

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

I am writing in response to the Ministry of Housing, Communities & Local Government's (MHCLG) technical consultation on Redress for Purchasers of New Build Homes and the New Homes Ombudsman. We have restricted our comments to the areas that the Association has expertise in.

Summary

1. The Ombudsman Association welcomes the Ministry's intention to strengthen redress for purchasers of new build homes.
2. An Ombudsman that meets the Association's criteria and has adopted both our Service Standards Framework and our Caseworker Competency Framework will reflect best practice in terms of powers and standards.
3. To be effective an ombudsman needs to work in a well-regulated environment and liaise closely with enforcement bodies.

Background

4. The Ombudsman Association was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the United Kingdom, the Republic of Ireland, the British Crown Dependencies and the British Overseas Territories.
5. The Vision of the Association is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
6. An Ombudsman helps to underpin public confidence in the institutions that they cover; by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.
7. The Association's membership criteria are recognised by the UK Government as representing best practice. This is reflected in the Cabinet Office's *Guidance for government*

*departments on setting up Ombudsman schemes*¹, which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'².

8. The Association's Validation Committee scrutinises both applications for membership and the 5-yearly re-validation of existing members against our membership criteria.³ The Validation Committee has a majority of independent members who are appointed via an open recruitment process for their knowledge and expertise of the ombudsman sector.

Requirement for developers of new build homes to belong to a New Homes Ombudsman

Q4. Who should be required to belong to a New Homes Ombudsman?

9. The Ombudsman Association's position is that there should not be any gaps in relation to access to redress through an ombudsman and we are pleased that MHCLG have pledged to make that a reality. All developers, builders and sellers of new homes should be required to be covered by an ombudsman scheme and the ombudsman's jurisdiction should be universal, covering sub-contracting to third party tradespeople and management of any common space.

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); Q6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?; and Q7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?

10. All members of the public deserve access to an ombudsman if there is an unresolved dispute in relation to their home. Unfortunately, at the moment it is not compulsory for all estate agents to belong to an ombudsman scheme as they can instead choose to sign up to an alternative redress scheme that does not operate to the same standards as an ombudsman. There would therefore appear to be a danger in these proposals that someone who bought a new build home through an estate agent, rather than directly from the developer, could be limited to a lower form of redress, codifying and embedding a two-tier 'lottery' system for consumers that the Government is purportedly seeking to reform.
11. We would urge MHCLG to ensure that any New Homes Ombudsman has a universal remit and that anything excluded from that remit is only done so because it is within the jurisdiction of another fully fledged ombudsman scheme.

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

12. There are a number of awareness raising activities that take place in other sectors that could be adopted. All of the relevant bodies, including Government and the ombudsman itself, should undertake to raise awareness of the requirement. In regulated sectors it is the regulator that ensures requirements are met before a business can trade. The same approach should be taken by the relevant authorising bodies in the new build sector, for example in relation to granting planning permission, warranty products and mortgages. There should also be a requirement for developers to signpost consumers to the ombudsman, as there is in the financial sector. Mirroring the approach in the financial sector, that information should be provided both at the 'point of sale', in each company's own literature about how to complain, and at the point of their final decision.

¹ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

² www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

³ www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf

Number of Ombudsmen

Q9. Should there only be a single New Homes Ombudsman?

13. We agree with MHCLG that there should be a single New Homes Ombudsman. The evidence provided by the 2017 Citizens Advice report *Confusion, gaps and overlaps*⁴ and the report by Money Saving Expert⁵ set out clearly the benefit of having a single ombudsman scheme per sector, which is the Ombudsman Association's long standing position, and the same approach is adopted in the energy, legal and financial sectors in the UK. We are not aware of any evidence that shows that having more than one redress provider in a sector is of more benefit to consumers than having a single ombudsman.

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

14. Members of the public should have direct and immediate access to the ombudsman if the organisation complained about does not resolve the complaint promptly and should be able to access the ombudsman immediately after receiving a final response from that organisation. In Scotland, public sector bodies initially have 5 days to deal with a complaint, and then a further 20 working days to deal with it if it is escalated to the next stage, after which they can approach the Ombudsman. Most Ombudsman schemes also have the power to deal with a complaint before someone has completed 'local' resolution if there is a pressing reason to do so, for example because of health or safety issues. The New Homes Ombudsman should have the same powers and ease of accessibility.
15. We are aware that the Government's forthcoming Consumer White Paper is likely to propose reducing the '8 week' period that is in place in much of the consumer landscape in the UK. We are not aware of any reason why there should be a different timescale for consumers in the new homes sector as to that in other sectors.

Standards of a New Homes Ombudsman

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

16. The Ombudsman Association's criteria - of independence, fairness, effectiveness, openness & transparency, and accountability - are recognised by the UK Government as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*⁶, which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'⁷.
17. If the New Homes Ombudsman also adopts the Association's Service Standards Framework⁸ and Caseworker Competency Framework⁹ it will have adopted current best practice in the redress sector.

⁴ www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf

⁵ https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

⁶ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

⁷ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

⁸ www.ombudsmanassociation.org/docs/OA17%20Service%20Standards%202017_Final.pdf

⁹ www.ombudsmanassociation.org/docs/CaseworkerCompetencyFramework2019.pdf

Scheme provider and approval process

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

18. The Ombudsman Association's principles and criteria apply to both public sector schemes and private sector schemes – a New Homes Ombudsman scheme could in theory be effectively delivered by either.
19. New ombudsman schemes should not be created where the role could be appropriately fulfilled by an existing ombudsman. MHCLG should explore whether an existing ombudsman scheme could deliver the service, especially if there is any potential cross-over in the complaints that could arise about people's homes.

Q13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?; Q14a. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?; Q14b. If so, what should count as shortcomings in service standards to merit disapproval, how can this be verified and by whom?; and 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?

20. The Ombudsman Association's criteria set out the minimum standards for an ombudsman, as recognised by the requirements that Companies House have in place for a business to use the name. If a private sector body is to be chosen to deliver the New Homes Ombudsman the Government should use the Ombudsman Association's criteria in conjunction with any tendering process or request for proposals, as is the approach taken in the energy sector and the rail industry.
21. Transparency and accountability are key elements of the Ombudsman Association's criteria. All ombudsman schemes should publish and report against the service standards they operate to. Our Service Standards Framework¹⁰ sets out best practice in this area, having been developed following a public consultation and input from consumer groups, advocacy bodies, and bodies within the jurisdiction of ombudsman schemes.
22. In regulated sectors it is the regulator that oversees the performance of an ombudsman, as happens in the energy, legal and financial sectors. Establishment of a property sector regulator would enable the same approach to be taken.
23. Transparency regarding performance enables all stakeholders to hold an ombudsman scheme's 'feet to the fire' in delivering an effective service. Public services ombudsman report directly to Parliament and are usually scrutinised by a parliamentary committee. In the recent report by the All-Party Parliamentary Group on Consumer Protection¹¹ a recommendation was made that parliamentary committees should also take a stronger interest in the work of private sector ombudsman schemes.

Funding a New Homes Ombudsman

Q16. Should access to a New Homes Ombudsman be free for purchasers of new build homes to access? and Q17. What would be the most appropriate way for a New Homes Ombudsman to charge property developers?

24. It is an international norm, and a key principle of the Ombudsman Association's criteria, that an ombudsman scheme is free-of-charge to those bringing complaints. Part of that norm is that public services ombudsman are funded from the public purse and private sector ombudsman schemes are funded by a levy on the relevant sector.

¹⁰ www.ombudsmanassociation.org/docs/OA17%20Service%20Standards%202017_Final.pdf

¹¹ <https://images6.moneysavingexpert.com/images/documents/Ombudsman%20report.pdf>

25. Other responders will be better placed to advise on the pros and cons of the different funding approaches. However, another aspect of the Association's criteria is that an ombudsman scheme should have sufficient funding for the proper discharge of their role. Considering the added value that an ombudsman service provides – signposting, addressing systemic issues and providing feedback to the sector – it is unlikely that a purely 'pay-per-complaint' approach would work.

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

26. An effective Ombudsman requires broad powers to provide effective remedies, including all of those listed. Any maximum level of award should not be lower than the actual cost to the consumer to resolve the issue, plus any additional amount as appropriate for distress, aggravation or inconvenience. If there is a pressing need to set a 'maximum amount' it should be set at the highest level likely in a worst-case scenario – an ombudsman will not award more than is appropriate so there is no risk in doing so.
27. An ombudsman scheme is just one piece of the puzzle and are most effective in sectors where they work closely with a regulator and other accountability bodies. This can be seen for example in the energy sector, where the ombudsman works closely with Ofgem, and in the health and social care sectors where the ombudsman works closely with both professional and systems regulators. In order to both improve services and hold organisations to account an ombudsman should have the power to share information with the regulator and other bodies as appropriate. 'Suspension' from the ombudsman scheme would only be beneficial to consumers if it also triggered enforcement action by the regulator or other accountability bodies to enforce a ban on trading.

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

28. All ombudsman schemes should pro-actively raise awareness of their work and engage with advocacy and advice bodies, such as Citizens Advice and Age UK, to ensure consumers and other stakeholders are aware of their service. Recent studies and commentary have shown that consumers do not have the time or capacity to seek out information themselves, so it should be provided in as clear and concise a manner as possible.
29. As it is another aspect of our criteria, there are numerous examples from amongst our members of best practice in this area, including guidance notes and factsheets on how to complain and what to expect. A New Homes Ombudsman should provide the same.
30. In addition, there should be a requirement on those in the ombudsman's jurisdiction to both signpost to and inform consumers of their right to take their complaint to the New Homes Ombudsman, as already takes place in the financial sector. As mentioned above, that information should be provided both at the 'point of sale', in the businesses own literature about how to complain, and at the point of their final decision.
31. Transparency is one of our key membership criteria and the publication of information about complaints data, decisions, and the performance of organisations is an important tool to drive improvement in conjunction with regulators and policy makers.

32. Statistics about the performance of named developers, including the numbers of complaints received and upheld and compliance rates are most useful to consumers and other stakeholders when accompanied by analysis and commentary from the Ombudsman scheme. Through the Ombudsman's insight a consumer can better understand, for example, the greater significance of poor compliance and a high uphold rate in complaints about a smaller developer as opposed to a high number of complaints but low uphold rate against a larger scale nation-wide developer. The recent innovation by the Local Government and Social Care Ombudsman in making their data and information about local authorities available and comparable through an interactive map is an example of good practice¹².

Geographical scope

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

33. No member of the public in one part of the UK should be disadvantaged in their access to justice in relation to a resident in one of the other four nations. The geographical jurisdiction of an ombudsman should match the geographical jurisdiction of the body they are accountable to, be that a regulator, Parliament or other elected body.

Enforcement

Q30a. How should failure to belong to a New Homes Ombudsman be enforced?; Q30b. Who should enforce this?; and Q31. What should the penalty for non-compliance be?

34. As previously stated, ombudsman schemes are most effective in sectors where they work closely with a regulator and other accountability bodies. If a strong and effective sector regulator is established, it would appear to be best placed to enforce sanctions for non-compliance. To be effective it should have the broad powers to do so as set out in the consultation document.

The Association would be happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely

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¹² www.lgo.org.uk/your-councils-performance