



Ministry of Housing,
Communities &
Local Government

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

Summary of responses to the consultation and the
Government's response



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February 2020

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Introduction

1. Last year more homes were delivered than at any time in the last 32 years. As more homes are built, homebuyers should be confident that when they purchase a new build home, they get the quality of build and finish they expect. The Government is committed to giving consumers an effective route to redress so that problems are put right when things go wrong. This document looks specifically at plugging the gaps in accessing redress through a New Homes Ombudsman.
2. We believe new build homebuyers should have effective and accessible ways to get problems sorted quickly and have better access to independent redress. The Government is committed to rebalancing the relationship between developers and purchasers of new build homes to deliver a fair service and better-quality new build homes.
3. No one expects to purchase a poor-quality home or receive poor quality customer service and accordingly action should be taken against those that do not deliver. We also want the New Homes Ombudsman to deliver wider benefits to consumers and drive up improvements in the new build homes sector. This includes building new homes of the highest standards and quality as well as ensuring new homes are sustainable and fit for the future.
4. In October 2018, the Government announced its proposals to ensure that a New Homes Ombudsman is established, working with industry and others. The Government also announced that it would introduce legislation that requires developers of new build homes to belong to a New Homes Ombudsman. In June 2019, the consultation: *Redress for Purchasers of New Build Homes and the New Homes Ombudsman*¹ was published, which explored the detail of the proposed legislation and how a New Homes Ombudsman will be delivered.
5. The consultation sought views on a number of areas:
 - The requirement of developers of new build homes to belong to a New Homes Ombudsman
 - The number of ombudsmen
 - Access to the New Homes Ombudsman
 - Standards of a New Homes Ombudsman
 - Scheme provider and approvals process
 - Funding a New Homes Ombudsman
 - Powers of a New Homes Ombudsman
 - The geographical scope of a New Homes Ombudsman.

¹ <https://www.gov.uk/government/consultations/redress-for-purchasers-of-new-build-homes-and-the-new-homes-ombudsman>

The consultation also sought views on whether a Code of Practice for developers building and selling new homes should be underpinned in statute and how requirements can be enforced.

6. Purchasers of new build homes also do not always have the right information to negotiate effectively or know who provides the best warranty and redress. It is difficult due to a lack of information and knowledge for a purchaser to know whether their developer is acting in their best interests.
7. The proposals in this document are based on the Government seeking a UK-wide approach to legislation and redress for new build homebuyers.
8. Under the duty, set out in Section 149 of the Equality Act 2010, the Department is required to have 'due regard' to the public sector equality criteria and the potential impact that any policy decisions would have on people with relevant protected characteristics. We have carried out an initial Equality Impact Assessment and we will continue to keep this under review. The Impact Assessment finds that the policy is impact neutral for people with protected characteristics.

Summary of Government Response

9. We received 376 responses to the consultation. There were a large number of suggestions for how a New Homes Ombudsman can be designed and delivered and how the end-to-end processes for building and selling homes can be improved. Through the consultation we heard of the experiences that individuals have had when buying new build homes, which were, in the main, negative. Other responses have given us an insight into how a New Homes Ombudsman can operate. We would like to thank everyone who responded to the consultation.

A New Homes Ombudsman underpinned by statute

10. We will bring forward legislation to underpin a New Homes Ombudsman in statute. There will be a **statutory obligation for developers of new build homes to belong to the New Homes Ombudsman. The scheme will meet the requirements to be an ombudsman.** It will have powers to hold developers to account and to require them to put matters right. This will provide new build homebuyers with the protection they require.
11. We will continue to work with the devolved governments towards our aim of implementing UK-wide legislation.
12. Following legislation, we will make arrangements for securing that a New Homes Ombudsman scheme is available for the purpose of adjudicating on complaints and upholding standards set out in a Code of Practice. Should any one scheme not meet the expected standards, we will have the power to select or appoint another body to deliver the New Homes Ombudsman scheme.

13. This will entail procurement of a single scheme that developers must belong to. This scheme will be the New Homes Ombudsman. Alternatively, we will provide the power for the Government to appoint an existing public sector body or provide the service itself should it be necessary. There are a number of existing schemes which could provide such a service. This will ensure that the Government retains the flexibility as to who can deliver the New Homes Ombudsman scheme and ensure that high standards are met.

14. We intend to specify what we want the New Homes Ombudsman to achieve and run a procurement process to select a provider for the New Homes Ombudsman scheme. The requirements may include:

- How developers join or be expelled from the scheme;
- Provide a mechanism for resolving disputes, including the types of complaints that may be made under the scheme including complaints regarding a failure to comply with provisions set out in the Code of Practice;
- The ombudsman's duties and powers in relation to investigating and determining complaints;
- The redress that a developer may be required to make to a complainant;
- How complaints can be made about the New Homes Ombudsman scheme itself;
- Commitment to work with other redress schemes; and
- Regular complaints data provided to government and publication of reports.

15. Our ambition is for a single scheme to be the New Homes Ombudsman. However, we recognise that there may be circumstances where more than one is required. For example, where a redress scheme may withdraw from the market or where a scheme is failing to perform to high standards. Therefore, to mitigate this risk the legislation will allow the Government to make arrangements for ensuring one or more New Homes Ombudsman schemes are available to adjudicate on disputes between purchasers and developers of new build homes.

16. We will also set out who will be required to belong to the New Homes Ombudsman. We intend for this to **include all organisations who commission or build new homes for the purpose of selling them**. Such as:

- Commercial developers;
- Registered providers of social housing selling freehold homes;
- Housing corporations;
- Developers and others who use special purpose vehicles (SPVs) for development;
- Private developers who build and sell shared ownership homes; and
- Developers who convert and sell properties, either through changing the use of a premises or creating new dwellings.

17. The scope of the New Homes Ombudsman would not include self-builders unless they plan to sell the property to someone else within a set period.

18. The Secretary of State would have the power to amend or add to the definition.

19. We will ensure that government has the ability to terminate and replace the New Homes Ombudsman if the service fails to meet high standards. This will allow a failing scheme to be replaced should it not provide an effective service including giving the role to another provider or the Government running the scheme itself.
20. We will raise awareness of a New Homes Ombudsman so that developers are aware of their responsibility to belong to a New Homes Ombudsman. This will be done through a variety of ways including trade bodies, warranty providers, registered providers of social housing and direct contact. We will also require the Ombudsman and developers to raise awareness of the service amongst consumers, especially during the sales process. Developers will be required to publicise details of a New Homes Ombudsman scheme to purchasers.
21. We will **set out in legislation that the Secretary of State can approve a Code of Practice** for developers building and selling new build homes. The Code of Practice will set guidance on what consumers can expect and what is expected of a developer. It will also form the basis of how the New Homes Ombudsman will adjudicate complaints. We will ensure that the Code of Practice maintains the flexibility to be updated as and when required.
22. We will expect the New Homes Ombudsman's remit to include complaints involving fuel, energy and broadband performance where expectations fall below that which is required or promised to be delivered by developers.
23. There will always be situations that are novel and may not be contained in the Code and Practice. Therefore, the New Homes Ombudsman will not be constrained by its contents and will be able to adjudicate on complaints that are fair and reasonable.
24. We will make **provision in legislation so that requirements can be effectively enforced**. Including that sanctions may be imposed if a requirement is breached and allow for the investigation of breaches of any requirement.
25. We will consider further who is best positioned to enforce the requirements to belong to the New Homes Ombudsman. Including using existing enforcement agencies or regulators.

Access to the New Homes Ombudsman

26. A New Homes Ombudsman will be **free for consumers** to access and paid for by members of the scheme.
27. We will task the New Homes Ombudsman with setting out the period in which a new build homeowner can approach it with a dispute. We recognise that there are different timescales in which problems can occur with a new build property and in which consumers can raise a complaint. This includes different time periods for warranty cover, architects' certificates and statute of limitations. We propose that homebuyers should be able to access the New Homes Ombudsman with a dispute **within the first two years following the initial purchaser's completion date**. This aligns with the current defect or builder's liability period for the majority of

warranties and does not limit the homebuyer's rights to pursue claims and disputes through the courts or limit other legal rights they have.

28. We will task the New Homes Ombudsman with setting the timescales for the escalation of a complaint to the New Homes Ombudsman, following the initial complaint under the developers' complaints process. We expect this to align with other redress providers and ombudsmen schemes providing services across the housing market and should follow best practice, currently this is eight weeks. This period will allow enough time for disputes to be resolved under the developers own complaints and dispute resolution processes. However, if there are exceptional circumstances, we expect that consumers will be able to circumvent the usual route and access the New Homes Ombudsman. Exceptional circumstances will be determined by the New Homes Ombudsman scheme and we would at least expect this to involve disputes concerning fire and safety issues and where a developer fails to engage with the consumer at all.
29. The New Homes Ombudsman will not adjudicate on disputes where redress should be sought elsewhere. It would not be fair to penalise developers if they are not responsible for the problem. Where disputes cut across different redress schemes and ombudsmen, we expect the New Homes Ombudsman to **undertake joint investigations and issue joint decisions** through a memorandum of understanding with other redress schemes and ombudsmen.
30. We may, in some circumstances, want small organisations to be treated the same as a consumer if they retain a stake in the ownership of a new build property. There are benefits to organisations of free informal dispute resolution as an alternative to the courts. For example, the Financial Ombudsman Service is able to consider complaints from small businesses. This followed research which identified that small businesses had no access to legal or accounting support, and little or no greater knowledge than individual customers². **We will task the New Homes Ombudsman with agreeing the circumstances in which small organisations purchasing a new build property, with the intention to sell it, can also access a New Homes Ombudsman.**

Better protection for consumers, faster

31. The New Homes Ombudsman will be **independent from industry** to provide consumers with confidence that they will be accessing an impartial service. It will also be fair and impartial to businesses.
32. The New Homes Ombudsman will be tasked, as in other sectors, to resolve disputes at an early stage and on an informal basis. This will mean that disputes do not continue to escalate, and problems are nipped in the bud.
33. Where disputes cannot be resolved early, we will ensure that the New Homes Ombudsman will have the ability to act, so that new build issues are dealt with swiftly and effectively. These powers should include:

² <https://www.financial-ombudsman.org.uk/files/1758/Micro-enterprise-complaints-Aug-2015.pdf>

- Ability to make awards for compensation to the homebuyer;
- Publishing details and reasons for expulsion;
- Direct developers to improve their service;
- Request information from the developer;
- Request developers to undertake or refrain from undertaking work;
- Ability to make recommendations to resolve disputes and timescales for rectifying disputes; and
- Requesting apologies and explanations from developers.

34. The New Homes Ombudsman should be able to make awards of up to £50,000 to reflect the potentially high costs of resolving disputes, where a consumer is out of pocket. We will task the New Homes Ombudsman with setting the appropriate limit and have the ability to vary this so that it does not become out of date. Anything above this amount we believe is best settled through the courts. The amount will be set out in the Code of Practice.

35. Once legislation is in place, it will be unlawful for a person who engages in the development and selling of new build homes not to belong to the New Homes Ombudsman and this will form a powerful deterrent against non-compliance with the New Homes Ombudsman's decisions or recommendations made. We believe that the New Homes Ombudsman should have the ability to expel members. However, we recognise that this could create risks detrimental to the consumer. For example, where consumers have already moved or reserved a new build property, a developer would have ongoing commitments and wouldn't be obliged to fulfil these commitments if they were expelled. There are also circumstances where developers may choose to fold or disband leaving poor work unrectified. For these cases, we will explore the merits of a compensation or retention scheme for consumers, funded by developers, to protect consumers where they would be out of pocket or need things rectified.

36. The New Homes Ombudsman will be tasked with providing government with information on complaints as well as providing useful information and guidance for consumers, subject to any data protection issues, including, but not limited to:

- A Code of Practice;
- Case Studies;
- An annual report; and
- Key performance indicators for resolving disputes and outcomes.

37. The New Homes Ombudsman will adjudicate on disputes based upon evidence provided by the consumer and developer against best practice contained within the Code of Practice and other relevant sources. The New Homes Ombudsman will recommend changes to the Code of Practice, based on best practice.

38. The New Homes Ombudsman must be adequately resourced and **paid for by developers**. However, costs to business must be fair and balanced. We will task the New Homes Ombudsman to devise the best way to charge developers to incentivise positive behaviour, whilst not placing an undue burden on smaller

developers. This will be through a mixture of charging methods such as a pay per unit and per upheld complaint to incentivise developers to ensure issues are dealt with quickly and informally.

39. The New Homes Ombudsman will be tasked with consideration of exemptions for smaller developers from some parts of the charge. For example, being exempt from the price per unit charge but not an upheld complaint charge, up to a certain number of new dwellings.
40. We will not wait until legislation is in place to ensure new build homebuyers receive better protection. Any scheme that is not mandated through legislation is a voluntary scheme. Therefore, **before we legislate, we will work closely with consumer organisations, warranty providers, lenders and industry to bring forward plans to implement a voluntary, independent and effective New Homes Ombudsman.** We will work with the industry so that developers sign up to the voluntary scheme. This scheme will be able to bid to be selected as the New Homes Ombudsman subject always to the general principles of procurement law. This means we will ensure that the award process is transparent, avoids conflicts of interest and conforms to the principles of equal treatment and non-discrimination.

Improving Quality of Customer Service, Processes and Build

41. The New Homes Ombudsman role will include **promoting best practice** so that developers continually improve.
42. We have previously announced proposals for a new **Housing Complaints Resolution Service** to be established, which will address concerns about confusion on who to approach for dispute resolution as it will provide a single front door for housing related complaints.
43. We will seek to **raise service and complaint handling standards of redress providers through the Redress Redress Working Group across the housing market**, including through an overarching Code of Practice for redress providers. The intention is to raise standards or alternative dispute resolution services across the housing market.
44. We will specify that the New Homes Ombudsman must be a **full member of Ombudsman Association and be an approved body by the Chartered Trading Standards Institute, as the competent authority**, to provide Alternative Dispute Resolution.
45. The Code of Practice will cover the whole of a developer's building and selling processes and we want to ensure that this reflects best practice. We will continue to work with industry, consumer groups and others to ensure this best practice is included in a Code of Practice, without stifling innovation and impeding freedom of contract. The Code of Practice will have the consumer's best interests at its core.
46. We will establish a **New Build Quality and Consumer Experience Monitoring Group** comprising of consumer groups, tech-companies, industry and others to

seek opportunities to collect better data on the issues consumers have. This group will be tasked with helping to improve practice throughout the process to improve consumer satisfaction and feed into the New Homes Ombudsman and Code of Practice. It will also work to **improve the public's perception of properties built using modern means of construction** which we believe, over time, could reduce many of build quality issues that homebuyers experience with their new build homes.

47. We will **work with warranty providers so that consumers receive clear information about what it covers and is in an easily understandable format.** Similar to insurance cover for home insurance and holidays.
48. Respondents to the consultation identified a lack of access to redress for freehold homeowners who live on private or mixed tenure estates, where a managing agent is not employed to manage common parts of the estate. We have already announced our intention to extend mandatory membership of a redress scheme to freeholders of leasehold properties who do not employ a managing agent – since there is already mandatory membership of a redress scheme for managing agents. We will also **extend mandatory membership of a redress scheme to freeholders or management companies who manage communal spaces on private or mixed tenure estates who do not employ a managing agent.** This will give freehold homeowners who live on managed estates access to redress if things go wrong. We will consider which redress scheme is best suited to receive disputes in these circumstances.
49. We are committed to improving consumer protection for new build homebuyers and these reforms will ensure they are better protected, and developers are held to account when things go wrong.

Responses to Consultation Questions

Overview

50. The consultation: *Redress for Purchasers of New Build Homes and the New Homes Ombudsman*³ ran from 27 June 2019 to 22 August 2019. Respondents were invited to reply using an internet survey (SurveyMonkey); by email or by posting their written responses to the Ministry of Housing, Communities and Local Government.
51. Out of 376 responses received, 81% (306) were received from private individuals and 19% (70) came from organisations. The vast majority, comprising 294 responses, came from individual respondents who were people who had bought or knows someone who had bought a new build home (96%).
52. The consultation sought views on a range of options for the design and delivery of a New Homes Ombudsman, whether a Code of Practice should be underpinned in statute and how the requirement to belong to a New Homes Ombudsman could be enforced.
53. Respondents did not have to answer all the questions in the consultation. In this response we provide a breakdown of each response by individuals and organisations. For some of the tables in the document, the numbers do not sum to 100% due to rounding.
54. It should not be assumed that an individual or organisation's views are representative of wider stakeholder or public opinion. The principal aim of the consultation was to consider the design and delivery of a New Homes Ombudsman to ensure that homebuyers of new build homes receive better consumer protection. It is imperative that, as more new homes are built, new build homebuyers have things put right when they go wrong.

Our respondents

Total consultation responses	Individual	Organisation	Total
Total	306 (81%)	70 (19%)	376 (100%)
Breakdown of individual categories			Totals
A person who has bought or knows someone who has bought a new build home			294 (96%)
Other			11 (4%)
A person who works for a developer			1 (0%)
Total number of individual responses			306 (100%)

³ <https://www.gov.uk/government/consultations/redress-for-purchasers-of-new-build-homes-and-the-new-homes-ombudsman>

Breakdown of organisational categories	Totals
Other	28 (40%)
A sector representative body	16 (23%)
A housing association/private registered provider	8 (11%)
A developer	8 (11%)
A Local Authority	5 (7%)
An Ombudsman or redress Scheme	4 (6%)
An Executive Non-Departmental Public Body.	1 (1%)
Total number of organisations	70 (100%)

The requirement of developers of new build homes to belong to a New Homes Ombudsman

Q4. Who should be required to belong to a New Homes Ombudsman?			
Breakdown by individual and organisation	Individual	Organisation	Total
Developers who build and sell homes on the open sales market	161	51	212
Self-builders	69	26	95
Developers who convert and sell properties	109	47	156
Other	16	32	48

Note: for Q4. People could choose more than one option.

55. Our consultation asked who should be required to belong to a New Homes Ombudsman. This is to ensure the Government accurately defines who is required to belong to a New Homes Ombudsman. Not everyone answered the question. 212 respondents said that developers who build and sell homes on the open market should belong to the Ombudsman. 95 respondents said that self-builders should be included and 156 said that developers who convert and sell properties should also be required to belong to a New Homes Ombudsman.

56. We also asked if there was anyone else who should belong to a New Homes Ombudsman. We received 48 responses to the 'other' category. A few respondents expressed that all organisations who build and sell homes should belong to a New Homes Ombudsman. The most common response was to include registered providers of social housing who build and sell properties. This would plug a gap as purchasers would not have access to redress elsewhere. In addition, some respondents identified that estate management companies, investors, individual tradespeople and warranty providers should also belong to a New Homes Ombudsman.

Government response

57. We received many useful suggestions regarding who should belong to a New Homes Ombudsman. It is clear from the responses that it is not only private developers who commission or build new homes and sell them on the open market, it can also be individuals, registered providers of social housing or through an

estate agent or solicitor. The Government wants to ensure that gaps in access to redress for new build homebuyers are filled and legislation requiring developers to belong to a New Homes Ombudsman captures all circumstances to avoid creating any loopholes.

58. We believe that organisations who commission or build new build homes should seek redress for issues they experience with the homes through their commercial contracts. They should not be able to seek redress through the New Homes Ombudsman.

59. We will define in legislation who has to be a member of redress scheme for the purpose of receiving, investigating and resolving complaints against members of that scheme. That redress scheme will be the New Homes Ombudsman. This will include development organisations, registered providers of social housing and developers who convert and sell properties. Additionally, this will apply to developers and investors who form 'special purpose vehicles' to develop homes, which are then dissolved.

60. We do not intend to include individual tradespeople within the definition of a developer of new build homes as often they are working on behalf of the developer who contract this work. If individual tradespeople fail to produce quality work, we believe the responsibility for rectifying issues is with the commissioning or building organisation or individual, as they will usually have a contract with the tradesperson. This will avoid any confusion as to who is ultimately responsible for the quality and standards of the work.

61. We also heard from a number of respondents that warranty providers should also be required to belong to a New Homes Ombudsman. We do not agree as they are not responsible for the quality of build or the sales processes involved with new build homes. Complaints regarding warranties can already be made to the Financial Ombudsman Service and warranties, as insurance products, are regulated by the Financial Conduct Authority. However, the consultation identified that consumers are not sure what is covered by their warranty and raise concerns that they do not have adequate information about their warranty.

62. We will ensure that the New Homes Ombudsman works with any regulators as necessary.

63. We will work with warranty providers so that consumers receive clear information about what is covered under the warranty and is presented in an easily understandable format. We would like to see something similar to that received by consumers purchasing insurance cover for home insurance and holidays.

Q5. Should a New Homes Ombudsman only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere?			
Breakdown by individual and organisation	Individual	Organisation	Total

Yes	57 (35%)	34 (68%)	91 (43%)
No	83 (51%)	11 (22%)	94 (44%)
Not sure	22 (14%)	5 (10%)	27 (13%)
Total	162	50	212

Q6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	50 (32%)	25 (51%)	75 (36%)
No	51 (32%)	17 (35%)	68 (33%)
Not sure	56 (36%)	7 (14%)	63 (31%)
Total	157	49	206

Q7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	10 (6%)	22 (46%)	32 (15%)
No	124 (77%)	21 (44%)	145 (69%)
Not sure	28 (17%)	5 (10%)	33 (16%)
Total	162	48	210

Note: Questions 5 to 7 have been grouped together to provide a joined-up response.

64. We asked whether a New Homes Ombudsman should only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere. The respondent's views were evenly split, with 43% of those responding to this question agreeing and 44% disagreeing. 13% of those responding to this question answered that they were not sure.
65. Of those who answered 'yes' to this question, many agreed that it should only consider complaints where redress could not be sought elsewhere. This would avoid duplication and if existing redress schemes exist then there was no need to change this. Many respondents highlighted that the first approach for a complaint should be to the developer.
66. Some respondents mentioned that memorandums of understanding should be established with other redress schemes where some complaints may overlap so that joint investigations and decisions could take place, for instance, where a complaint is in relation to both building issues and estate agency practice. There could also be mechanisms for a New Homes Ombudsman to refer complaints to the correct redress scheme where the fault does not lie with the home builder. Consumers will be kept informed of action taken and a named contact for the person dealing with their complaint.

67. Some respondents who answered 'no' to this question said that house buyers should not have to approach multiple redress schemes as it would cause confusion. Others identified that decisions should be taken on a case-by-case basis as to the appropriate redress scheme to deal with a complaint. There was also concern that alternative redress schemes may have different standards and developers could choose to use a scheme with less onerous requirements. This would allow them to absolve themselves of their responsibilities.
68. Out of the 206 respondents who answered Q6, 36% answered that there are other people who should be able to seek redress through a New Homes Ombudsman. The most common responses included second owners of new build homes, neighbours who are disrupted by development, those who have estate management issues, registered providers of social housing who purchase new build homes and those who have purchased shared ownership properties. Respondents also raised that those who have complaints about warranty providers should also be able to seek redress through a New Homes Ombudsman.
69. We asked in Q7 if anyone or anything should be excluded from a New Homes Ombudsman's remit. There were 210 responses to this question. A large majority (69%) of those answering this question said that there shouldn't be. Significantly more of the responses from individuals supported this view than organisations, at 77% compared with 44%. 15% of respondents identified that there should be exclusions and 16% were not sure.
70. Of those who answered that there should be exclusions, some respondents highlighted that these should include self-built properties, warranty providers and claims, complaints dealt with by a separate redress scheme or regulator, sales to commercial organisations and registered providers of social housing when using a new build property for rent.

Government response

71. We acknowledge that complaining to multiple redress schemes would be onerous for the consumer and confusion could be caused. However, we believe that if redress can be sought elsewhere and the subject of the complaint is not a result of something the developer has or has not done, then the complaint should be addressed by the appropriate redress scheme or ombudsmen which deals with the responsible party.
72. The Government has already committed to introduce a Housing Complaints Resolution Service which will address consumers concerns regarding confusion. Under the proposed service, they would be directed to the correct redress provider for their sector and complaint. We will continue to work with the **Redress Reform Working Group** to develop the new service.
73. We agree that complaints should be viewed on a case-by-case basis as it is dependent on the nature of the complaint, and whose responsibility it is to put things right. Where a complaint straddles different area of the housing market and parties for a new build home, such as an estate agent sales practice and build quality, we want a New Homes Ombudsman to have the ability to undertake joint

investigations with other redress schemes and ombudsman to reach joint decisions, through Memorandums of Understanding, should it be necessary.

74. Where social tenants have a dispute with a social landlord about a new build home they are living in as tenants, they will be directed to the Housing Ombudsman who has the powers to investigate their complaints, as their landlord would be responsible for the landlord and tenant relationship. This would mean consumers do not need to approach multiple redress schemes or ombudsman to resolve their issues.
75. A number of respondents argued that registered providers of social housing and other organisations should also be considered consumers where they purchase new build properties from developers, rather than commissioning or developing new build homes themselves. We heard, during the consultation period, that some of these companies and organisations who purchase new build properties, with or on behalf of others, are not in a position, due to a lack of financial clout or commercial capability, to pursue claims and issues through the courts. We also heard that some small companies and organisations should be able to approach a New Homes Ombudsman instead of pursuing complaints through the courts.
76. We agree that small companies and organisations should also be able to access a New Homes Ombudsman where they have purchased a new build property from a developer rather than commissioned or built it themselves. We will expect the New Homes Ombudsman to make provision to include which small organisations can also seek redress through the New Homes Ombudsman.
77. We agree that shared owners should also be able to access a New Homes Ombudsman where they do not have access to redress elsewhere, to ensure any gaps are addressed. We envisage these to be mainly in relation to shared owners who have bought through a private company above or where a smaller organisation has bought a new build property to sell on to the new owner and retains a stake in the property. It should be noted that shared owners of properties sold to them by registered providers of social housing already have access to redress through the Housing Ombudsman. Additionally, owners who have issues with the managing agent for their property should access redress through other routes.
78. A number of respondents said that residents of private estates should also be able to access a New Homes Ombudsman. In our response to the consultation *Strengthening consumer redress in the housing market*⁴ We already announced our intention to extend mandatory membership of a redress scheme to freeholders of leasehold properties who do not employ a managing agent – since there is already mandatory membership of a redress scheme for managing agents. We will also **extend mandatory membership of a redress scheme to freeholders or management companies who manage communal spaces on private or mixed tenure estates who do not employ a managing agent**. This will give freehold homeowners who live on managed estates access to redress if things go wrong. We will consider further which redress scheme is best suited to receive disputes in

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

these circumstances. We do not believe access should be through the New Homes Ombudsman.

79. We heard through the consultation that neighbours who experience disruption due to development and family members of the purchaser of new build homes should also be able to access a New Homes Ombudsman. We do not believe that neighbours should be able to raise issues to a New Homes Ombudsman. There is always going to be a degree of disruption as development occurs and these should be addressed through other methods. For instance, through planning departments and local authorities. We believe that any complaint should come from the purchaser but there will be circumstances where an advocate can act on their behalf to ensure that it is accessible.

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

80. We asked how the Government can best ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman. There were 193 (51%) responses to this question. There was a wide range of responses including raising awareness through local authorities as a planning condition or through warranty providers, mortgage providers and trade bodies. Others mentioned that a general publicity and advertising campaign could help to raise awareness of any requirement to belong to a New Homes Ombudsman.

Government response

81. We want the New Homes Ombudsman to be a strong recognised brand and we will work with developers to ensure that they are aware of their responsibilities and the requirement to belong to the New Homes Ombudsman. We also want consumers to be more aware of the routes of complaint that are available to them. We will do this in a range of ways, including through working with consumer groups, warranty providers, industry groups and directly with developers.

82. The legislation will ensure that those developers who would be affected by the requirement to join a scheme will be in a position to do so, so that the requirement to become a member will not be binding until the government is satisfied that the New Homes Ombudsman is available.

Number of ombudsmen

Q9a. Should there only be a single New Homes Ombudsman?			
Breakdown of Individual and organisation responses	Individual	Organisation	Total
Yes	104 (89%)	49 (92%)	153 (90%)
No	9 (8%)	3 (6%)	12 (7%)
Not sure	4 (3%)	1 (2%)	5 (3%)
Total	117	53	170

83. We asked whether there should only be a single New Homes Ombudsman. Nine in ten respondents (90%) agreed with the Government’s proposal that there should

only be one New Homes Ombudsman rather than more than one. 7% disagreed and 3% were not sure.

Q9b. Reasons for those whom said that there should be more than one ombudsman in the sector (if not, why not?)

84. We asked respondents to set out why the New Homes Ombudsman should be delivered by more than one provider. Reasons included that there would be too many issues for one scheme to deal with; competition would drive innovation and better value for money; and which works in other sectors of the market, including schemes for estate agents and the aviation industry. Other responses highlighted that different regions and nations of the UK require separate ombudsmen to reflect the different nature of house building in different areas.
85. Amongst organisations, some expressed a single New Home Ombudsman could leave small and medium homebuilders at a disadvantage and unprotected as they would be held to the same standards as large housebuilders who have more money and resources to fix problems quicker. It was argued that there should be a separate New Homes Ombudsman that caters to smaller housebuilders, to provide a service with lower fees and allowing longer timescales to fix problems. They argue that whilst the New Homes Ombudsman is important, it also should not hinder smaller housebuilders who have less capacity than larger developers.

Government Response

86. Currently, property developers can choose different warranty providers who are aligned to different industry led codes. This can mean that poor performing developers may not be held accountable for their actions as they can change between codes by purchasing a different warranty. Additionally, it is difficult for consumers to know what rights they have to access alternative dispute resolution services that their home builder is aligned with.
87. We believe that there should be one New Homes Ombudsman service provider rather than multiple ombudsmen as multiple redress schemes may confuse consumers and may introduce uneven practices in investigation and redress. We believe this will benefit consumers so that they know where to turn when things go wrong. It will also ensure there is a strong, trusted brand who will provide consistency of service.
88. A system where there are multiple redress providers would pose challenges for homebuyers and could lead to inconsistent service, standards and consumer protection. Multiple providers would add confusion as they would need to know which Ombudsman that their developer is a member of.
89. Following legislation, we will make arrangements for securing that a New Homes Ombudsman scheme is available for the purpose of adjudicating on complaints and upholding standards set out in a Code of Practice. Should any one private sector scheme not meet the expected standards, we will have the power to procure another body to deliver the New Homes Ombudsman scheme.

90. This will require procurement of a single body that developers must belong to. This body will be the New Homes Ombudsman. Alternatively, we will provide the power for the government to appoint a public body to provide the service should it be necessary. There are a number of existing bodies who could provide such a service. This will ensure that the Government retains the flexibility as to who can deliver the New Homes Ombudsman scheme and ensure that high standards are met.
91. We intend to specify what we want the New Homes Ombudsman to achieve and run a procurement process to select a provider for the New Homes Ombudsman scheme.
92. We do not agree that there should be a separate New Homes Ombudsman for smaller developers or regional Ombudsman as this will cause additional burdens for the industry and confusion for consumers. We accept that competition in the market can help keep standards high and
93. We will monitor the performance of the New Homes Ombudsman and will have the ability to procure an alternative body to administer the scheme or appoint a public body to deliver the scheme. There may be some circumstances where more than one provider is available so that consumers are able to access redress, for example in the period where a provider is withdrawing from the market or is being terminated because the service provided is not effective.

Access to a New Homes Ombudsman

Q10a. How long after the initial complaint should a purchaser of a new build home be able to access a New Homes Ombudsman?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
2 to 4 Weeks	50 (40%)	2 (4%)	52 (30%)
4 to 6 Weeks	25 (20%)	9 (18%)	34 (19%)
6 to 8 Weeks	28 (22%)	16 (32%)	44 (25%)
Other	23 (18%)	23 (46%)	46 (26%)
Total	126	50	176

‘There should be no gaps in redress where consumers find they have nowhere to turn should things go wrong.’

94. Respondents to Q10a were split on the appropriate length of time after an initial complaint to their developer that a new build homebuyer should be able to access a New Homes Ombudsman. The responses differed from individuals and organisations on the timescale.
95. Respondents were asked to explain their chosen response. Of those who answered that the New Homes Ombudsman should be accessed within two to four weeks, some identified that the developer should respond to complaints by proposing an appropriate resolution to complaints within this timescale. Others answered that developers can drag out their internal complaints process and therefore early access to an ombudsman is necessary to resolve issues. Other responses

identified that the process is stressful for homeowners and as complaints need to be raised in a time-limited fashion, for instance during a two-year defect's liability or 10-year warranty period, then an ombudsman should be able to be contacted at the earliest opportunity.

96. Those answering four to six weeks as the appropriate time to access the New Homes Ombudsman, identify that this would allow enough time for developers to resolve problems. Other respondents said that they have experience of purchasers being strung along by developers with no intention of sorting the problem out and that homeowners could be out of pocket taking time off work to allow access.

97. Of those identifying six to eight weeks as the most appropriate amount of time for developers to respond as they require time to respond to the complaint. Others identified that eight weeks is the current Alternative Dispute Resolution Standard and having a shorter period should be the same as equivalent redress schemes in other parts of the housing market.

98. Respondents who answered 'other' to this question raised a range of alternatives including immediate access to a New Homes Ombudsman, eight weeks to reflect current access standards and a range of periods depending on the nature of the complaint, for instance, where the complaint relates to building safety issues.

10b. Are there any other circumstances that a purchaser of a new build home should be able to access a New Homes Ombudsman?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	72 (59%)	24 (57%)	96 (58%)
No	13 (11%)	10 (24%)	23 (14%)
Not sure - Don't know	38 (31%)	8 (19%)	46 (28%)
Total	123	42	165

99. We asked if there are any other circumstances that a purchaser of a new build home should be able to access a New Homes Ombudsman. There were 165 responses with 58% saying that there were. These included exceptional circumstances including when a developer goes into liquidation, where there is a recurring issue which hasn't been dealt with satisfactorily and where there is an urgent defect with health and safety implications.

100. Some respondents identified applying any policy retrospectively for those who have had issues in the past, including for those who have purchased leasehold properties with onerous ground rents. Others identified access for those with issues regarding unadopted estates and those with complaints about new build estate management. We also heard that many complaints are abandoned if they cannot be resolved promptly and a long wait would be a significant barrier and unnecessary due to technological changes, such as email.

Government response

101. In our consultation '*Strengthening consumer redress in the housing market*⁵', we set out that in the medium term we will drive forward improvements on a sector-by-sector basis, taking into account of the existing complaints handling processes and arrangements that are in place. This includes working to ensure there are clear expectations for accessibility. In the longer term, it is our ambition that there should be a Single Code of Practice on complaint handling across all of housing and will work with the redress sector, through the Redress Reform Working Group to explore how this can be delivered.
102. We agree that it is right and proper that businesses have sufficient time to resolve disputes with their customers. Consumers must, in the first instance, approach their developer and pursue their complaints process, or that provided to them, so that they have the opportunity to put things right. We believe new build homes is an area where consumers face high consumer detriment, particularly with the stress and emotive issues that are evident when purchasing and living in a new home. However, consumers should not be unduly delayed in attaining a resolution or in knowing how their issues are to be resolved.
103. We want to balance the right of developers to rectify issues with a consumer's right to get any problems resolved quickly. We believe that eight weeks after the initial complaint to a developer is enough time for them to set out how complaints will be addressed and resolve disputes and for a consumer to escalate an issue to the New Homes Ombudsman. This aligns with other redress providers in other sectors of the housing market.
104. We acknowledge that due to the nature of building work and supply networks for materials, it may take time to rectify outstanding building issues. However, we often hear that it is the lack of information from a developer on how they plan to resolve issues which causes the most frustration for consumers. This lack of communication can quickly escalate disputes. We expect developers to keep the homebuyer up-to-date about the actions they are taking to rectify any issues. However, where a complaint is not dealt with in a reasonable timescale or to the satisfaction of the consumer, they should be able to approach the New Homes Ombudsman to help conclude a dispute. This will benefit consumers and developers as it will be, and seen to be, fair, transparent and impartial to both parties.
105. We will task the New Homes Ombudsman with setting out the period in which a new build homeowner can approach it with a dispute. We recognise that there are different timescales in which problems can occur with a new build property and in which consumers can raise a complaint. This includes different time periods for warranty cover, architects' certificates and statute of limitations. Initially, we propose that homebuyers should be able to access the New Homes Ombudsman with a dispute within the first two years following their initial completion date. This aligns with the current defect or builder's liability period for the majority of warranties and

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

does not limit the homebuyer’s rights to pursue claims and disputes through the courts.

106. We agree that in exceptional circumstances the timescale for consumers accessing the New Homes Ombudsman can be circumvented. We envisage these circumstances to be in situations where building safety concerns have been identified or where a developer has completely failed to engage with the consumer. We believe where health and safety issues have been identified, cases can be referred to a New Homes Ombudsman immediately and consumers would not have to wait until a developer has completed their complaints process. They can then be referred to the appropriate regulator or enforcement agency if appropriate.

Standards of a New Homes Ombudsman

Q.11 Are there any other specific standards to the new build sector that a New Homes Ombudsman should meet?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	50 (45%)	20 (43%)	70 (44%)
No	13 (12%)	15 (32%)	28 (18%)
Not sure- don't know	48 (43%)	12 (26%)	60 (38%)
Total	111	47	158

107. We asked whether there are specific standards to the new build sector that a New Homes Ombudsman should meet and that respondents explain their answer. 158 (42%) respondents answered this question 44% of these said there were specific standards, 18% said there weren’t and 38% were not sure.
108. Many of the respondents who answered ‘yes’, set out what developers should have to do rather than the standards a New Homes Ombudsman must meet. However, some identified compliance with Ombudsman Association and Trading Standards requirements. Others identified that a New Homes Ombudsman must be fully independent from the industry and be transparent, impartial and respond quickly to complaints.

Government response

109. The principle feature of an ombudsman scheme is to investigate complaints from consumers about public or private bodies. To formally use the term Ombudsman, the Ombudsman Association⁶ sets out five key principles: independence, fairness, effectiveness, openness and transparency and accountability. In addition to these principles we asked if there are any other specific standards to the new build sector that a New Homes Ombudsman should meet.

⁶ <http://www.ombudsmanassociation.org/>

110. Most of the responses were similar to those identified in the consultation, *strengthening consumer redress in the housing market*⁷, where we have already set out that we will work with the redress sector to raise standards. This includes working with the Redress Reform Working Group to improve standards across the sector.
111. The New Homes Ombudsman service will also be required to be a full member of the Ombudsman Association and adopt the Association's *Service Standards Framework*⁸ which sets out best practice for ombudsman schemes.
112. We will ensure that any scheme is authorised by the Ministry of Housing, Communities and Local Government and the Chartered Trading Standards Institute under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

Scheme provider and approvals process

Q.12 Should a New Home Ombudsman be delivered by a public sector body?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	91 (82%)	21 (45%)	112 (71%)
No	10 (9%)	18 (38%)	28 (18%)
Not sure - don't know	10 (9%)	8 (17%)	18 (11%)
Total	111	47	161

Q13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
A combination	48 (47%)	16 (38%)	64 (44%)
Other	45 (44%)	11 (26%)	56 (39%)
Tendering process	3 (3%)	8 (19%)	11 (8%)
Minimum Scheme Standards	5 (5%)	6 (14%)	11 (8%)
Request for proposals	2 (2%)	1 (2)	3 (2%)
Total	103	42	145

Q14a. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	79 (76%)	50 (93%)	129 (82%)
No	6 (6%)	3 (6%)	9 (6%)

⁷ <https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

⁸ https://www.ombudsmanassociation.org/docs/OA17_Service_Standards_2017_Final.pdf

Not sure	19 (18%)	1 (2%)	20 (13%)
Total	104	54	158

Note: Questions 12 to 14 have been grouped together as they are closely related and to provide a response based on all three questions.

113. We asked whether a New Homes Ombudsman should be delivered by a public sector body. There were 158 (42%) responses to this question. Of those who answered, 71% said that it should be delivered by a public sector body, 18% said it should not and 13% were not sure. There was a marked difference between individuals and organisations with 82% of individuals believing it should be delivered through a public sector body compared with 45% of organisations. 38% of organisations said it should not be delivered by a public sector body, compared with 9% of individuals and 17% of organisations were not sure, compared with 9% of individuals.
114. When asked to explain their answer the most common response for those who said a New Homes Ombudsman should be delivered by a public sector body was because it would be, and perceived to be, independent of the building industry. Others said it should be a public sector body so that it is accountable to Government. Some respondents argued that it should also be government funded to preserve its independence. Other responses argued that private sector organisations would be in danger of 'industry-capture'.
115. A number of those who responded that a New Homes Ombudsman should not be delivered by a public sector body argued that a private sector organisation could be launched quickly. So long as the private sector organisation is independent and met appropriate standards there is no reason why a New Homes Ombudsman could not be delivered by a private sector organisation. Respondents pointed out that private sector organisations currently deliver an effective service in other parts of the housing market which are approved by the Government, making them accountable. Private sector redress schemes are also underpinned in statute where there is a requirement for organisations to belong to them. Some respondents identified effective private sector ombudsmen operating in the communications, gambling and aviation fields. We also received responses which highlighted that the Ombudsman Association's principles and criteria apply to both the public and private sector and that a New Homes Ombudsman could be delivered by either.
116. Of those who answered that they were not sure whether a New Homes Ombudsman should be delivered by a public sector body, it was raised that it could be delivered by a private sector scheme with the Government retaining the flexibility to appoint a public sector scheme should this prove not to be effective. Responders also said it could be delivered by either a public or private sector scheme, however, any fees should be proportionate and reasonable. Other respondents identified that unless there is a penalty for underperformance, a failing public sector scheme leaves the Government with little room to take action and could lead to higher costs to rectify issues, whereas a private sector scheme could be replaced as there is more competition. In these instances, a failing scheme could be replaced with an alternative.

117. We asked how a New Homes Ombudsman should be chosen for approval if it were to be a private sector body. We received 145 (39%) responses to this question. Of these, 44% respondents indicated that approval by Government should be through a combination of ways. 39% indicated 'other', 8% indicated a tendering process alone, a further 8% indicated minimum scheme standards alone and 2% indicated that a request for proposals would be the most suitable way. Of those who said 'other', responses included performance standards, appointment by the industry and expert-led appointment were put forward. However, the majority of those answering 'other' did not answer the question, instead stating that they wanted the New Homes Ombudsman to be delivered by a public sector body.
118. Of the respondents who answered that a combination of methods should be considered by Government, most said that tendering or request for proposals and minimum standards should be used for approval by Government. Others said that those applying should include how it has considered Cabinet Office advice in setting up Ombudsman schemes, how the service will be delivered and how it proposes to engage with consumers and the industry to drive up improvement and satisfaction.
119. Q14a asked whether approval of a New Homes Ombudsman should be withdrawn or removed if they failed to deliver effective service standards. There were 158 (42%) responses to this question. 82% of those who responded answered that approval should be withdrawn from a failing scheme. This included 76% of individuals and 93% of organisations agreeing. 6% said approval shouldn't be withdrawn or removed and 13% were not sure. A higher proportion of organisations agreed that approval should be removed or withdrawn than individuals, at 93%, compared with 76%. A higher proportion of individuals were not sure at 18% compared with 2% of organisations.
120. Aimed at those who answered 'yes' to Q14, we asked what should count as shortcomings in service standards to merit withdrawal of approval or designation how it can be verified and by whom. There were 127 suggestions in response to this question. The most common responses mentioned that approval should be withdrawn if there was a failure to meet standards or respond to complaints. Some suggested that this could be verified through external reviews or audits as well as Government oversight. Additionally, some respondents mentioned capturing information in customer surveys or questionnaires regarding the service and experience complainants have. There were a small number of responses saying that evidence of industry collusion should merit disapproval.

Government response

121. A large majority of respondents answered (71%) that they believe that the New Home Ombudsman should be a public sector body. The most common response argued that a public sector body would ensure the New Homes Ombudsman had complete independence and impartiality. A number of respondents also answered that in terms of regulation and funding, a public sector body would be more independent as it would be funded by the government.
122. We acknowledge that there is strong support for a public sector body to deliver the New Homes Ombudsman service and particularly from individuals who have

purchased a new home or knows someone who has purchased a new build home. The most common reason for wanting a public sector body to deliver a New Homes Ombudsman service was so that it is independent and seen to be independent from the industry.

123. We do not agree with the argument that only a public sector scheme can be independent as there are independent private sector organisations acting as ombudsman across different sectors of the market and accountable to government. In our consultation document⁹ we set out the conditions required for scheme approval for Lettings Agency Work and Property Management. These set out that the Secretary of State may approve a scheme in the private rented sector which includes that it requires ‘the establishment or appointment of an independent administrator’. Additionally, compliance with private sector redress schemes decisions remain high. Since 2015 the rate of compliance with The Property Ombudsman’s decisions, a private sector scheme, has remained at or above 99%. There is no reason why this would not be the same for a private sector New Homes Ombudsman scheme.
124. The Government’s policy is that new arm’s length bodies should only be set up as a last resort, when consideration of all other delivery mechanisms have been exhausted. We must consider all possible delivery models when exploring options for the provision of new services or functions. There should also be a clear perceived advantage in establishing a new or expanding an existing scheme.
125. There are clearly private sector ombudsman schemes currently operating who have the independence, capacity and capability to deliver a New Homes Ombudsman service and whom are independent from developers and the industry. The Government also considers that a private sector scheme would also be at no cost or risk to the taxpayer, whereas a public sector body could be a liability on the Government’s accounts. However, we intend to retain the flexibility to designate a public sector body as an option to deliver the New Homes Ombudsman scheme.
126. The procurement will allow either a private or public sector scheme to bid to administer the scheme that developers must belong to, or for the government to appoint a public body if necessary. This scheme will be the New Homes Ombudsman. This will ensure that the Government retains the flexibility to appoint an alternative scheme should it need to.
127. The consultation identified overwhelming support for withdrawal of approval of the New Homes Ombudsman service if they fail to deliver effective service standards. We agree. We will ensure the Government has the ability to terminate and replace the New Homes Ombudsman if it doesn’t meet the required service provision and procure an alternative body as the New Homes Ombudsman, or appoint a public body to take the role. In these circumstances there may be a need to have more than one scheme running in parallel to take on existing and new cases and move

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812038/Redress_for_Purchasers_of_New_Build_Homes_and_the_New_Homes_Ombudsman_.pdf

service provision from the old scheme to the new scheme. Retaining the flexibility to procure either a private or public sector scheme would provide an element of competition into the market and provide an incentive for the New Homes Ombudsman to maintain a high performing, quality service. Whereas having only a public sector body delivering the service would limit the options to terminate and replace the New Homes Ombudsman with an alternative body. Should we pursue a new central government arm's length body in relation to the proposals in this document, then the usual, separate approval process would apply for such an entity¹⁰.

128. We propose that the New Homes Ombudsman will also have to obtain Ombudsman Membership of the Ombudsman Association. This sets out the criteria which ombudsman schemes have to meet and include independence of the Ombudsman from those whom the Ombudsman has the power to investigate; effectiveness; fairness; openness and transparency and public accountability.
129. We do not want to delay any longer than is necessary bringing forward stronger consumer protection for new build homebuyers. Legislation may take time to implement and we want to see improved redress for new build homebuyers in place as soon as possible, before we legislate. An independent voluntary scheme would replace the current redress scheme across the whole of the UK.
130. We will work closer with industry to ensure that Government and consumer organisations have a role in setting up a voluntary New Homes Ombudsman body before legislation, subject always to adherence to public procurement rules around prior market consultation ahead of launching the procurement for a New Homes Ombudsman.
131. We will consider whether a New Homes Ombudsman should also be a not-for-profit business. This will mean that any profits are recycled and used to further benefit consumers in contrast to for-profit businesses who would distribute profits to procurement process.
132. To improve the end-to-end process for consumers and developers, we will establish a New Build Quality and Consumer Experience Monitoring Group to seek opportunities to collect better data on the issue's consumers have. This group will be tasked with helping to improve practice throughout the process to improve consumer satisfaction and feed into the New Homes Ombudsman and Code of Practice. It will also work to improve the public's perception of properties built using modern means of construction which we believe, over time, could reduce many of build quality issues that homebuyers experience with their new build homes.

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 schemes continue to deliver an effective service?

Breakdown of individual and organisation	Individual	Organisation	Total
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¹⁰ <https://www.gov.uk/government/publications/the-approvals-process-for-the-creation-of-new-arms-length-bodies>

Yes	33 (32%)	20 (56%)	53 (38%)
No	17 (17%)	6 (17%)	23 (17%)
Not sure - Don't know	52 (49%)	8 (22%)	60 (43%)
Other	-	2 (6%)	2 (1%)
Total	102	36	138

133. Respondents to Q15 were asked whether there were any alternative sanctions that could be used to ensure that a New Homes Ombudsman or other redress scheme continue to deliver an effective service. 138 (37%) of those responding to the consultation answered this question. 38% of those who answered the question said that there were, 43% were not sure and 17% answered that there were not alternative sanctions other than removal of approval.

134. The most common comment in relation to this question was that there should be a financial sanction against the New Homes Ombudsman, including withholding payment for a New Homes Ombudsman scheme. Other comments included sanctions and fines for developers for failing to put things right rather than sanctions against a failing New Homes Ombudsman. Some comments identified improvement plans, periodic reviews, audits and renewals and warnings. A few respondents said that legal action should be taken against the scheme.

Government Response:

135. The Government proposes that the alternative sanctions on the New Homes Ombudsman should contain a combination of steps. First, the Government believes that there should be a warning and an agreed remedy or improvement plan. If such an agreed plan is not met, we believe that the next option would be to consider termination and replacement of a scheme. We do not agree that developers should be able to withhold money as that would not be in consumers' best interests.

Funding a New Homes Ombudsman

Q16. Should access to a New Homes Ombudsman be free for purchasers of new build homes to access?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	99 (95%)	47 (92%)	146 (94%)
No	3 (3%)	1 (2%)	4 (3%)
Not sure - Don't know	2 (2%)	3 (6%)	5 (3%)
Total	104	51	155

136. We asked whether a New Homes Ombudsman should be free to access for purchasers of new build homes. 155 (41%) respondents answered this question. The vast majority (94%) of both individuals and organisations answered that access to a New Homes Ombudsman should be free to consumers, at 95% and 92% respectively. 3% disagreed and 3% were not sure.

137. We heard that, should the New Homes Ombudsman be free to the consumer, there may be situations where multiple vexatious complaints could be made. This could penalise developers even if a complaint was not substantiated. Some responses set out that buyers could pay a deposit which is refunded if a complaint is upheld or a developer may offer to settle a dispute before a case goes to the Ombudsman. However, we also heard that if purchasers of new build homes had to pay for the service, they may be put off pursuing complaints.

Government response

138. We agree with the majority of respondents, that access to a New Homes Ombudsman should be free to the consumer. This aligns with the principles of the Ombudsman Association. We do not believe that there will be many purchasers with complaints whom make multiple vexatious complaints. However, it will be for the New Homes Ombudsman service to decide if a complaint is genuine. Should a complaint not be upheld then a developer is unlikely to be any worse off.

Q17. What would be the most appropriate way for a New Homes Ombudsman to charge property developers?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Flat membership rate	6 (6%)	1 (2%)	7 (5%)
Pay per complaint	21 (21%)	4 (9%)	25 (17%)
Price per unit	21 (21%)	16 (34%)	37 (25%)
Mix of charging methods	47 (46%)	22 (47%)	69 (46%)
Not sure -don't know	1 (1%)	1 (2%)	2 (1%)
Other	6 (6%)	3 (6%)	9 (6%)
Total	102	47	149

139. We sought views on different ways to charge developers, to ensure that the New Homes Ombudsman is adequately resourced. This included membership fees, a pay per complaint, a price per unit built or a mix of these. 149 (40%) respondents answered this question. Almost half (46%) of respondents answering this question said that a mixture of charging methods should be used. The majority of those who answered 'mix of charging methods' identified a combination of a price per unit and a pay per complaint scheme.

140. The next most common responses were a price per unit scheme (25%) and pay per complaint scheme (17%). Some respondents mentioned that there should be a tiered or sliding scale payment scheme, which should be proportionate for smaller developers and others argued that fees charged should be based on a developer's turnover.

Government response

141. It is necessary for a New Homes Ombudsman to be properly resourced to maintain a high-quality service for new build homebuyers. While we consider that charging

developers protects consumers, we also acknowledge that there is concern about additional burdens on developers and particularly, micro and small businesses.

142. We agree with the majority of responses to this question, which is that there should be a mixed payment method. Potentially charging on a pay per unit basis and through a pay per upheld complaint, to incentivise developers to ensure issues are dealt with quickly and informally. We will work with future schemes to discuss the correct mix of charging methods to ensure the New Homes Ombudsman is properly resourced. We will further consider how charges can help developers to resolve issues at an early stage of the complaints process.
143. Costs to businesses must be fair and balanced. We will task the New Homes Ombudsman to devise the best way to charge developers to incentivise positive behaviour, whilst supporting smaller developers. To avoid excessive charges on developers the legislation will provide a power to review charges.

Q18. Would any of these models have an adverse impact on smaller housebuilders?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	16 (16%)	30 (67%)	41 (28%)
No	60 (59%)	15 (33%)	75 (51%)
Not sure -Don't know	25 (25%)	5 (11%)	30 (21%)
Total	101	45	146

144. We asked if issues arise for smaller home builders from the different payment models. 146 (39%) respondents answered this question. Half (51%) of those responding to this question answered that the different payment models would not have an adverse impact on smaller housebuilders. 28% of respondents answered that some models would have an adverse impact on smaller housebuilders and 21% answered that they were not sure.
145. Of the respondents who provided an explanation, the most common response was that a flat membership fee would have a disproportionate impact on smaller developers. Some respondents highlighted that smaller developers may lack the capacity to pay and that any additional charge would have an adverse impact on their businesses. We also heard that smaller developers build better quality homes and do not have the same issues as bigger builders, they trade on reputation and better quality and therefore, the New Homes Ombudsman would unfairly penalise them.

Government response

146. We believe that it is important to diversify the housing market and promote and encourage the growth of smaller housebuilders. We also agree that a flat membership rate would have an adverse impact on smaller housebuilders as they would be paying the same as larger developers.

147. We will task the New Homes Ombudsman to ensure that smaller house builders are not disadvantaged, and larger housebuilders rightly pay proportionally more than smaller developers.
148. A pay per unit would mean a smaller developer pays the same per unit but would pay less than larger developers. We would also like to see a pay per upheld complaint fee implemented to incentivise all developers to produce good quality housing and service so that cases do not reach the New Homes Ombudsman in the first place.

Q19a. Should smaller housebuilders pay a smaller fee than larger housebuilders?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	21 (9%)	7 (12%)	28 (9%)
No	14 (6%)	6 (10%)	20 (7%)
Not sure - Don't know	204 (85%)	45 (78%)	249 (83%)
Total	239	58	297

Q19b: if so, how should this be achieved/calculated?

149. We asked whether smaller housebuilders should pay a smaller fee than larger housebuilders. 297 (79%) of respondents to the consultation answered this question. A large majority (83%) of respondents answered that they didn't know whether smaller developers should pay a reduced fee. 9% said they should and 7% answered that they shouldn't. There was not much difference between the responses received from individuals and organisations.
150. We asked how this could be achieved if smaller developers were to pay a reduced fee. Most of those who responded to this question advised that they would pay a smaller fee if they were charged on a per unit basis, dependent upon how many properties the developer builds. The next largest response suggested that the charge to developers should depend on the profit margin or turnover of developers. Some respondents mentioned delivery performance, tiered membership and the average house price in an area.

Government response

151. We believe that smaller housebuilders should pay a smaller fee than larger housebuilders in order to be fair. Whilst some fees could cripple the business of smaller housebuilders, the same fees would not have the same effect on larger housebuilders. We believe that fees should be proportionate to the number of properties built.
152. A pay per unit scheme will ensure that larger developers pay more of the overall cost due to the high number of units they build. However, we want to ensure that

smaller developers with low margins are encouraged to keep building and grow. We will work with the New Homes Ombudsman to consider waiving the initial fee for the very smallest developers. However, complaints could still be raised against them and if a complaint is upheld, then the developer will have to pay a case fee, ensuring there is an incentive to build the highest quality homes.

Powers of a New Homes Ombudsman

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?

Q21. Are there any other powers or sanctions a New Homes Ombudsman should have?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	67 (57%)	17 (40%)	84 (52%)
No	11 (9%)	17 (40%)	28 (17%)
Not sure - Don't know	40 (34%)	9 (21%)	49 (30%)
Total	118	43	161

153. In Q20 we asked whether there were different powers that a New Homes Ombudsman should have access to. 173 (46%) respondents answered this question. There was very strong support for a New Homes Ombudsman to have all of the powers listed in the consultation with 139 (80%) of those responding to the question selecting this option. Overall, the highest responses were in relation to an ombudsman having the power to set timescales to rectify faults or defects with the property. The second highest response was the ability to make different levels of award to the consumer.
154. We asked at Q21 if there were any other powers or sanctions that a New Homes Ombudsman should have. 161 (43%) responses were received to this question. 52% of those responding to this question said that there were, 17% said there were not and 30% were not sure. Of those who left a comment, the most common response was for a New Homes Ombudsman to be able to issue fines and the power to disclose information.
155. Many respondents, and particularly those from individuals, shared their negative experiences that they have had with buying their new build home and the response and service they received from developers and warranty companies. Most of these experiences were negative. Some responses from individuals were clear that rather than compensation, they wanted developers to take responsibility and to rectify any defects to their satisfaction. Others mentioned that expulsion or suspension from the scheme wouldn't be effective unless it would prohibit developers from trading. Others mentioned a New Homes Ombudsman scheme should be able to make awards for stress and inconvenience suffered by purchasers.

156. A number of respondents mentioned that the New Homes Ombudsman should have powers to rectify mis-sold leasehold homes. Others said it should have oversight of building regulations and quality of materials. A few respondents mentioned that the New Homes Ombudsman should be able to rectify issues that residents of private estate have.
157. Many of the responses we received said that the role of an ombudsman is to put the consumer back in the same financial position that they would have been if the issue hadn't occurred. Others mentioned that complaints about developers should be published. Some organisations highlighted that there are instances when actions to rectify faults or defects are outside the control of developers and may be impossible to meet. A number of respondents said that having an impartial suggestion from an Ombudsman on how to proceed would benefit the consumer.
158. There were also suggestions that there may be a need for a mediation focussed approach and powers to resolve issues creatively. Others highlighted that powers should depend on individual circumstances and powers should be flexible to provide suitable redress to complex issues.
159. Some respondents raised the point that the term 'sanctions' is misleading as an ombudsman is not a regulator, their role is to determine whether there is a justified complaint. Some responses argued that expelling or suspending registrants is tantamount to removing their licence to trade which is the role of a regulator and not an ombudsman. Therefore, there would need to be enforcement of some of the requirements. Some respondents also highlighted that information on complaints is useful, however, care should be taken to ensure that it is used in the correct context.
160. We heard that an ombudsman is most effective in areas where they work closely with a regulator. In order to improve service and hold organisations to account, an ombudsman should also have the power to share information with the regulator and other bodies as appropriate. Some respondents mentioned that there is a clear role for a regulator or an enforcement body to play as there may be circumstances where enforcement action is required quickly. We also heard that the New Homes Ombudsman should also have the ability to refer businesses under its jurisdiction to a regulator regardless of what stage a complaint may be at.
161. In the context of suspension from the scheme, it was highlighted that there is a danger that during the suspension period, purchasers could be denied access to the ombudsman scheme and care should be taken to ensure any unintended consequences for the consumer are avoided.
162. We also heard that one complaint has the potential to have a wider impact for residents at the same location and a New Homes Ombudsman should have the authority to make recommendations that the actions in one case are extended to others where this would ensure fair outcomes.

163. Other responses mentioned that the New Homes Ombudsman should have the ability to gather and share examples of best practice. Any maximum award should not be lower than the actual cost to the consumer to resolve the issue.
164. Some respondents raised that government should be able to sanction the New Homes Ombudsman and have the ability to change lease terms. Other responders mentioned that it could have the power to recommend to Government that developers should be excluded from government schemes such as Help to Buy. In addition, the Ombudsman should be able to ensure a developer acknowledges wrongdoing and apologise to the consumer and the ability to require a developer to implement an improvement plan.

Government response

165. The New Homes Ombudsman will be tasked, as in other sectors, to resolve disputes at an early stage and on an informal basis. This will mean that disputes do not continue to escalate, and problems are nipped in the bud.
166. The Consumer Protection from Unfair Trading Regulations 2008¹¹ provide consumers with rights to redress if they've faced misleading actions or aggressive selling practices by traders. For example, in the housing sector, this could include misleading adverts for properties advertised by letting agents. The regulations are enforced by Local Authority Trading Standards Services.
167. Where disputes cannot be resolved early, the New Homes Ombudsman will have a range of powers so that so that new build issues are dealt with swiftly and effectively. These will include:
- Ability to make awards for compensation to the homebuyer'
 - Publishing details and reasons for expulsion;
 - Direct developers to improve their service;
 - Request information from the developer;
 - Request developers to undertake or refrain from undertaking work;
 - Ability to make recommendations to resolve disputes and timescales for rectifying disputes; and
 - Requesting apologies and explanations from developers.
168. We accept that an ombudsman is not a regulator and their role is to adjudicate fairly and impartially based on the evidence. However, we want to ensure that the New Homes Ombudsman has the appropriate powers and duties in relation to investigating and determining complaints.
169. We believe that the ultimate sanction that the Ombudsman should be able to make is to exclude developers from the scheme. Once legislation is in place requiring developers to be members, it would be unlawful to develop and sell homes to

¹¹ <https://www.legislation.gov.uk/ukxi/2008/1277/contents/made>

consumers if they did not belong to a New Homes Ombudsman. We believe that current redress schemes and ombudsmen have the power to exclude businesses from their schemes, which acts as a powerful incentive in terms of compliance and appropriate behaviour.

170. We agree with the feedback in the consultation that suspension from the scheme would not materially resolve issues and may reduce access to consumers whose developer has been suspended from the scheme and do not believe this should be a remedy for the New Homes Ombudsman to use.

Q22. If a New homes Ombudsman offers awards, what should the maximum amount be?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Up to £15,000	3 (2%)	4 (8%)	7 (4%)
Up to £25,000	1 (1%)	5 (10%)	6 (4%)
Up to £50,000	6 (5%)	17 (35%)	23 (14%)
Over £50,000	44 (36%)	6 (13%)	50 (30%)
Other	67 (55%)	16 (33%)	83 (49%)
Total	121	48	169

171. We sought views as to what the maximum award a New Homes Ombudsman should be able to offer. 169 (45%) respondents answered this question. Almost half (49%) of those who answered this question selected 'other'. The majority of these said that the award should be the cost incurred by the consumer. Others answered that there should not be any limit or up to the value of the home. 30% of respondents of this question answered that the level of award should be over £50,000. 'Up to £50,000' was answered by 14% of respondents to the question.

Government response

172. We are aware that some of the problems new build homebuyers face can be expensive and believe that the level of award that the New Homes Ombudsman can make should reflect that. Therefore, we would want to see a New Homes Ombudsman to be able to make awards of up to £50,000. However, we do not expect most awards to be at this level. This level is the same as one of the current consumer codes and recommended by the All-Party Parliamentary Groups for Excellence in the Built Environment¹².
173. We believe that any amount over this is more suitably decided by a court rather than the New Homes Ombudsman. We think this level strikes the right balance between the level of awards and will task the New Homes Ombudsman with implementing this.

¹² <http://cic.org.uk/services/all-party-parliamentary-group.php>

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?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Complaints data provided to the Ministry of Housing, Communities and Local Government	18 (15%)	16 (24%)	34 (18%)
Data published in an annual report	37 (30%)	18 (27%)	55 (29%)
Case studies on their website	27 (22%)	13 (20%)	40 (21%)
Other (Please specify?)	42 (34%)	19 (29%)	61 (32%)
Total	124	66	190

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

174. Q23 was an open-ended question which asked what information should be published by a New Homes Ombudsman to empower consumers. The most common responses included guidance, information on the New Homes Ombudsman scheme, frequently asked questions and the process for buying a new build home. Other responses included the number and type of complaints and some said a league table of developer's performance would be useful for consumers. A number of other respondents mentioned a Code of Practice, annual reports and survey responses.
175. In the consultation at Q24, we asked for examples of the best way to publish complaints data to incentivise developers to improve their service. We received 190 (51%) responses to this question. The responses were split with the most common response, at 32% of respondents, being 'other'. Of those who answered this way, the most common answer was to publish complaints in an accessible way. The second most common response was for periodic reports on performance. 'Published in an annual report' was answered by 29% of respondents, 21% answered case studies and 18% answered for complaints data to be provided to the Ministry of Housing, Communities and Local Government.
176. We sought views on what data a New Homes Ombudsman could provide that would be useful for consumers when they are making a decision about purchasing a new build home. 148 (39%) responses were received to this question. Most of the responses mentioned information on developer performance with the second most common answer being information on a new build home. Some respondents answered that information on charges would be useful, including service charges, leasehold charges and estate charges. Others mentioned customers surveys and a Code of Practice.

Government response

177. We would expect that the New Homes Ombudsman should provide guidance and information on the process of buying a new build home. We would also expect case studies to be included on their website with a view of creating a positive feedback loop for developers to learn from other people's experiences.
178. We do not think league tables are useful without appropriate context. For example, people are constrained to choosing a developer that is building in their area and issues experienced may not be representative of performance in other areas that are developed. This would be of little use to a consumer. However, we agree that a copy of the Code of Practice, annual report including case studies and the result of surveys, if they are undertaken, should be published by the New Homes Ombudsman.
179. We will work with warranty providers, developers and mortgage providers to ensure that information in relation to their warranty cover is clearly set out and easily understandable for consumers. This will ensure that they know their rights and obligations, much in the same way that other insurance products are set out, for example, when purchasing holiday or home insurance.
180. We want consumers to have the information to make an informed choice and understand their rights and responsibilities. We believe that the New Homes Ombudsman will be well placed to provide information to consumers and feedback on arising issues to improve the consumer experience of both buying and living in a new build home.
181. We agree that the New Homes Ombudsman should publish responses in an accessible way and for the Government to receive complaints data.

The geographical scope of a New Homes Ombudsman.

Q26. Should a New Homes Ombudsman remit be UK-wide?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	104 (92%)	43 (89%)	147 (91%)
No	4 (4%)	2 (4%)	6 (4%)
Not sure - Don't know	5 (4%)	4 (8%)	9 (6%)
Total	113	49	162

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?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	35 (32%)	16 (38%)	51 (34%)
No	20 (18%)	9 (21%)	29 (19%)

Not sure - Don't know	54 (50%)	17 (40%)	71 (47%)
Total	109	42	151

182. Our consultation set out our intention to seek UK-wide legislation to ensure that consumers receive the same level of protection; and businesses can operate across the UK nations without having to navigate different regulatory environments. 162 (43%) respondents answered this question. Those who answered this question overwhelmingly agree, with 91% of respondents answering 'yes' to this question, compared with 4% who disagreed. A further 6% answered that they were not sure.
183. We asked those who answered this question to explain their answer. The most common responses for those in favour of the legislation being UK-wide, expressed that the quality of new build homes should be high no matter where people live in the UK and that there should be a single place to seek redress to avoid confusion and ensure consistency and efficiency across the UK.
184. Some respondents highlighted that developers and warranty providers currently work across the UK and it would cause an additional burden on industry and consumers to have different regulatory regimes. Others identified that it will be important for a New Homes Ombudsman to work with the wider regulatory environment that exists in different areas. Some said that a UK-wide approach would ensure that warranty providers and mortgage lenders are also aligned with the process. Some other respondents identified that, if a New Homes Ombudsman is less than UK-wide, it could leave groups of new build homeowners vulnerable and without redress.
185. Some respondents who were not in favour of a New Homes Ombudsman having a UK-wide remit, identified that there are different systems and regulatory environments in the different nations.
186. We also received responses which said that the devolved nations should be free to choose to amend their legislation to pursue their particular objectives. Others identified that different nations have a construction industry that is distinct to that nation, particularly Northern Ireland, which is made up mostly of smaller builders, whom are still recovering from the financial crash. They argued that having a single ombudsman with a UK-wide remit meant that the distinct make-up of the different regions would not get the attention and representation that they require.
187. We also heard that the issues with poor build quality and consumer redress are not as prevalent in Northern Ireland than they are in other parts of the UK. It was argued that a UK-wide New Homes Ombudsman would be a disproportionate means to solve a problem where there is no information that it is an issue in Northern Ireland. Others highlighted that the sales process and regulation is different in Northern Ireland. For example, exchange of contracts happens at a later stage giving consumers more protection as most of the risk is borne by the developer until a much later stage in the process.

188. The consultation asked at Q27, whether there are distinct practices in different countries of the United Kingdom that require consideration if the New Homes Ombudsman's remit were to be UK-wide. 151 (40%) respondents answered this question. 47% of respondents said they didn't know. 34% answered 'yes' and 19% answered 'no'.
189. Those who answered 'yes' identified that Scotland operates a different property purchase and land ownership model which would require different practices set out in a Code of Practice. Some identified that different nations had separate building regulations and planning policies. Others raised differences in terminology, such as 'missives' in Scotland, different building control regimes, absence of leasehold for new homes in Scotland and different ways in which common parts are owned and managed.
190. Some respondents acknowledged the need for careful handling, as housing laws differ across the devolved nations. There are also concerns that any future regulatory changes may only apply to one of the devolved nations which could increase costs for businesses and barriers when working across the UK nations, particularly for smaller developers. There was strong support of consistent standards of enforcement and service.
191. Other respondents answered that practices do not materially differ in the devolved nations and the main difference is in terminology which would need to be taken into account should the remit of a New Homes Ombudsman be UK-wide. We also heard that, although there are different legal systems in Scotland and Northern Ireland, the principles about a transparent and fair sales process are the same. Likewise, the technical requirements of warranty providers, which operate across the UK, apply equally across the UK.
192. Some respondents did not identify specific practices in different nations but suggested that there may be different regulatory and legislative requirements. However, the benefits in terms of cost, consumer awareness and shared best-practice could outweigh these.

Government response

193. Respondents highlighted that the housing market and regulations set out in the different UK nations are different. In our consultation we note that the current industry-led redress arrangements are UK-wide and continue to believe that better consumer protection, through a New Homes Ombudsman, should also be UK-wide.
194. We are convinced that the differences identified through the consultation do not pose a barrier to a UK-wide approach. The principles of building and selling new homes are the same no matter where developers operate, and residents should be better protected no matter where they decide to buy in the UK.

195. We have seen no evidence that the issues experienced, and consumer detriment experienced by homebuyers of new build homes differ to such an extent in different nations. It is noted that the Home Builders Federation and National House Builders Council's customer satisfaction survey is representative of the UK as a whole. In addition, we have heard throughout the course of the consultation that past complaints regarding new build homes have been proportionate to the number of homes built in the different UK nations.
196. We recognise and appreciate that different nations may have different housing markets with more smaller developers operating in Northern Ireland than other countries. We want to ensure smaller housebuilders are supported.
197. We will work towards securing and introducing UK-wide legislation that will put a New Homes Ombudsman on a statutory footing. This will reduce the regulative burden on developers and provide consistent levels of consumer protection across the UK. We will continue to work with the devolved administrations and governments.
198. We will continue to work with the devolved governments to implement UK-wide legislation. Legislation will set out the territorial extent of the legislation.
199. We acknowledge that there are different regulators and enforcement bodies across the different nations of the UK. We will continue to explore the best way forward to enforce the requirements to belong to a New Homes Ombudsman. This would take into account the different bodies operating, their powers and any changes to the future regulatory environment, such as those in relation to Building Safety¹³ and the Regulation of Property Agents¹⁴.

Code of Practice

Q28. What should be included in a Code of Practice for developers of new build homes?			
Breakdown of Individual and organisation responses	Individual	Organisation	Total
Complaints procedures	123	46	169
Pre-purchase information and reservation agreements	121	43	164
Customer Service Standards	117	45	162
Sales and advertising standards	120	46	166
Protection of deposits	112	41	153

¹³ <https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system>

¹⁴ Regulations of Property Agents: Final Report: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818244/Regulation_of_Property_Agents_final_report.pdf

Minimum warranty standards	122	42	164
Specifications that new homes should meet	121	43	164
Transparency of fees received a product or service is recommended	118	44	162
Clear after-care responsibilities	125	45	170
Contracts to allow homeowners to appoint an independent building consultant/surveyor	117	39	156
Timescales for responding to complaints and compliance	124	47	171
Standardised Contracts	107	39	146
A right of access prior to completion	121	40	161
The ability of homebuyers to carry out surveys before final completion	124	36	160

200. There was a good response rate to the question of what should be included in a Code of Practice for developers who build new build homes. 171 (45%) of respondents to the consultation answered this question and many provided useful additional information.
201. Some respondents suggested that warranty providers, maintenance and property agents should also be subject to the Code of Practice and information with regard to communal areas and private estates should also be referenced. Many responses set out that clear information should be provided on what the remit of the New Homes Ombudsman should be, including what is fair and reasonable.
202. There were many suggestions as to what additional functions should be included in the Code of Practice. One of which is that a retention scheme should be set out in order to ensure that developers have an incentive to rectify defects before full payment is released. Some suggested government sanctions, such as exclusion from government backed schemes. Others suggested quality of material should be included in a Code of Practice, as well as the requirement to abide by building regulations.
203. Many individuals commented that by having access to view and carry out a survey prior to completion, issues can be rectified at an earlier stage. However, there were also concerns regarding pre-completion surveys in that it would not provide an effective remedy. It was highlighted that the potential for such surveys may create practical difficulties in the housebuilding process and lead to delays in delivering new homes.
204. A number of responses said that best practice standards should be set out and applied across the industry ensuring consistency. Others identified that a New Homes Ombudsman must not solely use a Code of Practice to adjudicate

decisions, but they must be flexible to ensure that they can make decisions on cases which are not set out in a Code of Practice.

205. Some respondents suggested that the differences of practices of the UK-nations would need to be set out in the Code of Practice. This included legal jurisdiction and property law.
206. There were some concerns on some of the contents of a Code of Practice. These included standardised contracts. Some respondents said that it may be difficult to produce a contract covering the wide range of potential issues and that in order to ensure that consumers are protected. We were told that there would need to be a mechanism in place to allow the contract terms to be regularly updated to remain aligned with market practice. There were also concerns that the New Homes Ombudsman should not stifle design and innovation.

Government response

207. We agree with respondents that a Code of Practice should cover best practice for all of the things listed in the consultation. This will reflect the whole building and selling process. We believe that developers should already be following these practices. We want to ensure that clear information is provided to prospective consumers across all tenures so that an informed decision can be made when they are making one of the most expensive purchases of their lives to improve this and ensure there is a mandatory best practice standard.
208. In July 2019, we committed in our response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform¹⁵ that we agree with their recommendation that there should be a standardised key features document provided at the start of the sales process by the developer. This document should clearly outline the tenure of a property, length of any lease, ground rent and any permission fees. We will work to ensure all purchasers of new-build leasehold homes have all of the relevant information, before they make a decision to purchase. This information should clearly set out a consumer's rights and obligations. We believe that the Code of Practice should set out the information consumers should be provided.
209. We also want to improve the whole sales process through our proposed new Build Quality and Consumer Experience Monitoring Group to explore issues and improve processes, experiences and standards at every stage of the new build process. This group will feed into the New Homes Ombudsman and Code of Practice.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814334/CS0519270992-001_Gov_Response_on_Leasehold_Reform_Web_Accessible.pdf

210. We will continue to work with industry and consumers to develop and implement at the soonest opportunity a single Code of Practice that incorporates the practices set out in our consultation.
211. The Government acknowledges the changes in the wider landscape, in particular the Leasehold Reform and ongoing work on the Regulation of Property Agents. We intend to ensure that the Code of Practice can complement future regulations, this includes the potential changes in the devolved regions. We will continue to work with the relevant stakeholders, including those from devolved bodies.
212. We will ensure the Code of Practice takes into account differences in terminology and practices where they differ in the UK nations.

Q29a. Should a Code of Practice for developers of new build homes be underpinned by statute?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Yes	112 (88%)	33 (69%)	145 (82%)
No	1 (1%)	9 (19%)	10 (6%)
Not sure - Don't know	15 (12%)	6 (13%)	21 (12%)
Total	128	48	176

213. In the consultation, we asked whether a Code of Practice should be underpinned in statute. We received 176 (47%) responses to this question. A large majority (82%) of respondents answered that it should be underpinned in statute, 12% were not sure and 6% answered that it shouldn't be underpinned by statute. A higher proportion of individuals agreed than organisations, at 88% compared with 69%. Only 1% of individuals answered that they were opposed to this, compared to almost a fifth of organisations responding to the question.

Q29b. If not, why not?

214. We asked if a Code of Practice should be underpinned by statute and if not, why it shouldn't. Some of the responses we received said that if a Code of Practice were too onerous and prescriptive then developers may not be able to compete. Others mentioned that the key advantage of underpinning a Code of Practice in statute is that the decisions of the ombudsman can be enforced in court. However, there are other ombudsmen who do not have these powers and are still seen to be effective.
215. We heard that if a New Homes Ombudsman has statutory force and produces a Code of Practice there is little additional value to be gained by giving the code itself statutory force and that the purpose of using a mechanism like a Code of Practice is to remove it from Parliament on a day-to-day basis so that it can evolve to take account of changes in the sector.

Government response

216. A Code of Practice is a statement of practice to be followed. It offers guidance, rather than imposing requirements and the provisions of a code are not directly enforceable by legal proceeding, although they may have significant legal effects. A Code of Practice will be necessary for a New Homes Ombudsman to adjudicate on cases as it will set out its expectations for developers and allow consumers to know what they should expect.
217. We believe that a Code of Practice is essential to improving consumer experience and professionalising developers in their customer relations. We have been working with industry on developing a single Code of Practice for a voluntary New Homes Ombudsman to use.
218. We agree that a Code of Practice should be flexible so that it accommodates any changes in requirements and practices easily. Building a home is a complex undertaking and we do not want legislation to slow down improvements to processes and requirements that should be set out in a Code of Practice.
219. We do not agree that underpinning a Code of Practice will hamper changes and we will set out in legislation that the Government can either approve, develop or ask another body to develop a Code of Practice for these purposes. This would mean that the Government will endorse a Code of Practice but retain the power to develop one itself or task another body to develop this on its behalf.
220. The legislation will provide powers to approve a Code of Practice for developers building and selling new build homes. The Code of Practice will set guidance on what consumers can expect and what is expected of a developer. We will ensure that the Code of Practice maintains the flexibility to be updated as and when required.
221. We believe this approach strikes the right balance of providing Government oversight of a Code of Practice, ensuring that it is informed by those with the experience and right level of expertise including consumers, government and industry without hampering revision of the Code of Practice itself.

Enforcement

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

Q30b. Who should enforce this?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Local Government	22 (18%)	8 (15%)	30 (17%)
Redress schemes;	2 (2%)	2 (4%)	4 (2%)
Central Government;	38 (31%)	9 (16%)	47 (26%)
New or existing Regulator;	32 (26%)	14 (25%)	46 (26%)
Courts and Tribunals;	14 (11%)	3 (5%)	17 (10%)
Other (please specify?)	15 (12%)	19 (35%)	34 (19%)
Total	123	55	178

222. Our consultation asked how a failure to belong to a New Homes Ombudsman can be enforced. Some respondents answered that it could be enforced through trading standards and local authorities through the planning process. Others said that it should be enforced by an appointed regulator. Others identified that the requirements should be enforced by local authorities but overseen by National Trading Standards Estate Agency Team. We also received responses which included enforcement through licensing schemes, mortgage lenders and warranty providers
223. Our consultation asked who should enforce the requirements to belong to a New Homes Ombudsman and provided a list of options. There were 178 (47%) responses. Just over a quarter of those who responded to this question answered, 'Central Government' (26%). Another 26% selected a 'new or existing regulator'.
224. A lower proportion of those answering this question (17%) said local government could enforce the requirements and 19% said 'other'. Some of the respondents who specified those who could enforce this identified bank, warranty providers, planning departments, trading standards and the New Homes Ombudsman itself.
225. Some responses identified that home warranty providers and banks are integral to enforcement and they will need to be informed so that certificates of insurance are not issued, and funds are not released for mortgages.

Government Response

226. Enforcement is an essential element of consumers' trust in the new build market and helps maintain effective competition by ensuring a level playing field. It protects consumers in instances of harm, such as misleading claims, use of unfair terms, the sale of unsafe new homes and outright fraud. Tackling such practices is also important to business because they can undermine consumer confidence.
227. We have set out that we want to implement a stronger, independent and effective voluntary scheme as soon as possible. We agree that the commercial clout of warranty and mortgage providers is key to enforcing any voluntary scheme. We will work with warranty providers and lenders to help drive developers to join the voluntary scheme until a mandatory scheme is in place.
228. Providing the power to a New Homes Ombudsman to exclude developers from the scheme will help enforce the requirement without an enforcement body in place. This provides an effective deterrent, as without this they are unlikely to be able to access a warranty or a mortgage against the property. Once legislation is in place they would be in breach of the law if they were to continue to develop and sell new build homes if they were excluded from the New Homes Ombudsman scheme.
229. We are seeking UK-wide legislation and want enforcement to also be effective and consistent across the UK.

230. We have also recently consulted on building safety through our consultation, *Building a safer future: proposals for reform of the building safety regulatory system*¹⁶. The consultation proposes fundamental reform of building safety requirements so that residents are safe including: the scope of the new building safety regime in England and giving residents a stronger voice in the system and ensuring their concerns are never ignored. We will respond to this consultation in due course and will ensure that the New Homes Ombudsman complements the new regulatory environment in England.
231. We will also work with regulators and enforcement bodies responsible for building safety in the devolved nations to ensure the New Homes Ombudsman works effectively with any new or existing regulators.

Q31. What should the penalty for non-compliance be?			
Breakdown of individual and organisation responses	Individual	Organisation	Total
Criminal Offence	73	10	83
Civil Sanction	35	13	48
Financial Penalty	77	30	107
Banning Developers	98	28	126
Banning Directors of companies	84	22	106
Total	367	103	470

232. Our consultation asked what the penalty for non-compliance should be. There were 470 suggestions in total with the highest being banning developers from trading, banning developers of companies and financial penalties. Fewer respondents mentioned criminal and civil sanctions. Some respondents mentioned that banning developers may not prove to be effective as simply banning the entity would not preclude a new entity being set up within 24 hours with the same property holdings and directors. The penalty for non-compliance should be to prohibit developers from selling homes to consumers. Potentially, there should also be a route for prosecution available in circumstances where developers continuously attempt to sell new homes to consumers while being outside membership of the New Homes Ombudsman.
233. Other respondents identified that Ombudsman primarily deal with civil disputes and therefore to make it a criminal offence where there is non-compliance, would be disproportionate. We heard that closing loopholes and preventing any non-compliance, developers should be prevented from selling any new homes until they comply which would be the ultimate penalty.

Government response

¹⁶ <https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system>

234. A New Homes Ombudsman will have the ability to expel members if they have committed a serious breach of the scheme's conditions of membership which is most likely if there is a serious breach of non-compliance with their decision. It will be unlawful for a person who engages in the development and selling of new build homes not to belong to a New Homes Ombudsman and this will form a powerful deterrent to non-compliance.
235. We will make **provision in legislation so that requirements can be effectively enforced**. Including that sanctions may be imposed if a requirement is breached and allow for the investigation of breaches of any requirement.
236. We will consider the merits of a 'fit-and-proper' test for persons developing can work to protect consumers where development companies fold to avoid liabilities.
237. We will consider further who is best positioned to enforce the requirements to belong to the New Homes Ombudsman.

Glossary of terms

Alternative Dispute Resolution (ADR): A process for businesses and consumers to resolve disputes arising from the purchase of goods and 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.

Architects certificate: A document that an architect will use to confirm that a property has been constructed to its original specification.

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 practice 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.

Equality Impact Assessment: A tool designed to ensure that a policy or scheme does not discriminate against any disadvantaged or vulnerable people/to see whether they have the potential to affect people differently.

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.