

All Party Parliamentary Group for Excellence in the Built Environment



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HOUSE OF COMMONS
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More homes, fewer complaints

Report from the Commission of Inquiry into the
quality and workmanship of new housing in England

July 2016

Acknowledgement

We would like to thank the witnesses who gave oral evidence and the organisations that provided written submissions to the Inquiry, as well as those that took seats on the panel.

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Chairman's foreword

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Oliver Colvile MP
Chairman of the
All Party
Parliamentary Group
for Excellence in the
Built Environment

The Government is committed to building 200,000 new homes a year during this Parliament. This means that over one million new homes are expected to be built by 2020.

Whilst this is a welcome step to combat the chronic shortage of housing in the UK, the Government must ensure that these newly built homes are of good quality and of a high standard.

The UK housebuilding industry needs to raise supply. In tandem, it also needs to ensure that the quality of new build housing is good enough for people to live in. Although large numbers of homebuyers are happy with the quality of their new homes, there have been too many reports of new homes that are quite simply uninhabitable.

When problems occur they can be devastating. In my role as Member of Parliament for Plymouth Sutton and Devonport, where there has been a significant amount of newly-built homes, a series of defects have been brought to my attention by my constituents.

Amongst other things, the defects reported to me within my constituency include:

- Mould on both the inside and outside of their new properties after just a few weeks;
- Doorframes contracting so that doors don't fit;
- Water cascading through the rooves;
- Upward pressure on floors, creating uneven surfaces.

Starting in late 2015, as chairman of the All Party Parliamentary Group for Excellence in the Built Environment, I chaired an inquiry into the quality of new build homes. These four inquiry sessions took evidence from housebuilders, consumer groups, insurance companies and homebuyers.

To many, buying a new home is the realisation of a long held dream. Mostly, the experience lives up to that expectation. However, when it goes wrong you feel very let down. You expect the authorities to have systematically checked these new builds as they progress through development.

This is why I am positively passionate about this issue. Buying a house is probably the biggest investment that many of us will make. First-time buyers are purchasing a dream which they want to be of good quality. We need to build more homes, but I want quality homes for quality homeowners.

We also need to ensure that there is a clear process whereby developers can be held to account and are responsible for correcting any below-par workmanship as soon as possible.

A handwritten signature in black ink, appearing to read 'O Colvile', with a stylized flourish at the end.

Oliver Colvile MP

Executive summary and recommendations

Summary

This report is the result of an open Inquiry into the quality and workmanship of new housing for sale in England. As such, all appropriate organisations dealing with these issues were invited to submit evidence, and supplementary oral evidence was requested from a number of them. The weight of evidence we received suggested that as the number of new homes being built has increased, so house quality has declined.

This Inquiry by the All Party Parliamentary Group for Excellence in the Built Environment set out to investigate the issue. It was sparked by cases MPs have encountered among constituents frustrated by problems in their new homes and lack of adequate recourse to builders and warranty providers, to address these problems in a straightforward manner.

As the Government looks to drive up levels of housebuilding and offers more incentives to encourage greater levels of homeownership, we need to ensure that consumers are buying new homes that are fit for purpose, are of enduring quality, perform to the requisite levels of maintenance cost and energy efficiency and give peace of mind, pride and enjoyment to those who occupy them.

Our report says:

From the evidence we heard, consumers want to see an improved quality of build, homes that are fit for purpose and an easy to understand warranty. When something is wrong, consumers want an affordable and accessible means of putting it right.

- It is an area where we have elected to shine a spotlight because it was clear to us that there is a quality gap between customer demands and industry delivery. Closing this gap will only come about, we believe, if housebuilders make a concerted effort to create a more consumer-focused culture.
- The Government is intent on seeing the construction of one million new homes

within the course of this parliament and is investing large sums of money to stoke demand and raise affordability levels for first-time buyers in a drive for greater home ownership. However, our view is that it is imperative that increasing the quantity of new homes must not be achieved at the expense of their quality.

- Lack of market competition, skills shortages and an imbalance in bargaining power is short-changing buyers of new homes. Just 10 companies build half of all new private homes. As we were told in this Inquiry, while the number of new homes being built has risen, satisfaction levels have fallen. And when consumers do have problems they find their means of redress are inadequate. The last resort of pursuing claims through the courts is costly and inaccessible.
- It is often said, buying a new home is the biggest purchase anyone makes in their life. Yet, according to the 2015 National New Home Customer Satisfaction Survey carried out by the Home Builders Federation (HBF) and the main warranty provider, the National House Building Council (NHBC), 93% of buyers report problems to their builders — and of these, 35% report 11 or more problems. Buyers do actually have realistic expectations, and they do not necessarily expect their homes to be perfect, but they do expect to have effective mechanisms for redress, in order to get deficiencies rectified quickly.
- The same survey shows a decline in customer satisfaction with their new home from 90% to 86% in 2015. That equates to around 15,500 homebuyers (extrapolated from the number of private home completions in 2015) that were not satisfied. We think this is unacceptable.
- There is a perceived flaw in the system of checking quality and workmanship. Building controls and warranty inspections are concerned with compliance and Building Regulations but consumers think (or are even led to

believe) that a warranty is a hallmark of absolute quality. Often, the warranties cover far less than consumers assume; and neither warranties nor building control functions provide any sort of comfort that items such as finishes and fittings will be defect-free when the house is handed over. Nor do many consumers appreciate that for the first two years after completion, it is down to the builder to sort out defects; let alone that for the remaining eight years the warranties cover purely structural matters.

- A Local Authority Building Control (LABC) survey reveals a growing number of consumers taking complaints about new homes to their local authority building control departments, in the hope that they will be able to put pressure on the housebuilder to sort out the problems. But the local authorities have no such jurisdiction. The LABC said that 67% of complaints were about non-warranty issues with nearly 7 out of 10 related to aesthetic finish and décor. It also noted unwillingness of the warranty companies to act/pay out under the warranty scheme, which was prompting dissatisfied new homeowners to demand their local authority intervene and even repair the defect.
- Another key issue around quality is the so-called performance gap. As many witnesses told us, a gap exists between the designed and the as-built energy performance of new homes. This shortfall has yet to register on consumers' radar but we expect that it soon will and we are disappointed that the Zero Carbon Hub initiative, which was tackling the performance gap, has been wound up.
- Some of those giving evidence pointed to the need for more on-site inspections by independent organisations, in order to drive up quality. Inspections have a vital role to play and we recommend there should be a defined minimum number of

inspections by both building control and warranty providers. Financial pressures on local authorities should not be allowed to weaken their building control service. However, we do not agree with some of our witnesses who called for a 'beefed-up' inspection regime to combat poor quality. It is our belief that the responsibility for construction of defect-free homes should rest with the housebuilder, not with regulatory inspectors.

- Consumers need greater leverage to drive a change in culture. A chronic undersupply of homes means that, as things stand, normal market forces do not come into play and the balance between buyer and seller is strongly weighted in favour of the seller. This leads to problems such as exclusion clauses in the small print of sales contracts which consumers only discover when something goes wrong. And when they realise this, they are weakly placed to act as the legal position has become increasingly stacked against the consumer.

We need to see housebuilders putting consumers at the heart of what they do. This will involve new mechanisms and a fresh culture at every step of the process. It requires more onus on housebuilders to aspire to deliver the following: zero-defect construction; greater transparency to make consumers more aware of the inspection and warranty process; and easier and quicker forms of redress to solve disputes.

Recommendations

We believe that housebuilders should be upping their game and putting consumers at the heart of the business model. Alongside this, Government should use its influence to promote quality at every opportunity. To this end we have set out a series of measures to redress the imbalance between buyers and sellers.

Giving consumers a fairer deal and improving transparency in home buying

Recommendation 1: DCLG should initiate steps to set up a New Homes Ombudsman

The role would include mediating disputes between consumers and their builders or warranty providers to offer a quick resolution procedure paid for by a housebuilders' levy.

We see this as the key recommendation to provide more effective consumer redress if things go wrong, and a good way of applying pressure on housebuilders and warranty providers to deliver a better quality service.

Our view is that the new service should be funded by a levy on the sector, but it would need to be completely independent and replace the dispute resolution service offered as part of the Consumer Code for Home Builders. Our recommendation picks up on one made by the Office of Fair Trading, in its 2008 market study into the house building industry, which suggested that, if the industry failed to make satisfactory progress, it would recommend further intervention in the form of a statutory redress mechanism for new homebuyers funded by a levy on the industry.

Recommendation 2: Housebuilding sales contracts should be standardised

This would remove much of the uncertainty that presently arises from the bespoke nature of each builder's sales contract, which can deter so many from pursuing claims. The Law Society's Standard Conditions of Sale work well for normal conveyancing transactions and there is no reason why a similar approach

should not work for new homes.

We would expect the contract to set out how defects are handled, including provision for dealing with disputes before referral to an ombudsman.

Recommendation 3: Buyers should have the right to inspect properties before completion

There should be a mandatory right (which could be introduced by the inclusion of suitable provisions in the standard form contract) for buyers to inspect and, should they wish, carry out a full survey of their property prior to financial completion. We suggest that they be given 10 days' notice by the builder of when their property can be inspected. If after the inspection the buyer/surveyor deems that the property is not capable of occupation, the final financial completion can be delayed.

Such a provision would also discourage builders from serving notices to complete prematurely, or concealing major defects until after they have received the full purchase price, and would also encourage better quality control and site management pre-completion. In our view, the above suggestion would be relatively easy to implement, and would encourage improvements to construction quality without deterring capital investment or adversely affecting land values for developments already in the pipeline.

Recommendation 4: Builders should be required to provide buyers with a comprehensive information pack

The purpose would be to improve transparency of the design, building and inspection process. We would like to see housebuilders be required to provide prescribed and comprehensive written information to buyers during the conveyancing process as part of a standard contract (and in an electronic format) to make it easier for buyers to take issue if what they get is materially different to what they

contracted for. The pack should contain:

- Designs and plans, specifications etc.
- Details about both warranty and building control inspections, when carried out and by whom.
- What the warranty covers in plain English.
- Which version of the Building Regulations the house was built to and complies with.
- How to contact the builder to rectify defects.

Recommendation 5: There should be a review of laws governing consumer rights when purchasing new homes

There is a strongly held view that in disputes, the balance has been tipped too far in favour of housebuilders. This includes the Ruxley v Forsyth law case, which set precedent whereby housebuilders do not have to pay the costs for putting wrong work right if the costs are disproportionate to the impact of getting it wrong.

Recommendation 6: DCLG should commission a thorough review of warranties

At present warranty providers offer varying levels of cover and consumer protection. Our evidence suggested that warranties on new homes did not match the expectations of the consumer and our suggestion is that they need to be reviewed. In the context of buying a new home, consumers may well be prepared to pay more if it meant getting a better degree of service and would pay for additional cover on what they already get as part of the warranty.

We would expect the review to:

- Establish whether the warranties currently provided are adequate, what the minimum requirements should be, how they would need to change to achieve the needed level of cover and what the cost implications might be.
- Establish easier form of redress with

warranty providers as part of a New Homes Ombudsman role. At the moment, as financial bodies, warranty providers are covered by the Financial Services Ombudsman, which we were told was not always effective in dealing with the types of disputes we are looking at.

- Look into ways that warranty providers and housebuilders can set out more clearly at the time of conveyancing what the warranty actually covers.

Quality, workmanship, skills and inspection

Recommendation 7: Housebuilders should instigate a new quality culture by adopting quality systems to ISO standards

If defects are to be reduced and satisfaction levels improved, there needs to be an industry aspiration to achieve a zero defects culture, with greater emphasis on quality assurance and compliance measures adopted as standard by housebuilders. We would like to see the Home Builders Federation taking a more active part in driving this.

Recommendation 8: The industry should significantly increase skills training programmes

We would like to see greater emphasis on training and investment for both new and existing workers to embed a quality culture, whilst also bringing new people into the sector. We believe local authorities and Government should leverage more training by making it a condition on sale of their land.

Increasing trust

Recommendation 9: A minimum standard should be set for compliance inspections

The responsibility for construction of defect-free homes should rest with the housebuilder who should not rely on third party inspections to drive up quality. But we recognise that inspections from third parties do have a vital role to play and we need to

make sure that the corners are not cut. We are concerned that competition in building control might be fuelling a race to the bottom and we are therefore recommending there should be a defined minimum number of inspections that local authority building control and approved inspectors in the private sector and warranty providers should not fall below. We suggest that the minimum level should be considered by DCLG in consultation with the industry. We are also recommending inspection reports are made available to the public and form part of the information pack provided to purchasers when they buy a new home.
(See Recommendation 4)

Recommendation 10: Housebuilders should make the annual customer satisfaction survey more independent to boost customer confidence

We believe it would boost consumer confidence if the Customer Satisfaction Survey is seen to be more independent of the NHBC and the HBF – bringing in a high profile third party to conduct and take ownership of the research in their name. Furthermore, we would like to see more in depth research on consumer trends based on the follow up survey carried out by the NHBC in their nine-month survey. We feel this could provide a real insight into how builders are tackling initial defects and complaints.

Section 1:

The Inquiry

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1.1 About the Inquiry

Housebuilding output has been increasing as the sector has bounced back from the lowest rates of building on record. But as housebuilding has recovered from recession, has quality declined?

This Inquiry of the All Party Parliamentary Group for Excellence in the Built Environment sets out to investigate the quality issue. It was sparked by a growing number of cases MPs have encountered among constituents frustrated by problems in their new homes and with inadequate recourse to housebuilders and warranty providers to get them addressed in an affordable and straightforward manner.

This report is the result of an open Inquiry into housing quality and customer satisfaction. All appropriate organisations dealing with housing development, design and construction along with warranty providers, technical experts and consumer groups were invited to submit evidence, and supplementary oral evidence was requested from a number of them. The findings of the Inquiry are based on written evidence that was submitted, what we heard during our oral sessions and on extra evidence we invited.

Our Inquiry was confined to England as different standards and regimes apply in Wales, Scotland and Northern Ireland. It was also restricted to private sale. This is the biggest tenure type, representing around four out of five completions. Inevitably, problems occur across all tenures, but our report focuses on individual homes for sale rather than those bought by social and commercial landlords. Because these latter groups are professional landlords, they have a different direct commercial relationship with their builders and contractors and have more recourse for redress and greater bargaining power than individual homebuyers.

In its call for evidence, the Inquiry was keen to establish an overall picture of the state of housing quality and customer satisfaction as well as investigate practical examples and solutions that could lead

to improvements in these areas. Our call for evidence drew a wide range of evidence relating to aspects of the design, construction and performance of new homes as well as to customer care and legal redress when defects arise.

One of the central issues we had to confront is that there is no overall measure of quality in housebuilding. Instead, it is viewed through a number of different prisms from design and space standards through to planning considerations and energy and environmental performance.

Whilst we appreciate that properly used space and design are extremely important ingredients of good quality, we considered that this area has been well debated and that much has been said and recommended on these issues, and indeed has been addressed by introducing new housing standards.

The Technical Housing Standards¹ have been in place since 2015 and our view is that these should be given the chance to make an impact. However, we do note the concern expressed by the Royal Institute of British Architects (RIBA) that to date there has been little heed of them. It could well be a subject we return to in the future.

What became apparent to us is the often poor quality of workmanship and the problems this is causing consumers. It is an area where we have elected to shine a spotlight, because it was clear to us that there is a quality performance gap between customer demands and industry delivery. Closing this gap will only come about, we believe, if housebuilders make a concerted effort to create a more consumer-focused culture. As one member of our Inquiry noted, “We hear housebuilder chief executives talk about margins and land prices and the state of the market, but very rarely of the quality of their products.”

Written evidence was submitted in the autumn of 2015, and four open sessions, where oral evidence was presented, took place during November and December.

The All Party Parliamentary Group

¹<https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>

for Excellence in the Built Environment Commission of Inquiry comprises members of both Houses of Parliament, senior members of the construction professions and key influencers and decision makers in other aspects of society.

1.2 Members of the Commission

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APPGEBE and the Committee Chairman

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Section 2:

The new housing landscape and its impact on quality

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2.1 Housing overview

This Inquiry was instigated by Members of Parliament concerned that many buyers of new homes are not getting the quality they had expected. Constituents had contacted them to say they were unhappy with the quality of their new homes and they felt in a weak position when seeking a quick and affordable resolution.

We know the Government is intent on seeing the construction of one million new homes within the course of this parliament and is investing large sums of money to stoke demand and raise affordability levels for first-time buyers in a drive for greater home ownership. However, our view is that it is imperative that increasing the quantity of new homes must not be achieved at the expense of their quality.

Yet, as we discuss in more detail later in the report, evidence points to an industry that is under pressure to build quickly and, because it is lacking in any real competition in the new homes market, which will at times ride rough-shod over dissatisfied buyers. A shortage of homes has been instrumental in driving up prices in buoyant parts of the country². Analysis by Savills in 2015 showed that in Kensington & Chelsea prices had risen by 88% in a decade, compared with Durham where adjusted for inflation they had fallen by 41% in the same period³.

Competition is also lacking for several reasons: house sellers are not relying on repeat business; there is no overt disruption coming into the market; and housebuilding is concentrated in the hands of just a few major housebuilders. The smaller firms building a hundred or so homes who shut up shop during the recession haven't reappeared and their output hasn't been replaced.

In 2012-13, the UK hit a post-war low of 135,500 homes, yet it was estimated in 2013, for example, that over the previous five years the stock market valuation of Britain's largest housebuilders had risen by

342% while their output of new homes had marginally declined over the same period⁴.

Certainly, helped by low interest rates, an improving economy and a constant flow of Government initiatives since 2009, housebuilding rates have begun to recover, though they are yet to achieve the annual rates of above 200,000 homes before the recession. The number of new homes in England jumped by a quarter in 2014-2015 – the biggest rise in 28 years – as 155,080 new homes were built according to Department for Communities and Local Government (DCLG)⁵.

No one disputes the need to raise supply, but as more homes are built it is essential that their quality does not suffer. New homes need to be fit for purpose, have an enduring quality and meet with high levels of satisfaction from those that live in them. As we hear constantly, buying a house is likely to be the biggest purchase anyone ever makes. Yet for some, purchasing their dream home turns into a nightmare.

This is counter-productive to the industry. Witnesses pointed out that if the quality of new homes was improved and consumer satisfaction better addressed, members of the public might more readily accept new homes in their locale and the planning process might become less protracted.

The Home Builders Federation (HBF) deputy chairman, Peter Andrew, acknowledged to us that skills shortages and rising demand have impacted on consumer satisfaction. He said: "We recognise that given the scale of the industry and the complexities of designing, constructing and selling homes, there will be occasions on which properties are not perfect at the time of handover to the owners."

"Controls, checks and customer service advances over many years have greatly improved the overall experience for buyers of new homes. Individual companies, as well as the industry collectively, are

²<http://www.rics.org/uk/news/news-insight/comment/lack-of-stock-causing-unrealistic-housing-market-in-parts-of-the-uk/>

³<http://www.telegraph.co.uk/finance/property/11700282/Mapped-How-much-has-your-house-price-moved-in-10-years.html>

⁴Nick Raynsford. The challenge of the housing crisis. TCPA. 2013

⁵<https://www.gov.uk/government/statistical-data-sets/live-tables-on-house-building> and <http://www.theguardian.com/money/2015/nov/12/new-homes-planning-policy-housing-market>

working hard to improve even further.

He said that the current Building Regulations regime and other controls are doing an effective job in ensuring that serious structural failures or systemic building issues are extremely rare occurrences.

“However, for customers dealing with what are usually finishing items, the frustrations experienced are hugely significant. Buyers rightly expect a perfect product on the day they complete their purchase and the vast majority of builders are disappointed when they prove unable to deliver on these expectations. Many housebuilders have either recently reviewed the customer experience on offer or are currently doing so to ensure that as communications technology advances, the industry is using such options to their fullest to enhance the experience that buyers receive.”

Even before the recession in 2008, the role of clerks of works – site inspectors who assess building quality – had been declining, and this has not always been addressed by introducing a new and robust quality compliance systems. Yet it is arguably becoming harder for housebuilders to attain the highest quality that complicated modern homes require as houses have become increasingly a lifestyle product – with hi tech fittings (Wi-Fi, mechanical ventilation with heat recovery) and a need to be more energy efficient to meet tougher regulations. The absence of quality monitoring is inevitably creating more scope for error.

2.2 Lack of skilled labour

As we were repeatedly reminded during our Inquiry, housebuilders are facing an enormous challenge to increase output. This is not least because the industry has only recently emerged from the worst recession on record, losing 400,000 skilled workers along the way. More generally, the industry has found it all too easy to

hire migrant labour rather than attracting and training school leavers. Until recently, training of apprentices in the sector has been virtually non-existent, dropping to fewer than 8,000 per year completing an apprenticeship in one of the traditional trades of bricklaying, plastering or plumbing⁶. Skills shortages are rife at all levels from trades through to site management.

Mr Andrew, deputy chairman of the HBF told us: “You can’t have a year on year 25% increase in output without a skills issue – it’s certainly an issue for the industry. We think we are coping with it relatively well, but that’s not to say it’s not a challenge.”

He explained: “During the recession 40-50% of skilled labour, both in offices and on-site, left the industry. Some of these people have retired, some have other jobs, and we are in the process of recruiting some of them back. But there is also a massive drive to bring new people in – graduates and trainees for the next level of housebuilding.”

Mr Andrew acknowledged the resulting issue of quality. “From the HBF members’ point of view there has been a dip in customer satisfaction – from just over 90% to around 85%. We believe this is due to several things, among them completion dates for buyers being later than anticipated because of increased demand and skills shortages.” The figures are drawn from the 32,137 who completed the HBF survey, a little over half of the 60,000 forms sent out (see Section 3).

2.3 Demise of smaller housebuilders

The recession brought about another fundamental change in the sector which we believe has also impacted adversely on construction quality and customer service by diminishing competition. During the recession smaller housebuilders, who would naturally be more jealous of their local reputation than national housebuilders, had to shut up shop. At the

⁶<http://www.ciob.org/sites/default/files/No%20more%20lost%20generations%20report.pdf> (No more lost generations, All Party Parliamentary Group chaired by Lord Best and Rt Hon Nick Raynsford, published 2014)

same time, consolidation amongst the large companies has meant that, proportionately, a far higher number of homes are being built by volume builders than was previously the case. And there are now just a handful of these volume builders. For example, in 2007 before the recession there were 15 firms providing more than 2,000 homes a year. The following year when the recession bit, there were just six⁷.

In parallel, during recent years, SME developers have been lost because of the difficulties in buying land and getting finance. Surveys by the Federation of Master Builders (FMB) show that in the 1980s two-thirds of new homes were built by SMEs but that this has declined to less than one third (27% in 2013). Small housebuilders – those building

fewer than 100 homes a year – built just 20,000 homes in 2013, the Financial Times reported. A decade earlier it had been 51,000. A survey in 2014 by the National House Building Council found that half of small housebuilders cited banks' reluctance to lend as a serious problem.

It is clearly the case that for SMEs, a strong personal reputation is crucial, indeed even a matter of survival. It is their product and they are known locally. They have hands-on involvement and are often delivering a premium product to be priced accordingly. They often employ their own trades people and train them. They tend not to work on high volume developments which need to be finished on a specific day.

Local Authority Building Control (LABC) said in its submission: "Whilst we would

Box 1. How successive governments have stimulated demand to help the housebuilding industry

Over the past few years, the Government has stimulated the market through a range of new initiatives aimed at assisting first time buyers. It also reduced the requirement of Section 106 agreements and introduced rules to allow office buildings to be converted to residential use without planning permission.

The HCA's Kickstart programme provided £1bn of grants to developers in order to rescue projects stalled during the recession, helping to maintain employment and output of new homes. Launched in 2009.

The Builders Finance Fund: a recoverable capital investment to help unlock stalled housing schemes, with capacity to produce up to 15,000 new homes on small sites of between 15 and 250 units in size. The Government launched the scheme in April 2014 to encourage smaller builders to come back into the market⁹.

NewBuy Guarantee Scheme: allowed buyers to get a mortgage on a new-build homes with only a fraction of the deposit they would normally require. Started in March 2012 and was taken up by more than 70 housing developers and six major lenders¹⁰.

FirstBuy: aimed at maintaining capacity in the housebuilding industry in the short-term while assisting deposit-constrained first time buyers to realise their homeownership aspirations. The £250m scheme, which ran from March 2011 for two years, was expected to assist over 10,000 purchasers to buy a new home. FirstBuy support was offered through equity loan funding of up to 20% of the purchase price split, equally between the Agency and a housebuilder, with purchasers being required to raise funding (a mortgage plus deposit) of at least 80% of the purchase price¹¹.

Help to Buy: a replacement for FirstBuy announced in the 2103 Budget, Help to Buy provides an equity loan worth up to 20% of the value of a new build home (or up to 40% in London), repayable once the home is sold. It significantly widened the eligibility criteria to ensure as many people as possible are able to benefit. Originally open for three years, with a sum of £3.5bn, in 2014 it was extended to 2020¹².

Starter Homes: a scheme to offer 200,000 first-time buyers new homes with a 20% discount, as part of a major push to help people onto the housing ladder. First announced in December 2014, though yet to be launched, the highly controversial scheme will be open to first time buyers under the age of 40. The homes cannot be re-sold at market value for five years. Starter Homes will be in lieu of the traditional Section 106 agreements¹³.

⁷<http://www.bbc.co.uk/news/magazine-30776306>

⁸<https://www.gov.uk/government/news/pm-the-government-will-directly-build-affordable-homes>

⁹<https://www.gov.uk/government/collections/builders-finance-fund>

¹⁰<https://www.gov.uk/government/publications/2010-to-2015-government-policy-house-building/2010-to-2015-government-policy-house-building>

¹¹Stimulating housing supply – Government initiatives (England) Standard Note: SN/SP/6416 Last updated: 9 December 2014

¹²Stimulating housing supply – Government initiatives (England) Standard Note: SN/SP/6416 Last updated: 9 December 2014

¹³<https://www.gov.uk/government/news/20-discount-on-your-first-home-announces-pm>

not say that all large developers are bad (they definitely are not), or that all SME developers are excellent, our local authority members do have a very high regard for many small developers.”

Again, we appreciate Government is trying to make it possible for smaller firms to come back into the market with incentives like The Builders Finance Fund (See Box 1), and more recently pledging to release land exclusively for SMEs to build affordable homes⁸.

Box 2: The mammoth task of tackling skills shortages in housebuilding – evidence from the Chartered Institute of Building

With construction's well documented skills shortage, labour availability can be expected to be the biggest constraint on expansion over the next five years. Arcadis puts the scale of the skills challenge into tangible statistics¹⁴. Construction's productivity has not improved significantly in the past 20 years and, while many industries have invested in labour-saving technologies or methods in that time, construction – and housebuilding in particular – is typically as dependent on labour now as it was then.

Historically, the housebuilding industry has employed 1.5 full time equivalent (FTE) workers for a year to build a typical dwelling. Of this, 1.1 of FTE is associated with actual construction and 0.4 with management and administration. Based on this data, Arcadis estimates that the housebuilding industry currently employs approximately 165,000 site workers, as well as a further 50,000 supervisors, managers, technical staff and administrators. If the industry were to deliver 80,000 more housing units, taking the total to 230,000 homes per year, it would therefore require a further 120,000 workers. Hence it is clear that we will not achieve either the desired quantity or quality of new-build housing without first addressing the skills

gap that exists across the sector.

Construction quality is nearly always at risk when market dynamics change for the better, in particular when there is the prospect of a sustained period of economic and market stability. The graph in Box 3 shows this, with the 'boom' period of 2004 to 2007 seeing lower customer quality satisfaction ratings. In a housing context, the UK construction workforce is typically poor at responding.

The skills crisis is exacerbated by the fact that 19% of the construction workforce is set to retire within the next five to ten years. This exodus includes many experienced professionals (including chartered professionals) and will occur at a time when the building physics agenda is becoming more complex; for example, the issues associated with thermal bridging as Building Regulations become more stringent are likely to prove difficult to overcome without the appropriate experience.

As a result, the propensity for construction quality to be compromised still further is very real. We recommend that the industry must find ways to retain these older workers and enable them to pass on their skills to others in their firm, through mentoring schemes for example.

¹⁴<https://www.arcadis.com/media/7/3/0/%7B7300CB3B-C572-41EA-8D93-4AE794AD67BF%7DSolving%20the%20housing%20crisis.pdf>; Solving the Housing Crisis, Arcadis, February 2015.

Section 3:

Housing quality – assessing the evidence

3.1 Overview

An exact definition of what constitutes ‘quality’ with regards to a new-build home is difficult to ascertain. So measuring whether housebuilders are achieving that level is not easy either.

There is no coherent definition of quality in housebuilding, nor an agreed and centralised way of monitoring it. Instead, housing quality is seen in terms of design, space standards, technical performance, compliance with building regulations and planning, energy and environmental performance.

Many different organisations are involved and many different bodies have responsibility for particular aspects of quality – such as building control, housebuilders, planners and warranty providers.

Says the LABC: “There is no doubt that the standard of homes has increased over the last three decades, particularly in relation to acoustic performance, energy efficiency, inclusion and life safety.

“Perhaps most importantly, homes have become a ‘lifestyle’ product and are quite different from the designs of 30 or 40 years ago. For example, they regularly feature ensuite bathrooms, family bathrooms, downstairs cloakrooms, fitted kitchens, fitted appliances, utility rooms, wireless technology, and green technology.

“Many of these amenities have technical complexities which increase the risk of installation failures and increase the difficulty of maintaining a high decorative finish. To the new occupiers wanting their dream home, the risks of disappointments have been multiplied. But it may not mean there are problems with the structure.”

There are various technical and design standards that new homes must meet. These consolidate compliance guidance set by different local authorities and incorporate the Building Regulations into one streamlined document. The requirements were set out in March 2015, after long industry consultations¹⁵.

These new streamlined National Technical Standards include a nationally described space standard, which will be implemented through

the planning system, and a new security standard which is now part of the Building Regulations, for example.

Another driver for quality is through the Building for Life standard, though this is limited to the external environment of a housing development. In terms of construction quality, which our review has opted to focus on, good practice should be seen as building a new home that is defect-free.

As one of our witnesses, the Chartered Institute of Building, told us, utilising the ISO 9000 series of Quality Management standards is one such way to achieve this¹⁶. These standards provide a set of procedures companies can follow to ensure that quality checks are inherent in the way they run their businesses – it is not construction specific. However, we received no evidence to suggest how widespread this practice was in construction – and in fact more evidence to suggest that it wasn’t.

For us, the acid test of quality is customer satisfaction, and here many indications pointed to quality declining. It is hard not to escape concluding that all these surveys point to a problem in the sector.

3.2 Customer surveys point to dissatisfaction

There are no hard statistics on the extent of complaints about quality of housebuilding and how serious they are. But evidence points to the main focus of dissatisfaction being both around the fixtures and fittings, rather than fundamental structural defaults, and then subsequently the sheer frustration and often impossibility of resolving these problems.

A recent survey carried out by the Royal Institution of British Architects showed that nearly a third of people felt dissatisfied with some aspect of the quality of their new homes within two years of moving in.

According to the 2015 Homeowner Survey by HomeOwners Alliance and BLP Insurance, many members of the British public are shunning new homes because they are seen as being poorly built and characterless. The YouGov survey showed only one in five

¹⁵<https://www.gov.uk/government/publications/2010-to-2015-government-policy-building-regulation/2010-to-2015-government-policy-building-regulation#appendix-5-technical-housing-standards-review>

¹⁶http://www.iso.org/iso/home/standards/management-standards/iso_9000.htm

(21%) would prefer to buy a newly built home, whereas nearly half (47%) would prefer an old home (built ten or more years ago). The HomeOwners Alliance says that new homes may be less popular because they are seen to be poorly built, with 38% citing low build quality as a disadvantage of new homes¹⁷.

On a more positive note, the survey found that 51% thought new homes would offer lower ongoing maintenance and energy costs and were seen as the best chance of getting on the housing ladder.

The HBF surveys show declining levels of satisfaction

- Since 2005, the Home Builders Federation (HBF) has been sending new homeowners a survey to gauge satisfaction levels. The questionnaire is sent out eight weeks after legal completion. It clearly shows that for the 30,000 who replied (around half of those to whom the survey was sent since 2005), their satisfaction has dipped in recent years from 90% to 86% in the 2015 survey.¹⁸ That equates to around 15,500 homebuyers (extrapolated from the number of private home completions in 2015) that were not satisfied. We think this is unacceptable.
- In its evidence the HBF attributed this drop to stretched resources coming out of recession and homes being finished late – and even at 86% it is still far higher than the 76% satisfaction rating obtained in 2005 when the survey was first carried out. (NB: since taking evidence, the HBF has published its 2016 survey which shows overall customer satisfaction levels have remained at 86%¹⁹. Other results from the questionnaire also remained similar.)

Other findings from the 2015 survey were:

- 92% buyers said they would purchase a new home again.
- 86% would recommend their builder to a friend.

In contrast 93% of all respondents said that they had reported problems about their house to their builder – of which 20% were for 16 problems or more and 35% more than 11; yet nearly half said the defects they experienced were fewer than they expected.

The NHBC²⁰ partners HBF on the National New Home Customer Satisfaction Survey. It says: “Customer satisfaction, defects and claims data suggests that on the whole high quality homes are being built, although more can be done.”

But as our witness Chris Cousins, an associate with the Building Research Establishment (BRE), pointed out, “These surveys suggest that achieving the Government’s aim to increase the supply of new housing whilst at the same time improving customer satisfaction is likely to be a significant challenge to the industry.”

Recommendation: Housebuilders should make the annual customer satisfaction survey more independent to boost customer confidence

We believe it would boost consumer confidence if the Customer Satisfaction Survey is seen to be more independent of the NHBC and the HBF by bringing in a high profile third party to conduct and take ownership of the research in their name. Furthermore, we would like to see more in depth research on consumer trends based on the follow up survey carried out by the NHBC in their nine-month survey. We feel this could provide a real insight into how builders are tackling initial defects and complaints.

NHBC data

Data from the NHBC showed the quality of housebuilding in a very positive light. NHBC is the warranty provider for 75-80% of homes built in the UK. Lewis Sidnick head of corporate affairs at the NHBC, told us that just 0.7% of Buildmark warranty holders each year experience problems with their homes stemming from latent defects in the design and construction and which constitute a valid claim.

¹⁷<http://hoa.org.uk/campaigns/publications-2/the-homeowner-survey-2015/>

¹⁸<http://www.hbf.co.uk/policy-activities/customer-satisfaction-survey/2015-results/>
¹⁹<http://www.hbf.co.uk/policy-activities/customer-satisfaction-survey/2016-results/>

²⁰The NHBC is an insurance company authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority. It is an independent and non-profit distributing company which is able to invest in its purpose to support the housebuilding industry to raise standards of new homes and provide consumer protection for homeowners.

Box 3: HBF survey in more detail

The 2015 survey on which the HDF evidence was based was carried out by NHBC, and covers the 12 months from October 2013 to September 2014. The annual survey was launched in response to recommendations in the Barker Review of housing supply in 2004 and is a self-completion census of the new home purchasers. In its evidence the HBF said that of the 60,000 forms that were sent out, 32,137 were returned, a response rate

of 56% – ‘an outstanding response to a hybrid email and postal survey’²¹. The statistical methodology used in the analysis of this survey has been approved by the Statistical Services Centre, University of Reading. The methodology is principally the same as in the first survey, published in 2006, for which Ipsos MORI acted as a consultant. Industry results are weighted by builder to take account of the number of eligible homes they have

built in the year. Individual company results are not weighted. Company star rating results awarded by HBF are allocated according to the proportion responding ‘Yes’ to the question ‘Would you recommend your builder to a friend?’.

90%+ 5 star
80% – 90% 4 star
70% – 80% 3 star
60% – 70% 2 star
50% – 60% 1 star

The NHBC also said that fewer than 5% of new homebuyers contact NHBC with issues that result in a valid claim under the warranty period. However, NHBC warranties – like all warranties – mostly cover structural aspects of the new-build house after the initial two years. During the first two years the builder must put right anything that is not built to the NHBC requirements. If they do not, NHBC will do it on their behalf. Most often the devil is in the small print and frustrations arise when builders refuse or are slow to sort out defects or house owners discover their defect is no longer covered by the warranty.

Annually, NHBC investigates about 18,000 Buildmark warranty claims of which around half are found to be valid, or 0.7% of the around 1.5 million homes under cover. This has remained relatively flat over the last five years, increasing slightly in 2013/14 as a result of a significant storm event says the NHBC²².

NHBC contrasts the performance of housing in other countries with the UK’s, pointing out that the UK has not experienced the kind of systemic failures that have occurred recently in Canada and New Zealand.

In addition to the National New Homes Survey, which is carried out eight weeks after legal completion (which is the basis for the HBF Star Rating scheme), NHBC also carries out a similar survey nine months after legal completion.

There is not currently a public rating scheme associated with the results of the nine-

month survey, although some housebuilders do use these results for internal monitoring and reporting purposes. The homeowner satisfaction levels at nine months are generally between 5% and 10% lower than those measured at eight weeks. (However, the questions asked are not identical and the nine-month survey asks general questions about the development, such as parking provision and public spaces, that are not related to the quality of homes. The nine-month survey also includes questions about the after-sales service rather than the pre-sales and immediate post-sale service.)

The NHBC says that satisfaction levels in both eight-week and nine-month surveys have fallen slightly during the last couple of years, most likely as a result of the initial pressures associated with a growing market (eg, availability of skilled trades and customer service personnel). The latest results show that this decline in satisfaction levels may now have been arrested, housebuilders having responded to the strains of growth that were initially experienced.

During our evidence sessions, Ian Davis, operations director of the NHBC told us: “What’s happened is that, counter-intuitively, because the industry was under pressure during the recession, quality actually went up to an all-time high. We went from having only one 5-star builder to having many more.

“Because first off, consumers were seeing finished properties, they saw what they got.

²¹<http://www.brand-newhomes.co.uk/HBF-Customer-Satisfaction-Survey-2015.PDF>
²²No data from other warranty providers in terms of claims and defects was provided as part of the evidence.

Box 4: How consumer satisfaction has declined with increasing output

The Chartered Institute of Building (CIOB) has analysed consumer responses to housing quality over a period and correlated it against output. The CIOB focused specifically on the question: "Taking everything into account, overall how satisfied or dissatisfied are you with the quality of your home?" The CIOB compared the responses to this question where respondents answered "very satisfied" or "fairly satisfied" (as opposed to "neither", "fairly dissatisfied" and "very dissatisfied"), against the number of total private housing completions in England.

[Note that the HBF customer satisfaction survey did not start until 2005, and that the very first survey was conducted for the period April to September 2005, whereas all subsequent surveys have run from October 2005 to September 2006, October 2006 to September 2007, and so on.]

The CIOB says that "While this does represent a relatively rudimentary comparator and does not take account of other housing tenures besides private (although this is the biggest tenure type,

England Housing Completions (Private Enterprise) vs HBF Customer Satisfaction Survey Results

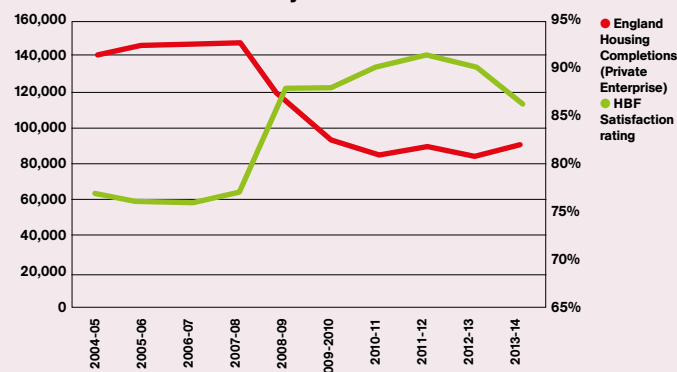


Fig.1 Private housing completions in England and HBF survey satisfaction by Chartered Institute of Building

representing 79% of all housing completions in England between Q3 2013 and Q3 2014), housing completions in Wales, there is a clear pattern that demonstrates that more homes built correlates with a decline in homebuyers' satisfaction in terms of quality. The most obvious increase in customer satisfaction came in 2008-09, one year after the recession began to bite and at a time when housing completions were beginning to fall.

"This general trend then

continued until the most recent set of figures, when housing completions increased by 6% and saw customer satisfaction decrease by 4%. We stress that these figures are in terms of volume and not productivity, but it is important for Parliamentarians, policy makers and indeed the public at large to be aware of the circumstances, based on the data here, that an increase in housing supply over the coming years intensifies the possibility of a decline in overall housing quality."

Builders were having to work hard to get sales, and therefore were finishing them off well.

"Coming back into a growth period, we do have a problem with skills. The figures actually show that what has happened to the customer satisfaction survey, and why it has fallen: it's not so much — and this is the homeowners' perception — the perception of a poor underlying quality problem, it is that satisfaction levels at moving-in stage have fallen considerably, as they're not completed necessarily on time, the standard of finish isn't as good as it was in the peak period, there are more finishing defects, and some of the after-sale service isn't as good as it was. (See graph, Box 4.)

"In response, we've embarked on the biggest recruitment process that I can remember from the organisation — going from 250 inspectors in

2013 to 375 at the end of this financial year. I've taken on more engineers and more surveyors. My inspectors are spending less time driving round and much more time on site now, because I've got more of them. We're doing more training than we've ever done before.

"And next year we're introducing a number of initiatives. One is a register of site managers. And secondly, at our Milton Keynes office, we are going to build a housebuilding centre of excellence where we're going to build two and a half perfect houses to help demonstrate and train.

"What might be an issue will be houses being built in the future to higher standards for environmental reasons, making them and Building Regulations more complicated. But without a doubt, the right level of skilled people is a key issue."

LABC survey

Local Authority Building Control (LABC), which represents all authorities in England and Wales, has been gathering complaints made to local authorities about the quality of new homes over the past 36 months. For the first time ever, exclusively for this Inquiry, it has put this information in the public domain.

Giving evidence, Paul Overall, chief executive of LABC, said an increasing number of disgruntled homeowners have been going to local councils in the mistaken belief that as a building control authority (which checks homes under construction for compliance with building regulations) the council would be in a position to help them.

He said that 67% of complaints were about non-warranty issues with nearly 7 out of 10 related to aesthetic finish and décor. The complaints varied, but these were typical.

“Complaints often relate to the unwillingness of the warranty companies to act/pay out under the warranty scheme and they then expect the local authority to intervene and even make good the defect.”

“We are often asked to enforce the completion of work, but until complete we cannot issue a completion certificate and cannot force the builder to complete the work.”

Mr Overall said: “I believe there needs to be a better understanding from the general public of our role within the build and design of dwellings in particular the limitations of our enforcement powers.”

Phil Hammond, LABC’s managing director told us: “If you look at our complaints, they are about prosaic, ordinary things going wrong in the house. And because trades are crossing over each other — drilling holes, putting screws etc — it means that leaks and other common snagging issues are pretty endemic. We, as local authorities, have been picking them up because consumers can’t get developers to deal with them.”

developers, rate the quality of the performance of their builders compared with other industry clients. A 2015 survey by Glenigan and Constructing Excellence provides extensive performance benchmarks on time, quality and costs²³.

On the whole, those in the housing sector tend to reflect a lower satisfaction compared with clients from other sectors, pointing to more evidence of a lack of quality control of those working in housebuilding — though the results on the whole pointed to improving standards.

Encouragingly, after a marked deterioration in 2013/14, clients’ overall satisfaction with housing projects held steady in 2015 at 74%. However, this is well below satisfaction levels seen over the previous 10 years. Between 2003 and 2012, this proportion varied from a low of 81% to a high of 88%.

In contrast, satisfaction improved with both service received and level of defects, according to the latest survey. Service on housing projects was rated as 8 out of 10 by 71% of clients, up from 62% in the previous survey. The proportion of clients rating the impact of defects at handover at 8 out of 10 also rose to 71%, from 66% in 2013/14.

Nevertheless, despite the improvements, performance on both these measures was worse than in any year prior to 2013/14. This again suggests that as output has risen, so quality has fallen. It is perhaps worth noting, however, that the clients we are referring to would in many cases be employing building contractors who have a direct relationship with clients who they rely on for repeat business.

²³https://www.glenigan.com/sites/default/files/UK_Industry_Performance_Report_2015_883.pdf

UK Industry Performance Report 2015

It is also worth noting how professional housing clients, like social landlords and

Section 4:

What is going wrong and how does the industry start getting it right?

4.1 Improving workmanship and inspection

Evidence presented to us suggested there is a continuing issue with poor standards of workmanship in new homes. And as we report in Section 3.2 the HBF's own customer satisfaction survey shows that 93% of people report problems to their builders. The survey also shows that new home buyers are realistic enough, or have heard enough about other people's problems, not to expect a defect-free dwelling. But nevertheless, the latest HBF surveys show 14% of new homebuyers are dissatisfied with what they have bought. More than one in seven, or around 15,500 buyers each year (based on completion figures of private new homes of 110,600 for 2015)²⁴, are not getting what they were led to believe they were getting, which clearly demonstrates there is room for improvement in the country's housebuilding system.

Specific issues that were raised were:

- Housebuilders have targets to achieve – sometimes, at financial half year stages, the quality is reduced as they rush to meet targets.
- Goods and equipment are not always installed to manufacturers' guidelines.
- Builders substitute products specified by the architect with cheaper products.
- Over-reliance by housebuilders on inspection by warranty staff and building control to drive quality – yet their role is to manage risks and compliance, not quality control. Some witnesses, however, said there had been too much inspection by third parties in the past and that the current level was about right.
- Housebuilders' own quality control systems are not fit for purpose.
- Performance gap widespread, with homes being designed to meet high energy performance found to meet far lower energy efficiency in practice. The Zero Carbon Hub identified 15 areas in need of improvement – including improving the build quality (See box 7).

There is no doubt the skills gap is having a big impact on performance and that training and recruitment issues across the whole construction industry have become more pressing. The HBF acknowledges the problem but says it is being addressed, commenting: "Rapid increases in housebuilding levels over the past two years initially stretched industry capacity but the industry is both working hard to expand capacity. This includes setting up a new website to promote careers in the industry to young people, and an initiative to get those who have left the sector to come back."

A great deal was made in the sessions about the varying quality of workmanship. Opinions differed about whether more consistency should be achieved through more inspections from outside independent bodies, or whether quality should be the responsibility of the builder, through improved quality compliance systems or by a return to the traditional use of clerks of works.

Concern was raised that in some cases fewer inspections were being undertaken by building control inspectors and approved inspectors (their private counterparts) to establish homes' compliance with Building Regulations because competition in the market was driving fees down and affecting their capability for doing a thorough and full set of inspections (see more in the Warranties section).

The same trend was observed by some for inspections for home builders' warranty inspectors where again the emphasis is on compliance and structural integrity.

Paul Overall, the chief executive of LABC, told us: "I'm not sure it's the standards that are letting us down. There are standards for tolerances. It's just that the two regulatory systems we have, building control and warranties, are only addressing part of the problem."

"Clearly there is a gap when it comes to checking other aspects of quality. Building Regulations are not to do with finish and fittings quality - they are more concerned with safety and energy. Warranty is more to do with structural integrity and meeting Building

²⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/502930/House_Building_Release_Dec_Qtr_2015.pdf

Regulations.

“It would be possible to design a more comprehensive inspection system that would cover all these aspects of quality. But that would cost money because you would need longer inspection time on site and it’s surely better to work with the industry to try and find a way to tackle these issues.”

It would certainly seem to us, given that housebuilding quality is inextricably linked with houses being built to meet their energy targets, that the work of the Zero Carbon Homes Hub could have been extended to provide a wider task force of increasing quality (see below, Energy section). This is a very good model for the industry and government working together, engaging the industry in improvement – and as we point out in Section 4.2 it is a real blow that its work is no longer continuing.

But our view is that it would not be appropriate that housebuilders absolve themselves from improving build quality by devolving this to a beefed-up inspections regime. It is housebuilders’ responsibility to get it right first time, rather than have defects pointed out by an outside inspector.

And while there is clearly no instant solution to this problem, we have not been convinced that more could not be done to change attitudes so that a defect-free environment becomes inherent in the culture of the sector.

The HBF says that the industry is addressing the issue of quality. Deputy chairman Mr Andrew told us: “For me, the responsibility for finish of a property is down to the housebuilder, and I think it has to sit with the housebuilder. Within that, some housebuilders will have people who check that: they might be called clerk of works, they may be called customer service people. I think the industry is going through a change at this moment as it focuses on how good completion is.

“I’m very aware that housebuilders are bringing on more people to look after consumers’ interests, to see through consumers’ eyes as it were. So building regulations and structural stuff is dealt with

in one way, but this is about how well the property looks on completion, how well the finishes are made. So whatever you call it, the focus is very much on the finish because it’s not covered by building regulations.”

Another of our witnesses, Professor Chris Gorse of Leeds University, told us: “We’ve got to remove the sign off procedures in construction – they are flawed. The first thing we need to establish is whether the design and the construction process are right and are meeting standards.”

Professor Gorse suggested housebuilders institute a system for photographing the whole construction process in order to highlight any fault, for example badly fitting products or problems with interfaces. He said this would help empower tradesmen and their managers to take more responsibility for their work, particularly if the photographs could be tagged by name to the individual tradesman.

Going forward – quality, skills and inspection

From the evidence we heard, consumers want to see an improved quality of build, homes that are fit for purpose, and an easy to understand warranty. And when something does go wrong consumers want an affordable and accessible means of putting it right.

Tackling the first of these – improving the quality of new build – comes down to improving skills of those already working in the sector, increasing the number of trained people, and putting in place a culture and inspection mechanisms that aspire to reducing defects.

We are pleased to hear of a number of new initiatives to drive skills, training and quality that have been put in place, including plans by the NHBC to introduce more checks on site (See Box 5) and a new £2.7m initiative between Construction Industry Training Board and the Home Builders Federation to train 45,000 new workers by 2019. However, given the 120,000 figure of new workers needed to increase output to 230,000 new homes per year as forecast in the Arcadis report (as we discuss in Box 2) the skills gap will still be someway off being filled.

Box 5: NHBC to tackle construction quality

The NHBC says it is introducing construction quality audits (CQAs) of sites under construction and registered for Buildmark warranty. These audits will involve NHBC's inspection managers undertaking structured detailed audits of construction quality throughout all construction stages. CQAs will include photographic evidence of construction quality being produced and will assign

a score to each element audited and, in addition, the underlying causation behind the level of quality being achieved will be recorded. The macro level data collected will be analysed and used to provide consultative feedback at industry and builder-specific levels in order to assist the industry in identifying opportunities for improvement and, importantly, how this may be achieved.

The introduction of

CQAs is designed to identify and seek to address the underlying causations behind defects and so address root causations and improve construction quality. Currently, quality control processes, such as inspection of construction work at key stages (for warranty or building control), are aimed at identifying what is wrong with homes under construction at the given point of inspection.

But the NHBC says CQAs go beyond this in a number of ways:

1. The audits are much longer in duration than the inspection of a given key stage of construction, typically two to three hours on site, and have a broader focus.

2. CQAs identify, document, photograph and score both very good construction work as well as work that is non-compliant with NHBC Standards and Building

Regulations.

3. CQAs establish root causation behind the quality of construction by utilising a more forensic approach – questioning site managers and trades etc, looking at design details, sub contractor work packages, materials stores and reviewing builders' quality management systems. They are looking to discover 'why did this happen?'.

Alongside this, we are aware that the Minister of State for Skills, Nick Boles, and Housing Minister Brandon Lewis in February commissioned Mark Farmer, the author of the Arcadis report, to conduct more research into ways to redress the skills gap in housing²⁵. We look forward to seeing the outcome.

From our evidence, more needs to be done to check quality on site, train existing workforce and implement quality and compliance systems.

Recommendation: Housebuilders should instigate a new quality culture by adopting quality systems to ISO standards

If defects are to be reduced and satisfaction levels improved, then there needs to be an industry aspiration to achieve a zero-defects culture, with greater emphasis on quality assurance and compliance measures adopted as standard by housebuilders. We would like to see the Home Builders Federation taking a more active part in driving this.

Recommendation: The industry should significantly increase skills training programmes

We would like to see greater emphasis on training and investment for both, new and existing workers to embed a quality culture whilst also bringing new people into the sector.

We believe local authorities and Government should leverage more training by making it a condition on sale of their land.

Recommendation: A minimum standard should be set for compliance inspections

The responsibility for construction of defect-free homes should rest with the housebuilder who should not rely on third party inspections to drive up quality. But we recognise that inspections from third parties do have a vital role to play and we need to make sure that the corners are not cut. We are concerned that competition in building control might be fuelling a race to the bottom and we are therefore recommending there should be a defined minimum number of inspections that local authority building control and approved inspectors in the private sector and warranty providers should not fall below. We suggest that the minimum level should be considered by DCLG in consultation with the industry. We are also recommending inspection reports are made available to the public and form part of the information pack provided to purchasers when they buy a new home.

²⁵<https://www.gov.uk/government/news/ministers-call-on-construction-industry-to-invest-and-build-home-grown-talent>

²⁶The Zero Carbon Hub has published two reports on the issue; the first as a result (1 Zero Carbon Hub, Closing the Gap Between Design and As-Built Performance - Evidence Review Report, March 2014.http://www.zerocarbonhub.org/sites/default/files/resources/reports/Closing_the_Gap_Between_Design_and_As-Built_Performance-Evidence_Review_Report_0.pdf)

²⁷Zero Carbon Hub, Closing the Gap Between Design and As-Built Performance - End of Term Report, July 2014http://www.zerocarbonhub.org/sites/default/files/resources/reports/Design_vs_As_Built_Performance_Gap_End_of_Term_Report_0.pdf)

4.2 Addressing the energy performance gap

A key issue around quality is the so-called energy performance gap. As many witnesses told us, a gap exists between the designed and the as-built energy performance of new homes. This is not on consumers' radar as yet – though we expect that it soon will be. But the problem and what is being done to tackle it was covered extensively by the Zero Carbon Hub whose reports have highlighted the performance gap and have set out plans to try and tackle it^{26 27}.

Their research concluded that all stages of the process of providing new homes – from site acquisition through to commissioning – have the potential to contribute to the performance gap, be it inadvertently, or as a consequence of conflicting drivers within the industry, or through poor practice, or as a combination of all three.

Andrew Forth, giving evidence on behalf of RIBA, pointed out the lack of connection with the end product that architects have been experiencing. “Architects are involved in fewer and fewer houses that get built these days. And even when they are, they are being marginalised in the process and therefore design lessons are not being learnt.

“We are even getting reports that architects are not allowed to visit sites during the build process. That means they are not seeing how their designs are being built, so if there is a problem with the design they don't learn about it until much later. And it means architects

are not learning about what it's like to be on a building site, which is an important part of their education.”

Zero Carbon Hub told us: “The existence of a performance gap means that homes are using more energy (and emitting more carbon) than expected, occupants are paying higher energy bills than anticipated and the overall intended quality of the home could be jeopardised.”

Research from the Zero Carbon Hub has identified 15 issues that are categorised as 'priority for action'. These range from issues with detail design teams who do not understand site and buildability issues well enough to be able to reliably design energy efficient homes with consistent as-built performance, through to poor construction (see Box 7).

Going forward

Given there is a vital job to be done in improving energy performance of new homes and equipping the length of the supply chain to improve design, coordination and quality on-site, it is disappointing to hear that it has subsequently been announced that this initiative has now been wound up.

It is an excellent model for industry and government working together, engaging the industry in improvement, and could provide a blueprint going forward for extending its remit into workmanship more widely and not just where it is detrimental to energy and environmental performance.

Box 6: The Home Quality Mark (HQM) - is this the answer?

One promising development for driving up standards in housebuilding is the Building Research Establishment's Home Quality Mark (HQM). This is a national standard for new homes, which uses a simple five-star rating to provide impartial information from

independent experts on a new home's design, construction quality and running costs.

The BRE says that its HQM, currently in the beta-testing phase, will enable housing developers to showcase the quality of their new homes, and identify them as having the added

benefits of being likely to need less maintenance, cheaper to run, better located, and more able to cope with the demands of a changing climate. It is intended as a voluntary scheme.

HQM also sets out ways to reduce the so called 'performance gap' by measuring actual

performance rather than 'on paper performance' and the BRE has worked with Zero Carbon Hub and others in finding metrics to do this. Workmanship, though not specifically mentioned, is a key part of reducing the performance gap. However, as Gwyn Roberts, New Homes and Communities Lead,

BRE Global told us: “We do recognise that there is further work to do on this area, and are planning to set up a working group to see how HQM can better address the workmanship issue, which is something that we are also keen to work with the warranty providers on.”

Box 7: How the performance gap can be bridged

The Zero Carbon Hub set out a number of priority actions for industry in its submission including priorities for industry:

Performance assessment r&d: Undertake the research and development necessary to create innovative testing, measurement and assessment techniques to understand the performance gap and develop commercially viable methodologies acceptable across industry for 'demonstrating performance'.

Skills and knowledge

development: Ensure that as-built energy performance knowledge, including learning from ongoing research and development, is embedded into training and up-skilling for professionals and operatives.

Construction details scheme: Develop an industry owned and maintained construction details scheme providing 'assured' as-built energy performance for the most common major fabric junctions and systems.

Continued evidence gathering: Support further evidence-gathering

processes and co-ordinated feedback to ensure accelerated continual improvement across all sectors of industry.

Signal clear direction: Clearly indicate that, in place of immediate additional regulation, Government expects the construction industry to act now and have put in place a number of measures to ensure that the energy performance gap is being addressed and to demonstrate this by 2020.

Stimulate industry investment: Signal Government's long term

intent by funding research and development into testing, measurement and assessment techniques with immediate effect, to support the industry in providing the information necessary to quantify the performance gap and create the 'learning loops' required to drive continuous improvement. Additionally, provide pump prime funding to enable industry to develop a construction details scheme.

Strengthen compliance regime: Take action by 2016 to ensure that the Zero Carbon Hub recommended

(revisions to energy modelling practices, sap processes and verification procedures, together with a strong regime to ensure that only suitably qualified persons carry out energy modelling and assessment) can be put in place.

Support skills & knowledge development: Accelerate the demand for industry-developed qualification schemes by requiring energy-certified operatives and professionals for developments on public land from 2017.

4.3 The need for clear and comprehensive warranties and clarifying the role of building control

Setting out the problem

During the course of our Inquiry we heard a great deal of evidence about building control, warranties and inspections. And we also heard about the confusion amongst consumers over how they are all linked and whether they are meaningful hallmarks of quality and workmanship. Often the warranties cover far less than consumers assume, and neither warranties nor building control functions provides any sort of comfort that items like finishes and fittings will be defect-free when the house is handed over. Nor do many consumers appreciate that it is down to the housebuilder to sort out defects for the first two years after completion, and for the remaining eight years the warranties are purely structural.

As we described in the Section 3, the LABC survey revealed how a growing number of consumers are taking complaints about new homes to their local authority building control departments in the hope that they will be able

to put pressure on their housebuilder to sort out problems in their new home. But they have no such jurisdiction.

Putting warranties and building control into context

All new homes are required to be built to minimum safety and performance standards laid out in the Building Regulations. Building Regulations in England are set by the Department for Communities and Local Government (DCLG).

These are standards for the design and construction of buildings to ensure the safety and health of the people who use those buildings. The standards also include requirements to ensure energy efficiency (the conservation of fuel and power) and accessibility (providing facilities for people, including those with disabilities, to gain access and move around inside buildings).

Building Regulations cover structural integrity, acoustics, electrical wiring and other safety issues. During construction, local authority building control officers or private sector approved inspectors (who are regulated for performance and qualification of their staff)

inspect the building for compliance with the Building Regulations and issue a compliance certificate on completion.

All local authority building control departments in England and Wales are members of LABC, which alongside approved inspectors, operates a warranty scheme. This is basically an insurance for homeowners against problems with new homes — largely covering structural defects after the first two years.

Where the warranty provider and building control/approved inspector are one and the same, the series of compliance inspections carried out under construction are often undertaken at the same time but using different criteria and additional checks are made.

NHBC is estimated to have around 80% of the warranty provision but less for the building control service (some clients prefer to separate the building control and warranty provision). A decade ago NHBC had a virtual monopoly on warranties, but now shares the market with Premier Guarantee and LABC Warranty. In addition, there are small and independent approved inspectors marketing warranties that together could account for a small slice. It is the housebuilder that chooses the warranty provider not the consumer.

Often the warranties they provide are similar in that for the first two years the builder is responsible for sorting out any defects and after that is the responsibility of the warranty provider. Generally, warranties provide insurance cover for certain structural damage for between 3 and 10 years. Before that period it is the builder's responsibility to sort it out — though the NHBC says it steps in if the builder does not do the work.

However, consumers see both the building control process and warranties as a total hallmark of quality, rather than the limited service it actually is.

It was flagged up that there are consumer misconceptions about both warranties and building control:

- Misconceptions about warranties: private buyers often rely heavily on the Building

Warranty CML certificate but they do not always appreciate that warranty inspections are more geared towards structural compliance.

- Misconceptions about building control: like warranties, there is often a misconception about building control. Again, inspections and compliance certificates are about safety and energy, not finishing quality.

But as council websites for building control point out, building control is not:

- A 'clerk of works' service monitoring every stage of the construction process on site. That is a matter for the contracts and arrangements put in place between the client and the builder. Ultimately, compliance is the responsibility of the person carrying out the work.
- A service to address issues such as the finish and aesthetics of the final project where these are not Building Regulations standards. These are a matter for designers, builders and new home warranty providers.
- A service to offer contractual protection to a client in a contract with a builder. This is a matter for contract law.
- A 100% guarantee of compliance. It plays an important part to educate and to reduce risk, but building control does not remove the obligation of the housebuilder to achieve compliance.

There are cases where the defects homebuyers are complaining about are structural faults which are in breach of Building Regulations and they should expect an independent building control inspector to have picked up on these faults and not signed a compliance certificate. Building control is certainly about safety and energy but it also about quality in terms of structural integrity and we need building control authorities from both local authorities and the private sector to be vigilant and help drive up quality.

We note that DCLG is working with the industry to devise a system for making inspection reports by building control

inspectors available to buyers of new build homes. This is a welcome step in increasing transparency.

Inspections records are a snap shot in time and currently do not necessarily reveal what work has been undertaken by the builder to remedy defects identified during the course of the inspection. A common template would also help ensure that inspections would be less likely to be open to misinterpretation from consumers. We would welcome such an initiative and would encourage DCLG to consult with building control representatives on the scope for developing a common framework for inspection records.

Warranty inspections

Warranty providers inspect houses under construction on a ‘sampling basis’ – ie, they will normally inspect every house but not at every stage of that house’s construction. NHBC, for example, says that every single house it inspects is visited five times.

One witness, Rob Clay-Parker, director of MD, Warranty Support Services, said: “The customer tends to think that a comprehensive inspection process on every individual property will have taken place – that every single stage of construction of that property will have been inspected. And that may be the case as part of a sampling risk management process of a couple of stages of the construction process. We inspect a number of foundations, a number of damp-proof courses, and on every single property we do a completion inspection and gas and electrical testing. But not all properties get all these inspections. On a site of say 200 or so houses, you would sample inspections on other stages – like foundations.

“The average motor policy is £365 per year. The average latent defects policy is £300 for a 10-year policy. The economics suggest that we cannot do a plethora of inspections. The inspections are purely to prove to our underwriters that the property is a standard risk.

“We certainly think there is an over-reliance [by housebuilders] on inspection by warranty

and building control organisations to drive quality levels. We try and do that, but the primary function on the warranty side is to manage risks – it is not about providing quality control. The economics are such that it does not allow staff to carry out that number of inspections.”

Warranty inspections have a vital role to play and we need to ensure that they are taking place and picking up the faults and helping to drive quality.

Going forward – providing warranties consumers want

Consumers buying goods rely on warranties to provide a degree of comfort that if the product does not perform in the way they expect, it will be fixed or replaced or they will get their money back. And they want to be able to understand exactly what their warranties cover.

We are recommending:

Review of warranties by DCLG to establish whether a more comprehensive cover would be more appropriate for house buyers – and what the cost implications might be. Our view is that in the context of buying a new home, consumers may well be prepared to pay more if it meant getting a better degree of service and would pay for an additional cover on top of what they already get as part of the warranty.

We would expect the review to look at:

- Minimum standards of cover – and minimum levels of inspections for warranty inspectors.
- Easier form of redress with warranty providers as part of a new New Homes Ombudsman role. At the moment, as financial bodies, warranty providers are covered by the Financial Services Ombudsman, which we were told was not always effective for dealing with the types of disputes we are looking at.
- Higher profile marketing by warranty providers and housebuilders at the time of conveyancing to set out more clearly what the warranty actually covers.

Box 8: Skills shortages hit building control functions

The Building Control Performance and Standards Advisory Group (BCPSAG) runs an annual survey to assess the performance of building control bodies. The most recent report for 2013-14 produced a number of headline findings that have implications for building control bodies' capability to effectively implement building regulations, including with new build homes (which typically account for 10% of a building control bodies' workload, depending on their location in the country). The three primary risks that were identified as having implications for quality are:

- reductions in building control body staff

- numbers;
- difficulties recruiting appropriately qualified staff;
- the age profile of staff increasingly becoming a problem, with over 17% of building control body staff aged over 55.

These skills issues are endemic and well documented elsewhere in the industry, but it is important to note that they affect not only the site and managerial workforce but also those who enforce quality checks and controls. This is perhaps even more vital when considering regulatory changes in the form of the new set of Housing Standards that came into force on 1 October 2015.

4.4 Giving consumers a fairer deal in buying a home

Imbalance in bargaining positions

Throughout the Inquiry we heard from consumers and independent organisations about the cavalier attitude of some housebuilders to their customers. A shortage of houses, limited competition and the fact that homes tend to be one off purchases means that, unlike other types of brands and products, housebuilders do not have the same pressures to provide excellent customer service to win repeat business. Consumers' frustrations stem from the following:

- Lack of understanding about warranties and the discovery that they do not provide the extent of cover consumers that they thought they had or believe they ought to have.
- Exclusion clauses in the small print of sales

contracts which consumers only discover when something goes wrong; and

- The legal position, which over the years seems to have become increasingly stacked against the consumer.

It all adds up to an imbalance of bargaining position and lack of redress.

Consumers, surveys suggest, seem to expect to have problems with their new homes. The frustrations kick in when they cannot get them sorted out.

Geoff Peter of Wingrove Law, a dispute resolution practice specialising in representing consumers against housebuilders, told us: "In our experience, homebuyers do not seek legal advice because of the existence of defects, nor do many homeowners have a particular problem with the existence of defects per se. They seek advice when builders unreasonably fail or refuse to put those defects right."

"Almost every enquiry we receive is predicated on homeowners having already become frustrated with builders denying liability for things that are obvious, delaying resolving things that are agreed, failing to carry out repairs or remedial works with proper care or in ways that resolve the original issue, not turning up to appointments when homeowners have taken time off work to be there, insisting on cheap fixes rather than proper ones, and generally minimising or avoiding their liability to homeowners."

"In our view, the excessive imbalance in the parties' relative bargaining positions is what lays the foundations (so to speak) for builders to operate with relative impunity in relation to defects rectification post-completion, and what also engenders tolerance of poor construction standards."

The view that homeowners have little chance of holding housebuilders to account was held by a number of witnesses, and the imbalance it creates is a source of much frustration.

Sale contracts

Unlike every other area of construction there is no standard form of sale contract

available. Builders invariably prepare their own contracts, and homeowners, even with legal representation, have little chance of renegotiating most of the terms. What they are left with can, we were told, give rise to potential difficulties when it comes to seeking to enforce the terms of the contract.

A key determinant in whether a homeowner pursues a claim against a builder is the degree of uncertainty over the meaning and effect of terms in their contracts. We heard that the more uncertainty there is over the outcome of a claim, the less likely a homeowner will be able to pursue it.

We were told that problematic aspects of contracts and practice included:

- Exclusion clauses - leading to a significant imbalance in the rights of the parties to the detriment of the consumer.
- Builders frequently change the wording of their contracts over time thus rendering a court decision on one form of contract all but irrelevant for the purposes of all other homeowners, even though the same basic issue arises time and time again.
- Refusing to allow pre-completion surveys often on the basis that the buyer does not at that time own the property so has no rights of access - only to find that when they do get to enter after completion - works are still to be completed.
- Clauses whereby the buyers say they have seen and agreed the specifications for their new home - yet witnesses told us that the written specifications for new homes are rarely provided to buyers' conveyancers as part of the standard conveyancing process.

In response, the HBF's Mr Andrew commented: "My experience is that customers have to come and inspect their property prior to completion, and I've worked in regimes where customers are invited to see it through the construction process as well - not to inspect the construction methodology so much as just to see how things are put together. And the more interaction any building

company can have with its customer, the better those relations will be, and the better your customer service will be.

"We're currently looking at trying to get better service from end to end, and I think interaction is a key way of doing that, so I would wholly support customers inspecting their property prior to completion. They have no way of getting hold of the written plans and specifications to prove if something is in fact different, and/or are barred from relying upon assurances or promises given to them before exchange of contracts that they omitted to get their conveyancers to repeat in writing."

Evolving case law

One of our witnesses, Dr Stephen Watkins, raised the issue of *Robinson v PE Jones*, which established that generally builders owed no tortious duties to homeowners in relation to any construction defects unless they cause personal injury or damage to another property. Homeowners are thus no longer able to pursue economic loss claims in tort in respect of latent defects to their home, even though the Latent Damage and Limitation Acts together might otherwise have given them up to 15 years to do something about certain defects that manifested within that period (which was particularly useful if the normal six-year contractual limitation period had expired).

However, a secondary issue arising from this judgment was pointed out to us as well. This is to do with Jackson LJ's findings that a clause in the sale contract limiting the homeowner's rights to those available under the NHBC Buildmark warranty was enforceable. The problem is that Buildmark in turn limits the builder's obligations in relation to construction defects to ones that have been reported to the builder within the first two years, except for major defects.

Says Mr Peter: "In summary, then, the effect of *Robinson v PE Jones* in practice is to curtail many homeowners' rights far more than most people realise - not only does it let builders off any tortious liability for certain defects in years 7-15 after completion, it also lets them off their

Box 9: Homeowners versus builders – where legal battles arise

Examples of the disputes between the two parties include:

A large group claim (circa one quarter of the homeowners on an estate that was constructed between 2007-2012) against a national housebuilder in relation to defects rendering all properties on the estate uninhabitable;

A small group claim (acting for all homeowners on the development) against a builder which instructed its contractors to ignore drainage plans entirely, and to bury rather than remove large parts of the foundations and driveway of the original building on the site, leaving the properties with surface flooding issues. Other major defects include structurally unsound roofs and defective DPCs, rendering the properties unfit for habitation. The cheapest property on this development was £1.6 million;

A claim against a builder which has refused to (among other things) reposition a garden fence at the legal boundary to the property, reducing the area of garden enclosed by the fence by around half;

A claim by “shared ownership” tenants whose landlord (a housing association) has

a legal right to pursue a full remedy against the builder but is threatening to force the tenants to pay for the works themselves under a clause of their leases. Their leases (in common, it would appear, with most shared-ownership leases) contain no provisions on which the tenants can rely to compel the landlord to pursue its own legal remedies against the builder.

A claim by homeowners who were refused access to carry out a survey before legal completion only to find that the floors in their property had been constructed so poorly that several months’ remedial works needed to be undertaken. The builder has since admitted knowing about this before completion, and attempting to conceal the defects. Notwithstanding, the builder is presently refusing to do anything about the defects until the homeowners sign a confidentiality agreement and agree to forgo their right to retain legal representation on threat of defending liability by reference to an ambiguously-drafted sale contract and forcing the homeowners to go to trial if they do not agree.

Supplied as evidence by Geoff Peter, Wingrove Law.

ordinary contractual liability in years 3-6 if there is a clause in the sale agreement limiting their rights to the NHBC Buildmark warranty.”

The Consumer Code for Home Builders

The Consumer Code for Home Builders is a voluntary industry-led code of conduct for builders, which was developed to make the home-buying process fairer and more transparent for purchasers. It was developed as a result of the Barker Review in 2004 and the Office of Fair Trading (OFT) Market Study into the housebuilding industry in 2008, and aims to address customer service and satisfaction.

But our view is that the code does not appear to give homebuyers the safeguards we think they should expect. We question how well it is policed and it does not appear to us objectively to offer consumers a wholly satisfactory form of redress.

The Code, which came into effect in April 2010, applies to all home builders registered with the UK’s main new home warranty providers - NHBC, Premier Guarantee and LABC Warranty - and effectively covers 95% of homes sold to private house buyers (other warranty providers have set up their own schemes). The NHBC says the Code is open to all warranty providers, but it was decided that no new applications would be accepted until the review had been completed. It consists of 19 requirements and principles that home builders must meet in their marketing and selling of homes and their after-sales customer service. The HBF says that there are currently around 16,000 builders signed up to the Code through registration with the warranty bodies. It is a development of an earlier code set up by warranty provider NHBC. The HBF says the Code is overseen by an independent chairman and approval board. HBF sits on the advisory panel to represent the industry.

The increase in output has seen an increase in the number of cases being referred to the Code’s Independent Dispute Resolution Scheme – which can award home-buyers financial recompense from their builder. The scheme is run by International Dispute Resolution Services (IDRS), part of the Centre for Effective Dispute Resolution (CEDR).

For the first four years of operating up to

2014, the annual report said that 57 people have referred their claim to IDRS (who administer the Scheme). Of those 57, just two succeeded on their claims in full, and 21 claimants succeeded in part. The majority (59%) failed on their claims entirely²⁹.

But the latest figures provided by the NHBC show a rise in uptake in IDRS cases: 66 applications made; 43 decisions; 10 withdrawn as early settlement achieved; 89% of applications succeeded in part or full. Maximum award £10,370 (maximum award made to date by IDRS c£14,000). The NHBC says that the builder is bound by the decision of the independent dispute resolution scheme, but that the home owners can still pursue the claim in court if unhappy with the outcome.

The credibility of the Code has been recognised by the Government's Help to Buy scheme in England and Scotland, with the requirement that the terms of the Code should be observed by home builders.

The Code is currently undergoing its second review, which is aimed at ensuring the required changes are made to the Code such that it can become a fully Chartered Trading Standards Institute (CTSI) Consumer Codes Approval Scheme. It has already passed the first stage of the process.

The NHBC says that in terms of redress it is comparable to other consumer codes and ombudsman schemes and that it is working well.

But some witnesses giving evidence were highly critical of the Code. Geoff Peter of Wingrove Law says that "the Code itself gives no protection or rights to purchasers of new homes. It merely requires builders who are registered with the main warranty providers to comply with existing laws on (in particular) misrepresentation, mis-selling and the Unfair Terms in Consumer Contracts Regulations 1999. The Code does nothing, however, to actively ensure or enforce compliance with these requirements. Moreover, the laws in question of course apply to all builders regardless of whether they are Code-registered."

Critics also say that its Dispute Resolution Scheme has actually reduced consumer protection in that it unfairly and unreasonably limits the time available for homebuyers to respond to the builder's defence. It also prevents buyers from recovering legal costs in disputes which, if they had been pursued through the courts, may have been recoverable from the builder. Another area of concern is the very low financial limit of £15,000 for claim settlements.

Mr Peter commented: "More seriously, in practice, many builders now make it a term of their sale contracts that any construction dispute, of any value, must be referred to the Code Dispute Resolution / and or the NHBC Resolution Service first. The builder argues that this excludes the court's jurisdiction to hear claims that have not first been through these schemes.

"There is nothing in the Code itself that prevents claimants from pursuing court proceedings if they do not like the outcome [although it makes the point that the decision will likely count against them in such instance]

"But a lot of disputes cannot be referred to either the Code DRS if they exceed the £15k financial limit or because they are too complex for the NHBC resolution service (which is concerned only with breaches of NHBC Technical Standards), but which would not deal with a boundary dispute or failure to supply fixtures and fittings that had been paid for as extras. In these cases the homeowner would be unable to discharge the contractual condition precedent on suing the builder in the courts because they cannot refer to Code DRS or NHBC Resolution. In such cases homeowners would ostensibly be left with no means of pursuing a claim at all."

Mr Peter said he had a case like this at the moment.

"Thus, far from the Code 'ensuring that all new home buyers are treated fairly', it is now being routinely employed by the industry to severely curtail the rights of homebuyers compared with what OFT identified was already an unacceptable state of affairs before

its introduction.”

However, there was concern amongst our witnesses that the Code is not policed and has no ‘teeth’. In response, the NHBC says: “The Code has a compliance monitoring programme that includes mystery shopping of sales outlets and a review of sales literature and contracts as well as management information on complaints made to the home warranty providers about Code breaches. The Code’s Management Board also review all decisions of the independent dispute resolution scheme to identify trends, whether there are lessons to be learnt or a need for further training or other action. The summarised outcome of all dispute decisions are publicised on the Code’s website to provide feedback to builders and homeowners.

“Sanctions range from warnings, requirement to undertake further training, suspension from the registers of the participating warranty providers (suspension from one provider’s register automatically results in suspension from the register of the other providers) and, ultimately, removal from the register of participating warranty providers. Suspension is a powerful sanction as it prevents a builder from offering warranty cover which has immediate and significant financial implications because it prevents the marketing of new homes by the builder. Removal from the register would effectively mean the builder would not be able to market or sell new homes.

“To date the threat of suspension and in a small number of cases, actual suspension, has ensured that all awards made by the independent dispute resolution scheme have been honoured and non-compliant practices changed.”

A number of witnesses put forward the idea – and we wholeheartedly agree with them – that the setting up of a New Homes Ombudsman would serve to overcome shortcomings in the dispute resolution mechanisms within the Consumer Code and provide an easy and affordable resolution service for all home buyers irrespective of their warranty provider.

Dr Stephen and Elizabeth Watkins, a couple who have been involved with a very long running dispute first with their builder and then their warranty provider, were two of those who advocated it.

“We were told that court proceedings are so prohibitively expensive and it would cost several hundred thousand pounds to take the case to court. While court proceedings are as expensive as that, there is in effect no rule of law in this country.

They asked us to recommend a new ombudsman service “to provide a cheap, quick and effective system of redress. It should have power to enforce standards and award compensation. Although this should be funded by a levy on the construction industry, it should be a public body not under the industry’s control.”

Another of our witnesses, Phil Waller, a retired site manager and campaigner for better quality homes, was another advocate of setting up a new ombudsman to provide a simplified dispute resolution scheme for consumers that would require no need for legal representation.

Going forward – More equitable redress and improving transparency and trust

Our view is that the balance between the consumer and housebuilder is weighted too much in favour of the housebuilder. From what we have heard, the various systems of redress for putting right defects can be too protracted or too expensive and deter complainants from going through the courts. The dispute resolution scheme through the Consumer Code for Home Builders is limited in its scope.

This has allowed housebuilders to be less attentive to workmanship and quality than they might if consumers had a better chance of seeking redress and the housebuilders were facing the prospect of being fined for their deficiencies.

If there was a quick and totally independent form of redress that consumers could go to that would resolve disputes, this would put pressure on housebuilders to up their game in the first place and spur them on to improve

workmanship and increase levels of service.

That said, we would also like to see a range of measures implemented to improve contracts, clarify the legal framework and boost transparency and trust between consumers and housebuilders.

Recommendation: DCLG should initiate steps to set up a New Homes Ombudsman

The role would include mediating disputes between consumers and their builders or warranty providers to provide a quick resolution procedure paid for by a housebuilders' levy.

We see this as the key recommendation to provide more effective consumer redress if things go wrong and a good way of applying pressure on housebuilders and warranty providers to provide a better quality service.

Our view is that the new service should be funded by a levy on the sector – but it would need to be completely independent and replace the dispute resolution service offered as part of the Consumer Code for Home Builders. Our recommendation picks up on one made by the OFT in its 2008 market study into the housebuilding industry which suggested that if the industry failed to make satisfactory progress, it would recommend further intervention in the form of a statutory redress mechanism for new homebuyers funded by a levy on the industry.

Recommendation: Housebuilding sales contracts should be standardised

This would remove much of the uncertainty that presently arises from the bespoke nature of each builder's sales contract, which can deter so many from pursuing claims. The Law Society's Standard Conditions of Sale work well for normal conveyancing transactions and there is no reason why a similar approach should not work for new homes.

We would expect the contract to set out how defects are handled including provision for dealing with disputes before referral to an Ombudsman.

Recommendation: Buyers should have the right to inspect properties before completion

There should be a mandatory right (which could be introduced by the inclusion of suitable provisions in the standard form contract) for buyers to inspect and, should they wish carry, out a full survey of their property prior to financial completion. We suggest that they be given 10 days' notice by the builder of when their property can be inspected. If after the inspection the buyer/surveyor deems that the property is not capable of occupation, the final financial completion can be delayed.

Such a provision would also discourage builders from serving notices to complete prematurely, or concealing major defects until after they have received the full purchase price, and would also encourage better quality control and site management pre-completion. In our view, the above suggestion would be relatively easy to implement, and would encourage improvements to construction quality without deterring capital investment or adversely affecting land values for developments already in the pipeline.

Recommendation: Builders should be required to provide buyers with a comprehensive information pack

The purpose would be to improve transparency of the design, building and inspection process. We would like to see housebuilders be required to provide prescribed and comprehensive written information to buyers during the conveyancing process (and in an electronic format) to make it easier for buyers to take issue if what they get is materially different to what they contracted for. The pack should contain:

- Designs and plans, specifications etc.
- Details about both warranty and building control inspections, when carried out and by whom.
- What the warranty covers in plain English.
- Which version of the Building Regulations the house was built to and complies with.
- How to contact the builder to rectify defects.

Recommendation: There should be a review of laws governing consumer rights when purchasing new homes

There is a strongly held view that in disputes, the balance has been tipped too far in favour of housebuilders. This includes Ruxley law – the case which set precedent whereby builders do not have to pay the costs for putting wrong work right if the costs are disproportionate to the impact of getting it wrong.

Recommendation: DCLG should commission a thorough review of warranties

Our evidence suggested that warranties on new homes did not match the expectations of the consumer and our suggestion is that they need to be reviewed. In the context of buying a new home, consumers may well be prepared to pay more if it meant getting a better degree of service and would pay for an additional cover on top of what they already get as part of the warranty.

We would expect the review to:

- Establish whether the warranties currently provided are adequate; what the minimum requirement should be and how they would need to change to achieve the needed level of cover and what the cost implications might be.
- Establish easier form of redress with warranty providers as part of a New Homes Ombudsman role. At the moment, as financial bodies, warranty providers are covered by the Financial Services Ombudsman, which we were told wasn't always effective for dealing with the types of disputes we are looking at.
- Look into ways that warranty providers and housebuilders can set out more clearly during the conveyancing process what the warranty actually covers.

Section 5:

Concluding remarks and recommendations: putting consumers at the heart of housebuilding

35

Concluding remarks

Lack of market competition, skills shortages and an imbalance in bargaining power is selling buyers of new homes short. As we were told in this Inquiry, while the number of new homes being built has risen, satisfaction levels have fallen. And when consumers do have problems they find their means of redress is inadequate. The last resort of pursuing claims through the courts is costly and inaccessible.

As the Government looks to drive up levels of housebuilding and offers more incentives to encourage greater levels of homeownership, we need to be building new homes that are fit for purpose, are of enduring quality, perform to the requisite levels of energy efficiency and give pride and enjoyment to those that buy them.

While there are checks for compliance with Building Regulations from both building control bodies and warranty providers, these are carried out on a sampling basis and can fail to identify structural or safety defects.

It is often said, buying a new home is the biggest purchase anyone makes in their life. Yet 93% of buyers report problems to their builders – and 35% report 11 or more problems. But buyers have realistic expectations; surveys show buyers don't necessarily expect their homes to be perfect. But they do expect to have effective mechanisms for redress to get them sorted quickly.

Consumers buying new homes should expect the same levels of aftercare and redress as they would purchasing any new product.

Housebuilders may talk of 85-90% of homes being fault-free, that still leaves thousands more that are not – in fact, 15,500 each year, based on completion figures for private sector homes in 2015. This is simply not acceptable.

Housebuilders point to dips in satisfaction levels because of problems completing on time in the wake of skills shortages. We appreciate it is a huge problem and one which they have begun to address by recruiting apprentices and offering incentives to bring older workers

back into the industry. The HBF is teaming up with the Construction Industry Training Board (CITB) to increase skilled workers.

We are also pleased to hear that the NHBC is implementing more checks on site, but we question whether housebuilders could be doing more to check quality on-site, train existing workforces and implement quality and compliance systems.

One witness, Dr Stephen Watkins, made what we consider an excellent point when he remarked: "As well as ensuring that things are right considerably more often than they are wrong, any quality system must:

- Recognise 'zero events' – those things which it is not acceptable that they should ever happen and when they do there must be an investigation to find out what went wrong. Trains should never pass signals. Surgical instruments should never be left in patients. Houses should never be built with missing drains and with unsafe roofs that do not comply with Building Regulations.
- Have effective mechanisms to put things right when they do go wrong.
- Aim at continuous improvement.
- Be candid and open about mistakes and learn from them. Use complaints and failures as lessons from which improvement can be achieved."

None of these characteristics, he added, are present in the quality control system of the construction industry.

Dr Watkins added: "In the days when I was a member of a Primary Care Trust Board, with the Board level responsibility for consumer affairs in the local NHS, I would not have been comfortable with a provider that was pleased with a 10% dissatisfaction rate on major elements of effectiveness of care."

Like Dr Watkins, we believe that housebuilders should be upping their game and improving quality and the buying process and Government should be urging them to do so at any opportunity. To this end, we have set

out a series of measures to redress the balance between buyers and sellers.

From the evidence we heard, consumers want to see an improved quality of build, homes that are fit for purpose, and an easy to understand warranty. Likewise, when something does go wrong, consumers want an affordable and accessible means of putting it right.

Some of the witnesses pointed to the need for further intervention, in terms of more on-site inspections from independent organisations, as a means of driving up quality. While the responsibility for construction of defect-free homes should rest with the housebuilder, we recognise that inspections have a vital role to play and we are recommending a minimum level of inspections.

In any other industry, it would be expected that the manufacturer or producer of a product should be held accountable for the quality of that product at the point of sale, rather than an independent inspection to verify whether the manufacturer or builder had done their job properly.

Consumers need greater leverage to drive a change in culture. A chronic undersupply of homes means that, as things stand, normal market forces do not come into play and the power between buyer and seller is strongly weighted in favour of the seller. Witnesses felt strongly that whatever solutions were proposed needed to be mandatory rather than voluntary codes.

We need to see housebuilders putting consumers at the heart of what they do. This will involve new mechanisms and a fresh culture throughout the process. It requires more onus on housebuilders to deliver zero-defect construction; greater transparency to make consumers more aware of the inspection and warranty process; and easier and quicker forms of redress to solve disputes.

Recommendations

We believe that housebuilders should be upping their game and putting consumers at the heart of the business model. Alongside this, Government should use its influence to promote quality at every opportunity.

To this end we have set out a series of measures to redress the imbalance between buyers and sellers.

Recommendation 1: DCLG should initiate steps to set up a New Homes Ombudsman

The role would include mediating disputes between consumers and their builders or warranty providers to offer a quick resolution procedure paid for by a housebuilders' levy.

We see this as the key recommendation to provide more effective consumer redress, if things go wrong, and a good way of applying pressure on housebuilders and warranty providers to deliver a better quality service.

Our view is that the new service should be funded by a levy on the sector, but it would need to be completely independent and replace the dispute resolution service offered as part of the Consumer Code for Home Builders. Our recommendation picks up on one made by the Office of Fair Trading, in its 2008 market study into the house building industry, which suggested that, if the industry failed to make satisfactory progress, it would recommend further intervention in the form of a statutory redress mechanism for new homebuyers funded by a levy on the industry.

Recommendation 2: Housebuilding sales contracts should be standardised

This would remove much of the uncertainty that presently arises from the bespoke nature of each builder's sales contract, which can deter so many from pursuing claims. The Law Society's Standard Conditions of Sale work well for normal conveyancing transactions and there is no reason why a similar approach should not work for new homes.

We would expect the contract to set out how defects are handled, including provision

for dealing with disputes before referral to an ombudsman.

Recommendation 3: Buyers should have the right to inspect properties before completion

There should be a mandatory right (which could be introduced by the inclusion of suitable provisions in the standard form contract) for buyers to inspect and, should they wish carry, out a full survey of their property prior to financial completion. We suggest that they be given 10 days' notice by the builder of when their property can be inspected. If after the inspection the buyer/ surveyor deems that the property is not capable of occupation, the final financial completion can be delayed.

Such a provision would also discourage builders from serving notices to complete prematurely, or concealing major defects until after they have received the full purchase price, and would also encourage better quality control and site management pre-completion. In our view, the above suggestion would be relatively easy to implement, and would encourage improvements to construction quality without deterring capital investment or adversely affecting land values for developments already in the pipeline.

Recommendation 4: Builders should be required to provide buyers with a comprehensive information pack

The purpose would be to improve transparency of the design, building and inspection process. We would like to see housebuilders be required to provide prescribed and comprehensive written information to buyers during the conveyancing process as part of a standard contract (and in an electronic format) to make it easier for buyers to take issue if what they get is materially different to what they contracted for. The pack should contain:

- Designs and plans, specifications etc.
- Details about both warranty and building control inspections, when carried out and by whom.
- What the warranty covers in plain English
- Which version of the Building Regulations

the house was built to and complies with

- How to contact the builder to rectify defects.

Recommendation 5: There should be a review of laws governing consumer rights when purchasing new homes

There is a strongly held view that in disputes, the balance has been tipped too far in favour of housebuilders. This includes the Ruxley v Forsyth case, which set precedent whereby housebuilders do not have to pay the costs for putting wrong work right if the costs are disproportionate to the impact of getting it wrong.

Recommendation 6: DCLG should commission a thorough review of warranties

At present, warranty providers offer varying levels of cover and consumer protection. Our evidence suggested that warranties on new homes did not match the expectations of the consumer and our suggestion is that they need to be reviewed. In the context of buying a new home, consumers may well be prepared to pay more if it meant getting a better degree of service and would pay for additional cover on what they already get as part of the warranty.

We would expect the review to:

- Establish whether the warranties currently provided are adequate; what the minimum requirements should be, how they would need to change to achieve the needed level of cover and what the cost implications might be.
- Establish easier form of redress with warranty providers as part of a New Homes Ombudsman role. At the moment, as financial bodies, warranty providers are covered by the Financial Services Ombudsman, which we were told was not always effective in dealing with the types of disputes we are looking at.
- Look into ways that warranty providers and housebuilders can set out more clearly at the time of conveyancing what the warranty actually covers.

Recommendation 7: Housebuilders should instigate a new quality culture by adopting quality systems to ISO standards

If defects are to be reduced and satisfaction levels improved, there needs to be an industry aspiration to achieve a zero-defects culture, with greater emphasis on quality assurance and compliance measures adopted as standard by housebuilders. We would like to see the Home Builders Federation taking a more active part in driving this.

Recommendation 8: The industry should significantly increase skills training programmes

We would like to see greater emphasis on training and investment for both new and existing workers to embed a quality culture, whilst also bringing new people into the sector. We believe local authorities and Government should leverage more training by making it a condition on sale of their land.

Recommendation 9: A minimum standard should be set for compliance inspections

The responsibility for construction of defect-free homes should rest with the housebuilder who should not rely on third party inspections to drive up quality. But we recognise that inspections from third parties do have a vital role to play and we need to ensure that the corners are not cut. We are concerned that competition in building control might be fuelling a race to the bottom and we are therefore recommending there should be a defined minimum number of inspections that local authority building control and approved inspectors in the private sector and warranty providers should not fall below. We suggest that the minimum level should be considered by DCLG in consultation with the industry. We are also recommending inspection reports are made available to the public and form part of the information pack provided to purchasers when they buy a new home. (See Recommendation 4)

Recommendation 10: Housebuilders should make the annual customer satisfaction survey more independent to boost customer confidence

We believe it would boost consumer confidence if the Customer Satisfaction Survey is seen to be more independent of the NHBC and the HBF – bringing in a high profile third party to conduct and take ownership of the research in their name. Furthermore we would like to see more in depth research on consumer trends based on the follow up survey carried out by the NHBC in their nine-month survey. We feel this could provide a real insight into how builders are tackling initial defects and complaints.

List of witnesses who gave oral evidence

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Royal Institution of Chartered Surveyors –

David McCullogh, Group Director Building Control and Sustainability, Carillion

Home Builders Federation –

Peter Andrew, Deputy Chairman

National House Building Council –

Lewis Sidnick, Head of Corporate and External Affairs, Ian Davis, Operations Director

Chartered Institute of Building –

Stephen Wielebski, Fellow

Association of Consultant Approved Inspectors –

Paul Wilkins, Chairman and Diane Marshall, Treasurer

Mineral Wool Insulation Manufacturers Association –

Sarah Kostense-Winterton, Executive Director and Steven Heath, Policy Committee Chairman

BLP Insurance –

Vim Vernau, Chief Executive and Jeff Maxted, Director of Technical Consultancy

Chartered Institute of Architectural Technologists–

Kevin Crawford, Vice- President Technical and Diane Dale, Practice and Technical Director

Leeds Sustainability Institute, Centre for the Built Environment –

Prof Chris Gorse, Director

Dr Stephen Watkins and Mrs Elizabeth Watkins

Institute of Clerks of Works and Construction Inspectorate –

Rachel Morris, Chief Executive, Ian Carey, Past President

Local Authority Building Control –

Paul Everall, Chief Executive, Philip Hammond, Managing Director, Barry Turner, Director of Technical Policy

MD Insurance Services Ltd –

Rob Clay-Parker and James Bush, Managing Directors

Zero Carbon Hub –

Rob Pannell, Managing Director, Ross Holleron, Project Director

Royal Institute of British Architects –

Andrew Forth, Policy and Public Affairs Manager

British Research Establishment –

Chris Cousins, Associate

Phil Waller –

Retired site manager and campaigner

Wingrove Law –

Geoff Peter, Founder

Ben Adam-Smith –

Blogger and campaigner

Barry Grossmith and Cornelius Jeronimus

Residents of new built housing in Surrey

List of all written submissions

**Association of Consultant
Approved Inspectors**

Barry Grossmith

Ben Adam-Smith

BLP Insurance

Brick Development Association

British Standards Institution

Building Research Establishment Global

**Building Services Research and
Information Association**

**Chartered Institute of Architectural
Technologists**

Chartered Institute of Building

Considerate Construction Scheme

Dr & Mrs Stephen and Elisabeth Watkins

Home Builders Federation

**Institute of Clerks of Works and
Construction Inspectorate**

Laing O'Rourke

Local Authorities Building Control

MD Insurance Services Ltd

Mineral Products Association

**Mineral Wool Insulation Manufacturers
Association**

National House Building Council

Phil Waller

Pocket Living

**Professor Chris Gorse, Leeds
Sustainability Institute**

Royal Institute of British Architects

Royal Institution of Chartered Surveyors

**Stefan Kruczkowski, School of Architecture
Surveyors School of Architecture,
Design and the Built Environment,
Nottingham Trent University**

Wingrove Law

Zero Carbon Hub







Construction Industry Council

All Party Parliamentary Group for Excellence in the Built Environment



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