

Response from the Housing Ombudsman to MHCLG’s consultation on ‘Redress for purchasers of new build homes and New Homes Ombudsman’

1. We have focused our response on the role of the New Homes Ombudsman. As the Housing Ombudsman Service, we already deal with complaints from residents in new homes so have relevant expertise and experience to share.

Our experience

2. Many residents who purchase or rent a new build home, owned or managed by a social landlord, already have access to the Housing Ombudsman Service as we deal with complaints where the freehold is owned by a social landlord, or where a lease is owned by a social landlord and the property is sublet to a purchaser or let to a tenant. We also deal with complaints where a social landlord is acting as managing agent for the freeholder.
3. These residents do access our service and, as a result, we have many years’ experience of complaints about new build homes. We would like to assist the consultation by sharing our knowledge and insight regarding the type of issues that can arise and the steps that can be taken to improve the consumer experience.
4. From April 2019 we introduced a specific complaint category for new builds to better monitor the number of complaints we receive relating to these properties and the type of issues that cause difficulties for residents.
5. For the first three months of 2019-20 we received 32 enquiries and complaints relating to new build properties. This demonstrates that new build properties are an issue of contention and that issues are not being resolved to the resident’s satisfaction during the internal complaints procedure.

Issue	Number of complaints
Communal areas	4
Condition of property (leaseholders)	4
Condition of property (tenants)	19
Heating and hot water	5

Jurisdiction of the Housing Ombudsman

6. The consultation paper envisages that residents of new builds undertaken by social landlords will retain access to the Housing Ombudsman Service. We welcome the commitment to preserve current routes to redress and agree that the New Homes Ombudsman should only cover complaints where redress cannot be sought elsewhere.

7. We believe our jurisdiction should be expanded to cover outright sales of new build property by social landlords and complaints that arise once the property is occupied. We have over 20 years' experience of dealing with complaints from social housing residents; our member landlords are familiar with the process for referral of residents to our service, as well as our expectations around engagement and evidence provision. It would be detrimental for the same body to be a member of two different Schemes: for the consumer if they are incorrectly referred; and for the landlord who may have to pay two sets of membership fees.
8. There is a further anomaly in accessing redress for tenants of social landlords and the introduction of a New Homes Ombudsman provides the opportunity to raise this again for the sake of completeness. Currently, residents whose homes are let at market rent by subsidiaries of Local Housing Authorities are excluded from accessing the Housing Ombudsman Service. We believe a wider jurisdictional change bringing these tenants into our jurisdiction would provide a clear route to redress for residents. This would ensure all housing activities of a Local Housing Authority are covered by the Housing Ombudsman Service and provide a clearer distinction between complaints about the council as a landlord (all of which should come to the Housing Ombudsman) and the council's statutory obligations to the homeless (dealt with by the Local Government and Social Care Ombudsman).

New Homes Ombudsman - operational considerations

Number of redress providers

9. We believe there should only be one New Homes Ombudsman providing access to redress for residents without a pre-existing route available. This should be adequately funded and free of charge to those bringing a complaint.
10. Multiple redress providers would pose challenges, for both residents and the sector. There is a risk of different approaches between redress providers leading to inconsistencies in consumer outcomes. For residents, multiple providers will add an initial layer of confusion as they try to identify the correct redress provider. This aligns with the view of the Ombudsman Association which states '*To ensure access to redress is simple and straightforward there should be a single ombudsman within a sector, and there should be increased harmonisation of powers and processes between ombudsman schemes in different sectors.*'

Willingness to work with others

11. It is likely that there will be some difficulties in establishing whether a complaint, or some aspects of it, are within the Housing Ombudsman's jurisdiction or the New Homes Ombudsman's. For example, responsibility in residential block management can be very complicated with developers, freeholders, managing agents, insurance companies, contractors and leaseholders all involved. Consequently, the New Homes Ombudsman must be willing to cooperate with us

or any other redress providers in resolving these issues and have the power to undertake joint investigations as necessary. Role modelling the importance of working with others to resolve disputes should be mirrored in the expectations that the New Homes Ombudsman sets for the bodies within its jurisdiction.

12. The Ombudsman Association recommends that *'where there are overlaps between schemes, they should work together to ensure clear signposting and hand-offs, to help complainants get to the right place.'* We would welcome the opportunity to work closely with the New Homes Ombudsman to develop a framework for providers, to ensure each redress scheme operates to the same standards of service, and to support a 'no wrong door' approach for residents coming through to the wrong Scheme.

Case example

The resident purchased a shared ownership lease of a flat within a new build estate. The freehold was owned by a private company with a social landlord owning the head lease. The head lease agreement between the private company and the social landlord included the private company's right to appoint a managing agent with responsibility for the management of the block. The complaint concerned the managing agent's handling of water charges. The resident's lease made no mention of managing agents and she had no right to submit a complaint to them. She complained to the social landlord, who raised the matter on her behalf several times with both the managing agent and the freeholder. The social landlord struggled to get a response from either.

Opportunity for increased consistency and reducing barriers to redress

13. The introduction of a New Homes Ombudsman brings with it the opportunity to develop consistency of practice across all new builds, ensuring that all providers involved in the new build market operate under the same redress framework, and that residents receive the same level of service whichever route to redress is taken.
14. Attention will need to be given to the complexity of legal relationships and ensuing obligations that can surround new builds. This can act as a barrier to redress for residents and an abdication of responsibility as residents are continually told that responsibility for the issue lies with a different organisation. In addition, we have seen a number of complaints when there is no contractual relationship between developers/managing agents and residents. In some cases, pursuing a complaint can require significant levels of both resilience and resource on the part of a resident.

Case example

Mrs T reported excessive damp to the social landlord who held the head lease 18 months after purchasing her flat. The landlord initially denied any responsibility and information was given regarding condensation.

The resident made a claim with her insurer, who contacted the developer's insurance company. The developer's insurance company inspected and found a slow leak emanating from the flat above. This was rectified and a payment made to the resident for redecoration.

The problem continued and the resident continued to complain. She instructed her own surveyor who found the trickle vents to the flat had been cemented over. The social landlord referred this to the developer as a building defect. The developer required a claim was made to NHBC before action was taken.

Timescales for accessing redress

15. It is not clear from the consultation how long a property is intended to be defined as 'new build', nor how this will impact on access to redress for residents. For example, there may be an expectation that any complaint concerning a 'new build' is raised within the first five years. This will need to be addressed with consideration given to the types of complaints that may not emerge for some time, for example, problems with a lease that come to light at the point of re-sale.

Case example

Mr X occupied his property as a shared owner with the landlord retaining a 20% share. An application to staircase to 100% ownership was made after Mr X had been living at the property for six years. At this point both the landlord and the resident discovered neither had a full copy of the lease, nor had a copy been registered with the Land Registry. This meant that neither party had any detail as to how to affect the transfer of the 20% shares, nor how to transfer the landlord obligations in relation to service delivery which were chargeable within the rental charge. Negotiation was necessary with the developer and their solicitors, the managing company, previous legal advisors and the resident's current solicitors. It took approximately two years for the transfer to be completed.

Complaints procedures

16. The focus for the developer should be on resolving the issue. In most cases, the customer wants the problem to be fixed and to continue living in their home. Adding a timescale to internal complaint handling may not assist in resolving disputes, as it could divert the developer's focus away from considering the outcomes the resident has requested to following process. This does not lead to

customer satisfaction and will not be beneficial to either party. It is important that the complaint process can deliver quality outcomes that both resolve the issue for the resident and can lead to positive change more widely.

17. As indicated in the case examples, finding a solution to some of the issues that present in new build properties can take time. Not all complaints are straightforward and many require expert opinion.

Case example

Damp and mould problems arose in a new build flat during the defects period. Remedial action was taken by the leasehold landlord, but the problem returned some months after the defect period had expired. A specialist contractor was instructed with several remedial works undertaken, some of which helped but did not fully resolve the problem. The expert identified a potential latent defect and claims were made against the freehold developer's building warranty.

18. A significant factor in many of the complaints from residents of blocks is the complexity of the relationships between parties. This can be a hindrance in resolving disputes, particularly when there are shared or disputed obligations. Any prescribed time for complaint handling would need to take this into account.

Case example

The complaint concerned the overheating of residents' flats. Environmental health had confirmed that the situation constituted a hazard and was working with all involved to try and find a solution.

The freehold was owned by a private developer. There were three leaseholder landlords within the block with one acting as the managing agent for all properties. The design of the properties was such that two areas of block were not connected to the air conditioning system.

Both social landlords instructed their own experts and worked with environmental health, but neither had authority to order works to the air conditioning system. Much negotiation was required with all three landlords, environmental health, the original builders and the local authority planning department. Works were eventually undertaken to join one set of properties to the system, however, the access for the third area required significant building work. This included the installation of underground pipework in occupied shared owner properties where consent would be needed and so this was not provided.

19. There will, of course be cases where insufficient action is being taken and early intervention is needed. Residents should be able to approach the New Homes Ombudsman when they believe no action is being taken in response to their

complaint. The New Homes Ombudsman should have sufficient authority to investigate a case where no response is forthcoming from the developer.

Redress for the many

20. There is potential for one complaint from a resident to have a wider impact for residents at the same location. We would recommend that the New Homes Ombudsman should have the authority to make recommendations that the actions in one case be extended to other residents where this would deliver fair outcomes.

Case example

Residents complained about the method used to calculate, and level of, compensation offered by the landlord for acknowledged repair issues to the block and the disruption caused by works.

The block was completed in 2006. From 2008, a number of repair issues were reported by residents to individual flats and communal areas. This resulted in the landlord appointing a contractor in 2013 to complete extensive repairs to the block. The repairs reported were primarily related to the lift, drainage and sewerage, a lack of insulation to the roof and resultant damp and mould in residents' flats. As a result of the complaint the landlord proactively calculated compensation for all residents, including those who were not party to the original complaint. This was commendable, however, the landlord's offer failed to address the difficulties experienced by the three residents who submitted the complaint and the lengths that they had to go to before the complaint completed the landlord's complaints procedure. We ordered an additional £500 compensation for each of these residents for the time and trouble that was required to get the landlord to engage with the complaint.

Sanctions

21. The New Homes Ombudsman should share information wherever possible to help the wider sector learn from complaint handling and improve the provision of services. This should include the power to publish special reports for non-compliance with orders.
22. The ability to make enforceable orders would ensure that the Ombudsman had sufficient teeth both to remedy a complaint for an individual resident, and to drive improvements across the sector. As part of this role, we believe the full range of sanctions should be available to ensure that the New Homes Ombudsman has the ability to respond appropriately to the diversity of complaints that residents will refer.