



New Homes Expert

submission to the

Ministry Housing Communities and Local Government (MHCLG)

Response to the Consultation:

Redress for purchasers of new-build homes and the New Homes Ombudsman

20 August 2019

New Homes Ombudsman: FREE - FAIR - FOR EVERYTHING

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1 Introduction

My name is Philip Waller and I am the New Homes Expert. I am a retired, award-winning house building professional, with over 35 years construction management experience gained working for a number of large plc national housebuilders and construction companies.

I launched my original consumer advice website <http://www.brand-newhomes.co.uk> in 2006, with the specific aim of assisting UK new homebuyers in making a fully-informed decision by providing all the information they need before purchasing a new home.

I became increasingly aware, despite several studies and recommendations: Barker Review (2004) and the Office of Fair Trading Market Study of Home Building in the UK (October 2008), that house builders would not improve the quality of their new homes without being required to do so by Government. In 2013, I began writing blog articles to highlight buyers' poor quality issues and campaign for change. <http://www.new-home.blog.co.uk>

I set up the 'Unhappy New Homes Owners' Facebook Group in May 2014. This currently has around 1,600 members who post to ask for advice, support for each other and share their new home experiences. <https://www.facebook.com/groups/unhappynewhomebuyers/>

For over ten years, I have worked (unpaid) advising and helping new homebuyers with their problems and actively campaigning to put pressure on large house builders to improve both the quality of the homes they build and the often abysmal service they give to their customers. Basically one dedicated and passionate individual making a stand for UK new homebuyers for what is both morally and ethically right. By actively campaigning on social media, TV, and in the national press, my aim is to both improve the quality of new homes and obtain better protection for UK new homebuyers.

A priority being a government-appointed, fully-independent **statutory New Homes Ombudsman**, one of the suggestions I made at the second evidence session of the APPG Inquiry 'Into Quality of New Build Housing in England' on 23rd November 2015.

I will not rest until the **Statutory New Homes Ombudsman** becomes a reality.

2 Response to government delay in creating the Statutory New Homes Ombudsman

On 1st October 2019, now ten months ago, the then Housing Secretary James Brokenshire announced the government would create a statutory new homes ombudsman which in his words: <https://www.youtube.com/watch?v=d2f9B55xXVw>

“will champion homebuyers, protect their interests and hold developers to account. And give confidence that when you get the keys to a new home you get the quality build you expect and the finish you’ve paid for.”

It is hugely disappointing that this has yet to take place, meaning tens of thousands of new homebuyers have no available recourse to seek unequivocal, 100% independent redress and meaningful compensation awards for the often nightmare new homes they now own and the indifferent service received from errant housebuilders and inadequate warranty policies.

As the one person that suggested the statutory new homes ombudsman at the APPG EBE Inquiry on 23rd November 2015, I had no idea at that time, it would take this government over 4 years to implement. Many thousands of new homebuyers are aware of the government’s failure to listen to their concerns, hear their pleas and start a long process of change, beginning with the creation of a statutory new homes ombudsman. The government should be aware that the lack of urgency and constant prevarication will lose votes, from homebuyers, their families and friends, whatever their political persuasion.

It is my hope that following this somewhat unnecessary Consultation closing on 22 August 2019, the statutory new homes ombudsman will become fully operational and not be further delayed by Brexit fallout, political grandstanding and become yet another classic wishy-washy government promises that take a decade to materialise if at all.

When 99% of new homebuyers report defects to their housebuilder, 43% reporting more than 10 defects* within the first few weeks of moving in, with many not even built in full compliance with existing building regulations, clearly government must act.

It has come to my attention that the MHCLG has been giving advice to the Consumer Code for Home Builders (CCHB)**. The cynic in me is concerned that the CCHB could be being tasked by government, to come up with a watered-down set of rules and requirements agreeable to plc housebuilders and warranty providers, with a view to setting up an industry-led “Ombudsman” perhaps a temporary ‘beta’ version of the new homes ombudsman, ahead of legislation “at the earliest opportunity” “when parliamentary time allows” which will be operated on a voluntary membership basis. Could this even be the “Shadow form” the MHCLG has outlined?

The time for debates, announcements and consultations with stakeholders has passed. It is now time to deliver on the promise made on 1st October 2018 and create a statutory new homes ombudsman.

Too many new homebuyers are suffering, many are physically drained as a result of engagement with indifferent housebuilders when trying to get their new homes brought up to warranty standards and statutory regulations. For some buyers, the mental anguish has become almost unbearable, with some contacting me for help even mentioning thoughts of suicide, such is their hopelessness! Like Yvette Davis <https://www.portsmouth.co.uk/news/woman-left-suicidal-after-paying-310-000-for-contaminated-sarisbury-green-house-she-can-t-live-in-1-8969272>

* - Source: HBF 8-week Customer Satisfaction Survey 2019

** <http://www.new-home-blog.co.uk/the-chameleon-consumer-code-for-home-builders-now-plan-their-own-ombudsman/>

2 Consultation responses

I have completed the online version to answer the specific questions but feel the need to expand on some aspects.

Q4 Who should be covered by the new homes ombudsman

To avoid housebuilders wriggling out of compliance with the statutory new homes ombudsman and depriving new homebuyers of effective redress, it should also encompass anyone who is involved in the selling of new homes or what are effectively new homes as 'second-hand'

Q5 Should a New Homes Ombudsman only cover complaints where redress cannot be sought elsewhere?

NO! Clearly the New Homes Ombudsman should cover ALL complaints from new homebuyers regardless of the nature or existence of alternative Ombudsman or redress. The "limited in its scope" Consumer Code for Homebuilders has clearly failed new home buyers over its ten year existence.

*It should also include warranty providers as the Financial Ombudsman Services NHBC complaint decision in Appendix A demonstrates, that despite 71% of complaints against the NHBC being upheld in new homebuyers favour * originally shown here <https://www.which.co.uk/news/2019/07/insurer-turned-down-your-claim-heres-why-should-go-to-the-ombudsman/> now deleted!*

See screenshot Appendix A

Q6 Anyone else able to seek redress through the New Homes Ombudsman?

YES! Anyone who buys a new home from the original buyer within the 10-year warranty period.

Q7 Should anything be excluded from the new homes ombudsman remit?

NO! It should include anything and everything including complaints about new home warranty providers.

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Q8 Awareness of requirement to belong to the New Homes Ombudsman

The requirement should be a condition of planning and building regulation approval. Building control inspectors and warranty providers should be legally required to seek proof of membership before carrying out inspections.

Q9 Should there only be a single New Homes Ombudsman

YES! It should be single Statutory New Homes Ombudsman administered by a PUBLIC BODY in a way not dissimilar to the Financial Ombudsman Services.

There should not be any form of "voluntary" New Homes Ombudsman, "shadow form" New Homes Ombudsman or any "Ombudsman" scheme created by any of the house building industry's stakeholders.

Q10b Additional circumstances a purchaser can access the New Homes Ombudsman

- *When a sale did not go through and housebuilder is withholding money, such as reservation fees and other payments such as for optional extras.*
- *It should also cover breaches of written agreements regarding carrying out remedial works to defects.*
- *If any purchaser of a new home is given a non-disclosure agreement to sign as a condition of carrying out remedial works to defects.*

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

*YES! Anything less, would be a sell-out to the housebuilding industry and a betrayal of trust to every new build buyer. **On no account whatsoever, should any private sector organisation, either existing or newly created, be allowed to deliver the New Homes Ombudsman.** Already the industry's own Consumer Code for Home Builders (CCHB) is attempting to manoeuvre and reinvent itself as an 'Ombudsman' with advice from the MHCLG! The New Homes Ombudsman must be unquestionably, 100% independent of the house building industry and its stakeholders (various Codes and warranty providers) and be clearly seen to be. The only way to ensure and guarantee independence is a New Homes Ombudsman service delivered by the PUBLIC SECTOR.*

The MHCLG should take note of the abject failure of deregulation of Building Control function with the use of "approved inspectors" with now many documented poor quality standards and examples of non-compliance in "completed" "inspected" and "signed off" new homes

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

YES! Any charge to access redress will deter consumers making complaints and questioning their validity. It has been previously announced by government that the New Homes Ombudsman would be free and on Page 41 of the 24 January 2019 response to the last Housing Redress consultation it stated it would be free. Even on page 17 (3.19) it states "we want to see better redress faster so that consumers can benefit from FREE, FAIR and EFFECTIVE redress as soon as possible"

Until this year, the CCHB charged new homebuyers seeking redress £120 (including vat!) as a registration fee. Just 357 complaints were received in 8 years with many no doubt being put off by the fee and the bias of adjudication.

It would be idiotic to have the opinion that a free service would be "subject to misuse giving rise to vexatious complaints" as any new homebuyers that angry and frustrated, would in all probability have genuine, justified grounds for making a complaint.

Q17 Funding the New Homes Ombudsman

A simple levy for each and every house built. I am suggesting £100 per home built giving around £20 million on 200,000 homes a year built. In addition for each complaint the house builder concerned should also pay £750 towards the cost of investigating the complaint and also additional amounts to cover the cost any independent external specialist's inspections, assessments and testing.

Q20 Sanctions for New Homes Ombudsman

All of the above. In addition, when considering sanctions, expulsion or suspension, this should apply to all companies and regional companies within a plc housebuilder's group. It should also apply to the directors of those companies. This is to prevent any plc corporation simply using another company within its Group, acquiring another housebuilder or setting up a new company to carry on trading and avoid the Ombudsman sanctions.

Q21 Powers of the New Homes Ombudsman

It is essential that the New Homes Ombudsman has the power to force housebuilders to buy back (reverse the purchase) defective new homes. This should be offered to the buyers of any new home where defects are serious or extensive enough to require the new home owners to move into temporary accommodation for more than 28 days.

In addition, the New Homes Ombudsman should have the powers to stop work on any development where serious defects are reported, such as weak mix mortar, missing fire barriers and structural issues. In all such serious instances, the New Homes Ombudsman should INFORM all other home owners on any particular development, that their home may have a serious defect(s). This will nullify the use of non-disclosure agreements by both plc housebuilders and warranty providers.

The purpose of a New Homes Ombudsman is to make meaningful justifiable levels of compensation awards to new home owners, taking into full account the impact on family life. It should not just exist to enforce the rectification of defects and ensure any financial loss is reimbursed. This will also ensure that housebuilders are suitably encouraged to improve quality and service. Each case should be judged fairly on its merits, in most cases compensation awards of less than £2,000 will be insufficient, as it will be cheaper for plc housebuilders to write-off the Ombudsman's award for the few buyers that take their complaint to the New Homes Ombudsman against the cost of improving quality for every new home built.

Q22 Maximum award by New Homes Ombudsman

This should be up to £200,000, in line with the Financial Ombudsman Service upper limit. A home is the most expensive purchase anyone makes in their lifetime; indeed, it can take a lifetime to pay off the loan. The upper limit must therefore properly reflect the investment, thus the likely cost of a total demolish and rebuild to properly cover those new homebuyers who do not wish to take advantage of the buy-back option.

By implying that taking legal action is an option for larger claims would dismiss its impossibility for most new homebuyers. For even those with legal expenses insurance, this is a lengthy and costly process with no guarantee of a successful and fair outcome. Indeed, housebuilders have deep pockets and vigorously defend every attempt by the very few new homebuyers who take this course of action, in the full and certain knowledge that it will cost less to defend the small number of claims that could potentially end up in court, than routinely pay justifiable compensation to homebuyers. Even if an agreement is reached ahead of a court hearing, this is normally subject to a non-disclosure agreement clause, ("gagging order") to avoid any precedent being established and to reduce likelihood of action being taken by others, often with identical issues.

Taking legal action against a plc housebuilder is a serious barrier to access to justice, in terms of cost, risk and time. As I said on national television, "Buyers who go to court will run out of money long before the housebuilders ever will." Most having just bought a new home at a premium price, perhaps using help to buy, cannot simply afford long and protracted legal battles with plc housebuilders and their bullying 'Rottweiler' litigation mitigation solicitors.

Q23 What information should be published to empower consumers?

There should be a builder league table, revised bi-annually naming house builders and the number of complaints made against them to the New Homes Ombudsman. It should detail the number of complaints upheld, amount of awards and compensation, with statistics divided into categories such as pre purchase, defects and poor quality, non-conformance with building regulations and unfair terms and charges.

In time, this incorruptible government data, should replace the industry's own, in-house and highly criticised '8-week HBF survey' designed with the sole intention of "providing data to rebut negativity" is completed by purchasers at a time when the full extent of defects and their housebuilder's indifference are unknown. Indeed the NHBC have said that the responses to its 9-month survey, which is never made public, show the responses are normally 5-10% lower than those in the 8-week survey.

Q26 Should a New Homes Ombudsman remit be UK-wide

Whilst there is a case for this, given most plc housebuilders have operations in the devolved nations and clearly have the same need, it will inevitably result in further legislative delay. For this reason the Statutory New Homes Ombudsman should apply only to England with devolved nations free to copy or amend their own legislation if they choose to do so.

The nations were devolved for a reason and have autonomy to change and revise their own building regulations, so why, if they feel a statutory New Homes Ombudsman is required, would they not be able to act and create their own? A requirement for a UK-wide New Homes Ombudsman would only serve to delay implementation.

Q28 What should be included in a Code of Practice for developers?

Obviously everything listed in the consultation should be included, but any industry collaborated/created Code of Practice will invariably be used to limit or restrict the redress available to new homebuyers and the effectiveness and powers of the New Homes Ombudsman (as is the case with the industry's own CCHB). This must not be allowed.

***The New Homes Ombudsman must not be confined to decisions from any Code requirement not met but each and every complaint should be judged in its own individual merits.** Whilst the FOS does make reference to the 'Banking Code' and the ABI 'Statement of general Insurance Practice' it does not appear bound to them implicitly. Neither should the Statutory New Homes Ombudsman be restricted in what it can and cannot rule on.*

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*It must be said, that the universal practice of housebuilders encouraging, incentivising and in some cases insisting, new homebuyers to use a particular solicitor of the housebuilder's choice must be banned. Clearly this practice leaves buyers at a distinct disadvantage as there is a clear conflict of interest. This being demonstrated by the harm thousands have suffered as a result of being led into leasehold ownership of houses, without fully understanding the implications and disadvantages of doing so. **Housebuilders recommending/suggesting solicitors** (because "it will be quicker/easier as they know the development and have already done the searches") **should and must be banned.** Until it is, this should be included under the New Homes Ombudsman remit.*

3 Conclusion

House builders and warranty providers own operational basis is to bat away buyers' complaints and warranty claims rather than work in the consumer's best interests. Despite many years of opportunity, this isn't going to change. It is now time, as the previous Consultation recognised, a Statutory New Homes Ombudsman is required to award justifiable and meaningful levels of compensation. It needs creating **now as a government priority**, without further unnecessary delay.

Appendix A

Screen shot originally shown here <https://www.which.co.uk/news/2019/07/insurer-turned-down-your-claim-heres-why-should-go-to-the-ombudsman/> now (strangely) deleted!

Buildings insurance

Buildings insurance was the worst type of insurance for complaints, which rose 42% since last year. Those complaints were also slightly more likely to be upheld.

We obtained the uphold rates, split by company level and type of insurance. Just over a third (35%) of buildings complaints were upheld. Of these providers, the National House-Building Council had the highest rate of 71%.

In one example from last year, the ombudsman ruled the provider pay a couple £600 in compensation and speed up several repairs after making slow progress in dealing with claims, some as much as three years old

Screen shot from: <http://www.nhbc.co.uk/Homeowners/ConsumerFeedback/>



Buildmark Cover



Policy Documents



Problems with your home



Claims

CONTACT US

The Financial Conduct Authority (FCA), the regulatory body that governs the financial services industry, sets out standards for how insurers and banks must handle customer complaints.

The following table provides our complaints data for the period 1 October 2018 – 31 March 2019.

Number of complaints opened	878
Number of complaints closed	861
Number of complaints closed within 3 days (%)	24.4%
Number of complaints closed within 8 weeks (%)	98.3%
% of complaints upheld	39%
Main cause of complaints opened	Delays/timescales

During the period 1 October 2018 – 31 March 2019 we received 878 complaints. As the number of policies in force during the same period was 1.3 million, this equates to 0.66 complaints per 1,000 policies.

Of the complaints reviewed during this period, 39% of complaints were upheld, which means that we agreed with the customer and took action to put things right. **Really?**

Appendix B

Apologies for the delay in responding. Whilst I fully appreciate that the steel beams may not be sitting on pad stones as they are currently performing then we are unable to consider this under the Resolution process or even as a claim under Section 3 of your policy. Only if there is actual damage can we pursue the matter further and the details are on file. Unfortunately there is no provision within the Buildmark policy to undertake works on a presumptive basis.

I fully appreciate that this may not be the response you had wished for but I trust that I have clarified the rationale behind our stance.

Regards


Claims Investigator – South East team

Email: claims@nhbc.co.uk



Raising Standards. Protecting Homeowners

NHBC | NHBC House | Davy Avenue | Knowlhill | Milton Keynes | MK5 8FP
www.nhbc.co.uk | Tel: [0300 035 6422](tel:03000356422) | Fax [01908 747255](tel:01908747255)

So essentially the @NHBC say they could smell urine on the door but as it falls within their technical tolerance, I have to go to the @CitizensAdvice to get my son's new and revolting bedroom door replaced?! @BarrattHomes @Barrattplc @wyrecouncil

Well done everyone.

Good afternoon,

Following our below correspondence I have now had a response from the claims investigator.

He has advised that he was asked to smell the door at the time of investigation, and although an aroma was observed, this would not be a breach of the NHBC technical standards so not something we would be able to pursue the builder on.

This does not stop you from pursuing the builder yourself via an alternate dispute resolution service. You may wish to speak with an organisation such as the Citizens Advice Bureau who should be able to provide you with some free legal advice.

Kind regards,

Holly Beechey
Customer Experience Consultant

Barratt Homes and Barratt Developments

3 ↻ ❤ ✉

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Further to our phone call I can confirm that the NHBC only provided the Warranty for your property and we did not do Building Control inspections for the builder.

Under your policy you can benefit from non-compliance with Building Regulations (Section 4 of the Buildmark policy) but **only** if the NHBC did Building Control inspections. Therefore as the fire protection concerns were not reported to the builder, or the NHBC, within two years of the date of legal completion, [21 December 2015](#), it cannot be considered. It is not covered under Section 3 of your policy.

Regards


Claims Investigator – South East team

Email: claims@nhbc.co.uk



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Appendix C [Reproduced as received from buyer]

Goldsmith Avenue Development Southsea – LINDEN HOMES DEVELOPER

Vista, Horizon, Outlook buildings Southsea - Construction Developer:- Linden Homes

The above development constructed by Linden Homes during the period 2008 – 2011 comprises of three buildings

Outlook is a social housing development but the head lease freeholder is Aviva and it is managed by Vivid Housing Management as a social housing development

Vista Building was constructed and sold as private properties to individual leaseholders between 2009 and 2011 comprises of 69 Apartments

Horizon Building was not completed until 2010/2011 and was sold to an investor and is currently a mix of private and rental properties with the landlord being a private investor comprises of 51 Apartments.

The freeholder for Vista is Aviva and has been since December 2013 when Linden sold on the freehold to Aviva possibly at the same time as Outlook was sold to Aviva.

Vista building has suffered from issues since 2011, the two main issues known at the time were the failing gas heating systems and in 2010 issues were identified with the cladding system in that the fixings had started to corrode and rust staining was evident on many panels,

Leaseholders in Vista advised Linden Homes of the cladding concerns at a meeting in February 2011 (minutes held). Linden did not respond to the concerns despite letters and e mails to them to request action from Leaseholders. Prior to this Linden Homes were notified of concerns with the building cladding as early as 2010 by leaseholders (e mail held)

From 2012 the main gas heating systems became unreliable and began to fail on a regular basis. The heating systems comprises of a two-boiler system providing heating and hot water to Vista and Horizon. Outlook is independent in regard to heating and hot water provision.

In August 2013 the managing agent for Linden Homes notified a leaseholder by e mail that the cladding issues were being investigated by Linden Homes but nothing was done in terms of any investigation or repairs. (E mail held by leaseholders)

In January 2014 the leaseholders became aware that the Vista freehold had been sold by Linden Homes to Aviva and it is believed that sale also included the sale of the Outlook building. In February 2014 leaseholders began to write to the asset managers for Aviva to notify them or in fact request if Linden Homes had advised them of the developer defects with the building. It seems that Linden Homes failed to disclose the defects notified to them with the cladding and heating systems. It was apparent that from December 2013 Aviva became the freeholder/Owner of Vista and was not aware of the latent defects with the building despite the leaseholders notifying Linden Homes of them since 2010/2011.

Aviva conducted no pre acquisition checks prior to the purchase of the freehold for Vista as confirmed by e mail from their asset managers at the time. (a copy of the e mail held by leaseholders) During 2014/2015 following letters to the asset managers representing Aviva, Aviva then conducted checks of the building and discovered the heating systems were not only not compliant with building regulations and gas safety standards but had been installed in an unsafe

condition. These developer defects were serious fire safety non-compliance issues that should have been identified by the inspecting authorities at the time of construction.

During late 2015/early 2016 Linden Homes began to conduct compliance remedial works to the heating systems which required significant works and costs to make them compliant. This initial work was funded by Linden Homes. Two weeks after Linden Homes allegedly completed the works to the heating systems in October 2017, one of the main boilers catastrophically failed two weeks later. One boiler required complete replacement following this failure. The heating systems remain fragile to this day despite significant works to meet legal compliance.

Investigations into the cladding defects continued and Aviva advised leaseholders in 2016 that they were planning to undertake corrective works to the cladding systems and the costs would be passed to leaseholders. It seems that Linden were refusing to engage with Aviva on the cladding defects and were refusing to accept any liability. This denial by Linden Homes continued for almost a year through the most part of 2017.

In September 2016 Aviva sought First Tier Tribunal ruling to dispense with consultation for the cladding works on the basis the building cladding was in an unsafe condition and required immediate scaffolding protection on the basis the works would commence immediately.

Scaffolding was erected around the building from September 2016 in anticipation of works planned to commence in January 2017. In fact, no works were started through all of 2017 meanwhile the leaseholders/residents were encapsulated inside plastic sheeting and scaffolding for what became a total of 28 months. Leaseholders believe that the actions by Aviva to erect the scaffolding prematurely was to attempt to force the hand of Linden Homes into accepting liability and remedy their own failings.

Aviva stated they were pursuing Linden Homes for their costs on the basis of a breach of the sale and warranty agreement when the freehold was sold to Aviva by Linden. Zurich Insurance provided a building guarantee for leaseholders benefit and claims were submitted to them by leaseholders for the defective cladding as fitted by Linden Homes. Zurich acknowledged that the cladding defects were notified to the developer Linden Homes within the first two years following the sale of properties to leaseholders which made the defects a Linden Homes liability. Zurich advised that the building guarantee policy would not engage since Linden were notified of the cladding defects in the first two years therefore, they (Linden) were responsible to remedy the defects.

At the end of 2016 an estimated £3.2M charges were sitting on the Vista leaseholders service charge accounts ranging from between £30 - £50K of liability on individual leaseholder's accounts to repair/replace the defective cladding. That sum has now grown considerably to £6.4Million in total from the 30th June 2019 which has been notified to leaseholders as a potential liability if Aviva do not recover their costs from Linden Homes. That cost liability ranges from over £60K - £100K per property depending on the type and size of Apartment.

In 2017 Linden Homes eventually made a proposal to Aviva to undertake the necessary works to the cladding systems on the building.

Peter Truscott of Galliford Try wrote:

"I am aware of the extremely unfortunate situation at Vista, and agree that elements of the workmanship fell well below the standards to which we aspire. For this I unreservedly apologise." In August 2017 Aviva rejected the Linden Homes offer and stated they would undertake the necessary works using their own contractors. The leaseholders were not consulted on the detail

related to why Aviva rejected the proposal by Linden Homes but did not commence any works until January 2018, 15 months after they erected scaffolding.

Zurich now East West/Armour Risk, maintain their position that they have not engaged the building guarantee policy because Aviva has carried out unnecessary works and Linden Homes had proposed to conduct the works in August 2017. Between the two organisations they have effectively disenfranchised leaseholders in their ability to use the building guarantee policy.

Portsmouth City Council Building Control Failures

During the past two years the Vista leaseholder's association has engaged with Portsmouth City Council and it has been declared by the council verbally in a meeting held on 15th January 2019 in the offices of Portsmouth City Council – a statement made by the Council Leader and their own solicitor Michael Lawther that ' Michael Lawther stated in minutes of a meeting held with the council and the Vista Leaseholders association that the Council has performed its duties poorly. Residents would be well within their rights to complain to the Local Government Ombudsman. However, that will not come close to compensating the loss suffered'.

In effect Portsmouth City Council Failed in their duties and the leaseholders have raised official complaints with the council stating that 'PCC improperly discharged at least one significant planning approval condition (A*37086/AZ number 23) in relation to Vista, as admitted by PCC, and other planning approval conditions admitted but not yet described or enumerated by PCC. Consequently, the declaration made by PCC on 24 November (doc. ref BCO/07/00076/DOMFP) discharging those approval conditions, and which formed part of the legal documentation on which I based my decision to purchase a flat at Vista, was improperly signed and issued by PCC.

I wish also to complain that PCC failed to properly keep records relevant to the construction (cladding and heating system specifications) which would have and could still be of use in mitigating the consequences of PCC's and Linden Homes' failures.

I wish also to complain that, as a consequence of the faults described in the complaints above and contrary to PCC's statutory duty of care to its citizens, the Completion Certificate No. CC/07/00076/DOMFP (and its Partial Completion predecessors), which formed part of the legal documentation on which I based my decision to purchase a flat at Vista, was improperly signed and issued by PCC.

Further, Portsmouth City Council have lost/been unable to locate the building cladding and heating specifications and Linden Homes have refused to release them to the leaseholders. Aviva also refused to provide the leaseholders sight of the warranty they were provided with from Linden Homes when they were sold the freehold in December 2013.

In addition to the cladding and heating developer safety defects identified at Vista, during further investigation in early 2017 it was identified that Linden Homes the developer had failed to install the required fire stopping and fire protection compartmentation within the Vista building in all of the common parts and on further investigation this failure was identified in the individual internal properties. In effect Linden Homes had put the safety of residents at risk from the potential spread of fire for over 8 years. In early 2018 Linden Homes were invited by the freeholder Aviva to conduct urgent remedial works on the building to install the legally required fire-stopping under the guidance and direction of the local fire authority and the council.

In 2017 concerns were raised over the installation of the balconies fitted to Vista and upon investigation it was found that the balconies fitted to Vista did not meet the requirements of

building regulations and were deemed unsafe for use. It is understood that in 2017 Aviva the landlord invited Linden Homes to investigate and remedy the balcony defects. They did not respond and no proposal was made to remedy their own failures on the balconies.

In July 2018 the landlord Aviva issued all leaseholders with a notice that the balconies were unsafe for use. The landlord again engaged with Linden Homes to invite them to undertake the necessary remedial works to make the balconies safe and compliant. Again, due to the balcony defects resident's safety has been compromised for over 8 years due to the negligence of Linden Homes in their failure to install and construct balconies safely. That assurance was not forthcoming and the landlord commenced consultation to have the works carried out by Aviva and potentially charge the leaseholders. Again, Insurance claims were raised with the building guarantee insurer Zurich now East West/Armour Risk. At the present time the balconies remain out of use and deemed unsafe while Linden Homes and Aviva discuss and negotiate who will repair and pay for the failures of Linden Homes.

It is worth noting that all three buildings Vista, Horizon and Outlook as constructed by Linden Homes have the same balcony design and arrangements. The integrity of Horizon and Outlook is unknown. It is also not known the status of the internal fire stopping/protection in those buildings. Currently no works have been carried out on the Horizon building which is the responsibility of another landlord. It is entirely possible the cladding and the balconies on the Horizon building are unsafe and non-compliant just as Vista was in respect to the cladding and remains so in terms of balcony safety. The balconies fitted to the Horizon building remain in use and there are areas of cladding breaking up and the fixings are severely corroded and rust is evident on many of the cladding panels on Horizon building.

Since 2016 the leaseholders of Vista have had the constant stress and worry of facing huge bills for work that should never have been required on a building less than 10 years old and was clearly constructed in a negligent way by Linden Homes.

Currently due to the service charge liability and the defective unsafe balconies the properties in Vista are rendered worthless and unmarketable. Valuations carried out by various independent appointed RICS Chartered surveyors since 2018 have documented the properties unsalable and with a current value of £0.00.

In March 2018 under undisclosed circumstances, Linden Homes purchased back a property in the Vista building and is currently owned by a Galliford Try/Linden company under a company name 'Vista Portsmouth'. It is understood the original owner of the property at Vista is now subject to an NDA but the owner and property is known to the leaseholders. It is however interesting that the previous owner was among the first to highlight the cladding defects with the building to Linden Homes where they did nothing to resolve the issues.

Aviva continue to state that they are pursuing Linden Homes for their costs in having to remedy the building developer defects but the charges against individual properties remain as a liability and leaseholders are unable to sell or in some cases rent out their properties due to the unsafe balconies and the service charge liability.

The failures of Linden Homes in constructing such a dangerous and defective building has caused significant stress and financial difficulty for leaseholders which has impacted on their health. Aviva appear to continue to use the leaseholders as pawns in their attempts to have Linden Homes pay for these construction failings but as of July 2019 nothing has changed and properties and worthless and leaseholders are facing huge debts.

A number of properties were purchased on a help to buy scheme with 20% - 25% equity loan from Linden Homes. Some leaseholders have attempted to redeem this loan as it is based on the property value at the time of an agreed survey.

Linden Homes and their own finance administrators have made it very difficult to allow leaseholders to redeem this equity since they realise the lack of value in the properties and they stand to lose out due to their own negligence. In some cases, this has continued for almost two years with Linden Homes slowing down the process and attempting to block due process. Currently banks will not lend or remortgage due to the dire situation with the property values and the potential liability. It is entirely possible this situation could see some leaseholders homeless and or even bankrupt if Aviva pursue them for the costs of the building defects.

This is possibly the worst of an extreme case of developer negligence and in the case of Vista the freeholder Aviva's failure to conduct any pre acquisition checks when they purchased the freehold from Linden Homes in December 2013. Aviva seem content that in any event they can revert to the leaseholders to pay for the negligence of these large corporations.

This type of behaviour in the property and construction industry requires maximum exposure to protect innocent leaseholders and purchasers of what should be legally compliant and safe properties.

I am sure and have confirmed that a number of the leaseholders of Vista would be more than happy to meet face to face with the media and share their misery and stressful stories. Photographs in addition to the enclosed are available if required.

Appendix D



Appendix E

The New Homes Ombudsman should:

- Be 100% independent, able to rule on the facts of each case without fear or favour.
- Not be an industry-created “voluntary” or “shadow form” New Homes Ombudsman
- Be able to set timescales for responses from house builders and warranty providers.
- Provide a simplified dispute resolution scheme for consumers with minimal effort on their part and little or no need for legal representation.
- Be able to award compensation (up to £200,000) to new homebuyers taking into consideration:-
 1. inconvenience, delay, or stress arising from a defect, any discussions concerning it and any rectification work, and
 2. any loss of earnings and/or holiday leave from taking time off work to facilitate access and
 3. any loss of use of all or part of the property or other consequential losses (including liabilities to third parties) as a result of a defect or any investigations or remedial work, and
 4. all costs and expenses incurred in connection with any investigations and discussions of a suspected defect and
 5. any loss of quality resulting from a defect not being fully rectified on the grounds of proportionality (Ruxley Ruling) and
 6. personal injury or damage to property suffered by a third party as a result of a defect in a new home and
 7. any loss in property value as a result of the misdescription, misinformation, or works carried out (or not carried out) to the property.
- **Require housebuilders and/or warranty providers to buy-back the home** in extreme structural circumstances, perhaps caused by weak mix mortar, or defective floor or roof issues. The price to be at current market value in addition to all associated moving costs, stamp duty, legal fees etc.
- Require house builders and/or new home warranty providers to pay buyers justifiable compensation awards, certainly higher amounts than the paltry £500 maximum permitted in the industry’s own Consumer Code.
- Fine or impose sanctions to the worst or persistent offending housebuilders/warranty providers.
- Bring the adjudication process regarding the rectification of building defects, warranty disputes and breaches of existing consumer law, **all together under one roof.**
- Require housebuilders and/or warranty providers to take note of the New Homes Ombudsman’s findings and any recommendations to prevent similar claims.
- Encourage house builders to be more proactive in disputes by offering compensation to avoid referral to the New Homes Ombudsman.

- Improve quality by forcing the industry to look inwards at what it does and the way it operates. The very existence of an official, totally independent New Homes Ombudsman giving all new homebuyers an easy straightforward means of making a formal complaint and claiming compensation, could be sufficient to force a change of attitude amongst house builders. This should lead to improvements in both the quality of new homes built and housebuilders' response when buyers report problems with their new homes, as housebuilders seek to avoid the associated cost of a claim.
- Require house builders and warranty providers to inform consumers of their right to refer their complaint to the New Homes Ombudsman in any dispute.
- Be able to obtain specialist independent reports or advice on technical matters from third parties without connection to the house builder and/or warranty provider.
- Make its rulings public to establish a precedence and case history for dealing with similar claims.
- Publish reports and statistics on the nature of claims and the performance of house builders, showing just how well (or badly) individual house builders and warranty providers deal with complaints. The data collected by the New Homes Ombudsman would be able to give consumers a clear idea of which house builders really do treat complaints seriously and those who would rather obstruct the process in the hope that their homebuyers give up and drop their complaint. This would be similar to certain aspects of the Legal Ombudsman.
<http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/OFFICIAL-Annual-Report-2016-17-final-171016.pdf>
- Order works and investigations to be carried out using authorised, vetted and approved contractors where the house builder or warranty provider has failed to remedy a defect or problem.
- Deal with complaints within 12 weeks, unless independent expert reports are required.
- Any claim that was found to have merit would automatically trigger minimum £1000 compensation to the homebuyer. This should encourage housebuilders to settle minor claims with £1,000 compensation becoming an industry standard offer.
- Refer any claim that is found to have broken UK law to the relevant authority to take further action against the housebuilder. For example: breaches in the Consumer Protection Regulations 2008 and Consumer Rights Act 2015 and Building Act 1984.

Appendix F

New homebuyers' statements

This is what some new homebuyers have said about their experiences in trying to get housebuilders to honour their marketing promises and warranty and fix their defective new homes:

"I knew eventually it would be fixed because they had to, but it is the way they treated me, the fact that they tried to pull the wool over my eyes with all of this, the fact that everything was a fight to get what I was entitled to. It's been 18 months of hell"

Sue Oliver – Bovis buyer

"Everything takes so long, everything is so hard, everything is a huge fight. In the end you end up saying, you know what, that's good enough, that's fine – I'm done"

Luke Mahon – Taylor Wimpey buyer

"It's exhausting. I can't stress enough how tired I am with all of this and I just want it to end. And I know it's not going to end and I now we will just have to keep fighting"

Roberto and Carolina Revilla – Taylor Wimpey buyer

"Buying my Taylor Skimpey [sic] house was the biggest mistake I have done despite seeking reassurance from them they lied in my opinion just to get the sale. There was no move in and put your feet up, instead we had to get the mop out, watching your garden and garage flood, the builder was fully aware our downpipes were not connected, not that they bothered to inform us. Never mind could I cry I had the Customer Service Rep crying and the Site Manager covering his face in disbelief, he was there when we discovered missing insulation, he reappeared moments later all smiles to say, it didn't have to be there anyway....he'd checked the plans...supposedly.

Living in my cold damp house, I began to despair every time it rained. It caused myself and my partner to bicker and argue about a way forward as I wanted to just sell and leave this carbuncle behind me despite the huge loss in costs we faced. It'd taken two bitter years of our lives and we're still in dispute with them now."

Wendy Howell - Taylor Wimpey Buyer

"I purchased a Bloor show home with my life savings, Bloor advised all cosmetic and structural defects would be rectified. They have denied this and said the house is sold as seen. This has caused so much stress to my wife and I, constantly having to fight to get any type of repair, time wasted waiting for tradesmen, extra heating costs due to hole in roof etc."

Brian Fozster – Bloor buyer

"They lied and cheated regarding defects. Failed to do major works and on pretence passed all problems to the NHBC. Things got so bad that I couldn't face any more so would spend my days unable to get out of bed and cried continuously. Eventually I had a breakdown and my doctor prescribed much needed medication and counseling. NHBC took over all the defects in September 2016 and put their contractors in to do the works. They were so incompetent that in September 2017 I had to ask NHBC to withdraw their contractors.

I feel totally let down by the whole industry as no one cares once you've parted with your hard earned money. It has been terrible for me for 30 months and counting and cannot imagine how people with young families cope with the enormous stress they will suffer when dealing with a house that is not fit for purpose and only hindrance from both housebuilder and warranty provider. The whole process has damaged my faith in companies and people. A heart breaking and soul destroying experience which I would not wish on anybody."

Jo Leonard - Bovis buyer

"I knew buying a new home would involve snags, but we were buying our house with a five year warranty on everything so I thought that would give us peace of mind. We moved in on 28th June 2013 and I now know, never move in at end of year for housebuilders which is what we were bullied into.

What I cannot believe has happened to us is, when I was realising there was serious problems over the last four and a half years so many and strongly believe there to be many more, including breaking of Building Regulation the whole thing would fall upon me to prove to a 5 Star housebuilder these problems are real and serious. I have been lied to and misled, to the point that I had to use my own money to get a surveyor to conduct a report to prove my house is structurally built incorrectly and more. Over the last two years I feel I have been treated unfairly compared to other residents. As the structural problems became widespread over the development.

Just a number of weeks ago my daughter returned from university and suffered an asthma attack due to damp and mould. This pushed me over the edge, after already feeling alone in dealing with the problems and failed promises from the builder. I cried for days feeling I could not see the end in my lifetime.

I find it hard to except this company can lie and twist and is allowed to destroy lives, relationships and dreams. But it has made me suffer health wise. They are telling me I have to leave my house/home before 8th January 2018 giving them all my keys and leaving our furniture inside! They said they would find us a house nearby to rent - my house/home, my safe place is killing me and I cannot even tell you how it feels and what I have thought of.

*If there had been an Independent **New Homes Ombudsman**, I could have asked them to try to resolve the problems with the builder in the beginning which was to investigate my worries. This would have shown the structural defects much sooner.*

My MP did write to the builder last April 2017 trying to get them to do a survey. Their CEO lied to her so what chance have I got?

For the record with three weeks to go until we (5 adults & 3 dogs) are due to move out for 13-weeks, we have not been offered anywhere to move to. I am trying to live my life one day at a time and am taking antidepressants now."

Julie Andrews-Jones – Barratt buyer

"I feel cheated by the whole new home establishment by their lack of honesty and non-disclosure, a total disrespect for the customer. That is the builders, the sales company, planning and building control. It is just fraud and out of control. Four years of my life have been consumed and still not resolved. Soul destroying."

Ian Willacy – Story Homes buyer

"After about 18 months the Customer Care Manager said to me that he thought I needed to take up a hobby or something but I told him that I'd got one and it's called work as this has now become my full-time job trying to get my house put right. It's still not right even now after 2.5 years!"

Bellway Home buyer

“Without question we wouldn’t have moved in had we known the problems. Truly has been 6 months of hell”

Redrow buyer

“It just feels like the whole house wasn’t put together properly”

Taylor Wimpey buyer

“Homes still not fixed years after moving in, and in many cases / issues the only solution is to rebuild from scratch!!

Twitter

“Tired, let down, ripped off, stressed out. I feel sick when I see the fat cats patting themselves on the back at their various conferences and award ceremonies on social media.”

Twitter