

Redress for Purchasers of New Build Homes and the New Homes Ombudsman: A Technical Consultation

Response from NAEA Propertymark

August 2019

Background

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

Questions

Question 4. Who should be required to belong to a New Homes Ombudsman?

3. NAEA Propertymark believe that developers who build and sell homes on the open sales market, self-builders and developers who convert and sell properties should all be required to belong to a New Homes Ombudsman. In addition, we believe that freeholders of leasehold properties who are not using a managing agent should be required to belong to a New Homes Ombudsman.
4. Freeholders of leasehold properties who are not using a managing agent should be required to belong to a New Homes Ombudsman. Currently, there is no requirement for them to do so and consumers are left without access to redress. All blocks of flats require an element of property management to deal with issues such as the maintenance of the common parts. However, most freeholders are not professional property managers and do not have the systems in place to be able to handle this work and deal with issues that arise. Therefore, it is usually out-sourced to a professional firm of managing agents who, unlike the freeholder, are required to

belong to one of the two government-approved redress schemes.¹ However, where the management of the property is not outsourced, consumers are left not knowing who to raise a complaint with and without access to independent redress should they be dissatisfied with how the freeholder has dealt with their complaint. In order to ensure that consumers have access to redress we believe all freeholders of new build blocks who are not using a managing agent to manage the property must belong to a New Homes Ombudsman.

Question 5. 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)

5. Yes, we do think that a New Homes Ombudsman should only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere. This would prevent unnecessary double redress. Where solicitors, estate agents and managing agents are already required to register with an ombudsman scheme the consumer has access to independent redress.

Question 6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?

6. As outlined in our response to Question 4, leaseholders living in property where the freeholder is not using a managing agent should be able to seek redress through a New Homes Ombudsman.

Question 7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?

7. Yes, a New Homes Ombudsman should not have the authority to take regulatory or legal action, impose fines or dictate how businesses conduct their affairs.

¹ <https://www.gov.uk/redress-scheme-estate-agencies>

Question 8. How can the Government best ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman?

8. The Government should embark on a major communication campaign involving all the actors and partners in the sector to ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman. The Government should do this by working with local authorities, Government agencies, financial institutions, property agents, builders, developers and professional bodies.
9. Local authorities as planning authorities can ensure developers and builders belong to a New Homes Ombudsman before planning permission is granted. Mortgage lenders can also signpost information when consumers look to ascertain a mortgage when purchasing a new build property. The Government should also work with the professional bodies and warranty providers within the sector such as NAEA Propertymark², Consumer Code for Home Builders³ and Home Builders Federation (HBF)⁴ to disseminate information to property agents and developers who sell new build homes.

Question 9a. Should there only be a single New Homes Ombudsman?

10. NAEA Propertymark has long held the view that there should be one portal for housing related complaints and one ombudsman for private housing and another for social housing. The ombudsman for private housing should cover private rented sector tenants, park homeowners and leaseholders with a private sector freeholder as well as purchasers who have brought a new build home and purchasers and sellers of existing homes. The ombudsman for social housing should include social housing tenants, leaseholders with a social housing provider as freeholder, persons applying to a local authority for social housing, persons approaching their local authority for homelessness advice and persons applying for a tenancy with a housing association. This will provide greater consistency, speed up the dispute process and bring clarity for consumers.
11. Redress works in different ways for private and social housing. By having one ombudsman for private housing and another for social housing this will ensure consistency across the housing sectors and improve speed of redress. It is imperative that consumer complaints are dealt with by experienced and trained adjudicators who

² <https://www.naea.co.uk/>

³ <https://consumercode.co.uk/>

⁴ <https://www.hbf.co.uk/>

understand the significant complexities that exist within the different sectors of the property market. Expert and well-trained staff can provide guidance to help consumers navigate housing providers complaints procedures as well as helping consumers to articulate their complaint clearly. This is particularly important for vulnerable complainants who may not have the knowledge or skills on their own to go through a landlord, agent or developer's complaints procedure and then pursue a complaint to a redress scheme. An ombudsman for private housing, which includes new build homes, and one for social housing would provide clarity and transparency for consumers.

12. The two ombudsmen should hold responsibility for and outline the overarching principles for how the private and social housing sectors should handle complaints. By doing this it will unify the existing procedures and ensure that members of redress schemes are working to the same professional standards. It will also mean that where there are overlaps between the private sector and social housing the two ombudsmen can work together, creating a commonality in approach. It will also allow for one of the schemes to take the lead if a complaint covers both sectors.
13. This approach will bring clarity to consumers because the one ombudsman portal will ensure they know where to go to raise housing related complaints. Once a complaint has been raised the portal should have the capacity to filter or advance complaints for consumers. It's imperative that the new streamlined redress provision for housing can intervene early to support parties to resolve cases as quickly as possible. For instance, the portal could provide the consumer with a set of short questions to review their situation and work out what the best course of action is. The portal will then need to analyse this information and either refer the consumer back to the housing provider (for example if the internal complaints process has not been first exhausted) or advance the complaint to the relevant housing ombudsman.

Question 10a. How long after the initial complaint should a purchaser of a new build home be able to access a New Homes Ombudsman?

14. Where purchasers of new build homes have raised a complaint, we believe that the consumer should be able to access a New Homes Ombudsman within two years. This mirrors the time period of the housebuilder's liability for defects. Most new build homes come with a 10-year National House Building Council warranty covering structural defects.⁵ Furthermore, most developers provide their own two-year home

⁵ <http://www.nhbc.co.uk/Warrantiesandcover/NewHomes/>

warranty policy covering build quality and the property's compliance with standards and regulations. Therefore, the ability for purchasers to be able to access a New Homes Ombudsman must coincide with the warranty schemes. As a result, the timescales for accessing a New Homes Ombudsman should be years rather than weeks as set out in the consultation document.

Question 10b. Are there any other circumstances that a purchaser of new build home should be able to access a New Homes Ombudsman?

15. Yes, purchasers of new build homes should also be able to access a New Homes Ombudsman when problems have arisen after developers have referred purchasers to their chosen solicitors or financial advisers. Consumers are likely to seek redress if it turns out that the developer was not given proper planning permission and the estate does not have access to all the right services, such as roads and sewers. It's important that consumers can raise these issues with a New Homes Ombudsman who can signpost or refer elsewhere.

Question 11. Are there any other specific standards to the new build sector that a New Homes Ombudsman should meet?

16. We agree that the New Homes Ombudsman should be independent, effective, accessible, professional, fair and transparent. Additionally, a New Homes Ombudsman must also actively assist in and contribute to raising standards by highlighting best practice and promoting them. The scheme must also be sufficiently staffed and funded. Furthermore, the scheme's procedures to complain must be straightforward and free of charge. Importantly, the decision or recommendation from a New Homes Ombudsman must be binding and enforceable.
17. Overall, a New Homes Ombudsman must be open, transparent and accountable including publicising complaints, offences and offenders. This is important for three reasons. Firstly, it will encourage developers, builders and freeholders to benchmark their standards of complaints-handling against their competitors. Secondly, it will allow them to learn from others who are handling complaints better. Thirdly, we think it will help to reduce the number of unresolved complaints referred to a New Homes Ombudsman. Other sectors, such as the Financial Ombudsman, publish this data and by replicating this in the property sector we believe it would be a way for people to see how house builders are performing, but importantly improve complaints handling across the entire industry.

Question 12. Should a New Homes Ombudsman be delivered by a public sector body?

18. As outlined in our response to Question 9a, we believe that a New Homes Ombudsman should be part of a single overarching housing ombudsman via the one housing portal. When it comes to redress based on knowledge, size of membership, experience and capacity the ombudsman for private housing should be The Property Ombudsman⁶ and the ombudsman for social housing will be the Housing Ombudsman. The Property Ombudsman should cover the private rented sector, block management, land and new homes, sales and letting agents. The Housing Ombudsman should cover social landlords, housing associations and providers of social homes.

19. The Property Ombudsman should cover land and new homes because it has the appropriate expertise, which has been developed over the years. The organisation has been providing consumers and property agents with an alternative dispute resolution service since 1990. The scheme provides a facility for the independent and impartial resolution of disputes between any small commercial businessman, charity or consumer (who may be an actual or potential buyer, seller, landlord, leaseholder, lessee or tenant of property or who has otherwise become involved). This also includes firms that are directly members of the scheme or who are subject to The Property Ombudsman's jurisdiction. The scheme covers relevant estate and/or letting agency and/ or property management work by those firms in the UK, Channel Islands and the Isle of Man. In order to a consistent approach across all areas of the house buying and selling process, The Property Ombudsman must be the overarching ombudsman for private housing.

Question 13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?

20. The approval process by Government for a new Homes Ombudsman should involve two things. Firstly, request for proposals. Secondly, Minimum Scheme Standards.

Question 14a. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?

21. Yes, approval of a New Homes Ombudsman should be withdrawn or removed if they fail to deliver effective service standards.

⁶ <https://www.tpos.co.uk/>

Question 14b. If so, what should count as shortcomings in service standards to merit disapproval, how can this be verified and by whom?

22. A New Homes Ombudsman must be subject to Government approval. It must be accountable via an annual report of activity and success measured by tracking consumer awareness.

Question 15. 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?

23. We do not have any further information to add.

Question 16. Should access to a New Homes Ombudsman be free for purchasers of new build homes to access?

24. Yes, access to a New Homes Ombudsman should be free for purchasers of new build homes.

Question 17. 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**

25. NAEA Propertymark believe that the most appropriate way for a New Homes Ombudsman to charge property developers is a price per unit.

Question 18. Would any of these models have an adverse impact on smaller housebuilders?

26. Yes, we believe that a flat membership rate and a pay per complaint system would have more of an adverse impact on smaller housebuilders than a price per unit. Introducing a levy on a per house basis is the fairest way because developers who build more will pay more.

Question 19a. Should smaller housebuilders pay a smaller fee than larger housebuilders?

27. No, we do not think that smaller housebuilders should pay a smaller fee than larger housebuilders.

Question 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**

28. We believe that a redress scheme should have access to a full range of sanctions depending on the type and size of provider. This should include making financial awards, expulsion from the scheme and powers to make decisions binding. NAEA Propertymark think that a New Homes Ombudsman should have access to the list of sanctions outlined in the consultation document apart from suspension from scheme until problems are rectified. This sanction should be removed because if implemented it could have a detrimental impact on consumers attempting to access redress during the suspension period whilst the developer continues to trade.

Question 21. Are there any other powers or sanctions a New Homes Ombudsman should have?

29. Yes, we believe there are four additional powers that a New Homes Ombudsman should have. Firstly, it should a statutory requirement to belong to a New Homes Ombudsman. Secondly, membership of a new Homes Ombudsman should be a condition of selling a warranty. Thirdly, a New Homes Ombudsman should be able to reverse a property sale in certain cases. Fourthly, awards should be made public. Only by ensuring that a New Homes Ombudsman has a full range of sanctions will it be able

to provide both adequate redress for consumers in all circumstances and a deterrent to bad practice.

30. It should be a statutory requirement for any organisation building and selling new homes to belong to a New Homes Ombudsman to be able to trade. The threat of being 'struck off' by the Ombudsman would give the scheme real power and responsibility. This would also mirror the current arrangements for estate agents where it is a legal requirement to belong to a redress scheme in order to practice. It would also build on the Memorandum of Understanding between the Redress Schemes where expulsion from one scheme results in an expulsion from all.⁷ In order to strengthen the requirements to trade it should be a condition of selling a warranty that providers only cover housebuilders that are members of a New Homes Ombudsman. Additionally, membership of the New Homes Ombudsman should be a condition of building control registration.
31. In extreme circumstances, a New Homes Ombudsman should be able to reverse the sale of a property. For instance, if the property is uninhabitable the builder or developer should be forced to rebuy the house or provide a new one. A New Homes Ombudsman should also be able to make referrals to enforcement agencies and regulators. In order to tackle snagging issues, the New Homes Ombudsman should have a detailed set of finishing standards that it can use to apply when assessing the merits of complaints and resolving disputes. Any resulting decisions or awards should be made public and collated in an annual report.

Question 22. If a New Homes Ombudsman offers awards, what should the maximum amount be?

32. NAEA Propertymark think that a New Homes Ombudsman should be able to offer awards up to a maximum of £50,000. This is important for two reasons. Firstly, it is vital that the consumer is not out of pocket. Secondly, awards must ensure that a consumer's financial status can be restored to what it was before a complaint was raised.

⁷ https://www.tpos.co.uk/images/documents/corporate-reference-policy-and-procedures/MOU-between-Redress-Schemes_August-2018.pdf

Question 23. What information should be published by a New Homes Ombudsman to empower consumers?

33. The New Homes Ombudsman must publicise information on the scheme's processes and procedures in a clear and accessible format. This should include three things. Firstly, how to make a complaint. Consumers need to know using a simple step by step guide how to raise a complaint. Secondly, information about a New Homes Ombudsman's review process. Consumers must have confidence that the review process is independent and what timescales are involved. Thirdly, case studies outlining the issues dealt with and awards made. By publicising information on the scheme's processes and procedures in a clear and accessible format this will provide consumers with confidence that awards will be made, and the system works.

Question 24. What is the best way to publish complaints data so that it incentivises developers to improve their service?

34. We believe that the best way to incentivise developers to improve their service is to publish three sets of data. Firstly, data that has been sent to the Ministry of Housing, Communities and Local Government. Secondly, data published in an annual report. Thirdly, case studies on the New Homes Ombudsman's website.

Question 25. What data from a New Homes Ombudsman would be useful for consumers when they are making a decision about purchasing a new home?

35. We believe that data from a New Homes Ombudsman on the number of complaints raised against developers and builders would be useful for consumers when they are making a decision about purchasing a new home.

Question 26. Should a New Homes Ombudsman remit be UK-wide?

36. Yes, a New Homes Ombudsman's remit should be UK-wide. There needs to be consistency and new build customers must have the same level of protection anywhere in the UK. This is extremely important as a consistent approach not only eases understanding for the consumer, it ensures warranty and mortgage lenders are also aligned to the process. To further enhance protections for consumers across the UK the Government must do two things. Firstly, it must extend the requirements under the Estate Agents Act 1979 to housebuilders' sales staff. Secondly, the Government must include the sales staff of housebuilders in the requirements for sales agents to be qualified as set out in the Regulation of Property Agents Working

Group report published in July 2019.⁸ Ensuring that everyone involved in the house buying and selling process are suitably qualified, meet minimum competency standards and the consumer has the same levels of protection is the only way to drive up standards of service.

37. To create consistency in standards across the UK in the house buying and selling process the Government must extend the requirements under the Estate Agents Act 1979 to housebuilders' sales staff. The Act regulates work as an estate agent. It ensures that agents work in the best interests of their clients. This includes making sure that both buyers and sellers are treated honestly, fairly and promptly. Furthermore, if estate agents don't comply with the law, they could be banned from working and if they ignore a ban they could be prosecuted and fined. The requirements of the Act cover estate agents working across the UK and help to ensure that selling activities they are engaging in are of a consistently high standard. In order to reduce complaints against housebuilders about their sales services and about the contents of their leases and sale agreements it is vital that they fall under the Estate Agents Act.

38. The Government must include the sales staff of housebuilders in the requirements for sales agents to be qualified as set out in the Regulation of Property Agents Working Group report. Without consistency in entry requirements to work in the sector, consumers moving between property on the existing market and purchasing new build property or vice versa will face different service levels and standards. Whether consumers are purchasing property via an estate agent in a high street branch, online or a sales agent in an office on a development site, staff must be trained to an appropriate level with clear oversight arrangements in place. The focus of the new regulatory regime must be on ensuring that the same consumer protections exist across the whole industry rather than only looking at certain aspects of the house buying and selling process.

Question 27. 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?

39. No, we are not aware of any 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. We maintain the view that when proposing any

⁸ <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

changes to new build customer redress, a consistent system should apply throughout the UK given the fact that many home builders, and buyers operate across borders.

Question 28. 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?)**

40. We believe that all the issues listed above should be included in a Code of Practice for developers of new build homes.

Question 29. Should a Code of Practice for developers of new build homes be underpinned by statute?

41. Yes, we believe that a Code of Practice for developers should be underpinned by statute.

Question 30a. How should failure to belong to a New Homes Ombudsman be enforced?

42. Failure to belong to a New Homes Ombudsman should be classified as a criminal offence with a fixed penalty fine.

Question 30b. Who should enforce this?

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

43. NAEA Propertymark believe that a new or existing regulator should enforce failure to belong to a New Homes Ombudsman. The Government has set out plans to regulate property agents and a streamlined redress provision in housing provides an opportunity to build a relationship between the two housing ombudsmen and a regulator of the industry. Looking ahead, working practice could be developed to ensure that the ombudsmen are obliged to inform the regulator of any new member of the scheme and work with the regulator to ensure that complaints, such as those seeking regulatory action contact the regulator and those requiring individual redress contact the portal, are signposted effectively. There is also the possibility of ensuring that the ombudsmen can refer providers to the regulator. For example, under the current rules for property agents for where a redress scheme has upheld a complaint against an agent, but the agent has failed to pay compensation the redress scheme cannot enforce the order. The redress scheme can only expel the agent from the scheme. By linking up with the regulator more regulatory action can be taken against developers of new build homes who do not adhere to the professional standards set out by the redress schemes.

Question 31. 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?)**

44. NAEA Propertymark believe there should be a full range of sanctions for non-compliance. This should include: Criminal offence; civil sanction; banning developers; banning Directors of property development companies as well as financial penalties. These penalties should be based on the size of the business and whether the reason was error, ignorance or offenders were wilfully ignoring the rules. This should also include a financial penalty per offence of a fine up to £30,000, which would bring the sanctions in line with recent changes to local authority powers to enforce civil penalties of up to £30,000 as an alternative to prosecution for housing offences.