



Ministry of Housing,
Communities &
Local Government

Redress for Purchasers of New Build Homes and the New Homes Ombudsman

A Technical Consultation



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Scope of the consultation

<p>Topic of this consultation:</p>	<p>This consultation seeks views on a New Homes Ombudsman and the detail of proposed legislation to provide better redress for purchasers of new build homes.</p> <p>It covers the following areas:</p> <ol style="list-style-type: none"> 1. The role of a New Homes Ombudsman; 2. The requirement of developers of new homes to belong to a New Homes Ombudsman; 3. The number of Ombudsmen; 4. Access to a New Homes Ombudsman; 5. Standards of a New Homes Ombudsman; 6. Scheme Provider and Approvals Process; 7. Funding a New Homes Ombudsman; 8. Powers of a New Homes Ombudsman; 9. Geographical Scope; 10. A Code of Practice for developers of new build homes; and 11. Enforcement
<p>Scope of this consultation:</p>	<p>We are seeking the views of all interested parties in the proposal, so relevant opinions and evidence can be taken into account when shaping the way forward.</p>
<p>Geographical scope:</p>	<p>Developers of new build homes work across all administrations of the United Kingdom. As the proposed legislation includes devolved matters, we will continue to engage and consult the devolved administrations with the aim to seek agreement on introducing UK-wide legislation.</p>
<p>Impact Assessment:</p>	<p>The purpose of the consultation is to gather evidence and seek views on improving redress for purchasers of new build homes. Any policy changes brought forward as a result of the consultation would be subject to appropriate assessment.</p>

Basic Information

<p>To:</p>	<p>This is a public consultation and anyone with an interest in the proposals may respond.</p>
<p>Body/bodies responsible for the consultation:</p>	<p>This consultation is being run by the Housing Markets and Strategy Team in the Ministry of Housing, Communities and Local Government.</p>
<p>Duration:</p>	<p>This consultation will last for 8 weeks from 27 June 2019 and will conclude on 22 August 2019.</p>

Enquiries:	For any enquiries about the consultation please contact
How to respond:	<p>You may respond by completing an online survey at:</p> <p>https://www.surveymonkey.co.uk/r/New_Homes_Ombudsman</p> <p>Alternatively you can email your response to the questions contained in this consultation to:</p> <p>NewHomesOmbudsman@communities.gov.uk</p> <p>If you are responding in writing, please make it clear which questions you are responding to.</p> <p>Written responses should be sent to: New Homes Ombudsman Consultation, Housing Diversification, 3rd Floor Fry building, 2 Marsham Street, SW1P 4DF</p> <p>When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - your name, - your position (if applicable), - the name of organisation (if applicable), - an address (including post-code), - an email address, and - a contact telephone number

1. Introduction

- 1.1. The Government is committed to delivering 300,000 homes a year by the mid-2020s. As new housing supply increases it is crucial that quality does not suffer. The Government wants to see high levels of satisfaction from purchasers of new build homes. Improving quality could help improve the perceived reputation of developers and change the public's perception of new build homes so that they are welcomed in their areas and increasingly seen as desirable to live in.
- 1.2. Everyone, whether they own or rent, in the private or social sector, or are purchasing a newly-built home deserves a decent, affordable and secure place to call home. They also need to know where to turn for help when things go wrong and to be confident that any problems will be put right.
- 1.3. The Government recognises that building a new home is a complex undertaking requiring a wide range of various skills and trades. The Government knows that on occasion things may go wrong. However, this Government expects builders to aim to get things right the first time, correct mistakes quickly and treat home buyers fairly.
- 1.4. In October 2018, the Secretary of State for Housing, Communities and Local Government announced¹ measures to protect the rights of homebuyers and help to ensure that when they buy a new home they get the quality of build they rightly expect. This includes our proposal to ensure that a New Homes Ombudsman is established, working with industry and others to protect the interests of purchasers and hold developers to account and that the Government intends to legislate to mandate that developers of new build homes belong to a New Homes Ombudsman.
- 1.5. This commitment forms part of the Government's wider intention to improve redress in the housing market². In February 2018 we published '*Strengthening consumer redress in the housing market*'³ which consulted on improving redress across the housing market. This considered options including the establishment of a New Homes Ombudsman; the Government response was published on 24 January 2019.
- 1.6. The Government response to the '*Strengthening consumer redress in the housing market*' consultation⁴, identified strong support for purchasers of new build homes to have access to an ombudsman scheme and that the scheme should be statutory. The Government also announced proposals for a new **Housing Complaints Resolution Service** to be established to provide a single point of access to redress services across all tenures.

The Government response to the consultation also sets out proposals to:

¹ <https://www.gov.uk/government/news/government-announces-new-housing-measures>

² <https://www.gov.uk/government/news/government-looks-at-consumer-redress-across-the-housing-sector>

³ <https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

⁴ <https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

- bring forward legislation to mandate membership of a redress scheme for developers of new build homes;
- consult on the detail of the content of the legislation to underpin a New Homes Ombudsman in statute;
- introduce a condition that housing developers must belong to a New Homes Ombudsman to participate in the New Help to Buy scheme from 2021;
- work with industry and consumer groups to establish a **voluntary code of practice for new homes** ahead of legislation;
- to bring forward legislation to extend mandatory membership of a redress scheme to:
 - all private landlords regardless of whether they employ an agent for full management services,
 - all freeholders of leasehold properties regardless of whether they employ a managing agent,
 - all residential park home site operators.
- to establish a **Redress Reform Working Group** to work with redress schemes to develop and promote effective approaches to improve complaint handling through existing and voluntary guidance on a sector-by-sector basis; and
- on an individual sector basis use existing statutory powers or proposed legislative vehicles to introduce or reform individual sector basis with an ambition, in the longer term, that there should be a single Code of Practice on complaint handling across all of housing.

1.7. The Government will continue to work with industry and consumer groups towards establishing a voluntary code of practice and improve consumer redress for purchasers of new build homes whilst a New Homes Ombudsman is established. This includes work on a single consumer code, strengthening protection especially for the first two years when the majority of problems occur, and increasing minimum warranty standards. The Government wants to ensure that an independent voluntary code of practice for new homes is in place as soon as possible before we legislate when Parliamentary time allows.

1.8. This consultation seeks views on the detail of the proposed legislation for a New Homes Ombudsman following our response to the consultation on '*Strengthening consumer redress in the housing market*'. This consultation will run for eight weeks.

2. Background

2.1. Issues relating to quality and redress around new-build homes are not new. In March 2004, Dame Kate Barker DBE's review of Housing Supply⁵ made a number of recommendations for the house-building industry to improve service quality and customer satisfaction ratings while increasing investment in skills and improved production

⁵ https://web.archive.org/web/20080910135314/http://www.hm-treasury.gov.uk/consultations_and_legislation/barker/consult_barker_index.cfm#report

techniques.

- 2.2. The review highlighted that low customer satisfaction levels for purchasers of new homes had been exacerbated by a lack of adequate customer protection and, to some extent, the approach of house-builders. The report recommended that industry needed to work hard to restore its image with customers, developing a code of conduct for new house sales that delivered fair contracts and higher levels of customer satisfaction. It also concluded that customer service had to improve.
- 2.3. In 2008, the then Office for Fair Trading's review into 'Home Building in the UK'⁶ identified problems for consumers when buying a new home, such as delays in moving in, faults in new homes and potentially unfair terms in contracts. If the industry failed to deliver a solution to these issues, the review recommended that a statutory redress mechanism should be implemented with the ability to award homebuyers compensation.

Consumer Codes

- 2.4. Following the Barker report and the Office for Fair Trading's Review, the industry responded by establishing Consumer Codes. Developers registering with specific Consumer Codes would be obliged to follow the Code they were registered with. When developers obtain a ten year new build warranty, the majority of warranty providers will require the developer to register with the Consumer Code that the warranty provider belonged to. There are numerous industry-led codes which can offer resolution where things go wrong, but these do not always cover all issues or have the same standards that a developer has to adopt if they register with them.
- 2.5. Consumer Codes act as a voluntary code of conduct or practice that developers register with if they want to use a warranty that is signed up to a particular code. They may cover the pre-purchase stage through to the first two years after sale of a new build home but not always. If a consumer requires resolution, their first point of contact should be directly with their developer, and after, if the consumer is unhappy with the developer's response and, where applicable, have exhausted a warranty provider's alternative dispute resolution service, the Code should be contacted. Codes include a complaints and disputes procedure through an independent dispute resolution scheme and typically for a fee, a formal complaint can be logged. Codes accept cases where the code's requirements are not met and a dispute is not covered by a warranty provider's resolution scheme for defects and damage.
- 2.6. The majority of new build homes for sale are covered by the largest industry-led code, the Consumer Code for House Builders⁷. However, variance in warranty providers cover has

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https://webarchive.nationalarchives.gov.uk/20140402181400/http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft1020.pdf

⁷ <http://www.consumercode.co.uk/>

more recently led to a proliferation of Codes⁸ now operating in the new build market, all prescribing different levels of standards that developers should adhere to. The problems a Code will consider, the forms of redress and the sanctions that the codes have will differ. For example, not all codes may cover snagging issues with the property.

- 2.7. Consumer Codes make awards, suggest improvements and raise awareness of the codes to developers in an attempt to improve standards. Most codes can expel developers so that they are unable to use a warranty provided by one linked to an individual code. However, developers could still operate without being registered with an individual code by choosing a different warranty provider which is affiliated with another code or one that isn't linked to a code at all. Consumer Codes also differ in accessibility, transparency, independence and in the amount of awards and types of decisions that can be made. The Government believes the Codes lack the teeth they need to ensure developers put things right. This consultation considers the detail of how an effective New Homes Ombudsman will replace the current alternative dispute resolution services offered by the various Consumer Codes operating in the sector.

Developers and Warranty Providers' Responsibilities

- 2.8. Most new homes are covered by a ten year new build warranty, which is usually split into two sections. During the first two years, commonly known as the builder's or defect liability period, it remains the responsibility of the person who carried out the work to put right any damage or defects. Between the third and tenth year, the warranty provides cover against the cost of repairing defects. Warranties vary and can be very specific about what is and is not covered.
- 2.9. In order for a warranty to be obtained on a new build home, a housebuilder is required to build to the warranty provider's requirements which often exceed the minimum requirements set out in the Building Regulations.
- 2.10. Where consumers experience non-structural, snagging problems in their first two years they can contact their warranty provider if their housebuilder fails to resolve them. The warranty provider may offer alternative dispute resolution services to resolve a consumer's complaint or dispute with the developer. The only recourse for a consumer if a developer fails to put things right and does not adhere to a decision is through the courts which can be complex and expensive process for the consumer.
- 2.11. The Government believes that the majority of developers act responsibly when building new homes. However, where something goes wrong, house builders and warranty providers should fulfil their obligations to put things right. The balance of power is heavily weighted in favour of the developer and our reforms seek to address this so that dispute resolution is fair for all.

⁸ These include: Consumer Code for Home Builders; Consumer Code for New Homes; Checkmate Consumer Code for Builders of Homes for Sale; Advantage Consumer Code for Developers of Homes for Sale; and Build-Zone Code of Conduct for Home Builders.

Building Regulations

- 2.12. All newly built homes must meet the relevant Building Regulations. The Building Regulations set minimum standards for the design and construction of new build homes.
- 2.13. The primary responsibility for complying with Building Regulations is with the person carrying out the work. However, building work is subject to supervision by either the local authority building control department or an approved inspector, both of whom have a legal duty to take all reasonable steps to ascertain if the building work complies with the relevant requirements of the Regulations.
- 2.14. If a purchaser of a new build home believes the building control body has not taken all reasonable steps to ascertain compliance with the Building Regulations, a complaint about local authorities can be raised with the Local Government and Social Care Ombudsman and a complaint against an approved inspector can be raised with Construction Industry Council Approved Inspectors Register, the body which regulates approved inspectors. These are not in the scope of this consultation. The Government has separately consulting on Building Safety.

Warranty Providers and Lenders

- 2.15. Outside of building regulations, the building of new build homes operates in a non-regulated sector. However, someone purchasing a new build home will generally require a warranty to obtain a mortgage. Mortgage lending on new build homes require a warranty for the lender to be assured that a property is built correctly. Therefore, developers are required to pay for a warranty to enable them to build and sell a new build property in the vast majority of situations.
- 2.16. Where a purchaser of a new build home has a complaint or dispute relating to the warranty, they can access redress through the Financial Ombudsman Service as warranties, a form of insurance, are a financial product. We are not looking to change warranty schemes or redress in relation to warranty provision and they are outside of the scope of this consultation.
- 2.17. Where a dispute arises between a housebuilder and a purchaser during the defect liability period, some warranty providers may provide their own alternative dispute resolution service to help resolve the issue.

Regulatory Framework in Regulated Sectors

- 2.18. There is currently no regulatory complaints framework for new build homes. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015⁹ (“the 2015 Regulations”) require businesses selling to consumers in certain regulated industries to inform them of the appropriate alternative

⁹ <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>

dispute resolution entity to whom they can raise complaints. The 2015 Regulations also identify competent authorities¹⁰ to certify alternative dispute resolution schemes and set the standards that alternative dispute resolution scheme applicants must meet in order to achieve certification.

- 2.19. In regulated sectors, the regulators act as the competent authority to certify alternative dispute resolution schemes. For example, Ofgem in the energy market and the Financial Conduct Authority in the financial market. In most other areas the Chartered Trading Standards Institute is the generic competent authority, auditing and approving alternative disputes, acting on behalf of the Secretary of State for Business, Energy and Industrial Strategy. Not all alternative dispute resolution providers are approved entities and not all alternative dispute resolution providers are ombudsmen. There is therefore a significant variety in the way alternative dispute resolution providers operate.

3. The Case for Change

- 3.1. The majority of new home purchasers are satisfied with their new homes¹¹ and many builders do a fantastic job and take pride in their work. However, purchasers of new build homes rightly expect and should receive high standards of service, both during and after purchase of their property just as consumers purchasing other products do. If something has gone wrong during the developing, selling or after-care service, problems need to be rectified and complaints dealt with in a timely manner at no further expense to the consumer.
- 3.2. Unfortunately, these expectations are often not fulfilled when it comes to buying a new home and purchasers often do not understand the protection they have. The system is confusing to navigate and purchasers are often unsure of who to turn to put things right when they have a legitimate complaint and their housebuilder fails to deal with it adequately. This has allowed some housebuilders to continue to build poor quality homes without access to effective redress for purchasers.
- 3.3. Overlaps between responsibilities and diversity of practice leave consumers confused about where to seek help and what level of service they can expect. When things do go wrong, the structure of the current system of redress mean that purchasers often have to battle property developers, industry-led codes and warranty providers so that the developer fulfils their obligations to put things right. The proposed new Housing Complaints Resolution Service¹² is intended to help people know where to go by providing a single point of access for housing consumers, but there is still more that needs to be done to deal with the issues specific to the new build sector.

¹⁰ A Competent Authority is an organisation or person/s that have a legally delegated or invested authority, capacity, or power to perform a designated function.

¹¹ https://www.hbf.co.uk/documents/6614/CSS_2016.pdf

¹² <https://www.gov.uk/government/news/james-brokenshire-announces-overhaul-of-broken-housing-complaints-system>

3.4. Currently where complaints are not resolved satisfactorily there may be no option but to make a claim through the courts. Almost a quarter (23%) of those facing disputes in the Real Estate and Business Sector and 16% of Construction businesses are having to go to court to resolve a dispute¹³. This can be daunting, costly and complex.

3.5. Where developers do not fulfil their obligations and they are expelled from one code, they are free to join another code easily by using a different warranty provider. The Government feels this does not provide an adequate deterrent. There is no incentive for developers to drive up standards and improve the customer service that purchasers of new build homes should rightly expect.

3.6. Unlike consumers in other sectors where an ombudsman adjudicates on disputes, purchasers of new build homes are charged a fee to use a Dispute Resolution Service through the industry-led Codes¹⁴. Without effective legislation, these schemes do not have the teeth they need to ensure developers are held to account.

Home Builders Federation and National Home Building Council's Customer Satisfaction Survey¹⁵

Year of Customer Satisfaction Survey	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
% Responding that they would not recommend their builder to a friend.	9%	10%	14%	15%	16%	14%	13%

Source: MHCLG analysis, Home Builders Federation and National House Builders Council's Customer Satisfaction Survey 2011-12 to 2017-18

3.7. The Homes Builders Federation and National House Building Council began to conduct national annual surveys of house builders in 2005 following the Barker Review. The most recent survey was conducted over 12 months from October 2017 to September 2018 and the results were published in March 2019¹⁶. 98,876 questionnaires were sent which received 60,955 responses. The survey records that 86% of respondents were very, or fairly satisfied with the overall quality of their newly built home and that 87% would recommend their home builder to a friend. This has dipped from 91% in 2011-12. Respondents to the survey who would not recommend their builder to a friend increased from 9% in 2011-12 to 16% in 2015-16, before decreasing to 13% in 2017-18. This shows that there still an unacceptably large number of purchasers who would not recommend the builder of their new home.

¹³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561518/UK_businesses_understanding_of_unfair_terms_in_consumer_contracts_IFF_Research_.pdf (page 37)

¹⁴ This is typically £100 plus VAT

¹⁵ <https://www.hbf.co.uk/policy/policy-and-wider-work-program/customer-satisfaction-survey-new/>

¹⁶ National New Home Consumer Satisfaction Survey, March 2019

https://www.hbf.co.uk/documents/8389/CSS_HBF_Brochure_2019_with_table.pdf

Year of Customer Satisfaction Survey	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
% Responding that they were fairly or very dissatisfied with the service provided by their builder during the buying process	6%	8%	10%	9%	11%	10%	10%
% Responding that they were fairly or very dissatisfied with the service provided by their builder after they moved in	12%	12%	17%	17%	18%	16%	14%

Source: MHCLG analysis, Home Builders Federation and National House Builders Council's Customer Satisfaction Survey 2011-12 to 2017-18

3.8. We have heard that purchasers find that builders provide them with worse service once a new build property has been sold and the survey supports this, although it suggests that satisfaction is getting better in recent years. However, there is still a marked difference in the percentage of respondents who were fairly or very dissatisfied with the service provided by their builder during the buying process and the service provided by their builder after they had moved in. The percentage of those dissatisfied with the service provided by their builder both during the buying process and after they moved in has also risen between 2011-12 and 2017-18, from 6% to 10% and 12% to 14% respectively.

Year of Customer Satisfaction Survey	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
% Purchasers reporting problems (i.e. snags, defects) to your builder since you moved in	91%	92%	93%	93%	98%	99%	99%

Source: MHCLG analysis, Home Builders Federation and National House Builders Council's Customer Satisfaction Survey 2011-12 to 2017-18

3.9. The survey's results support that most owners of brand-new homes find that there are problems that they have reported to their builders. This has also increased from 91% in 2011-12 to almost all purchasers of new build homes with 99% reporting problems in 2017-18. Most of these problems are likely to be minor, however in 2017, Shelter and YouGov¹⁷ found that 51% of new home owners say they have experienced major problems with their properties including issues with construction, unfinished fittings and faults with utilities.

The All-Party Parliamentary Group for Excellence in the Built Environment

3.10. The All-Party Parliamentary Group for Excellence in the Built Environment carried out an open enquiry into the quality and workmanship of new housing for sale in England and published its reports, *"More Homes, Fewer Complaints"*¹⁸, in July 2016 and *"Better Redress for Homebuyers"*¹⁹, in June 2018.

¹⁷

https://england.shelter.org.uk/media/press_releases/articles/rigged_housebuilding_system_means_eight_in_ten_families_cannot_afford_new_home_says_shelter

¹⁸ <http://cic.org.uk/admin/resources/more-homes-fewer-complaints.pdf>

¹⁹ <http://cic.org.uk/admin/resources/appg-ebenew-homes-ombudsman-report-2018.pdf>

3.11. The Group identified a risk around efforts to incentivise house building if similar attention is not directed at ensuring 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.”

3.12. The Group’s reports contain a number of recommendations aimed at:

- Improving customers’ means of redress through the establishment of a statutory New Homes Ombudsman should industry fail to progress, and a review of the warranty system; and
- Improving the systems in place to check quality and workmanship;
- Developing a new quality culture within the construction industry;
- Improving the information customers receive about their new home, including standardised contracts and a right to inspect before completion.

3.13. The Group also identified that there is a lack of awareness of the Consumer Codes shown in the small number of awards made and an acknowledgement by the Codes themselves that more needed to be done to raise awareness of the schemes. This is supported by the relatively low number of cases and awards in each year by the largest Consumer Code, the Consumer Code for Home Builders. However, it should be noted that information on the number of cases and awards is not readily available for the other Codes operating in the market.

Number and Outcome of cases resolved by the Consumer Code for Homes Builders 2010-2017

Outcome of Cases	2010	2011	2012	2013	2014	2015	2016	2017
Number of cases found fully in favour of the home buyer	1	0	1	0	1	3	7	5
Number of cases found partly in favour of the home buyer	0	6	5	10	21	43	59	47
Number of cases found fully in favour of the house builder	0	6	8	9	10	5	20	25
Number of cases settled prior to an adjudicators decisions	0	0	1	0	6	6	8	5
Number of cases withdrawn from the scheme or deemed invalid	2	2	2	3	5	9	8	7
TOTAL CASES	3	14	18	22	43	66	102	89

Source: Consumer Code for Home Builders Annual report 2017²⁰

²⁰ <http://www.consumercode.co.uk/wp-content/uploads/2018/09/Consumer-Code-Annual-Report-2017.pdf> (page 8)

Strengthening Consumer Redress in the Housing Market Consultation

- 3.14. In November 2017, the Government announced its intention to explore options for improving redress in the housing market²¹. In February 2018, we published the consultation: “*Strengthening consumer redress in the housing market*”²².
- 3.15. The consultation looked at a range of issues including: how the current redress landscape works; whether there was a case for streamlining access to redress services; how we might improve ‘in house’ complaints processes; and how to fill the gaps in access to redress in housing with a particular focus on purchasers of new build homes and private tenants.
- 3.16. The responses to the consultation questions on new build homes showed that the majority of respondents (91%) agreed that purchasers of new build homes should have access to an ombudsman scheme and 84% were in favour of an ombudsman scheme being statutory with only 2% answering that it should not. In October 2018 the Government proposed our intention for a New Homes Ombudsman to be established and set out our intention to legislate so that developers of new build homes are required to belong to a New Homes Ombudsman.
- 3.17. It is clear from the responses that more needs to be done to strengthen consumer redress in relation to new build homes and drive up standards across the industry. The need for an easy, effective and independent scheme for purchasers of new build homes to go to is evident and supported by industry. Only 11% of respondents to the consultation on consumer redress in housing said that there is a current existing redress scheme which is best placed to deliver an ombudsman scheme for purchasers of new build homes.

Industry-Led work to improve redress for purchasers of new build homes.

- 3.18. Our consultation response set out that as we introduce statutory arrangements, we will work closely with industry and consumer groups to accelerate the implementation of a voluntary, industry-led, New Homes Ombudsman ahead of legislation. We expect this ombudsman to be:
- Free to the consumer and funded by industry
 - Independent from the organisations the ombudsman will investigate
 - Fair in dealing with disputes
 - Have effective powers to hold developers to account
 - Be open and transparent and have public accountability through regular reporting.
- 3.19. The Government considers that the fastest way to improve redress is to work with industry and consumers to implement a single accessible redress scheme for purchasers of new build homes. We have been working closely with industry and consumers towards putting in place a voluntary code of practice for new homes as soon as possible and before we bring forward legislation. Good progress has been made towards a unified code of practice

²¹ <https://www.gov.uk/government/news/government-looks-at-consumer-redress-across-the-housing-sector>

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684843/Stregthening_Redress_in_Housing_Consultation.pdf

but we want to see better redress faster so that consumers can benefit from free, fair and effective redress as soon as possible.

- 3.20. Our previous consultation considered how to ensure complaints are dealt with effectively and swiftly by housebuilders. The considerations in achieving this that were raised most commonly by respondents were: powers and enforcement; the level of service standards; and independence and governance.
- 3.21. Our proposal for a new Housing Complaints Resolution Service aims to ensure housing consumers across all tenures will have a single point of access to redress and a New Homes Ombudsman will provide purchasers of new build homes the confidence they need. It will:
- treat them in a fair and balanced way when they have a complaint;
 - provide access to an independent service which is free to use;
 - provide a simple and effective access to redress;
 - make binding decisions that a developer has to comply with; and
 - provide helpful information and guidance.

4. A New Homes Ombudsman

The Role of a New Homes Ombudsman

- 4.1. An Ombudsman can be either statutory or non-statutory, whose core role is to investigate, resolve, determine and make recommendations with regards to complaints against those whom the Ombudsman is empowered to investigate and meet a detailed criteria.
- 4.2. Ombudsmen also provide a wider role beyond disputes resolution, they also support consumers, provide advice to businesses and share information with regulators and consumer organisations to highlight systemic issues in a sector.
- 4.3. An Ombudsman considers and investigates complaints fairly and independently through the evidence they receive. In the first instance they will try to solve complaints informally to the satisfaction of all parties and where this is not possible, some have the power to make binding decisions.
- 4.4. The role of a New Homes Ombudsman will be to provide redress, where appropriate, to consumers whose complaints are considered on a case-by-case basis. An Ombudsman is not a regulator and does not have the authority to take regulatory or legal action against a property developer. It cannot impose fines or dictate the way developers conduct their business. An ombudsman can help resolve disputes and can uphold complaints and recommend redress, which is usually by way of compensation for what has gone wrong. That is why we are seeking views as to whether a Code of Practice should also be underpinned in statute and how the requirement to belong to a New Homes Ombudsman will be enforced, through this consultation, so that developers know what is required of them and consumers know what to expect.

The Requirement for Developers of New Build Homes to Belong to a New Homes Ombudsman

- 4.5. The Government has committed to introducing new legislation to require developers of new build homes, who then sell the properties that they develop directly to a consumer, to join a redress scheme. This redress scheme will be known as the New Homes Ombudsman.
- 4.6. The purpose of a New Homes Ombudsman is to plug the gaps for purchasers of new build homes where they do not have adequate access to redress. Therefore, a New Homes Ombudsman would not look at disputes between developers and organisations. Additionally, to avoid any overlap with existing redress schemes in other parts of the housing market, the Government proposes that a New Homes Ombudsman covers organisations and processes involved in the building and selling of new build residential homes. Exceptions to this will be those sectors and services which already have their own ombudsman or redress scheme such as residents of social housing, solicitors, estate-agents and property management organisations.
- 4.7. Additionally, complaints relating to other sectors such as the Financial Ombudsman Services in relation to warranties; and the Local Government and Social Care Ombudsman and Construction Industry Council Approved Inspectors Register in relation to building and approved inspectors are outside the scope of a proposed New Homes Ombudsman as consumers already have the means to access redress in these areas.
- 4.8. Following the introduction of the proposed legislation, and subject to any exemptions, it will not be possible to develop properties and sell directly to a consumer if a developer does not belong to a New Homes Ombudsman. We want to ensure that we close the gaps in accessing redress for purchasers of new build homes and are seeking views on our approach, for example whether those who self-build should be included within the scope of a New Homes Ombudsman.
- 4.9. There may be other circumstances where those purchasing properties should have access to a New Homes Ombudsman, for example where properties are built by self-builders, properties are converted or properties sold by an investor to a third party. We are keen to understand if there are other circumstances which should be considered to fall within a New Homes Ombudsman's remit.

Q4. Who should be required to belong to a New Homes Ombudsman? (Tick all that apply)

- Developers who build and sell homes on the open sales market
- Self-Builders
- Developers who convert and sell properties
- Other (Please specify?)

Q5. Should a New Homes Ombudsman only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere? (For instance, it would not cover a complaint in relation to the sales process for a new build home bought through an estate agent as redress is sought through the redress scheme an estate agent belongs to)

- Yes
- No
- Not sure

Please explain

Q6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?

- Yes
- No
- Not sure

If so, who?

Q7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?

- Yes
- No
- Not sure

If so, who or what should be excluded?

4.10. Once the legislation is in place we will need to ensure that developers are aware of the requirement to belong to a New Homes Ombudsman and consumers know how to access it, including how it will interact with the proposed Housing Complaints Resolution Service in the future.

Q8. How can the Government best ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman?

Number of Ombudsmen

4.11. Currently, if a property developer is excluded from one industry-led code, they can choose a different warranty provider which is aligned with a different industry-led Code and 'code hop'. This means that poorly performing developers are not held to account for their actions. In some sectors there are more than one redress scheme that cover the same type of businesses and agreements are in place to stop excluded businesses from using alternative scheme. Multiple scheme can also lead to lower costs to business and can protect against resilience should one scheme fail or leave the market.

4.12. However, the Citizens Advice 2017 report '*Confusion, gaps and overlaps: A consumer perspective on alternative dispute resolution between consumers and businesses*' and Money Saving Experts 2017 report, '*Sharper Teeth – The consumer need for ombudsman reform*', raised the following issues regarding sectors where there is more than one alternative dispute resolution provider:

- In sectors where there is more than one provider it may not be immediately clear to firms that there is more than one approved scheme;
- It can be difficult for consumers to navigate and work out which is the most appropriate, or which one a trader belongs to;
- Consumers have no control over which scheme a business chooses and consequently the standards which govern that scheme; and
- There are inconsistencies in how alternative dispute resolution is provided.

4.13. The Government needs to ensure that redress in the new build homes market is simpler and streamlined without adding additional complexity. While there is evidence in other sectors, such as property agency, that a redress system can operate successfully with more than one scheme, it is clear that the number of schemes currently operating in the

new build sector has created an unacceptable variance of standards. The Government believes that a single New Homes Ombudsman could solve these without unnecessary disruption to the market. Therefore, we propose that there should be a single New Homes Ombudsman rather than multiple providers for the new build market.

Q9a. Should there only be a single New Homes Ombudsman?

- Yes
- No
- Not sure

Q9b. If not, why not?

Access to a New Homes Ombudsman

- 4.14. The Government wants to ensure that a New Homes Ombudsman’s service is simple and easy to use and can be contacted in various ways including by phone, email and social media as well as being accessible to those with disabilities. The proposed **Housing Complaints Resolution Service**²³ is intended to provide a single user interface for consumers across the whole housing market to access redress including purchasers of new build homes. A Redress Reform Working Group will be established to work with existing redress schemes, working with industry and consumers to develop the new service.
- 4.15. The Government proposes that purchasers of new build homes should first exhaust the internal complaints process of the property developer or warranty provider, where applicable, before accessing a New Homes Ombudsman. It is only fair and reasonable to allow the developer the opportunity to solve the complaint themselves in the first instance. As such, a New Homes Ombudsman can only become involved in the complaint once the consumer has completed this process and the issues remain unresolved, if a consumer is not happy with a developer’s reply or if the developer persistently fails to engage with the consumer.
- 4.16. There may be instances where there is an unreasonable delay, or depending on the severity of issues, consumers should be able to contact a New Homes Ombudsman before an internal complaints process has been exhausted. For example, where there are serious incidences where it would be acceptable to bypass the developers and/or warranty

²³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773161/Strengthening_Consumer_Redress_in_the_Housing_Market_Response.pdf

providers internal complaints mechanism. The current alternative dispute resolution standard is that a complaint can be escalated eight weeks from the initial complaint if it remains unresolved. The Government is seeking views on the circumstances in which someone could access a New Homes Ombudsman when a developers' internal complaints process has not been exhausted.

Q10a. How long after the initial complaint should a purchaser of a new build home be able to access a New Homes Ombudsman?

- 2 to 4 weeks
- 4 to 6 weeks
- 6 to 8 weeks
- Other

Please explain

Q10b Are there any other circumstances that a purchaser of a new build home should be able to access a New Homes Ombudsman?

- Yes
- No
- Not sure

Please explain

Standards of a New Homes Ombudsman

4.17. In our response to the '*Strengthening consumer redress in the housing market consultation*' the Government concluded that the most effective approach was to drive forward improvements on a sector-by-sector basis and that the Government will work to ensure that there are clear expectations for accessibility, transparency, timeliness and sanctions in terms of complaint handling. The response also set out that the Redress Reform Working Group will undertake a review of redress standards and that it is our ambition in the longer term that there should be a single Code of Practice on complaint

handling across all of the housing sector.

- 4.18. In light of this, the Government wants to ensure that a New Homes Ombudsman has the highest of standards around independence, effectiveness, accessibility, communication, professionalism, fairness and transparency. We also want a New Homes Ombudsman to use any lessons learnt from complaints to improve services.
- 4.19. The Government wants to ensure a New Homes Ombudsman has clear and achievable standards and targets for complaints handling and that there is transparency on performance against these targets. These standards will be set out in the work that the Government is undertaking to drive forward improvements overall and on a sector-by-sector basis.
- 4.20. A New Homes Ombudsman would also be subject to meeting certain standards if it is to join bodies such as the Ombudsman Association²⁴. Additionally, it would have to abide by requirements of the Chartered Trading Standards Institute²⁵ which acts as the competent authority of alternative dispute resolution schemes in unregulated sectors. These standards are: ensuring independence, effectiveness, accessibility, timeliness, professionalism, fairness and transparency. However, we are keen to explore whether there are other standards, specific to the new build sector, that should apply to New Homes Ombudsman.

Q11. Are there any other specific standards to the new build sector that a New Homes Ombudsman should meet?

- Yes
 No
 Not sure

Please explain

Scheme Provider and Approval Process

- 4.21. Some ombudsmen are established by, and get their powers from, legislation. Examples of statutory ombudsmen are: the Housing Ombudsman, the Local Government and Social Care Ombudsman, the Parliamentary and Health Service Ombudsman, the Financial

²⁴ <http://www.ombudsmanassociation.org/>

²⁵ <https://www.tradingstandards.uk/>

Services Ombudsman, the Pensions Ombudsman and the Legal Ombudsman.

- 4.22. Other alternative dispute resolution schemes, such as the private sector redress schemes²⁶ which cover consumers of letting and managing agents in the rented and leasehold sectors and consumers (buyers and sellers) of estate agents, are underpinned by statute. These are private redress schemes and generally operate as private companies, some operating on a non-profit basis.
- 4.23. The Government has previously set out that a New Homes Ombudsman would be underpinned in statute and we would like to explore the best approach to take. One option is for a public sector body to deliver a New Homes Ombudsman Scheme which would have greater accountability to the Government. Alternatively, a New Homes Ombudsman could be delivered by a private sector scheme. We are keen to seek views on the type of body to deliver a New Homes Ombudsman and how the approval and withdrawal process could work depending on whether it is to be delivered by either a private or public sector scheme. Should any of the proposals in this document lead to the creation of a new central government arm's length body, then the usual, separate government approval process would apply for such an entity.
- 4.24. In other sectors of the housing market, the Secretary of State in the Ministry of Housing, Communities and Local Government, has the power to approve private sector redress schemes on the basis that they meet statutory conditions²⁷. The Government wants to maintain flexibility as to whether alternative scheme or schemes or individuals should be approved as a New Homes Ombudsman, including whether approval is given to a private sector body. The legislation would provide a mechanism to approve an alternative body should a New Homes Ombudsman not meet our expectations.
- 4.25. There are many organisations with experience of providing alternative dispute resolution who could deliver a New Homes Ombudsman scheme. For example, a private sector organisation who already has appropriate skills and experience in adjudication. We would like to hear views on the fairest way to choose a New Homes Ombudsman for approval. For example these could be through Government directly appointing a New Homes Ombudsman, the standards a New Homes Ombudsman has to meet or asking companies to bid to be a New Homes Ombudsman.

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

- Yes
 No
 Not sure

Please explain

²⁶ [The Property Ombudsman](#) and [The Property Redress Scheme](#)

²⁷ [Section 87 of the Enterprise and Regulatory Reform Act 2013](#) and article 4 of [The Redress Schemes for Lettings Agency Work and Property Management Work \(Approval and Designation of Schemes\) \(England\) Order 2013](#)

Q13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?

- Tendering process
- Request for proposals
- Minimum Scheme Standards
- A combination of these
- Other (please specify?)

4.26. The Government will need to ensure that any organisation, whether public or private, who has been approved to provide dispute resolution for consumers in the housing market continues to meet the statutory conditions for scheme approval²⁸. The Secretary of State currently has the power to withdraw approval of a private sector redress scheme²⁹.

Q14a. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?

- Yes
- No
- Not sure

Q14b. If so, what should count as shortcomings in service standards to merit disapproval, how can this be verified and by whom?

²⁸ See Annex B – Conditions required for redress scheme approval under Article 4 of ‘The Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013’

²⁹ [Section 87 of the Enterprise and Regulatory Reform Act 2013](#) and article 8 of [The Redress Schemes for Lettings Agency Work and Property Management Work \(Approval and Designation of Schemes\) \(England\) Order 2013](#)

Q15. Are there any alternative sanctions, other than withdrawal of approval, that could be used to ensure a New Homes Ombudsman or other housing redress scheme continue to deliver an effective service?

Funding a New Homes Ombudsman

4.27. It is essential for public confidence in new build homes that access to a free independent dispute resolution service is available for consumers. As in other sectors, where there is an Ombudsman the businesses covered by a New Homes Ombudsman, not consumers, should meet the costs of resolving complaints brought to it. Currently, the industry-led Codes in the new build sector are resourced through a payment by the developer to the warranty provider.

4.28. A New Homes Ombudsman must be properly resourced to ensure that purchasers of new build homes receive a high quality service. Whilst most redress schemes operating in other parts of the housing sector offer a free service to the consumer, this is not the case in the new build sector. The majority of the industry-led codes charge consumers a fee to log a complaint with their independent dispute resolution schemes.

4.29. The Government proposes that, in keeping with the principle that Ombudsman should be free for the purchasers of new build homes, a New Homes Ombudsman would charge property developers.

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

- Yes
- No
- Not sure

Please explain

4.30. We are seeking views on different models for charging property developers as it will need to be adequately resourced which would require certainty that it will be properly funded. There are different models used by the different ombudsmen/redress schemes currently in

operation. We want to understand whether a subscription, pay per unit or by complaint, a tiered fee structure based on the number of properties developed per year or a mixture of these models would be the most appropriate. We are interested in hearing whether other approaches are more effective.

Q17. What would be the most appropriate way for a New Homes Ombudsman to charge property developers?

- A price per unit
- A pay per complaint system
- A flat membership rate
- A mixture of the above
- Don't know
- Other

Please explain

4.31. The Government particularly wants to hear if there are any issues that arise for smaller house builders from how the different models may affect smaller house builders.

Q18. Would any of these models have an adverse impact on smaller housebuilders?

- Yes
- No
- Not sure

Please explain

Q19a. Should smaller housebuilders pay a smaller fee than larger housebuilders?

- Yes
- No
- Not sure

Q19b. If so, how should this be achieved/calculated?



Powers of a New Homes Ombudsman

- 4.32. Powers and sanctions of redress schemes were explored in our previous consultation³⁰ which found that there was a very high level of compliance with the decisions of Ombudsmen in other parts of the housing market and most decisions were implemented quickly. We will be working with redress providers on how better to enforce their decisions through existing powers, such as looking at minimum standards and exclusions from membership and will consider if legislation is required to make this as effective as possible. However, we would like to understand if the processes involved in building new homes requires a different approach, including whether decisions should be binding.
- 4.33. A New Homes Ombudsman would help to resolve issues and disputes informally at first to the satisfaction of both sides of the dispute. However, the Government knows that this is not always possible and wants an effective New Homes ombudsman which is empowered to make decisions, which are binding on developers of new build homes.
- 4.34. There are varying powers that the current Consumer Codes have at their disposal. For example, the Consumer Code for House Builders awards up to £15,000 maximum including VAT. This includes a maximum of £500 discretionary award for inconvenience. The newer, since 2017, Consumer Code for New Homes may make awards of up to £50,000.
- 4.35. The Government believes that a statutory requirement for developers of new build homes to belong to a New Homes Ombudsman in order to trade will be effective in raising standards across the home building industry because if a housebuilder is excluded from a New Homes Ombudsman, they would lose the ability to build and sell new homes.
- 4.36. In this section the Government wants to consider what powers and sanctions should be at a New Homes Ombudsman's disposal. When a complaint is resolved there are a number of awards that can be made. These can include: an apology, an explanation of what went wrong, a correction of the problem, a financial award in the form of compensation or a combination of these.
- 4.37. Rectifying problems and defects in a new build homes can be expensive which may require a higher level of maximum award than a New Homes Ombudsman can offer. However, there is a point at which legal representation and pursuing claims is more

³⁰ Strengthening consumer redress in the housing market: <https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

appropriate through the court.

4.38. There may also be circumstances where it is not appropriate for a New Homes Ombudsman to make a binding decision but could make a recommendation for a developer. For example in relation to purchasing a property back, reviewing leasehold agreements or service fees. In addition, to the responses we received in our previous consultation the Government wants to explore whether practices in the new build sector requires different powers and sanctions that a New Homes Ombudsman should be able to deliver that are different to other sectors.

Q20. Are there different sanctions in addition to those available in other sectors of the housing market that a New Homes Ombudsman should have access to? (Tick all that apply)

- Different levels of financial award to the consumer;
- Expulsion from scheme unless a developer instigates and follows an improvement plan;
- Publish the details and reasons why developers have been expelled from a New Homes Ombudsman;
- Suspension from scheme until problems are rectified;
- Ability to make recommendations, for example: that the developer purchases the property back; reviews the terms of leasehold agreement and amends them; and to review the terms of estate maintenance fees and amend them;
- Set timescales to rectify faults/defects with a property;
- All of the above.

Please explain

Q21. Are there any other powers or sanctions a New Homes Ombudsman should have?

- Yes
- No
- Not sure

Please explain

Q22. If a New Homes Ombudsman offers awards, what should the maximum amount be?

- Up to £15,000
- Up to £25,000
- Up to £50,000
- Over £50,000
- Other (*please specify?*)

4.39. Through the Redress Reform Working Group, announced following our consultation on strengthening redress, we will explore with the redress schemes what further data can be made available to improve transparency for consumers.

4.40. The new build sector functions differently from other consumer markets as potential homebuyers cannot assess the quality of the home at the point of purchase and make choices based on perceived quality or standards and marketing material from the housebuilder³¹. There is also limited competition in an area where new homes are being built. The Government believes more information should be available to empower consumers to make informed choices about developers who deliver poor service and standards. However, this information has to be balanced as not all problems will end up with a decision by a New Homes Ombudsman and may not capture a representative picture of complaints.

4.41. In other sectors of the housing market, redress schemes publish the names of any agents that have been expelled from their schemes, provide the Ministry of Housing, Communities and Local Government with monthly complaints statistics, and publish annual reports summarising the information. The Government is seeking views on the right balance to ensure consumers can be empowered but is also fair to developers.

Q23. What information should be published by a New Homes Ombudsman to empower consumers?

³¹ <http://www.smf.co.uk/wp-content/uploads/2019/03/Building-a-Better-Market.pdf>

4.42. The Government wants to see a New Homes Ombudsman help change and promote positive behaviour in the new build industry so that standards are raised and developers can learn from their mistakes. This can help to improve processes and prevent future problems. The Government believes that publishing information on complaints and decisions can play a role in improving standards and encourage developers to try and get things right the first time. We are seeking views on what information a New Homes Ombudsman should have to publish which can be used to drive up standards in the home building industry.

4.43. Our previous response to our consultation on strengthening redress we committed to monitor schemes performance through their returns to the Ministry of Housing, Communities and Local Government and we will work with the Redress Reform Working Group to explore with the redress schemes what further data can be made available to improve transparency for consumers. We propose that information on those organisations expelled and awards made by a New Homes Ombudsman should be published. We also propose that monthly complaints statistics should be provided to the Ministry of Housing, Communities and Local Government for monitoring purposes and to enable it to take action as well as being summarised in an annual report by a New Homes Ombudsman.

Q24. What is the best way to publish complaints data so that it incentivises developers to improve their service? (Tick all that apply)

- Complaints data provided to the Ministry of Housing, Communities and Local Government
- Data published in an annual report
- Case studies on their website
- Other (please specify?)

Q25. What data from a New Homes Ombudsman would be useful for consumers when they are making a decision about purchasing a new home?

Geographical Scope

4.44. Consumer protection is generally a Reserved matter which enables protection for consumers across the UK and a common baseline for industry to operate in. However,

housing is a devolved matter. Property developers, warranty providers and the Consumer Codes work across the United Kingdom and the UK Government would like to see a new redress system to cover the whole of the United Kingdom.

- 4.45. There are different redress arrangements in other parts of the housing market in the UK. For example, the Estate Agents Act 1979³² requires estate agents to belong to a redress scheme and covers the whole of the UK whereas property agents in England and Wales must belong to a redress scheme under the powers in the Enterprise and Regulatory Reform Act 2013³³. These differences reflect the different models operating in different sectors and parts of the UK.
- 4.46. In the market for new build homes, developers, lenders, warranty providers and redress providers operate the same model for the whole of the UK. As we consider new arrangements, there is an opportunity to develop a framework for the whole of the UK. This approach would benefit industry and consumers as they will avoid having to navigate different regulatory frameworks in different countries.
- 4.47. The UK Government has already announced that it is our intention to seek agreement with the devolved administrations to introduce UK-wide legislation.

Q26. Should a New Homes Ombudsman remit be UK-wide?

- Yes
 No
 Not sure

Q27. Are there distinct practices in the different countries of the United Kingdom that require consideration for how a New Homes Ombudsman should operate if it were to be UK-wide?

- Yes
 No
 Not sure

Please explain

³² <https://www.legislation.gov.uk/ukpga/1979/38>

³³ <http://www.legislation.gov.uk/ukpga/2013/24/section/87/enacted>

5. Code of Practice for Developers of New Build Homes

- 5.1. For an effective New Homes Ombudsman, they will need a set of standards and practices that they will adjudicate against. This will also set out clearly the expectations that a purchaser of a new build homes will receive and what is expected from the developer of new build homes for the building and selling process.
- 5.2. Codes of Practice are a means of setting out what is expected of the developer so that they and the consumer are clear. This can help support compliance and drive wider service improvements. The Government has already set out its ambition to develop a Code of Practice on complaint handling for the whole housing sector.
- 5.3. Codes of Practice in other sectors of the housing market may be approved by the Chartered Trading Standards Institute's Consumer Codes Approval Scheme and provide a benchmark to help ensure a consistent service for consumers. For new build homes, the Consumer Codes set out high level expectations which providers are assessed against.
- 5.4. A Code of Practice should include:
- Ethics and conduct: Clear and truthful advertising, marketing and pre-purchase information of new build homes including information on leases, estate fees (where applicable), energy performance and reasonableness of reservation charges.
 - Transparency and reasonableness of charges for reservations.
 - Standards for the handover of new build properties and aftersales service covering the first two years post completion.
 - Quality of construction and ensuring that any defects are fully remedied in a timely manner.
 - The requirement to have a warranty.
- 5.5. The Government has been working with industry and consumers on a strengthened Code of Practice for developers who are building and selling new build homes directly to consumers. We are seeking views on what should be included in it and whether it should be statutory. We want to explore and understand the role of a single Code of Practice in driving more effective redress system for purchasers of new build homes and upholding high standards in the new build sector.
- 5.6. The Government will continue to work with industry, warranty providers and consumers to ensure that the distinct practices for the new build sector are addressed and that these are reflected in a single industry-wide Code of Practice which a New Homes Ombudsman would use to resolve disputes against. We have already set out our ambition, in the longer term, that there should be a single Code of Practice on complaint handling across all of housing and are seeking views as to what should be included in a Code of Practice for

developers of new build homes to improve complaint-handling on an individual sector basis.

Q28. What should be included in a Code of Practice for developers of new build homes? Tick all that apply:

- Complaints procedures
- Pre-purchase information and reservation agreements
- Customer Service Standards
- Sales and advertising standards including, but not limited to, the requirement to provide clear information in for; energy performance ratings, warranty provision, management services, leasehold charges, future development phases and connectivity
- Protection of deposits
- Minimum warranty standards
- Specifications that new homes should meet
- Transparency in relation to the receipt of fees a developer receives if they recommend a product or service, such as a solicitor
- Clear after-care responsibilities of builders
- Contracts to allow homeowners to appoint an independent building consultant/surveyor to review and agree with builders
- Timescales for responding to complaints, rectifying defects and compliance with requirements of a New Homes Ombudsman
- Standardised Contracts
- A right of access for the purchaser to view the property prior to completion
- The ability of homebuyers to carry out surveys before final completion
- Other (please specify?)

5.7. In our previous consultation on strengthening redress across the housing market, the Government set out that we will explore whether underpinning Codes of Practice is necessary to drive uptake³⁴. The Government is proposing that a Code of Practice should also be underpinned by statute and approved by the Secretary of State to ensure that high standards are upheld. This will help purchasers of new build homes know what to expect and developers will know what is expected of them.

Q29a. Should a Code of Practice for developers of new build homes be underpinned by statute?

34

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773161/Strengthening_Consumer_Redress_in_the_Housing_Market_Response.pdf

- Yes
- No
- Not sure

Q29b. If not, why not?

6. Enforcement

- 6.1. In sectors where there is a regulatory agency in place, the working relationship between an ombudsman and a regulator can influence the effectiveness of the redress scheme in delivering results. If regulation is to have a positive impact for purchasers of new build homes, it needs to be effectively enforced. Regulators need to be able to employ the right sanctions. Currently, outside of building regulations there is a lack of enforcement of the standards of build quality and service requirements of developers of new build homes except through the courts. The Government wants to understand the best way to enforce the requirement to belong to a New Homes Ombudsman.
- 6.2. In April 2018, the Government committed to a new regulatory regime for property agents, on which it has asked a working group – chaired by Lord Best – to develop more detailed proposals. The group³⁵ will report in July 2019. While developers are not an explicit part of its remit, the Government will consider whether recommendations would also be suitable for those who perform a sales function in-house for developers.
- 6.3. In December 2018, the Secretary of State announced that the Government will consult on a stronger and more effective regulatory and accountability framework for buildings in scope regarding building regulations³⁶. The focus of the new regulatory regime is expected, in the first instance, to be on buildings where a significant fire or structural failure could put many lives at risk. However, as Dame Judith Hackitt recommended, there is a consideration of whether aspects of the new regime should apply more widely to drive the change in culture. This shift in culture could be replicated across all buildings to ensure that residents, regardless of tenure, are able to have fire and structural safety concerns escalated and resolved as soon as possible.
- 6.4. In unregulated sectors, where companies do not cooperate with ombudsmen, or do not implement the ombudsman's decisions, such as expulsion from a scheme, there is no

³⁵ <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

³⁶ <https://www.gov.uk/government/news/brokenshire-introduces-tougher-regulatory-system-for-building-safety--2>

overarching regulatory body that this can be disclosed to. Lack of a regulator in the new build sector, outside of building regulations, can lead to inconsistencies in approach across alternative dispute resolution providers. Although there may not necessarily be a regulator to revise industry standards there are lead enforcement authorities for sales and lettings that can guide local enforcement agencies towards those who do not belong to a redress scheme. We want to understand whether this model could be implemented to enforce the requirement to belong to a New Homes Ombudsman.

6.5. The Government has already proposed to work with the redress sector through the Redress Reform Working Group on what could still be improved further through existing powers, such as looking at minimum standards and exclusions from membership. We will also consider options for legislative or regulatory reform to give redress schemes more teeth if necessary. Therefore, it is important to have a strong deterrent to poor practices and to crack down on rogue traders involved in building and selling new homes, which is both proportionate and fair. Possible penalties that a regulator can impose include financial penalties and removing the ability to trade. The Government is keen to hear how failure to belong to a New Homes Ombudsman or adhere to a Code of Practice can be enforced and by whom.

Q30a. How should failure to belong to a New Homes Ombudsman be enforced?

Q30b. Who should enforce this?

- Local Government
- Redress schemes
- Central Government
- New or existing Regulator
- Courts and Tribunals
- Other (please specify?)

Q31. What should the penalty for non-compliance be? (Tick all that apply)

- Criminal offence
- Civil sanction
- Financial penalty (please give details of suggested level)

- Banning developers
- Banning Directors of property development companies
- Other (please specify?)

7. Consultation Questions

About you

Q1: Are you responding (please tick one)

- As a private individual?
- On Behalf of an organisation?

Q2: If you are an individual, in which capacity are you completing these questions? (Please tick one)

- A person who has bought or knows someone who has bought a new build home?
- A person who works for a developer?
- Other (please specify)

Q3a: If you are an organisation, which of the following best describes you?

- A housing association/private registered provider
- A Local Authority
- An ombudsman or redress scheme
- A developer
- A sector representative body
- A charity
- A government body
- Other (please specify)

Q3b: What is the name of your organisation?

Q4. Who should be required to belong to a New Homes Ombudsman? (Tick all that apply)

- Developers who build and sell homes on the open sales market
- Self-Builders
- Developers who convert and sell properties
- Other (Please specify?)

Q5. Should a New Homes Ombudsman only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere? (For instance, it would not cover a complaint in relation to the sales process for a new build home bought through an estate agent as redress is sought through the redress scheme an estate agent belongs to)

- Yes
- No
- Not sure

Please explain

Q6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?

- Yes
- No
- Not sure

If so, who?

Q7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?

- Yes
- No
- Not sure

If so, who or what should be excluded?

Q8. How can the Government best ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman?

Q9a. Should there only be a single New Homes Ombudsman?

- Yes
- No
- Not sure

Q9b. If not, why not?

Q10a. How long after the initial complaint should a purchaser of a new build home be able to access a New Homes Ombudsman?

- 2 to 4 weeks
- 4 to 6 weeks
- 6 to 8 weeks
- Other

Please explain

Q10b Are there any other circumstances that a purchaser of new build home should be able to access a New Homes Ombudsman?

- Yes
- No
- Not sure

Please explain

Q11. Are there any other specific standards to the new build sector that a New Homes Ombudsman should meet?

- Yes
- No
- Not sure

Please explain

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

- Yes
- No
- Not sure

Please explain

Q13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?

- Tendering process
- Request for proposals
- Minimum Scheme Standards
- A combination of these
- Other (please specify?)

Q14a. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?

- Yes
- No
- Not sure

Q14b. If so, what should count as shortcomings in service standards to merit disapproval, how can this be verified and by whom?

Q15. Are there any alternative sanctions, other than withdrawal of approval, that could be used to ensure a New Homes Ombudsman or other housing redress scheme continue to deliver an effective service?

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

- Yes
- No
- Not sure

Please explain

Q17. What would be the most appropriate way for a New Homes Ombudsman to charge property developers?

- A price per unit
- A pay per complaint system
- A flat membership rate
- A mixture of the above
- Don't know
- Other

Please explain

Q18. Would any of these models have an adverse impact on smaller housebuilders?

- Yes
- No
- Not sure

Please explain

Q19a. Should smaller housebuilders pay a smaller fee than larger housebuilders?

- Yes
- No
- Not sure

Q19b. If so, how should this be achieved/calculated?

Q20. Are there different sanctions in addition to those available in other sectors of the housing market that a New Homes Ombudsman should have access to? (Tick all that apply)

- Different levels of financial award to the consumer;
- Expulsion from scheme unless a developer instigates and follows an improvement plan;
- Publish the details and reasons why developers have been expelled from a New Homes Ombudsman;
- Suspension from scheme until problems are rectified;
- Ability to make recommendations, for example: that the developer purchases the property back; reviews the terms of leasehold agreement and amends them; and to review the terms of estate maintenance fees and amend them;
- Set timescales to rectify faults/defects with a property;
- All of the above.

Please explain

Q21. Are there any other powers or sanctions a New Homes Ombudsman should have?

- Yes
- No
- Not sure

Please explain

Q22. If a New Homes Ombudsman offers awards, what should the maximum amount be?

- Up to £15,000
- Up to £25,000
- Up to £50,000
- Over £50,000
- Other (**please specify?**)

Q23. What information should be published by a New Homes Ombudsman to empower consumers?

Q24. What is the best way to publish complaints data so that it incentivises developers to improve their service?

- Complaints data provided to the Ministry of Housing, Communities and Local Government
- Data published in an annual report
- Case studies on their website
- Other (please specify?)

Q25. What data from a New Homes Ombudsman would be useful for consumers when they are making a decision about purchasing a new home?

Q26. Should a New Homes Ombudsman remit be UK-wide?

- Yes
- No
- Not sure

Q27. Are there distinct practices in the different countries of the United Kingdom that require consideration for how a New Homes Ombudsman should operate if it were to be UK-wide?

- Yes
- No
- Not sure

Please explain

Q28. What should be included in a Code of Practice for developers of new build homes? Tick all that apply:

- Complaints procedures
- Pre-purchase information and reservation agreements
- Customer Service Standards
- Sales and advertising standards including, but not limited to, the requirement to provide clear information in for; energy performance ratings, warranty provision, management services, leasehold charges, future development phases and connectivity
- Protection of deposits
- Minimum warranty standards
- Specifications that new homes should meet
- Transparency in relation to the receipt of fees a developer receives if they recommend a product or service, such as a solicitor
- Clear after-care responsibilities of builders
- Contracts to allow homeowners to appoint an independent building consultant/surveyor to review and agree with builders
- Timescales for responding to complaints, rectifying defects and compliance with requirements of a New Homes Ombudsman
- Standardised Contracts
- A right of access for the purchaser to view the property prior to completion
- The ability of homebuyers to carry out surveys before final completion
- Other (please specify?)

Q29a. Should a Code of Practice for developers of new build homes be underpinned by statute?

- Yes
- No
- Not sure

Q29b. If not, why not?

Q30a. How should failure to belong to a New Homes Ombudsman be enforced?

Q30b. Who should enforce this?

- Local Government
- Redress schemes
- Central Government
- New or existing Regulator
- Courts and Tribunals
- Other (please specify?)

Q31. What should the penalty for non-compliance be?

- Criminal offence
- Civil sanction
- Financial penalty (please give details of suggested level)
- Banning developers
- Banning Directors of property development companies
- Other (please specify?)

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the EU General Data Protection Regulation, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex A.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Annex A - Personal data

The following is to explain your rights and give you the information you are be entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gov.uk

Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

Our legal basis for processing your personal data

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

With whom we will be sharing your personal data

We will not be sharing personal data outside of the MHCLG

For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the consultation

Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

MHCLG will not send your personal data overseas.

However, the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this.

Your personal data will not be used for any automated decision making.

Your personal data will be stored in a secure government IT system.

Once the consultation closes the data will be moved from survey monkey to servers at the MHCLG.

Annex B – Conditions required for redress scheme approval under Article 4 of ‘The Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013’

The conditions that must be met before the Secretary of State may approve a redress scheme in the private rented sector include;

- the establishment or appointment of an independent scheme administrator;
- how agents can join, leave or be expelled from the scheme;
- the types of complaints that may be made under the scheme (including complaints about the failure to comply with any provision of a code of practice approved under section 87 Leasehold Reform and Urban Development Act 1993 and non-compliance with the provision of a voluntary code of practice or other such document);
- the ombudsman’s duties and powers in relation to investigating and determining complaints;
- the redress that an agent may be required to make to a complainant (the scheme must make provision for apologies, explanations, compensation and such other actions in the interest of the complainant as the ombudsman may specify);
- the enforcement of any requirement to provide redress that has been imposed on a member of the scheme (which may include expulsion from the scheme);
- how complaints can be made about the redress scheme itself;
- the provision of information to other redress schemes or to any person who regulates lettings agency work and property management work (for example, so that agents who do not belong to a redress scheme can be identified); and
- the publication of an annual report.

Annex C – Glossary of Terms

Alternative Dispute Resolution (ADR): A process for businesses and consumers to resolve disputes arising from the purchase of goods or services, which can be a cheaper and quicker alternative to the courts. Some of the ways a complaint can be handled are:

- **Arbitration:** A binding process where an independent third party evaluates a dispute and decides how it should be resolved. It is not generally possible to take cases to court once they have been arbitrated upon.
- **Adjudication:** Similar to arbitration, but it is generally possible to take cases to court after they have been adjudicated upon.
- **Mediation or conciliation:** An independent third party helps the disputing parties to come to a mutually acceptable outcome.

Code of practice: An agreed set of written rules, which explains how people working in a particular sector/industry should adhere to

Consumer Code: Industry-led scheme which provides protection and to purchasers of new build homes. There are approximately seven consumer codes.

Consumer Code for Homebuilder: A voluntary code of practise developed by the home building industry and adopted by some home builders. The Consumer Code Independent Resolution Scheme provides ADR for Consumer Code members.

Consumer Code Independent Resolution Service: A home buyer can refer their complaint to the Independent Dispute Resolution Scheme after 56 calendar days have passed since first raising it with the home builder and no later than 12 months after the home builder's final response. The Independent Dispute Resolution Scheme is run by CEDR Ltd, the Centre for Effective Dispute Resolution.

Consumer Code for New Homes: A mandatory Code for members established so that best practice is followed by registered developers in respect of marketing, selling and purchasing new homes.

Construction Industry Council Approved Inspectors Register: The designated body responsible for managing the approval and termination of approval of Approved Inspectors in accordance with section 49 of the Building Act and regulations 3 and 5 of the Building (Approved inspectors etc.) Regulations 2010.

Chartered Trading Standards Institute: The Chartered Trading Standards Institute (CTSI) is a not-for-profit membership organisation to support and represent trading standards professionals in the UK and abroad.

Estate Agent: A person who carries out estate agency work as defined in section 1 (1) of the Estate Agents Act 1979.

Financial Ombudsman Services: Set up by Parliament, the Financial Ombudsman Service is a statutory ombudsman to resolve complaints in relation to financial services.

Housing/Property Developer: A person or company that makes money building homes or renovating existing properties for sale.

Housing Complaints Resolution Service: A new single housing service to provide a single point of access for any housing consumers wanting to access redress.

New Homes Ombudsman: A proposed new scheme that will champion the rights of purchasers of new build homes and provide free, easy and effective redress.

Ombudsman Scheme: Independent third parties, which provide ADR. Generally, to describe itself as an 'ombudsman,' a redress scheme needs to be either a statutory complaints organisation, or a non-statutory body certified as a provider of ADR and holding ombudsman-level membership of the Ombudsman Association.

Ombudsman Association: The Ombudsman Association is a professional association for ombudsmen and complaint handlers but is not a complaint-handling body. Its members have to fulfil certain criteria for membership. The association has no role in the internal working of member schemes nor any influence or jurisdiction over them.

Redress scheme: These are independent third parties who provide ADR to remedy a complaint. However, a redress scheme is not necessarily an accredited ADR body and may not meet the membership criteria of the Ombudsman Association.

The Housing Ombudsman: Approved by the Secretary of State under Section 51 of, and Schedule 2 to, the Housing Act 1996. Membership of the Scheme is compulsory for social landlords (primarily housing associations who are or have been registered with the social housing regulator) and local authority landlords. A number of managing agents and private landlords are voluntary members.

The Local Government and Social Care Ombudsman: Handles complaints about councils and some other organisations that provide local public services. It deals with complaints about councils' wider housing functions, including homelessness and housing allocations. Complaints about councils' role as social landlords, including repairs and maintenance, are handled by the Housing Ombudsman.

The Pensions Ombudsman: Impartially investigates complaints from members of pension schemes or their beneficiaries, employers or trustees.

The Legal Ombudsman: Investigates legal service problems if people are unable to resolve them with their service provider.

Warranty Provider: provides building insurance that is provided by a developer to the owner or buyer of a new build home. They may also provide alternative dispute resolution and mediation services where there are problems with a new build home.