



Proposed New Build Homes (Buyer Protection) (Scotland) Bill – Homes for Scotland Response

Homes for Scotland (HFS) and its' members who together provide 95% of all new homes built for sale in Scotland each year are fully committed to increasing standards for each and every purchaser of a new build home. Our members support moves to appoint a New Homes Ombudsman and we are proactively engaging with Westminster, the Home Builders Federation (our equivalent body in England and Wales), warranty bodies, the Consumer Code for Home Builders and mortgage lenders to achieve this. It is essential that any improvement to the system of home purchase covers new home sales across the whole of the UK, to give consumers adequate protection and developers clarity of what is required of them, wherever the homes are being built.

The purchase of a new build home is a complex process, with the involvement of a wide range of stakeholders including solicitors, surveyors, lenders, warranty providers, the home builder as well as the purchaser. To compare this process to a simple retail transaction such as the purchase of kettle (Graham Simpson MSP's forward 'It is astounding that in 21st century Scotland, we have more rights if a kettle is defective than if a new-build home is defective'.) is misleading to consumers and home buyers alike. We appreciate that the legislation enacted through the Consumer Rights Act 2015 is intricate and recognise that there are exemptions in Part 1 of the Act in regard to the purchase of land or a house, as goods are defined as 'any tangible moveable item'. However, it is inaccurate to say it doesn't afford protection for purchasers of new build homes.

As defined within the Part 2 'Unfair Terms' of the legislation, all contracts and notices between traders (home builder) and consumers (purchaser) regardless of the 'goods' being sold, must be transparent and fair, meaning that any contract or notice must be expressed in plain and intelligible language and must not cause a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. These laws are further complimented by 'The Consumer Protection from Unfair Trading Regulations 2008' (CPRs) which prohibits property businesses from engaging in unfair commercial practices in their dealings with consumers, including giving false or misleading information and exerting undue pressure. The CPRs also require home builders to be proactive and disclose all information a consumer needs to make an informed transactional decision. In addition, we believe that the existing structures and provisions afforded to purchasers through the variety of warranty schemes and industry consumer codes help fill any areas that the Minister may believe leaves the consumer exposed.

Improving customer satisfaction and build quality are core objectives that are engrained throughout the newly published Homes for Scotland Strategy and clearly sets out how HFS, as the major representative body of home builders in Scotland will work with our members to ensure they strengthen their existing processes in relation to customer protection and satisfaction. We are working with our members to explore any issues they currently face with regards to use of standardised missives and how these can be overcome. In addition, we fully acknowledge the concerns raised in the APPG for Excellence in the Built Environment report and are currently working through the recommendations listed along with HBF.

While anecdotes may imply there is a serious issue with the quality of new homes, when we look at the data, this is not the case.

- The majority of home buyers are satisfied with their purchase, as evidenced by annual customer satisfaction surveys. The latest results for 2017/2018 (the first year the national new homes survey was extended to Scotland) shows an average recommend rating in Scotland of 89% over the last four years, consistently higher than the rest of the UK.

- NHBC dealt with 4,600 issues across the UK last year through their own dispute resolution service when a total of 192,090 new homes were built, accounting for just 2.3%. While we do not have Scottish only statistics for this, we understand that there are more issues in England given the rapid rate of housing growth of over 50% in 5 years, compared to 17% growth in Scotland.
- In 2018, out of the 192,090 new homes completed across the UK, only 106 cases (0.05%) were brought forward to the Consumer Code for Home Builder's Independent Dispute Resolution Scheme; of which 72 cases were found in favour of the home buyer. We believe this is a further indication of the robust protections that the Code already offers to customers.

Whilst we agree with some of the principles outlined within the consultation regarding increasing customer satisfaction for every purchaser of a new build home, we do not believe the proposals as set out within the consultation are workable or will truly address any associated problems with build quality or customer redress, but rather deal with issues as they arise, and at the end of the process. Instead we believe the focus should be on the improvement of skills and training within the industry and therefore set solid foundations to improve build quality across the entirety of the sector. We would strongly urge that any proposed changes to strengthening and simplifying the current processes and structures related to consumer redress should be considered in the context of the UK as a whole rather than Scotland individually. It is vital that any changes do not adversely impact the ability of home builders to continue providing the new homes Scotland desperately needs or impact negatively upon aspiring home owners.

1. What are your views on the establishment of statutory standardised clauses for builders' missives?

- 1.2 HFS and its members are fully committed to improving consumer protection within the Scottish housing sector. However, we do not believe the introduction of mandatory statutory clauses is the solution to address this. We believe that the current voluntary Scottish New Build Standard Clauses drafted and updated by the Scottish Law Society currently provide the best format of standardised missive if a home builder decides to use this.
- 1.3 Lessons should be learned from the lack of uptake of the current New Build Standard Clauses; flexibility is required to account for the wide range of new build properties and the various funding arrangements used to purchase them. As such, many home builders who do use the standard clauses rarely issue them without amendments and additions to reflect the needs of the individual property or development. Additionally, many of our members who operate across Scotland and England may wish to align their sales processes for both sides of the border to ensure consistency and transparency, the addition of statutory clauses will ultimately make this more difficult. We would therefore suggest that the introduction of compulsory standardised clauses be avoided and that style clauses setting out the protections be supplied instead. The styles should not be prescriptive, only illustrative.
- 1.4 We acknowledge the recommendation set out in the APPG report to create standardised clauses within missives and we are currently working with all relevant stakeholders and members to consider the best possible format for doing this.

2. What are your views on providing a statutory route for home buyers to obtain redress for major failings on new-build property?

- 2.2 The vast majority of all new homes built for sale in Scotland come with the protection of a comprehensive warranty scheme through one of four main providers in NHBC, Premier Guarantee, LABC and Checkmate, all of whom offer 10 year cover for structural defects. Further, all builders registered with the above warranty providers must adhere to the Consumer Code for Home Builders, which offers approximately 95% coverage across the UK.

- 2.3 The Consumer Code for Home Builders has operated across all devolved nations to offer new build customers the same level of protection anywhere in the UK since 2010. The creation of the Code led, without a doubt, to a step change in how builders deal with customers through the sales process.
- 2.4 Since its' establishment, the Code has been reviewed and updated three times which we believe illustrates the robust nature of the protections it offers to customers of new build homes. These include a free (for consumers), Independent Dispute Resolution Scheme that can resolve issues falling outside a warranty provider's scheme for defects or damage. Further, if any registered builder fails to honour any award made against them under the Scheme, the Home Warranty Bodies can apply a sanction against them including financial penalties, re-training and suspension from the Home Warranty Bodies' registers which in effect, removes their licence to trade.
- 2.5 We acknowledge that the creation of other consumer codes related to the sale of new homes has led to some confusion for customers and is not ideal; such as the Consumer Code for New Homes. Whilst, on the face of it, the Codes themselves do not vary greatly, the protection afforded by the warranties that underpin them vary considerably and may potentially leave the consumer exposed. It is, therefore important to recognise the ongoing work that is taking place between HFS, the Home Builders Federation (HBF), The Consumer Code for Home Builders and representatives from other codes and warranty bodies to:
- Work to establish a, single common consumer code
 - Work to establish one set of warranty standards that conform to best practice
 - Review and improve existing governance structures to ensure independence
 - Review and improve the existing Independent Dispute Resolution Scheme by providing free access to consumers and extending it to cover any gaps identified
 - Implement of an Ombudsman redress scheme

3. What do you think would be the main practical advantages and disadvantages of the proposed Bill?

- 3.2 One of the main disadvantages with the proposed Bill as a whole, is that it is pre-empting the ongoing work the home building industry is already involved in regarding the establishment of one common consumer code that brings together one universal set of warranty standards, consumer protections and the creation of a New Homes Ombudsman. It is essential that any improvements to the system of new home purchase is industry-led and covers the whole of the UK in order to give consumers adequate protection and developers clarity of what is required of them, wherever the homes are being built.
- 3.3 If the proposals were to be taken ahead they pose the threat of creating a two tier system for redress that will inevitably only create further confusion for the purchaser.
- 3.4 The proposals also have the potential to adversely impact what mortgage providers are currently offering, if Scotland were to depart from the rest of the UK in the development of any future consumer protections. Already in Scotland, small differences in conveyancing have prevented some lenders who offer mortgages to buyers in England from participating in the Scottish market. Even a small difference can mean significant implications for lenders in terms of processes or automated systems. In some cases lenders have taken the decision to withdraw from, or not enter the Scottish market rather than make the investment required. For example, Santander do not lend on Help to Buy mortgages in Scotland as their processes could not cope with the differences between the Scottish scheme and the one in England. In maximising choice for new build customers, we are keen to see everything possible done to ensure a consistent approach to customer redress. These same principles apply to warranty body participation. We would not want to see any reduction in choice for home builders in who they can partner with to offer structural

insurance for their customers.

4. What length of time do you think is most appropriate for a builder's warranty for a new-build home?

4.2 We believe that the current ten year warranty currently offered through the mainstream warranty providers is the most appropriate.

4.3 Under the mainstream warranty providers, the home builder is made liable for the first two years for any defects that may arise. The warranty provider then covers the remaining eight years for any major structural defects that may arise (including years 0-2 if the home builder becomes insolvent or fails to resolve any defects). If the customer believes the home builder has not obliged in their duty to correct any snagging or defects within the first two years, the home buyer can seek resolution through the home warranty body. Then, if the home buyer is dissatisfied with how the home warranty body has dealt with the case, they have recourse to complain to the Financial Ombudsman Service.

4.4 It should also be noted that purchasers of a new home have significantly more protection than if they were to buy an older existing property. Other than a Home Report, unless the purchaser pays additional costs for further checks such as structural surveys on the property, they have to rely on their own buildings insurance if they discover any major defects.

5. What are your views on having standard missives that provide a right for buyers to carry out a full survey of the property within a specified period, and a right to pull out of the purchase if severe or very serious defects are discovered?

5.2 Our members have expressed strong concern over the lack of detail included in this proposal and have queried:

- Who will assume financial responsibility for the full survey; will the cost lie with the developer or the purchaser? This would be detrimental to either the developer or purchaser dependent on whom the cost lies with. In addition for SME home builders this would raise yet another financial obstacle they would have to navigate in an already difficult development process.
- Further clarification on the definition of severe or serious defects is needed to ensure that minor snagging issues are not conflated with structural defects, both of which are covered by home builder warranties. It should also be noted that it is incredibly unlikely that, in the rare instances there is a structural defect, this will be picked up by a surveyor, pre-purchase.
- Without the clarification over what is referred to here by severe or very serious defects there are concerns over the ability this may give to surveyors to conflate issues that would be considered minor snagging and the home builder is obliged to remedy within the first two years of purchase.
- Dependent on when the proposed survey was to be carried out, the ability for a customer to fully pull out of a purchase will create larger uncertainty throughout the sales process for both home builder and purchaser. Given that most purchasers have already sold their home or given notice to a landlord, they want certainty of entry dates as much as the lender and the developer does.

5.3 Consideration must be given to the disruption the proposals would cause across the whole home building sector, with developers likely facing increased uncertainty from sales falling through, more complex missives to conclude and with no certainty of completion dates. Whilst larger developers may be able to absorb some of these costs, the impact will be felt acutely by the SME sector. Small scale home builders often tend to operate in more dispersed rural areas, in secondary or

tertiary markets; where economies are the first to be hit by any slowdown, and usually the last to experience a recovery. This will result in yet another hurdle for SMEs to overcome and discourage new entrants from entering the market.

5.4 Many SME home builders will offer significant levels of customisation in the construction of their homes to a purchaser. Inclusion of statutory clauses allowing the purchaser to completely pull out of the sale therefore could result in a home builder being left with a bespoke product that would be difficult to sell to an alternative purchaser and potentially worth less than a non-customised house. Undoubtedly, some home builders would have to stop offering this type of personalised service if these proposals were pursued as the commercial risk would be too great.

6. **If you have bought a new-build home in the past, please tell me about your experience, taking care not to name individuals/companies or the location of the property/development.** As the representative body for the industry, we cannot comment on individual experience, however the high levels of customer satisfaction in relation to the purchase of new build homes should not be ignored. Results from the last four years National New Homes Survey operated by NHBC has demonstrated the consistently high level of satisfaction customers have with their purchase:

	2017/18		2016/17		2015/16		2014/15	
Response % (weighted by Builder size)	Scotland	All UK	Scotland	All UK	Scotland*	All UK	Scotland	All UK
Recommend	88.9	86.8	89.9	86.1	88.9	84.3	89.3	85.0

6.2 We would like to highlight the fact that any anecdotal evidence received during this consultation should be carefully reviewed. Consideration must be given as to whether respondents are directly referring to Scottish developments and that issues associated with developments south of the border are not conflated with the quality of Scottish new build homes. Further thought should also be given as to when the homes were built, were the homes constructed and sold before the existence of the Consumer Code, to allow for reflection on longer term trends in customer satisfaction.

7. **What financial impact would you expect the proposed Bill would have on Government and the public sector, Businesses – including housebuilders, individuals – including new build house buyers?**

7.2 Home builders would inevitably face significant increases in costs if the proposals set out within the consultation were taken forward issues surrounding:

- Initial set up costs aligning legal departments to deal with any new statutory missives and any subsequent delays faced in concluding them
- Uncertainty in the sales process if the purchaser were to pull out of the sale completely. Whilst this would be incredibly detrimental to any home builder, for PLCs who have to report to their shareholders, setting out the total number of anticipated completions in the financial year, the uncertainty has the potential to impact share values. Further it would also be acutely felt by the SME sector where companies already often operate in more uncertain markets.
- Lack of clarity over who would be responsible in covering the cost of any survey carried out before the purchase

7.3 Purchasers of new build homes would be equally likely to face some increase in cost if the proposals were taken forward due to the anticipated longer times it would take to conclude missives and therefore experience an increase in legal fees associated with the purchase of any

home. Additionally, if lenders were to pull out of Scotland as a result of the proposals, this could potentially result in the reduction in access to competitive mortgage rates for aspiring home owners, consequentially pushing up the cost to borrow and impacting on the overall housing market.

8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

8.2 No response

9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

9.2 We have serious concerns over the viability of taking forward the proposals set out within the consultation without causing significant disruption to home builders and purchasers alike. As outlined throughout our response we urge consideration of the impact these proposals may have on further restricting or hindering the supply of new homes Scotland desperately needs to meet the demands of its' growing population, particularly in the context of the backlog of 80,000 homes amassed over the last 10 years and the subsequent need to deliver approximately 25,000 homes per annum. If carried out in isolation to the rest of the UK, Scotland may be at risk of:

- Increased costs:
The inclusion of statutory standardised missives is overly prescriptive and will most likely add further delays to the sales process. The lack of clarity over who is financially responsible for carrying out the pre-inspection survey; will this come at increased cost to the home builder or the purchaser?
- Increased uncertainty:
Separate standards in relation to customer redress will ultimately result in the creation of a two-tier system which only achieve in adding further confusion to the purchaser and home builders in terms of what they are entitled to and what is required of them respectively.
- Lender withdrawal:
Including the provision for a customer to pull out of a purchase entirely not only creates uncertainty for the home builder but has the potential to cause lenders offering mortgages to aspiring home owners to withdraw from Scotland or not enter the Scottish market entirely.
- SME Home Builder Sector:
All of these potential disruptions will be felt most acutely by the SME home builder sector which is still recovering from the 2008 crash and operating on much thinner margins as their costs are proportionally higher than larger builders.

10. Do you have any other comments or suggestions on the proposal?

10.2 The home building industry is fully committed to increasing levels of customer redress and the quality of new build homes. We would strongly encourage that any changes made to strengthen the existing structures regarding customer redress in Scotland are not made in isolation to the rest of the UK, with collaboration between the home building industry and all concerned stakeholders. The proposals set out within the consultation will not deal with issues of build quality and customer service but rather simply address problems as they arise. We believe that a more strategic approach to improving the quality of new homes and customer redress is required with full industry buy-in. In this light the industry led work currently being undertaken by between HFS, HBF and the Consumer Code for Home Builders presents the most viable platform to improve the specific areas

of concern outlined within the consultation.

10.3 If you would like to discuss any of the above in further detail please don't hesitate to contact Homes for Scotland.

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