

Consultation Questions

UK Finance Consultation Response - New Homes Ombudsman - August 2019

About you

Q1: Are you responding (please tick one)

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

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

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

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

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

Q3b: What is the name of your organisation?

UK Finance

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

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

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

Yes No Not sure

Please explain

A New Homes Ombudsman should focus on complaints raised by consumers about the action of developers/builders of new homes who are not currently covered by a redress system.

In their 2018 consultation, *Strengthening Consumer Redress in the Housing Market*, the government stated that it aimed to fill in the gaps of consumer redress. Most consumers would interact with a range of parties during the home-buying process and some of these will already be governed by a regulatory regime which includes a system of redress (for example conveyancers, valuers and mortgage lenders). It would be harmful for these to fall within scope of a New Homes Ombudsman as it would be confusing for consumers and could lead to different standards being adopted.

The various routes for redress should be clearly set out for consumers by all of the parties involved in the home-buying process so that consumers can readily understand how they can access it.

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

Yes No Not sure

If so, who?

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

Yes No Not sure

If so, who or what should be excluded?

The remit of the New Homes Ombudsman should explicitly exclude complaints about financial matters involving regulated mortgage lenders that are covered by the Financial Ombudsman Service.

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

It is important that a New Homes Ombudsman service is available to all consumers no matter what size firm they are purchasing a new home from. There is a strong possibility that smaller developers/builders will be slower to learn about any requirement to belong to a New Homes Ombudsman. As well as using trade bodies such as the Home Builders Federation, Homes For Scotland and Federation of Master Builders and trade press as conduits for information the government could also consider making it a requirement of local authorities to check that a developer/builder making a planning application to build a new home is a member of a New Homes Ombudsman.

The government could consider whether to make access to the Help-to-Buy equity loan scheme for developers/builders conditional on being a member of the New Homes Ombudsman.

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

Yes No Not sure

Q9b. If not, why not?

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

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

Please explain

It is reasonable to give a developer/builder an opportunity to address a consumer complaint before it is referred to the New Homes Ombudsman. If no response is received from the developer/builder within 6-8 weeks or the consumer is unhappy with the response they should be able to refer it to an Ombudsman.

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

Yes No Not sure

Please explain

The consultation questions whether 'serious incidences' could be referred to the Ombudsman before the 6 to 8 weeks' time period expires. The definition of 'serious' will always be

subjective and it is likely that many home owners will see their concerns as serious. Trying to define this could be difficult and lead to confusion.

A more reasonable approach may be to allow immediate referrals to the Ombudsman where a defect could result in further damage or costs and the home owner is unsatisfied with the initial response from the developer/builder.

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

Yes No Not sure

Please explain

The consultation states that a New Homes Ombudsman would be required to meet certain standards (such as those of the Ombudsman Association and Chartered Trading Standards Institute). It also states that the Redress Reform Working Group will explore if further standards should be met. UK Finance is willing to allow this working group to provide advice on this.

Q12. Should a New Homes Ombudsman be delivered by a public sector body? Yes No Not sure

Please explain

The timescales for delivering a new public sector New Homes Ombudsman are considerable. A voluntary body set up and funded by the home building industry with government in an oversight capacity could be delivered a lot more quickly. There could be an option for the New Homes Ombudsman to be placed on a statutory footing when parliamentary time allows. If a voluntary body failed then delivery by a public sector body could be an option of last resort.

Q13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body? Tendering process Request for proposals Minimum Scheme Standards A combination of these Other (please specify?)

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

Yes No Not sure

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

This would be a matter for the government to decide and UK Finance does not have a view.

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

It would be sensible for there to be some form of sanction for an Ombudsman below withdrawal of approval. UK Finance does not have a view what this should be.

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

Yes No Not sure

Please explain

Any fee or similar cost for consumers would be a barrier for redress. The cost of a New Homes Ombudsman should be borne by developers/builders.

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

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

Please explain

The Financial Ombudsman Service operates on a mixture of flat fee (per type of firm) and an additional 'per complaint' fee. A similar system would be appropriate in the new homes industry. For example, all developers could pay a fee dependent on their size/turnover plus a fee per complaint. It would need to be balanced so that small and regional developers/builders are not overly burdened, and so that an incentive to build a good quality home and address consumer complaints is built in.

Consideration needs to be given to the funding of the body which will administer and oversee the Code of Practice that a New Homes Ombudsman would adjudicate against. There will be a cost involved and it would make sense for these to be made in one payment if possible. This will be particularly important if a voluntary scheme is set-up before the necessary parliamentary time is available to put it on a statutory footing when agreeing to follow a Code of Practice and accept adjudications from a New Homes Ombudsman will be voluntary.

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

- Yes No Not sure

Please explain

An equitable system of charging property developers is needed to avoid smaller housebuilders being adversely affected. For example, a flat membership fee regardless of size would clearly be unfair on smaller home builders. In addition, regional variations in the housing market should be considered. A 'price per unit' would fall disproportionately on those parts of the market when the price of a unit is lower. A system which is fair between developers/builders of different sizes and locations and encourages good quality home building in the first place is needed.

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

- Yes No Not sure

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

Smaller homebuilders should pay a proportionate fee. Given the vagaries of the homebuilding market we do not have the expertise to comment on the best way of achieving this.

Q 20. Are there different sanctions in addition to those available in other sectors of the housing market that a New Homes Ombudsman should have access to? (Tick all that apply)

- Different levels of financial award to the consumer;
- Expulsion from scheme unless a developer instigates and follows an improvement plan;
- Publish the details and reasons why developers have been expelled from a New Homes Ombudsman;
- Suspension from scheme until problems are rectified;

- Ability to make recommendations, for example: that the developer purchases the property back; reviews the terms of leasehold agreement and amends them; and to review the terms of estate maintenance fees and amend them;
- Set timescales to rectify faults/defects with a property;
- All of the above.

Please explain

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

- Yes No Not sure

Please explain

The option of financial sanctions against the developer/builder should be considered for extreme cases or persistent poor behaviour.

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

- Up to £15,000
- Up to £25,000
- Up to £50,000
- Over £50,000

Other (**please specify?**)

The aim of an Ombudsman service should be to ensure that no consumer is left in a worse position than the one they were in before they purchased the home. The maximum award level should be at a level which covers all of these.

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

The New Homes Ombudsman should publish data on developers in the form of a league table or similar in order to aid consumers in choosing a developer/builder and driving better behaviours within the industry. The Financial Ombudsman Service does this in the financial services sector. Publication of cases both upheld and not upheld at Ombudsman level would also be useful to both consumers and developers in understanding expectations.

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

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

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

The number and type of complaints. The number and type of complaints upheld. The level of any rewards.

It would be worth considering how data from a New Homes Ombudsman could be shared with other stakeholders and, indirectly, benefit consumers. For example, an ombudsman could share information on non-compliance of building standards with the Local Authority Building Control to ensure that greater scrutiny of potentially non-compliant builders or developments takes place.

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

Yes No Not sure

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

Yes No Not sure

Please explain

UK Finance members did not identify any specific practices in different countries of the UK that require consideration. We do acknowledge, however, that there will probably be different procedures and policies an ombudsman would need to apply because of the different regulatory and legislative regimes of the devolved governments. The benefits in terms of cost, consumer aware and shared best-practice would probably outweigh these.

Q28. What should be included in a Code of Practice for developers of new build homes?

Tick all that apply:

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

The Code could consider a right of access for representatives of the home purchaser, such as a chartered surveyor or valuer.

It would be helpful if there was consistency across the new build market so there should be engagement with bodies such as RICS which already provides guidance to valuers/surveyors on how to inspect new build property.

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

Yes No Not sure

Q29b. If not, why not?

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

A financial sanction and/or ban or suspension from trading.

Q30b. Who should enforce this?

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

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

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