

All Party Parliamentary Group for Excellence in the Built Environment



Better redress for homebuyers

How a New Homes Ombudsman could help
drive up standards in housebuilding and
improve consumer rights

June 2018

Acknowledgements

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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Eddie Hughes MP
Chairman of the All
Party Parliamentary
Group for Excellence in
the Built Environment

The housing crisis in the UK takes many forms and will require many and varied solutions. Patently, one of those solutions is that we build more homes. When our previous report, *More homes, fewer complaints*, was published in July 2016 the Government was committed to building 200,000 homes a year. In the November Budget of 2017 the Chancellor raised the target to 300,000. However, in the quest for increasing output in terms of supply we must ensure that we do not sacrifice quality. Furthermore, where quality issues arise they must be addressed in a satisfactory and timely manner.

Since I took on the role of chairman of the APPG for Excellence in the Built Environment I have been contacted by many MPs with despairing constituents who have implored them to help achieve redress from housebuilders refusing to rectify poor workmanship. In the case of one MP, owners of properties on an estate in his constituency have been battling for nearly six years to have issues regarding plumbing and ventilation addressed. We cannot allow this experience to continue. Consumers desperately need greater leverage to drive a change in this culture in order to ensure that housebuilders put them at the heart of what they do.

In gathering evidence for this report, we engaged with a broad spectrum of interested parties to ensure that our conclusions were based on robust information and our recommendations were viable. The result is a clear proposal to help mitigate the level of complaints and ensure that those that arise can be dealt with quickly, at no cost to the consumer.

All purchasers of new homes in this country should be confident they are buying a high-quality product, no matter who built it or where they are in the country. Our proposals will help to make this a reality.

A handwritten signature in black ink, appearing to read 'E. Hughes'.

Eddie Hughes MP

Executive summary and key recommendations

The All Party Parliamentary Group for Excellence in the Built Environment Inquiry into the potential for a New Homes Ombudsman

The need for an ombudsman

In July 2016 the All Party Parliamentary Group for Excellence in the Built Environment Inquiry published a report on the quality and workmanship of new housing in England. Our report, *More homes, fewer complaints* revealed a high level of frustration and disappointment from buyers of new homes, both in terms of the number of defects that new homes often had on handover, and also the problems they encountered on getting them fixed. As we detailed in that report, lack of market competition, skills shortages and an imbalance in bargaining power are combining to short-change buyers of new homes. Housebuilders, we concluded, were too frequently handing over poor-quality homes because they could get away with doing so.

We set out a series of measures to give consumers a fairer deal and improve transparency in homebuying. Our key recommendation was that Government should initiate steps to set up a New Homes Ombudsman as a way to provide the missing system of easy redress, which we believed would also incentivise housebuilders to address the root problem of their poor workmanship.

It was against the backdrop of these major problems and the need to increase rates of new housebuilding that our Parliamentary Group decided to return to the subject and investigate how an ombudsman could work to provide much needed redress and galvanise the sector to do better. We were pleased that in February the then Secretary of State in the Ministry of Housing, Communities and Local Government, Sajid Javid, announced a consultation on improving redress for new home buyers. One of the areas he sought views on is whether home builders should be required to join an ombudsman scheme. Our Inquiry dovetails with many of the questions the consultation posed but focuses purely on complaints procedures and redress around new homes. Our recommendations were submitted to the department to inform the consultation, which concluded in April.

Affected homebuyers, we discerned, are exasperated not so much by the existence of defects but rather by a builder's failure or even refusal to put the defects right. Submissions we received from homebuyers described how buying a new home had been 'the worst decision of their life'; how it was like 'going through hell' as the complaint passed between housebuilders and their suppliers and warranty providers; and how fighting for redress was taking a toll on their health.

As our previous report found, and new evidence reinforced during this Inquiry:

- Consumers faced a confusing landscape caused by a plethora of warranties, housebuilding codes and complaints procedures, each offering something slightly different. Buying a new home is stressful enough; but buying a defective one, as we heard from submissions and witnesses, can take a massive toll on people's wellbeing as they wrestle with an almost Kafkaesque system seemingly designed to be unhelpful.
- Consumers are confused by what warranties cover, which is far less than consumers assume; and neither warranties nor building control functions provide any sort of comfort that items such as finishings and fittings will be defect-free when the house is handed over.
- The house inspections are performed primarily to prove to underwriters and mortgage lenders that the property is a 'standard risk'.
- Few consumers appreciate that for the first two years after completion, it is down to the builder to sort out the defects – and that for years three to 10 the warranties cover purely structural matters.

This Inquiry echoes the conclusions of our previous report: we need to see housebuilders putting consumers at the forefront of what they do. This requires more onus on housebuilders to aspire to deliver:

- Zero-defect construction.
- Greater transparency to make consumers more aware of the inspection and warranty process.
- Easier and quicker forms of redress to solve disputes.

While prevention is always better than cure, we believe an ombudsman system would provide quick and fair redress and help bring about a change of culture amongst housebuilders.

Recommendations relating to a New Homes Ombudsman

1. Principle: The principle of the ombudsman scheme is that it should be independent, free to consumers and provide a quick resolution to disputes. But we would like to see housebuilders consistently building defect-free homes so that the number of complaints are reduced.

We would expect that as well as being free for consumers to deal with, the New Homes Ombudsman would not require individual complainants to use legal representation.

2. Consumer clarity: We are advocating that there is a single portal for ombudsman services spanning the entire residential sector, covering the conduct of estate agents through to social housing, in order to reduce confusion in the market place. Within this single entity, there would be either a number of specialist ombudsmen or specialist divisions. One of these would cover new homes – and this is the aspect our report is concentrating on, a New Homes Ombudsman.

There are a number of ombudsman schemes already operating in related fields, and at the same time, the housing economy is increasingly mixed tenure. What consumers need is a single portal, that is a single entry point, for dispute resolution services, which would then see their complaint referred to the appropriate ombudsman.

3. Remit: We would expect to see the New Homes Ombudsman cover all those organisations and processes involved in the building and selling of new homes, except those which already have their own ombudsman, such as solicitors and estate agents.

The New Homes Ombudsman would resolve disputes against an agreed code of practice.

This would typically cover:

- The requirement for housebuilders to provide warranty schemes approved under the code.
- Accurate and truthful advertising and pre-purchase information of new build homes.
- Fair treatment of consumers when exchanging contracts.
- Transparency and reasonableness of charges for reservations, fee deposits and pre-payment protection.
- Quality of construction (and monitoring of quality) based on technical requirements laid down in a new universal consumer code.
- Adjudicating on incomplete or defective infrastructure on the development, and common parts.
- Standards for the handover of new-build properties.
- After-sales services post-handover.
- Establishing the nature of defects by requiring investigative reports.
- Ensuring that defects are fully remedied.
- Flag up trends in housebuilders' performance and publish annual reports collating awards made throughout the year.

4. Tough sanctions: We recommend that it should be a statutory requirement for any organisation building and selling new homes to belong to the New Homes Ombudsman to be able to trade.

We are advocating that the New Homes Ombudsman is not a statutory body but would operate in the same way as The Property Ombudsman.

The Property Ombudsman is not a statutory ombudsman but it is a statutory obligation for all estate agents to belong to an ombudsman in order to trade. If they are struck off, they lose the ability to operate, which gives the ombudsman teeth.

We have elected to recommend this pragmatic course of action, rather than create a new statutory ombudsman, because it could be set up more easily and quickly. Our overriding concern is to see consumers getting better redress as soon as possible, rather than face a long wait. However, if the improvements we are seeking do not materialise, we would seriously consider calling for the ombudsman to be placed on a statutory footing.

5. Industry-wide code of practice: We are recommending that government, warranty providers, housebuilders and consumer groups work together to draw up a code of practice which would be used by the New Homes Ombudsman to adjudicate on disputes.

We were told there are seven consumer codes of practice for housebuilders operating in the market, covering 15 or 16 warranty providers, all operating to different standards.

Our recommendation is that a new code of practice would be drawn up in consultation with government, trading standards and industry, which all housebuilders and warranty providers must operate under, rather than persist with the plethora of inadequate codes that consumers currently face. We envisage that this consumer code could provide a vehicle to introduce other measures we called for previously, such as the right to inspect the home-to-be before final completion plus comprehensive home information packs.

We are also recommending that the code will specify:

- That a builder will use an approved warranty scheme which must be fit for purpose (we are reiterating our call for a separate review of warranties – see below).
- Basic specifications that new homes should meet, which provide an inventory of what consumers should expect of a home built to high quality.
- Set out better inspection and quality control regimes that must be undertaken for new homes and determine how these should be documented and made available to homebuyers' solicitors as part of the

conveyancing process, and as part of a home information pack. The purpose would be to improve transparency of the design, building and inspection process.

- The need for comprehensive home information packs and what they should contain. We think this must include: what the warranty covers in plain English and clarify whether it covers white goods; which version of the Building Regulations the house was built to and complies with; and how to contact the builder to rectify defects.
- The need for sales offices to have clear documents about after-care responsibilities of builders and the warranties.
- Independent investigation of and rectification of defects (pre- and post-occupation). We think contracts should allow homeowners to appoint an independent building consultant /surveyor to review the issues and agree with the builders a schedule of repair work with all costs being picked up by the builder including those of the building consultant / surveyor.
- In the event of a dispute, a clear timetable for responding to complaints, rectifying defects and compliance with any requirements of the ombudsman.
- The ability for all homebuyers to carry out surveys before final completion.
- Compensation scales to homeowners for damage arising.

6. Awards: We are advocating that the New Homes Ombudsman would be able to make awards to consumers of up to £50,000 and that these awards are made public.

The principle of the awards would follow that of the Financial Ombudsman Service which is that the consumer should not be out of pocket and that their financial status is restored to what it was before the complaint took place. We recommend that the maximum award would be £50,000. Disputes over larger sums than this would likely involve legal representation, and though they could be adjudicated on by the New Homes Ombudsman, they would be best settled

in court. We think that in certain extreme situations the New Homes Ombudsman should be able to reverse the ‘sale’.

Awards should be made public and collated in an annual report available to consumers. We would make the point that going to an ombudsman would not take away consumers’ other rights in law.

7. Timescale for settling disputes: The New Homes Ombudsman should be obliged to settle disputes within certain time limits.

Consumers need to have confidence that their disputes are being dealt with speedily. By the time they go to the ombudsman resolution service they will have already spent time taking a complaint to the housebuilder (which itself, we believe, should be under time constraints to resolve any complaints, as set out under a new consumer code of best practice).

8. Funding: We are recommending that the New Homes Ombudsman is funded by a levy on housebuilders, rather than a case fee. However, we think that volume housebuilders should pay proportionately more than small to medium enterprises.

Most housebuilders are already levied by warranty providers to pay for consumer codes and dispute resolution, and there was an industry preference for funding to be raised in this way rather than by a case fee. While we did consider the advantages of case fee as a funding route – namely that it penalises those who are the worst offenders – we think the disadvantages would outweigh the benefits. The level of funding for the ombudsman would be more uncertain and leave companies vulnerable to persistent ‘claimants’. There could be a lower levy for smaller housebuilders.

9. Relationship with existing complaints procedures: The New Homes Ombudsman would cover disputes between housebuilders and consumers for the first two years.

We have suggested this two-year time frame because it mirrors the period of the housebuilder’s liability for defects. At that stage, the warranty provider takes over. If homebuyers are unhappy with the way the warranty provider deals with their complaint, the buyer can refer the matter to the Financial Ombudsman Service.

That said, we were told that the Financial Ombudsman Service, which presides over complaints about insurance companies and thus covers warranty providers, is not necessarily the best organisation to preside over technical disputes. This is an area that needs more research to see how the demarcation between the two different ombudsman schemes would work best for the consumer; and whether that means bringing complaints involving defective construction under the aegis of one body. But we would reiterate, the code of practice for the New Homes Ombudsman would contain requirements for builders to use an approved warranty scheme, which we would expect weeds out those that currently represent substandard service and cover.

Other recommendations

We are confident that fairer and faster redress will help improve the quality of new homes, but many additional changes need to be made. It was just one of the 10 recommendations in our last report and we would like to make a strong case for them all again (See Appendix 1).

Some of these recommendations are particularly necessary to enact in the context of the success of a New Homes Ombudsman.

10. Review warranties: We are advocating that the Ministry of Housing, Communities and Local Government commissions a review of warranties to ensure they are fit for purpose for homebuyers.

Our evidence suggested that warranties on new homes did not match the expectations of the consumer; 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 means getting a better degree of service and they might willingly pay for an additional cover on top of what they already get as part of the warranty.

Key aims of the review would be 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 preferred by the consumer. For example, it is questionable whether the limited scope of warranties only covering structural defects after two years is in the best interest of the consumer. Latent defects that are not structural can come out at any time and we believe there is scope for extending warranties to cover them and that consumers would be prepared to pay more for strengthened cover.
- Establish an easier form of redress with warranty providers as part of a New Homes Ombudsman role. At the moment, with their status as financial bodies, warranty providers are covered by the Financial Ombudsman Service, which we were told is 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.
- Establish the levels of inspections carried out by the warranty providers and whether this needs to be more extensive.

- Establish the liabilities of warranty providers to step in to finish the open spaces and infrastructure of new developments if the housebuilder goes under.

11. A minimum standard should be set for compliance inspections by Government

In our first report, some of those giving evidence pointed to the need for further intervention in terms of more frequent and rigorous onsite inspections from independent organisations as a means of driving up quality. However, although inspections have a vital role to play, we think that the responsibility for construction of defect-free homes should rest with the housebuilder. That said, we were concerned that competition in building control might be fuelling a race to the bottom. To counter this, there should be a tighter regulatory regime, which could specify 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 and we would like to see the Ministry of Housing, Communities and Local Government review this as part of setting up the New Homes Ombudsman.

The Commission of Inquiry into a New Homes Ombudsman, All Party Parliamentary Group for Excellence in the Built Environment. June 2018.

The Inquiry

1.1 About the Inquiry

This Inquiry is a follow up to a previous Inquiry from July 2016 in which we made a series of recommendations to tackle shoddy workmanship in new homes and provide better consumer redress.

Our key recommendation was that the Government should initiate steps to set up a New Homes Ombudsman.

It was against the backdrop of continued problems buyers are encountering and the need to increase rates of new housebuilding that our Parliamentary Group decided to return to the subject and investigate how an ombudsman scheme could work to provide much needed redress and galvanise the sector to do better. Everything we heard in this Inquiry served only to strengthen our previous conviction that an ombudsman scheme for new homes is the right approach.

The written evidence we received and the oral evidence we took over three sessions in February and March this year reiterated the need for drastic improvement in construction quality, clarity in the market place and better redress for buyers.

Written evidence was submitted to the Inquiry in the early part of 2018, and three open sessions where oral evidence was presented took place during February and March.

Since launching our second Inquiry, the Secretary of State for the Ministry of Housing, Communities and Local Government announced (in February) a consultation *Strengthening consumer redress in housing*. Among the questions posed in the consultation were whether home builders should be required to join an ombudsman scheme. Our Inquiry dovetails with many of the questions the consultation poses, but we are focusing purely on complaints procedures and redress around new homes. Our recommendations were submitted to the department to inform the consultation.

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The need for an ombudsman

2.1 Context and challenges for the homebuyer

In July 2016 The All Party Parliamentary Group for Excellence in the Built Environment published the work of its Inquiry into the quality and workmanship of new housing in England. Our report, *More homes, fewer complaints*,¹ revealed a high level of frustration and disappointment from buyers of new homes, both in terms of the number of defects that new homes often had on handover, and also the problems new owners encountered on getting them fixed. There was a clear gap between customer demand and industry delivery. As we detailed in that report, a combination of lack of market competition, skills shortages and an imbalance in bargaining power is short-changing buyers of new homes. Housebuilders, we concluded, were handing over poor-quality homes too frequently because they could get away with it.

We set out a series of measures to give consumers a fairer deal and improve transparency in homebuying. Our key recommendation was the Government should initiate steps to set up a New Homes Ombudsman as a way to provide the missing system of easy redress, which we believed would also incentivise housebuilders to tackle the root problem of poor workmanship.

Many of those who presented evidence to us pointed out that the gaps in redress for consumers are to do with post-occupancy snagging and their struggles to get any satisfaction from builders to put things right.

These were issues we covered at length in our first report. After examining the hurdles and confusion consumers faced in all aspects of buying a new home, we put forward recommendations to raise the quality of new homes and provide consumers with better redress. Consumers need this protection, in particular given the difficulty encountered in trying to undergo due diligence when buying a new home. As we frequently heard, consumers have more clarity of information, rights and warranties when they buy a new fridge than they do buying a new home, yet the pressure of making the biggest purchase of their lives couldn't be greater.

Our 10 recommendations to counter specific problems raised were:

1. Government should initiate steps to set up a New Homes Ombudsman – to provide quick and easy redress for consumers and help rebalance the power that is heavily weighted in favour of housebuilders.
2. Housebuilding sales contracts should be standardised – to eliminate loopholes and clauses in the small print, which again weigh the transaction heavily in favour of the housebuilder.
3. Buyers should have the right to inspect properties before completion – which would highlight defects before the contract was signed.
4. Builders should be required to provide buyers with a comprehensive information pack. This would include information on warranties in plain English, detailed information about both warranty and building control inspections, expected energy performance and how to use the home's utilities services and systems.
5. There should be a review of laws governing consumer rights when purchasing new homes – case law has set precedents that are unhelpful to consumer redress.
6. Government should commission a thorough review of warranties that come with new homes as they are of variable quality and don't provide the degree of cover consumers expect.
7. Housebuilders should instigate a new quality culture by adopting quality systems to ISO standards – solving the problem of poor quality must start with an aspiration to build with zero defects.
8. The industry should significantly increase skills training programmes – this should help instil a quality culture while bringing much-needed new people into the sector.

¹ More homes fewer complaints, All Party Parliamentary Group for Excellence in the Built Environment, July 2016 <http://cic.org.uk/admin/resources/more-homes.-fewer-complaints.pdf>.

9. A minimum standard should be set for compliance inspections – we think that responsibility for defect-free homes has to rest with the housebuilder. Third parties like building control, Approved Inspectors and warranty providers have a vital role to play, but a race to the bottom is potentially allowing too many corners to be cut.
10. Housebuilders should make the annual customer satisfaction survey more independent than currently in order to boost customer confidence.

The full Executive Summary from the 2016 Inquiry is given in Appendix 1.

Since the report was published the issue has received widespread coverage in the media as increasing numbers of consumers have brought these issues to the fore.

It was against the backdrop of these major problems occurring when there is such a strong need to increase rates of new housebuilding that our Parliamentary Group decided to return to the subject and investigate how an ombudsman could work to provide much needed redress and galvanise the sector into doing better.

We were pleased that in February the then Secretary of State in the Ministry of Housing, Communities and Local Government, Sajid Javid, announced a consultation on improving redress for consumers in housing - *Strengthening consumer redress in housing*.² The scope of the consultation reflected both the gaps in the market (for example, there is redress for tenants in social housing, where the landlord is regulated and covered by the Housing Ombudsman, but not for those with private landlords) as well as ways to make it clearer to consumers trying to navigate their ways through a series of ombudsman schemes which may or may not deal with their complaints.

The areas it asked for comment on included:

- Introducing a single housing ombudsman to cover the whole of the housing market.
- Should homes builders be required to join an ombudsman scheme?
- Should offenders be named and shamed for their poor practice to help tackle the worst abuses?

Our recommendations were submitted to the department to inform the consultation.

Our Inquiry dovetails with many of the questions posed in *Strengthening consumer redress in housing*, including whether home builders should be required to join an ombudsman scheme. In our Inquiry, we focus purely on complaints procedures and redress around new homes and we are calling for the setting up of an ombudsman to provide redress for new home buyers.

In section 3.2 we have addressed the question of whether this New Homes Ombudsman should be part of a single overarching housing ombudsman. It is certainly a confusing environment for a consumer – as is apparent from examining the different ombudsman schemes relating to housing and property set out in Box 1.

The written evidence we received and the oral evidence we took this time around certainly underlined the need for change and better redress for buyers. Homebuyers, we discerned, are exasperated not so much by the existence of defects – disappointing though that is – but rather by a builder’s failure or even refusal to put the defects right. Submissions we received from homebuyers described how buying a new home had been ‘the worst decision of their life’; how it was like ‘going through hell’ as the complaint passed between housebuilders and their suppliers and warranty providers; and how fighting for redress was taking a toll on their health.

Generally speaking, homebuyers are dealing with three types of defects:

- Snagging issues caused by poor workmanship, either through lack of skills, lack of time or lack of adequate supervision. Usually, the most irritating and common faults are not covered by the warranty providers – they fall under the builders’ two-year liability period. Warranty providers say they step in if the builders don’t fix these problems.
- Warranty-covered defects, which are usually matters that affect the structure, typically emerging between years 3 to 10 following completion.
- Non-structural latent defects arising from poor design, inadequate materials or bad workmanship, which can emerge at any time, potentially causing homeowners much financial and emotional distress.

The 2017 home building industry’s Customer Satisfaction Survey, carried out by the Home Builders Federation and the NHBC,³ found that 98% of new home buyers reported problems with snagging or defects to their home builder since they had moved in, with one in four reporting over 16 separate issues. As The Property Ombudsman, which deals with complaints about estate agents and letting agents, pointed out in its submission: “This means that 51,000 home owners have problems with their new homes, with over 13,000 having more than 16 issues that required attention. So instead of moving in and enjoying their new homes, consumers are burdened by having to collate and report multiple issues to their home builder.”

We were also presented with the results of more surveys commissioned in the wake of our last report. Warranty provider MD Insurance Services, which claimed in its submission to provide warranties for 30% of new homes started last year, set up The New Homes Review to gauge customer satisfaction. Feedback is obtained through an on-line survey www.newhomesreview.com and the survey is conducted by Zebra Square, an independent research agency.⁴

Again, findings pointed to problems with workmanship and after-sales care.

The results showed:

- 41% of respondents scored lower than 7 out of 10 for the condition of the home when they moved in.
- 37% of respondents scored lower than 7 out of 10 for the overall quality of the build.
- 93% experienced snags or defects when they moved in.
- Only 29% of snags or defects were resolved in a timely manner; of the others, 47% were partly resolved and 24% were unresolved.
- 33% of respondents scored fewer than 7 for overall satisfaction with their home.
- 20% of respondents scored 1 for overall satisfaction with the service provided by the developer/home builder after they had moved in.

In its submission, MDIS said: “In the general comments provided as part of the survey, the majority relate to snagging issues and the quality of finishes due to a rush for completion. The length of time in getting defects remedied is also an issue.”

Providing more evidence of poor quality, the managing director of Local Authority Building Control (LABC), which is the body representing council building control organisations, said that their members regularly receive calls from distraught homebuyers frustrated by defects. Its MD Phil Hammond told us: “In local authorities we have clear evidence, simply just from the number of calls that we take from purchasers, that they need help; 67% of the calls for help that we get and complaints on new homes are about snags and problems that are nothing to do with building control.”

We would like to reiterate the need to make sure we have as many as possible defect-free buildings and especially homes, right from the time they are handed over. Consumers want to see an improved quality of build, homes that are fit for purpose and an easy-to-understand warranty. Additionally, when something is wrong, consumers want an

³ <https://www.hbf.co.uk/policy/policy-and-wider-work-program/customer-satisfaction-survey-new/previous-years-results/>

⁴ www.newhomesreview.com

affordable and accessible means of putting it right. Consumers are entitled to expect this level of service, but it is woefully lacking currently.

Since our first Inquiry on this subject came out, we have been heartened to hear of efforts to improve performance from the Home Builders Federation (See Box 2). Senior management at many housebuilders are taking steps to address the multiplicity of issues, we were told by the Home Builders Federation.

But as one of our witnesses Lynne Ceeney, technical director, BSRIA and her colleague Tassos Kougiolis, principal consultant for residential, pointed out, for real progress to occur, board room aspirations must be manifested at site level, which could be a difficult cultural change to pull off quickly.

We also raised the issue of homes not performing in the way they purport to in terms of energy efficiency. Fuel consumption is consistently far higher than consumers are led to believe it will be. As building regulations have become tighter to conserve fuel, the so-called performance gap has become a common phenomenon, and so takes its places as another type of housing defect. We think that this is an important area for further discussion.

In our previous report, we also highlighted the over-aggressive competition in the building control market and the potential impact this was having on inspections for compliance with building regulations, and called for there to be tighter control. We have reiterated our call again in this report (Recommendation 11) for there to be a minimum number of inspections to prevent a race to the bottom as one way to regulate this more tightly.

Whilst it is not an area we intend to dwell on at length, we note that this inherent weakness in building control has been addressed in the Hackitt report, *Building a safer future – independent review of the Building Regulations and Fire Safety*, commissioned in the wake of the Grenfell Tower tragedy and undertaken by Dame Judith Hackitt.⁵

It says: “The part-privatisation of this regulatory function has led to many serious concerns about the oversight of buildings.” Dame Judith is advocating a new regulatory regime for higher risk residential buildings (those over 10 storeys), which would mandate the work of ensuring these buildings comply with the building regulations solely to local authority building control organisations – to be renamed Building Standards. This, says the report, would “ensure that the necessary risk-based site inspection regime can be put in place... without the concern that this will cause regulators to lose business.” Dame Judith Hackitt’s report was published in mid-May and there has been no opportunity for the potential impact of this change to be discussed as part of our Inquiry.

Box 1: Ombudsman schemes in property and housing

Estate agents/letting agents

By law all estate, lettings and property management agents must join a Government-authorized consumer redress scheme.

There are currently three ombudsman schemes operating in the property field, though this is about to become two.

Firstly, The Property Ombudsman has been resolving consumer disputes against property agents for 27 years. The organisation covers property sales, lettings, residential leasehold management, personal search organisations, chattels auctions, buying agents, buying companies and commercial property.

The Property Ombudsman scheme is an independently governed 'not for profit' organisation underpinned by statute. There is no cost to the consumer or the taxpayer and profits are invested back into providing an ombudsman service.

Secondly, the Ombudsman Services Property, a not-for-profit private company, which also offers an alternative dispute resolution service

across other sectors such as energy and communications. This body announced in February 2018 that it will withdraw from handling complaints in the property sector

Thirdly, the Property Redress Scheme. The three ombudsman schemes have operated an agreement that if an agent is thrown out of one of the schemes they'd been registered with, they are not allowed into another.

Social housing

The Housing Ombudsman Service (HOS) looks at complaints about registered providers of social housing, for example housing associations, and other landlords, managers and agents. The service is free, independent and impartial. HOS is an executive non-departmental public body, sponsored by the Ministry of Housing, Communities and Local Government.

As registered providers have developed both homes for outright sale and mixed tenure as well as traditional rents, the remit of this

ombudsman scheme is becoming blurred. We were told, for example, by the interim Housing Ombudsman David Connolly that it could only become involved where there was a landlord-tenant relationship which would include shared ownership and leasehold sales, but for freehold sales its jurisdiction is less clear.

The Financial Ombudsman Service

The Financial Ombudsman Service covers businesses regulated by the Financial Conduct Authority to provide retail financial services or credit-related activities and links to the FCA's register of these businesses. Insurance firms, such as those which provide warranties for new homes, are covered by the FOS.

The Legal Ombudsman

This scheme deals with complaints about solicitors, barristers, licensed conveyancers and other firms covering other legal services such as some accountants.

2.2 The confusing landscape and lack of redress

This Inquiry underlined the overwhelmingly complicated and confusing landscape consumers face when buying a new home, thanks to a plethora of warranties, housebuilding codes and complaints procedures, each offering something slightly different (and sounding the same with indistinguishable names in some cases) but none dealing with consumer issues in the way we think is straight forward or adequate when it comes to redress.

These were issues we covered at length in our first report, which looked at the hurdles and confusion consumers faced in all aspects of buying a new home, and we put forward recommendations to alleviate the confusions.

As discussed in the previous section our recommendations were wide ranging to tackle both the source of defects and the remedies and we would like to see all 10 of them adopted.

But we feel it necessary to highlight again the issues and deficiencies of warranties and consumer codes because getting this right is essential to the successful establishment and operation of an ombudsman.

2.3 Deficiencies of consumer codes of conduct

In theory, consumers are provided with redress schemes in disputes with home builders through consumer codes of conduct.

In addition to warranties, most developers will have to be part of a consumer code.

We were told there are seven different codes in the new homes sector, some of which are specific to individual warranties, and there are two codes which cover more than one warranty body. These are the Consumer Code for Homebuilders, which claims to cover 90% of all new homes started last year, covering NHBC, Premier Guarantee and LABC Warranty; and secondly, the newly set up code, the Consumer Code for New Homes, covering Q Assure Build, Protek Warranty, Global Home Warranties, FMB Insurance and BLP Insurance. This second code was launched in 2017 and is approved by the Chartered Trading Standards Institute and offers awards up to £50,000 as opposed

to the Consumer Code for Home Builders which makes awards up to £15,000.

Each of the seven codes is slightly different but they share a general lack of obligations placed on home builders, which serves to highlight the prevailing imbalance of power between the builder and the consumer.

We pointed out the limitations of codes in our previous review. In this Inquiry the codes also came in for criticism from some of our witnesses.

The Property Ombudsman said in its submission: “They [the codes of conduct] have been driven by the warranty providers and have been written in such a way as to suggest that they exist to contain complaints. The language is one of exclusion, the coverage is generic, and they each miss a major part of the new homes experience, ie, snagging.”

The original code, The Consumer Code for Home Builders, was created in 2010 by the leading warranty providers and the Council of Mortgage Lenders following a review of housebuilding by the Office of Fair Trading. Other warranty providers were deemed ineligible by the Consumer Code for Home Builders to join its scheme and have subsequently set up their own codes.

The majority of the issues consumers experience concern snagging. However, as The Property Ombudsman told us, snagging issues are not covered in most of the seven consumer codes related to housebuilding. This is a significant gap in redress.

There has also been an issue of general consumer lack of awareness, as exemplified by the relatively small number of awards. The Consumer Code for Home Builders, the longest established and with the highest coverage of properties, dealt with very few complaints.

In 2016, according to its annual report,⁶ between 1 January 2016 and 31 December 2016 there were a total of 102 cases referred to the independent dispute resolution service, which represents an increase of 55% on the amount of cases referred to the scheme in 2015. As the report says: “However, to put this in to context, given the many thousands

⁶ <http://www.consumercode.co.uk/wp-content/uploads/2017/11/Consumer-Code-Annual-Report-2016.pdf>

of Home Buyers that are covered by the Code, the numbers seeking assistance through the scheme are still very low, equating to approximately just 0.06% of the home buying population.”

The annual report says that the total sum awarded in 2016 was £65,108.42. The average sum awarded by adjudicators in cases where the home buyer’s claim was successful was £986.49. This continues a trend of declining average awards in previous years, from £2,031.67 in 2015, £2,219.66 in 2014 and £2,651.25 in 2013.

These awards represent significant improvement on previous years of operation (where it only fully upheld three complaints in total in five years from 2010 to 2014).

It has also been charging £120 for homeowners to make a complaint, though this charge is now to be dropped.

Noel Hunter, chairman of the Consumer Code for Home Builders, acknowledged that the code’s existence was not very well known amongst consumers but said that in the last 12 months the organisation has made efforts to raise its profile with a new website in place, which is interactive and has portals for access by consumers, builders, lawyers, and the organisation is working harder with the media. He added that it had also trained 7,000 front line housebuilding staff to understand better the way the code operates.

An ombudsman which is independent from the industry would not only serve to rebalance this power but would be in a unique position to assist the industry in producing a single code of practice. Such a code would, of course, include obligations on builders to deal with snagging issues.

2.4 Confusion over warranties

There are between 15 and 17 different warranties operating in the market. All offer something slightly different. We are reiterating our call for a review of warranties that we made in our 2016 report to ensure greater clarity and better protection for the consumer.

Consumers are confused by what warranties cover, which is far less than consumers assume; and neither warranties nor building control functions provide any sort of comfort that items such as finishings and fittings will be defect-free when the house is handed over. None covers such matters as incorrectly located boundaries or title conflicts, or significant other defects.

Clare Thomas, director of the Consumer Code for New Homes, said: “The warranty tends to be quite far down the list of consumer preference when they’re buying the new homes. We as a warranty provider provide key facts and information that clearly outlines exactly what insurance they’re provided with and what it covers before they make that purchase. But a lot of people aren’t aware of what the warranty is or who it’s with. It is unfair to the consumer.”

Mr Hunter of the Consumer Code for Home Builders added: “There are 15, 16 maybe 17 warranty bodies in the UK at the moment, and their standards are all different. The consumer has no choice. There ought to at least be a minimum standard for warranties, because that would give clarity to consumers and ensure that when they buy a home, they have a minimum standard warranty.”

Consumers may expect that, in common with warranties for goods they buy, if something is wrong with their purchase the cover offered by the warranty kicks in. But when it comes to buying a new home, the situation is far more complicated than that.

New homes come with a 10-year warranty; yet in the first two years it is the home builder which is responsible for sorting out defects. The warranty provider will only step in if the builder refuses to do anything, or if the builder goes into liquidation. Then, for years 3 to 10, the warranty only covers structural defects. Snagging and defects that are outside the technical standards specified by warranty companies will not be covered. Disputes with warranty providers – which as insurance companies are regulated by the Financial Conduct Authority – can be referred to the Financial Ombudsman Service but its remit does not cover snags.

Consumers may find comfort that a new home has been inspected and signed off at completion by a warranty provider, but such confidence is misplaced.

Warranty provision has become a competitive market. The house inspections carried out during construction and at handover by warranty providers are performed purely to prove to underwriters and mortgage lenders that the property is a 'standard risk'. Some warranty providers will inspect during the construction phase on a 'sampling' basis, ie they will normally inspect every house but not at every stage of that house's construction. We were told that some warranty providers don't even go to site to inspect the properties but 'inspect by photographs' taken.

Gary Devaney, chief executive of MD Insurance Services, which provides warranties under the brands Premier Guarantee and LABC Warranty, explained the 'logic test' which is applied before new homes are signed off by warranty providers to meet the Council of Mortgage Lender requirements. He said: "This test asks: is it going to lead to a claim under the warranty; are we aware of anything that's an issue for health and safety; and are there things outstanding which will cause undue inconvenience. We rigorously inspected each and every house against that criteria."

He added: "We don't inspect it for a snagging list because to do a proper snagging on a house would take two hours. It's a competitive world and, if we were to offer that service, it's highly likely we would go out of business because we'd be charging a lot more for it.

"Certainly, I think every homeowner should have the right for somebody to go into the house and carry out snagging on their behalf."

MDIS's written submission explained further: "Whilst we inspect each housing unit for breach of performance standards and tolerances, as set out in our Technical Manual, our surveyors do not carry out a full snagging inspection. For instance, whilst we check that all kitchen units are present we

do not open and close each cupboard door to ensure they run smoothly.

Snagging items are covered under the Defects Insurance Period cover if they constitute a breach of the Technical Manual Functional Requirements."

MDIS's submission continued: "To the home buyer, there is little difference between a snagging issue and a defect – they both create inconvenience. The term 'snagging issue' is most probably used to cover a wide range of problems as there is not clarity around definitions."

Some warranty providers said they would be prepared to carry out more rigorous inspections. Mr Devaney noted: "If the market says we should be doing snagging, then everybody has to be doing snagging and we're all on the same playing field. The issue is, would the developer pay the extra money for us to do the snagging for them? I'm not sure that they would."

The point was made in our previous Inquiry that the economics for more far-reaching inspections to cover quality and workmanship currently don't stack up. It was pointed out to us that the average motor insurance policy is £365 per year and the average latent defects policy is £300 for a 10-year policy.

The NHBC's chief operating officer, Neil Jefferson, also made the point that the system is flawed because inspections are carried out too close to the date of completion of the sales process and housebuilders do not always allocate resource to go back and put defects right.

We would certainly like to see beefed-up inspection regimes – but responsibility for construction and handover of defect-free homes should rest with the housebuilder, not with regulatory inspectors.

We set out in more detail how we would like to see warranties reviewed in Recommendation 10, Section 3.8

Box 2: A snagging app

One idea we support is a snagging app suggested by The Property Ombudsman, which could be developed by an ombudsman dealing with complaints about new homes. Such an idea would allow

home owners to photograph snagging issues and report them to the builder at the touch of the button. The app could be used to monitor the builder's progress in resolving the issue and if the problem is

not fixed, allow a consumer to raise a complaint and access the ombudsman if those complaints were not dealt with appropriately with by the builder.

Box 3: Home builders respond

Inevitably a great deal of evidence we heard concerned the deficiencies in housebuilding, warranties and redress for the consumer. However, we were heartened by a distinct change of attitude in those representing housebuilders and warranty providers, who in contrast to our previous Inquiry readily acknowledged that more needed to be done to improve their performance and provide consumers with better redress – as well as to respond to our other recommendation around improving quality and customer service.

Steve Turner, director of communications at the Home Builders Federation, told us that following our last Inquiry the HBF had put schemes in place to address many of the recommendations and that the latest customer satisfaction results covering

2016-17 show that following five years of drops in scores from satisfaction levels, the fall has been arrested and scores are starting to improve. Work of the Home Builders Federation has included:

- Progressing with work related to standardisation of sales contracts led by independent legal advisors, with a draft almost ready.
- Developing guidance for builders on what information must be included in a Customer Information Pack.
- Working with technical specialists within HBF member companies to prepare a guidance for builders on appropriate and comprehensive inspection regimes to ensure issues are addressed internally before customers move in and with lenders to ensure the

process around signing off properties is consistent and comprehensive.

- Boosting training with a new programme in partnership with the Construction Industry Training Board.
- Developing an Industry Charter which could sit alongside or within an ombudsman and will commit signatories to certain behaviour and actions through the sales and after-sales process. This Charter will provide a more cohesive and transparent process for customers to understand and for builders to follow.

SECTION 3:

How an ombudsman could work for new homes

In this section we set out recommendations for the way we think a New Homes Ombudsman should be set up, its role and how it could work to bring improved consumer redress.

3.1 Principles

Recommendation 1: The principle of the ombudsman is that it should be independent, free to consumers and provide a quick resolution to disputes. But we would like to see housebuilders consistently building defect-free homes so that the number of complaints is reduced.

We would expect that as well as being free to consumers, the New Homes Ombudsman would not require them to use legal representation.

Customers need access to a system that is independent, provides unfettered free access and is fast. Such a system also needs to provide a clear pathway for the consumer and to cover all organisations involved in the entire housebuilding process from construction to selling.

Katrine Sporle, chief executive of The Property Ombudsman, emphasised the need for early resolution. “Early resolution should be the main purpose of a New Homes Ombudsman. That’s what consumers need who have got new homes and who have been waiting for a while to have the defects rectified.”

Others presenting evidence to us also emphasised the multiple benefits an ombudsman would bring, both to businesses and housebuilding more widely, in terms of helping set up proper and appropriate complaints procedures and gathering information which would pick up on trends in common defects – information that is not currently made available through warranty providers.

Lewis Shand Smith, chief executive of Ombudsman Services, commented: “I think too often this is seen as something that exists purely for the benefit of consumers, but if you’re looking at an ombudsman, an ombudsman is also there to bring benefit to the business by the use of data, by letting people know when you see something going wrong, and by working with businesses to help them in complaint handling.”

He said it was also imperative to be impartial to both sides. “If you look at a case

and see that there is nothing wrong with the property, nothing wrong with the equipment in the property but the behaviour of the person who’s living in that property has caused the problems, then the ombudsman has a duty to say so.”

3.2 Structure - Single housing ombudsman versus New Homes Ombudsman

Recommendation 2: To provide consumer clarity we are advocating that there is a single portal for ombudsman services spanning the entire residential sector, covering the conduct of estate agents through to social housing, in order to reduce confusion in the market place. Within this single entity, there would be either a number of specialist ombudsmen or specialist divisions. One of these would cover new homes – and this is the aspect our report is concentrating on, a New Homes Ombudsman.

There are a number of ombudsman schemes already operating in related fields (See Box 1), and at the same time, the housing economy is increasingly mixed tenure. This creates even more confusion in that, for a mixed-tenure estate developed by a housing association, those renting and in shared ownership would be covered by The Housing Ombudsman, whereas those who have bought their home outright would not be.

What we heard repeatedly was that consumers need ‘clarity’ and a single portal for dispute resolution services, that is a single point of entry, which would then see their complaint referred to the appropriate ombudsman.

Anthony Browne, chairman of the HomeOwners Alliance, said: “I think the Financial Ombudsman does a very good job because it is a single ombudsman. People know where to go. There is high visibility.”

We were advised by some who gave evidence that a service for new homes disputes could be absorbed within The Property Ombudsman. However, we are well aware that the disputes would be of a more technical nature, which suggests new homes disputes would need their own separate and bespoke operation.

In its submission the Home Builders Federation was among those which said that any new ombudsman dealing with new home complaints would need its own dedicated operation.

“One thing that is clear is that newly built homes are a very particular product which requires a unique set of considerations. Therefore, while lessons can be learnt from existing ombudsman regimes such as The Property Ombudsman or Housing Ombudsman, it is also important to keep the different needs of the new build market and customers in mind.

“For instance, treatment of snagging issues would require a detailed set of finishing standards for an ombudsman to apply when assessing the merits of complaints and resolving disputes.”

It also needs to be considered how a new system could sit with existing protections to avoid unnecessary duplication.

Lewis Shand Smith, chief executive of Ombudsman Services, also emphasised the need for a one-stop shop. “Because of the mixed housing economy, it is really important to just have a one-stop shop for people to go to. It doesn’t matter who owns the house, if it’s in the private sector, the social sector or the rented sector, if there’s one place to go, a one stop-shop, it makes it simple for them, and it makes it simple for the landlord.”

The Property Ombudsman’s Katrine Sporle added: “I think that people who complain must know the people they’re complaining to have expertise in the area that they are dealing with.

“I don’t think you have to set up new bits for everything, but what we have to do is make sure there is only one way in for the consumer and then signpost them to the right place. But once they get there, you’ve really got to indicate the difference between block management, residential freehold management, private sales, relationships between landlords and tenants in order to give a proper service.”

David Connolly, Interim Housing Ombudsman, concurred: “I think that the portal is the answer to the problem of scale, of a large organisation. I think there’s a real problem with a housing ombudsman which includes both social housing and private housing. It’s huge and that problem of scale could be resolved by having different organisations under one portal.”

3.3 Remit and sanctions

Recommendation 3: We would expect to see the New Homes Ombudsman cover all those organisations and processes involved in the building and selling of new homes, except those services including solicitors and estate agents which already have their own ombudsman.

Recommendation 4: We recommend that it should be a statutory requirement for any organisation building and selling new homes to belong to the designated New Homes Ombudsman to be able to trade. The threat of being ‘struck off’ by the ombudsman would give the organisation teeth.

We are advocating that The New Homes Ombudsman would operate in the same way as the The Property Ombudsman.

The Property Ombudsman is not a statutory ombudsman but there is a statutory obligation for all estate agents to belong to an ombudsman in order to trade. If they are struck off, they lose the ability to operate, which gives teeth to The Property Ombudsman. In the estate agency sector there are three (shortly to become two) ombudsman schemes in operation, which have measures to ensure that if a company has been thrown out of one it cannot join another. We think that in the interests of simplicity for the consumer, there should be just one ombudsman scheme for new homes that all housebuilders will be required to join.

We have elected to recommend this pragmatic course of action, rather than recommend creating a new statutory ombudsman, because it can be set up more easily and quickly. Our overriding concern is to see consumers getting better redress as soon as possible, rather than face a long wait

for a new consumer protection body. However, if the improvements we are seeking do not materialise, we would seriously consider calling for the ombudsman to be placed on a statutory footing.

We would advocate strengthening the hand of the New Homes Ombudsman and its policing by making it a condition of selling a warranty that providers only cover housebuilders that are members of the ombudsman scheme. Additionally, membership of the New Homes Ombudsman should be a condition of building control registration.

The scheme would also need to put in place safeguards to prevent those that have been thrown out from setting up phoenix companies and applying to re-join under a new name.

We debated whether the New Homes Ombudsman should be a statutory body like the Financial Ombudsman Service and a number of witnesses recommended this course of action to us, particularly those presenting to us from MoneySavingExpert.com, who based on a study⁷ they had carried out of ombudsman across different sectors, believed that consumers would be best served with this approach.

William Barnes, senior policy and campaigns officer at MoneySavingExpert.com, said: “What was coming back from our research is that consumers were getting a really different experience from different ombudsman schemes. The Financial Ombudsman came out best in terms of consumer experience, which is probably based on the fact that it has a statutory foundation and obviously has a strong relationship with the regulator in the sector. Although the Financial Ombudsman wasn’t perfect, it generally had a high level of compliance with processing decisions.”

While there is certainly a strong argument in favour of setting up a statutory body, we reiterate our preference for getting an ombudsman in place as soon as possible – a view held by a number of those who gave evidence, but which could be revisited if necessary at a later date.

Recommendation 5: We are recommending that government, warranty providers and housebuilders and consumer groups work together to draw up a code of practice which would be used by the New Homes Ombudsman to adjudicate on disputes.

We would expect a New Homes Ombudsman to resolve disputes against an agreed code of practice to cover all the processes involved in buying a new home from construction through to sales. This would typically cover:

- The requirement for housebuilders to provide warranty schemes approved under the code.
- Accurate and truthful advertising and pre-purchase information of new build homes.
- Fair treatment of consumers when exchanging contracts.
- Transparency and reasonableness of charges for reservations, fee deposits and pre-payment protection.
- Quality of construction (and monitoring of quality) based on technical requirements laid down in a new universal consumer code.
- Standards for the handover of new-build properties.
- Adjudicating on incomplete or defective infrastructure on the development, and common parts.
- After-sales services post-handover.
- Establishing the nature of defects by requiring investigative reports.
- Ensuring that defects are fully remedied.
- Flag up trends in housebuilders’ performance and publish annual reports collating awards made throughout the year.

Our recommendation is that a new code of practice would be drawn up in consultation with government, trading standards and industry, which all housebuilders and warranty providers must operate under, rather than the plethora of inadequate codes that consumers currently face. We envisage that this consumer code could provide a vehicle to introduce other measures we called for previously, such as the right to inspect before final completion and comprehensive home information packs.

⁷ https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

We think that information about the construction and inspection process should also be made available to consumers. There should be available information which records on a site by site, plot by plot basis the results of all inspection activity or the lack of it and how faults have been rectified. This way a picture can be built up of the performance of the builder so that homebuyers and their advisors can see where there may be issues. This should not be difficult or expensive to do and could be available to solicitors/conveyancers on-line to support the buyer's due diligence process.

This information might also be helpful to officials and elected members both in Parliament and local authorities to be effective as well.

We recommend that the consumer code will also specify:

- That a builder will use an approved warranty scheme which is fit for purpose (we are reiterating our call for a separate review of warranties – see Recommendation 10).
- Basic specifications that new homes should meet, and an inventory of what consumers should expect of a home built to high quality.
- Better inspection and quality control regimes that must be undertaken for new homes and determine how these should be documented and made available to homebuyers' solicitors as part of the conveyancing process, and as part of a home information pack. The purpose would be to improve transparency of the design, building and inspection process.
- The need for comprehensive home information packs and what they should contain. We think this must include: what the warranty covers in plain English and clarify whether it covers white goods; which version of the Building Regulations the house was built to and complies with; and how to contact the builder to rectify defects.

- The need for sales offices to have clear documents about after care responsibilities of builders and warranties.
- Independent investigation of and rectification of defects (pre- and post-occupation). We think contracts should allow homeowners to appoint independent building consultants /surveyors to review the issues and agree with the builders a schedule of work with all costs being picked up by the builder including those of the building consultant /surveyor.
- In the event of a dispute a clear timetable for responding to complaints, rectify defects and compliance with any requirements of the ombudsman.
- The ability for all homebuyers to carry out surveys before final completion.
- Compensation scales to homeowners for damage arising.

We were told by the witnesses from the Home Builders Federation, and those from the largest warranty providers and consumer codes that they have been working hard since our last report to make improvements to their offer to the consumer and that they understand the need to reduce confusion in the marketplace by streamlining the number of codes.

This acceptance of the need for change ought to make it easier for such organisations representing industry to come together with consumer organisations and government to draw up a code of conduct.

It is clearly essential that the New Homes Ombudsman will be able to adjudicate on snagging issues and other defects, which will necessitate drawing up detailed inventories.

3.4 Awards

Recommendation 6: We are advocating that the New Homes Ombudsman would be able to make awards to consumers of up to £50,000 and that these awards are made public.

The principle of the awards would follow that of the Financial Ombudsman Service which is that the consumer should not be out of pocket and that their financial status is restored to what it was before the complaint

took place. We recommend that the maximum award would be £50,000. Disputes over larger sums than this would likely involve legal representation, and though they could be adjudicated on by the New Homes Ombudsman, they would be best settled in court. We think that in certain extreme situations the New Homes Ombudsman should be able to reverse the ‘sale’ of the property.

Anthony Browne, chairman of the HomeOwners Alliance, told us: “If someone’s house is uninhabitable, the company should be forced to rebuy the house or provide a new one. That’s what the Financial Ombudsman does: it tries to restore people to what they would have had if they hadn’t had that particular transaction.”

Awards should be made public and collated in an annual report available to consumers. Going to an ombudsman would not take away consumers’ other rights in law.

Paula Higgins, chief executive of the HomeOwners Alliance, pointed to the benefits that data collected and collated by an ombudsman would bring to homebuyers who want to learn more about the performance and track record of home builders before they buy.

3.5 Timescale for settling disputes

Recommendation 7: The New Homes Ombudsman should be obliged to settle disputes within certain time limits.

Consumers need to have confidence that their disputes are being dealt with speedily. By the time they go to the ombudsman resolution service they will have already spent time taking a complaint to the housebuilder (which again would be under time constraints to resolve it as set out under a new consumer code of practice). They will want resolution as soon as possible.

Several witnesses made the point that it was important for consumers to know the timescale builders were working to – and if they failed to do so, it could be referred to the ombudsman in order to stop builders dragging their feet sorting out the problem.

Phil Waller, who runs a campaigning website, New Home Expert, said in his submission: “Most companies [across different industries] using an ombudsman have a maximum eight weeks to resolve the complaint. In the new homes industry this would not be sufficient as works to remediate defects could take much longer to rectify. However, housebuilders and warranty providers would be required to respond to buyers’ complaints to inform of the intended course of action and duration of any works within eight weeks of the buyer’s initial complaint. If there is no response within eight weeks, or the homebuyer is not happy with the response, then they can refer the complaint to the new homes ombudsman service.”

3.6 Funding

Recommendation 8: We are recommending that the New Homes Ombudsman is funded by a levy on housebuilders, rather than a case by case fee. However, we think that volume builders should pay proportionately more than SMEs.

Most housebuilders are already levied by warranty providers to pay for consumer codes and dispute resolution through that and there was preference from the industry for funding to be raised in this way rather than by a case fee. While we did consider the advantages of case fee as a funding route, namely that it penalises those who are the worst offenders, we think the disadvantages would outweigh the benefits. The level of funding for the ombudsman would be more uncertain and leave companies vulnerable to persistent ‘claimants’. A fee of £50 per home would raise £8.5m if 170,000 new homes for sale were built annually. There could be a lower levy for smaller housebuilders.

Some of our witnesses, like the NewHomes Alliance, argued for greater penalties for those who were the worst offenders, pointing out that it would provide more incentive for them to improve and conversely would not penalise housebuilders that do not have complaints.

In its submission, the NewHomes Alliance said: “You need to make incentives within the system so that you can reduce the number of complaints in the first place, resolve complaints before they even happen, and the second thing is that it actually allows an ombudsman to grow or contract, in line with the scale of complaints.”

However, given that homebuilders currently pay a levy for consumer codes, we think this would be easier to introduce and give greater financial certainty to a new service.

The Home Builders Federation said: “In terms of funding a new or extended body the industry accepts it should pay. We do not foresee too many difficulties in agreeing and establishing a mechanism to collect the monies on a per house levy basis and transferring it to the new body. We are currently considering scoping work to establish the running costs of the new body to determine what the levy would need to be set at.”

3.7 Relationship with existing complaints procedures

Recommendation 9: The New Homes Ombudsman would cover disputes between housebuilders and consumers for the first two years.

We have suggested this two-year timeframe because it mirrors the duration of the housebuilder’s liability for defects. At that stage, the warranty provider takes over. If home buyers are unhappy with the way the warranty provider deals with their complaint, the buyer can refer the matter to the Financial Ombudsman Service.

That said, we were told that the Financial Ombudsman Service, which presides over complaints about insurance companies and thus covers warranty providers, is not necessarily the best organisation to preside over technical disputes. This is an area that needs more research to see how the demarcation between the two different ombudsman schemes would work best for the consumer; and whether that means bringing

complaints involving defective construction under one roof. But we would reiterate, the code of practice for the New Homes Ombudsman would contain requirements for builders to use an approved warranty scheme which we would expect to weed out those that currently represent substandard service and cover.

The Property Ombudsman chief executive Katrine Sporle observed: “In the first two years, the issues are much more likely to be about snagging and common parts and the management company. After those years, it’s much more likely to be very serious – for example, structural defects which haven’t come to light. At the minute there is a Financial Ombudsman Service that is set up to do this – but what they must have is the technical expertise to underpin it.

“Whichever way you do it, you must make sure you understand the nature of structural defects, because it’s then affecting the asset that you bought. But for the moment it would be easier to leave it with Financial Ombudsman Service and make the New Homes Ombudsman concentrate on the first two years. That is where the practical things are and that’s where I think you need to make more progress with people to really feel that something has been done. But, in the longer term I agree that both should be looked at, and there should be real expertise to underpin it.”

3.8 Other recommendations and actions

We are confident that fairer and faster redress will help improve the quality of new homes, but it is only one aspect of the changes that we feel need to be made. As we have said, it was just one of 10 recommendations in our last report and we would like to make a strong case for them all again.

Some of these recommendations are particularly necessary to enact in the context of the success of a New Homes Ombudsman.

We also discussed the possibility of imposing retentions on housebuilders, whereby part of the contract sum would be held back or in an escrow account until any defects have been rectified. However, we

decided against recommending this course of action out of concern that SMEs in housebuilders' supply chains would suffer as a result. Also, it would run counter to the Private Members Bill currently being championed by Peter Aldous MP⁸ to abolish the widespread practice of retentions in the construction industry because of the damage it causes small and medium sized businesses.

Recommendation 10: We are advocating the Ministry of Housing, Communities and Local Government commissions a review of warranties to ensure they are fit for purpose for homebuyers.

Consumers want a warranty to cover snagging and defects in their house, and when a claim is made for the situation to be rectified promptly. Yet the consumer has no say in the warranty which is provided with their new home or its level of cover and there is no guarantee that the level of cover offered by one builder matches that provided by another.

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, there are several shortcomings:

- Consumers have no choice whatsoever which warranty they get, it simply comes as part of the purchase.
- Warranties cover less than expected, and 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. Many of those giving evidence to the Inquiry re-iterated this point, calling some warranties unfit for purpose.
- As we discussed in Section 2.4, inspections carried out by warranty providers are less rigorous than consumers would expect.

Paula Higgins, chief executive from the HomeOwners Alliance, commented: "I think the homeowner would love to have a warranty from day one, as you do if you buy a car or a toaster. It's quite confusing that for the first two years they have to go to the builder."

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 preferred by the consumer. For example, it is questionable whether the limited scope of warranties only covering structural defects after two years is in the best interest of the consumer. Latent defects that are not structural can come out at any time and we believe there is scope for extending warranties to cover them and that consumers would be prepared to pay more for strengthened cover.
- Establish an 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 Ombudsman Service, which we were told is 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.
- Establish the levels of inspections carried out by the warranty providers and whether this needs to be more extensive.
- Establish the liabilities of warranty providers to step in to finish the open spaces and infrastructure of new developments if the housebuilder goes under.

⁸ <https://services.parliament.uk/bills/2017-19/constructionretentiondepositschemes.html>

Recommendation 11: A minimum standard should be set for compliance inspections by approved inspectors and building control.

In our first report, some of those giving evidence pointed to the need for further intervention in terms of more frequent and rigorous onsite inspections from independent organisations as a means of driving up quality. However, although inspections have a vital role to play, we think that the responsibility for construction of defect-free homes should rest with the housebuilder.

That said, we were concerned that competition in building control might be fuelling a race to the bottom. To counter this, there should be a tighter regulatory regime, which could specify 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 and we would like to see the Ministry of Housing, Communities and Local Government review this as part of setting up the New Homes Ombudsman.

SECTION 4:

Concluding remarks

Our first report calling for a New Homes Ombudsman clearly addressed a very important issue, one which we are pleased that the Government is taking seriously. We hope that this follow up report will be helpful in creating the kind of body we envisage to give consumers a much fairer deal when they buy a new home with fairer access to redress if it is defective. We also hope that it will encourage housebuilders – under pressure to increase output – to meet consumer demand of building defect-free homes with greater consistency and generally create a more equitable environment.

We were encouraged by a more positive tone from housebuilders, warranty providers and operators of consumer codes of conduct than we encountered in our first report, particularly the acknowledgement that competing organisations need to work together to establish a unified consumer code of best practice housebuilders will need to work to under a New Homes Ombudsman. But we were struck once again by the utter confusion and morass of bodies and organisations that consumers encounter when seeking redress. Little wonder they so often fail to find it. Buying a new home is stressful enough. Buying a defective one can take a massive toll on people’s wellbeing as they wrestle with an almost Kafkaesque system seemingly designed to be unhelpful.

Consumers buying new homes should be entitled to expect the same levels of aftercare and redress they would receive when purchasing any other new product.

We believe that setting up an ombudsman to deal with specific complaints to do with new homes, accessed via a portal that provides a shop window and easy navigation for the appropriate redress service across housing and property, will provide the much-needed improvement in redress.

The Commission of Inquiry into a New Homes Ombudsman, All Party Parliamentary Group for Excellence in the Built Environment. June 2018.

Witnesses who gave oral evidence

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[Building Services Research & Information Association](#)

Lynne Ceeney, Technical Director and Tassos Kougionis, Principal Consultant-Residential

[Consumer Code for Home Builders](#)

Noel Hunter, Chairman and Carol Brady, Secretary

[Consumer Code for New Homes](#)

Sarah Langley, Managing Director and Claire Thomas, Director

[HomeOwners Alliance](#)

Anthony Browne, Chairman and Paula Higgins, Chief Executive

[Home Builders Federation](#)

Steve Turner, Director of Communications

[Housing Ombudsman](#)

David Connolly, Interim Housing Ombudsman

[Local Authority Building Control](#)

Phil Hammond, Managing Director

[MoneySavingExpert.com](#)

Kirsty Good, Campaigns Editor, and William Barnes, Senior Policy and Campaigns Officer

[National House-Building Council](#)

Lewis Sidnick, Director of Corporate Affairs and Neil Jefferson, Chief Operating Officer

[Ombudsman Services](#)

Lewis Shand Smith, Chief Executive

[Premier](#)

Gary Devaney, Chief Executive and Chairman

[The Property Ombudsman](#)

Katrine Sporle

List of written submissions

Organisations and institutions

Building Services Research & Information Association
Chartered Institute of Building
Consumer Code for Home Builders
Consumer Code for New Homes
Coventry City Council
Federation of Master Builders
Home Builders Federation
HomeOwners Alliance
Housing Ombudsman Services
Local Authority Building Control
MoneySavingExpert.com
National House-Building Council
Ombudsman Services
Premier Guarantee
The Property Ombudsman

Individuals

Alison Briggs
Stephen J Brown
Victor Cooper
Philip Gaw
Vicky King
Charlotte Longley
Sue Lyttle
Emily Manns
Ursula Matthews
Greg McLaughlin
Carol Owen
Mike Ridgell
Stuart Runham
David Seex
Richard Smith
Anthony Sully
Robert Sutton
Andrew and Kerensa Vulliamy
Philip Waller

Executive summary from 2016 Inquiry

To put our latest Inquiry into context we have included the executive summary from the All Party Parliamentary Group for Excellence in the Built Environment report into the quality of workmanship and consumer redress in new homes, *More homes, fewer complaints*, published in July 2016.

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.



All Party Parliamentary Group for Excellence in the Built Environment



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