

## **New Homes Quality Board Code of Conduct Consultation**

### **Response from Propertymark**

**July 2021**

#### **Background**

1. Propertymark is the leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 17,500 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

#### **Questions**

##### **Section One: Creating a New Register of House builders**

**Question 1. How important is it that there is a register identifying those house builders who agree to the requirements and principles of the New Homes Quality Code?**

2. Propertymark believes that it is very important that there is a register identifying those house builders who agree to the requirements and principles of the New Homes Quality Code. There are two reasons for this: firstly, in the absence of a statutory requirement for all developers to belong to a New Homes Ombudsman, a publicly available list of “Registered Developers” is a key element of promoting consumer confidence by enabling transparency and access to information. Secondly, a register would assist consumers in making informed purchasing decisions and ultimately encourage uptake of the scheme across the house-building industry.

##### **Section Two: The Fundamental Principles of the New Homes Quality Code**

**Question 2. Responding as an industry professional – comments on the Fundamental Principles of the New Homes Quality Code.**

3. Propertymark believes the Fundamental Principles of the New Homes Quality Code are about right, but guidance is needed as to how these are to be applied and interpreted. To this end, the Principles outlined in the Code should be explicit in their requirements. Whilst there is some elucidation, many of the standards are undefined: requirements to “treat customers fairly” and to “identify vulnerable customers” come with no reference as to what is meant by fairness, or indeed what characteristics constitute a “vulnerable customer”. It is vital that the Developer Guidance and Glossary of Terms are points of reference to avoid misunderstanding and inadvertent breach of the Code.

**Section 3: Scope of the application of New Homes Quality Code (The Code) – consumer purchasers**

**Question 3. Responding as an industry professional – scope of the Code**

4. Propertymark believes the Code plugs the gap in existing consumer protection for homeowners and is a step in the right direction. It should be reviewed within 12 months of starting to examine whether it needs to be extended further.

Shared Ownership

5. It is our understanding that, under current arrangements, the Housing Ombudsman’s jurisdiction includes Shared Ownership (local authority and housing association) properties. It is therefore appropriate that protections are not duplicated under the Code, and that the provisions do not extend to Shared Ownership properties.

Self-Build

6. Propertymark believes that self-build projects that are due to be sold by the builder within a set period should fall under the Code’s remit and would urge the NHQB to define an appropriate timeframe so that purchasers of such properties do not lose out on the protections afforded by the Code.

Leaseholders and renters

7. It is vital that freeholders of leasehold properties who do not make use of a managing agent be members of a New Homes Ombudsman. It is unacceptable that leaseholders or renters not presently protected by the Housing Ombudsman be unable to access redress and the Code could go further to ensuring that its provisions are extended to these, presently marginalised, groups.

**Section 4: New measures to stop poor sales practices and ensure inducements are declared**

**Question 4. The Code includes new measures to put an end to poor sales practices including High-Pressure Selling and requires Registered Developers to declare hidden inducements (payments to connected parties for recommendations). How important are these changes to tackle poor sales practices?**

8. Propertymark believes the new measures are very important. We consider the standards for sales practices defined by the Code to be helpful, and the examples of prohibited high-pressure selling techniques a useful guide for consumers who may be unaware of such techniques. However, the Code could go further in some areas to eradicate bad practice. The Code requires a developer to “notify a customer *at the time of* referral or reservation...if they receive any fee”, and Propertymark believes this should be amended in line with the National Trading Standards Estate and Letting Agency Team’s (NTSELAT) guidance to provide referral fee information *in advance* of any transaction-based decision, such that information can be digested, and an informed choice can be made by the consumer.
9. To further tackle poor sales practices, Propertymark has previously called for developers’ sales staff to be subject to the requirements of the Estate Agents Act 1979 and the UK 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.<sup>1</sup> Ensuring all staff involved in sales and after-sales processes are appropriately qualified, meeting agreed minimum competency standards, is a crucial element of improving service standards and consistency across the industry and guaranteeing that poor sales practices are eliminated.

**Section 5: A new right for buyers to carry out a Finishing Check before completion to identify any finishing issues**

**Question 5A. Do you think that a pre-completion check will help buyers identify issues before they move into their new home?**

10. Yes, Propertymark strongly agrees that the opportunity for a pre-completion check carried out by a suitably accredited professional should be available to a prospective purchaser, and that it would capture some if not all defects prior to completion. Whilst many reputable developers allow pre-completion checks to be undertaken, often the responsibility is assumed by the purchaser as part of the new home demonstration, which means any check is limited by both the time available and expertise of the individual.

**Question 5B. How important is a compulsory right to pre-completion check to ensure that builders finish homes to a high standard?**

11. Propertymark contends that the compulsory right to a pre-completion check is very important. The long-term impact of a mandatory right to a pre-completion check would be elevation of industry standards and aspiration to achieve a 'zero-defect' culture, as house builders seek to minimise faults that might lead to a delay in completion. It would also aid in enforcement of the Code's requirement that completion may only take place on a "Complete New Home". Whilst not every consumer may exercise their right to such a check, it is important for ensuring parity that everyone have the opportunity for a pre-completion check.
12. Propertymark would urge the NHQB to consider the inclusion of a compulsory snagging retention in the Code. Such a mechanism would promote build quality and provide assurance to the purchaser that any issues would be rectified in a timely manner. Few builders offer such a service, and those that do may be inclined to set unattainable terms, such as impractical deadlines for identifying defects. A retention mandated by the Code would remove this bias and offer a real incentive to developers to build well from the outset.

**Section 6: A new obligation to inform buyers of known and additional costs.**

**Question 6. Responding as an industry professional - obligation to inform buyers of costs.**

13. Propertymark welcomes the new obligation to inform buyers of known and additional costs and believes it will bring greater peace of mind and confidence to home buyers. We are supportive of efforts to improve the transparency of information on costs, and the Indicative Costs Schedule is clearly a helpful point of reference for any prospective purchaser. The

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<sup>1</sup> <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

Schedule's ten-year timeframe is also welcome, affording consumers with some confidence and an ability to forward plan.

14. The New Homes Quality Code requires developers to provide "a reasonable identification of likely costs"; this does not appear to be too onerous, and indeed the very title of the Indicative Costs Schedule allows for some margin of uncertainty in defining precisely what costs may be incurred. Propertymark therefore anticipates that such an obligation should be straightforward to fulfil.

## **Section 7: After sales service and dealing with complaints**

### **Question 7 Responding as an industry professional - new standard processes to deal with complaints.**

15. Propertymark believes that the new proposals for dealing with complaints outlined in the new Code are about right – but guidance in how these are to be applied and interpreted would be necessary. This will support all developers to have an effective after-sales service where they can deal with issues that arise post occupation, such as snagging.
16. The procedures proposed recognise that developers cannot be permitted to expunge themselves of responsibility for a lack of build quality or service once a sale is legally complete. Propertymark considers the processes outlined to be both helpful for consumers and achievable for developers. Complaints-handling must be transparent, and the New Homes Ombudsman must hold developers to account, in part by publicising complaints upheld. This will provide clarity on performance for consumers and competitors, and help to reduce the number of complaints, particularly those related to maladministration.
17. Propertymark would recommend, however, that the complaints handling timeframe should be dependent on the size and nature of the developer. Whilst the proposed eight-week timeframe appears reasonable and achievable for all developers, larger house-builders (as defined by a certain number of units sold per annum) with proportionately greater after-sales resources should be encouraged to resolve issues more quickly, such that a customer could refer any dispute to the New Homes Ombudsman after 42 days (rather than the proposed 56 days). In an oligopolistic industry, where small- and medium-sized firms may struggle to compete, a more nuanced approach to complaints handling that reflects available resources would be a fairer approach.
18. Finally, the Code should offer more protection for customers in instances of insolvency. The Code requires developers to "provide reasonable protection against insolvency" and refers to obligations for financial reimbursement and payments to the New Homes Ombudsman. However, there is no elaboration of what would be deemed "reasonable" and no explicit reference to a developer's responsibilities in respect of defects. As has been identified by the NHQB, warranties habitually cover repairs from year three onwards, therefore this would seem to be an area in which protection is lacking.