

The Housing Ombudsman's response to the All Party Parliamentary Group for Excellence in the Built Environment's call for evidence – New Homes Ombudsman Parliamentary Inquiry

1. We welcome the opportunity to respond to the call for evidence. We are mindful that since the call for evidence opened, the Secretary of State has announced an intention to consult on a proposed cross sector housing ombudsman which may include jurisdiction in relation to complaints relating to the sale of new homes. We will respond in due course to any such consultation, but meanwhile we offer our thoughts on the current call for evidence under three broad headings: access, quick resolution and compliance.

Access to the New Homes Ombudsman should be unfettered

2. It is a requirement of the [Housing Ombudsman Scheme](#) that all member landlords inform residents of their right to bring their complaint to the Housing Ombudsman (see paragraph 5(c) of the Scheme). Under the Housing Act 1996 (as amended) residents are able to bring their complaint to the Ombudsman once the landlord's internal complaints procedure has been exhausted and either eight weeks have passed, or if they have referred their complaint to the Housing Ombudsman via a designated person (MP, local councillor, designated tenant panel). Our experience has been that the eight week wait can act as an unnecessary and frustrating obstacle for residents. We favour its removal for our own ombudsman scheme, and we would recommend that any provisions establishing a New Homes Ombudsman include direct – and speedy – access for prospective and actual residents to the Ombudsman to deal with unresolved complaints. As we understand it, this is also the position taken by the Ombudsman Association, of which a New Homes Ombudsman may wish to seek membership.

An independent New Homes Ombudsman should provide the opportunity for quick resolution of complaints

3. The Housing Ombudsman has a dual purpose – a) to resolve complaints involving members of the scheme, and b) to support effective landlord-resident dispute resolution by others. The second of these purposes is what makes the

Housing Ombudsman different from other ombudsmen, and it is something we believe could be effectively replicated for a New Homes Ombudsman.

4. Our experience tells us that it is most satisfactory for everyone if problems can be resolved early, and key to achieving this is to have an ombudsman who is not solely a final-tier redress route. Jurisdiction and powers enabling the New Homes Ombudsman to have a role in helping resolve disputes locally between the parties may increase the chances of an early resolution to disputes (81% of complaints that came to the Housing Ombudsman in both 2015-16 and 2016-17 were closed without the need for formal investigation).
5. Where a complainant contacts the Housing Ombudsman before the landlord's complaint procedure has been completed, although we cannot yet investigate the complaint, our staff provide them with guidance to help them navigate their landlord's complaint procedure as well as helping them to articulate their complaint clearly. A clear complaint – ie one that identifies the precise source of the problem (where possible) and the action needed to put it right is crucial: it gives the complainant the best possible chance of getting a solution to their problem because it helps the landlord understand what it needs to do to put things right.
6. Given the potential level of complexity and probable competing interests at work in the relationship between the purchaser of a new-build property and the developer/builder/warranty provider, we feel that it would be beneficial for all involved if a New Homes Ombudsman had the power to help resolve complaints locally and to provide advice and guidance to consumers *at any stage* in the applicable complaint process.
7. We also believe that the process (eg streamlining of obligations, warranties, contract conditions) should be as transparent and user-friendly as possible. It seems likely that the “jurisdictional” element of the advice provided by a New Homes Ombudsman could be involved and complex, so it follows that consumers are likely to require help in understanding *who* is responsible for dealing with their complaint, as well as help with articulating it.
8. We suggest that the responsibilities of each party – eg builder, developer, holder of the head-lease, warranty providers – should be clearly delineated and communicated from the outset, perhaps through codes of practice, to give as much clarity for consumers as possible. The aim should be to ensure that consumers are able easily to establish what to expect from the parties as well as the party to whom they should, in the first instance, address their complaint. Further, all the parties involved should be required to establish and maintain a clear and effective internal complaints procedure. As part of any such complaints procedure each body should be required to inform residents of their right to refer their complaint, if not satisfactorily resolved, to the New Homes Ombudsman.

Where early resolution is not possible, the New Homes Ombudsman should have powers to ensure compliance

9. The Housing Ombudsman's determinations are not enforceable by the courts, but they are nevertheless effective; in the year to date we have had 100% compliance with our orders within three months. However, it seems to us that the broader remit of a New Homes Ombudsman, and the need to investigate complaints involving multiple parties, may necessitate greater powers to ensure compliance.
10. It is a requirement of the Housing Ombudsman Scheme that in order for the Ombudsman to investigate a complaint, there must be a landlord/tenant relationship between the parties to it. The existence of that ongoing relationship in many cases may provide an in-built incentive for both sides to keep relations amicable, which in turn can help us identify and achieve early resolution of a complaint or, if that is not possible, it can encourage landlords to comply with our recommendations.
11. A New Homes Ombudsman is likely to have to determine disputes between more, and more diverse, parties. It may also be the case that there is no such in-built incentive between the parties either to resolve disputes or comply with an ombudsman's findings. Some of the parties involved in disputes may have only a "one-off", transactional relationship with one another or, in the case of shared ownership leaseholders who have bought off-plan and where the housing association holds the head-lease and the developer owns the freehold, no direct contractual relationship at all. In the absence of an ongoing relationship to protect, or a direct and extant contractual relationship, we suspect that a New Homes Ombudsman will need sharper enforcement teeth to ensure compliance where s/he finds faults that need to be rectified. Moreover, given the number of parties that can be involved from initial design to final sale of new homes, there is potential for a New Homes Ombudsman to have to determine disputes where a party might seek to transfer responsibility onto another party (eg: the builder onto the developer, the developer onto the warranty provider). Each party is likely to have its own set of interests to protect and so the Ombudsman should have wide powers to cut through these territorial disputes and to secure redress from all parties that have contributed to the problem.
12. We hope that these comments are helpful.

22 December 2017