



DRAFT FOR CONSULTATION PROCESS



**New Homes Quality Board**  
**Developer Guidance**



## DEVELOPER GUIDANCE

The New Homes Quality Code (“the Code”) establishes mandatory Requirements which must be adopted and complied with by Developers and new homes builders who are registered with the New Homes Quality Board (“Registered Developers”).

This Developer Guidance is provided as a supplement to the Code to assist Registered Developers in the operation of the Requirements. It does not supersede or replace any of the Statement of Principles or Practical Steps of the Code and may be updated from time to time, to reflect emerging industry best practice as well as decisions of the New Homes Ombudsman service.

This Guidance is not necessarily prescriptive as it is the Fundamental Principles which are important when interpreting the Requirements to achieve Customer satisfaction. Developers do not have to follow the Guidance but if they take a different approach, the Customer must not be worse off than they would have been if the Developer had followed the Guidance. The Developer should provide a similar level of information and achieve a similar outcome to the same or better level or standard than this Guidance suggests.

Guidance is only provided where the Requirements in the relevant section of the Code requires more practical information to assist Developers in compliance with the Requirements. Where such additional Guidance is not required the following statement will appear in this document “See *New Homes Quality Code for mandatory Requirements.*”

Where this Guidance uses the term or terms for England/Wales, the appropriate term or terms for the United Kingdoms’ devolved nations are implied.

## THE NEW HOMES QUALITY CODE: **STATEMENT OF FUNDAMENTAL PRINCIPLES**

The purpose of the ten **Statement of Principles** (the Fundamental Principles) is to set out fundamental obligations which Registered Developers agree to follow in all their dealings with all of their Customers of New Homes.

## NEW HOMES QUALITY CODE: **PRACTICAL STEPS**

Developers should incorporate the Code Requirements into their own published customer charter.

During the transition period to adoption of the Code and New Homes Ombudsman service the Developer must clearly inform Customers if they are covered by the New Homes Quality Code and New Homes Ombudsman service or if they are subject to legacy arrangements due to the date of their Reservation Agreement

Developers’ relevant Trade Bodies (e.g., Home Builders Federation and Homes for Scotland) and the Home Warranty Bodies may provide information to their members on how to fulfil their obligations under the Code and provide appropriate information and help to their Customers.



## SECTION ONE: SELLING A NEW HOME

### Sales Information and Marketing

The Code logo should precisely follow the design shown in the logo guidelines on the Code website.

The logo should be prominently displayed at the minimum prescribed size in public areas, on the Developers website, in sales offices/outlets including those of appointed selling Agents and clearly printed in sales and marketing material. The Developer may provide the Code scheme documents in hard copy or electronic form.

The Developer should make the Code available in a variety of formats (e.g., large print) and media and fulfil reasonable requests for an alternative format within ten calendar days of a Customer's request.

The Developer must act within the terms of the law at all times in their sales and marketing processes. If there is any uncertainty as to whether marketing or sales material is legally compliant, before presenting it to Customers, the Developer should check that the material complies with all relevant legislation.

Developers must follow the principles and take account of in their practices any direction provided by official bodies and reporters authorised to investigate the activities of Developers. An example of this would be the outcomes of the Competition and Markets Authority (CMA) investigation into the mis-selling of Leasehold New Homes.

At all times the Developer should consider the needs of Vulnerable Customers.

### Describing the New Home

See New Homes Quality Code for mandatory Requirements.

### No High-Pressure Selling Techniques

See New Homes Quality Code for mandatory Requirements.

### Part-Exchange and Assisted Move Schemes

See New Homes Quality Code for mandatory Requirements.

### Considering Vulnerable Customers

In this section all references to 'staff' includes Agents acting on the Developers behalf. It is especially important that Customer facing staff are able to identify Customers with a potential vulnerability and have appropriate procedures in place.

The Developer should take all reasonable steps so that;

- a) the necessary arrangements are made to provide Vulnerable Customers with the appropriate advice and assistance suitable to their needs, and that staff do not make assumptions about the degree of knowledge that a Customer has.
- b) a Vulnerable Customer understands the Code, the purchase and their responsibilities (e.g., where there is difficulty in comprehension, the Developer should recommend that the Customer is accompanied by a suitable representative).
- c) if a Customer declares a vulnerability at the commencement of negotiations or it is obvious that the Customer has a vulnerability (e.g., a physical or mental impairment) the Developer must consider the possible effect of that vulnerability on the proposed transaction.
- d) if no vulnerability is declared by the Customer, but it becomes apparent that there may be a vulnerability, the Developer must seek clarification from the Customer and/or their representative. Enquiries must be of a nature that are considerate, inoffensive and can in no way be interpreted as discriminatory.

The Developer should ensure that staff engaged in the sales process understand their obligations in relation to identifying and supporting a Vulnerable Customer.

The Developer may find it helpful when dealing with Vulnerable Customers to consider the BSI Code of Practice.

If the Developer is advised of, or perceives there to be, vulnerability, then they may also consider seeking further information from the appropriate organisation specialising in that vulnerability.

Further sources of information about vulnerability can be found here:

- [www.gov.uk](http://www.gov.uk) for a comprehensive list of organisations that offer advice and information on specific mental health issues.
- [www.ableize.com](http://www.ableize.com) which is run by people with disabilities and provides links to local and national support and advice groups.

### Customer Service Standards and Training

In this section all references to 'staff' includes Agents acting on the Developers behalf. The Developer should ensure that all Customer facing staff have a good understanding of the Code requirements in respect to sales and marketing, no high-pressure selling techniques, standards expected, information requirements, part-exchange schemes, reservation procedures, New Home Warranties and after sales service.

Customer service standards, procedures, training and systems should be provided to all relevant Customer facing staff both permanent and temporary and, where appropriate, a record maintained.

Not all staff are expected to have received the same level of training. Its extent will depend on their role.

For good practice, the Developer should have systems in place for monitoring their staff and their training

The Developer should ensure that staff training, including that for Agents, is refreshed at least on an annual basis.

A record of training undertaken on the Code should be maintained and this can be achieved by undertaking the Code training package.

### **Legal and other Advisers, Commission and Inducements for Goods and Services**

If the Customer asks the Developer for advice on how to seek suitable conveyancing services, the Developer should recommend to the Customer that they seek independent legal advice as well as, where appropriate, advice from an independent mortgage advisor before Contract Exchange.

If the Customer asks the Developer to recommend a Professional Advisor, then the Developer should recommend more than one to provide the Customer with choice.

There is a growing need to be able to serve Customers who choose to make enquiries and proceed up to and including Reservation 'online' or on the telephone (non-face-to-face). All references in the Code that suggest a face-to-face apply to online and telephony Customers and the Fundamental Principles must be interpreted and complied with accordingly.

If a Developer provides an online or telephony cost tool, mortgage qualification and or calculator this will often be provided by a specific single provider and, therefore, the option of choice of provider is not always available. In these circumstances the Developer must make it clear to the Customer who the provider is together with any assumptions and limitations around the provision of the service and obtain the Customers consent before referral to the provider.



## **SECTION TWO:** LEGAL DOCUMENTS, INFORMATION, INSPECTION AND COMPLETION

### **Early Bird Arrangements**

Arrangements with Customers that provide a pre-release of a plot (e.g., option, Early Bird, pre-reservation waiting list) on a New Home are not recognised as Reservation Agreements.

### **Reservation Agreements**

The Developer should provide enough information for the Customer to properly understand the Reservation Agreement.

If the Developer is not the owner and vendor of the New Home then this must be clearly explained to the Customer - for example the Developer has been retained to market the property having sold it to a third party.

When providing a copy of the Code and the Reservation Agreement to the Customer, it is acceptable for this to be an electronic version. If these are emailed to the Customer at their request, the Developer should obtain confirmation that they have been accepted. If further guidance or clarity is required by the Customer prior to Reservation, then the Developer should advise them where and how they can obtain such information.

The Reservation period may be extended by mutual agreement between the Customer and Developer. If the deadline date is not extended and contracts have not been exchanged, the Reservation Agreement automatically expires. In such circumstances the Reservation Fee should be refunded less reasonable cost retentions as set out in the Reservation Agreement.

It may be that the terms of a Reservation Agreement relating to incentives (for example, discounts, part exchange or similar) have to be altered. The Reservation Agreement must provide for and specify how any changes or variations to the Reservation Agreement will be agreed and documented between the Customer and the Developer. If no such provision exists the Developer and Customer should cancel the existing Reservation Agreement and enter into a new agreement without any deduction from the Reservation Fee.

When a Reservation Agreement has been signed by the Customer, the Developer's legal advisor should send the Customer's legal representative the proposed Contract of Sale, the legal title, a copy of the Code and any other relevant documents and approvals, including information about town planning and statutory approvals and consents. This may be in hard copy or electronic format.

The draft Contract of Sale and all relevant documents should be sent by the Developer's legal representative to the Customer's legal representative following the completion of the Reservation Agreement.

The Developer should provide the Customer with contact details for the relevant New Home Warranty provider together with a summary document of the New Home Warranty cover obtained by the Developer from the New Home Warranty provider.

The Developer should provide the property and Customer/s details to the New Home Warranty provider in order that the provider will be able to issue any required regulatory information to the Customer/s.

If the New Home is incomplete the Developer must provide the Customer with brochures or plans reliably illustrating the New Home's general layout, appearance, plot position and orientation. The utilities provided and where they are located, energy performance ratings of the New Home. To help avoid later disputes, the Developer should record with the Customer the plans, list of contents and any elevational drawings they have shown to a Customer, and ensure that the Customer acknowledges having seen these.

If the New Home is complete and the Customer has had the opportunity to view the finished New Home, then the Developer does not need to provide a brochure, plan or illustrations of the New Home, but should still provide a list of the contents.

Customers' questions should be acknowledged and responded to within 10 calendar days. If the Developer is unable to provide a full response within that time, the Buyer should be kept informed of progress.

See also Consumer Rights Act 2015

The Developer should ensure that all information provided to Customers on timings is accurate at the time it is provided.

What the Developer informs the Customer about when the New Home is likely to be ready will depend on what stage construction is at relevant to when they provide the information.

***Important note on extra work and extra items.***

If the Developer agrees to do extra work or incorporate extra items that the Customer will pay for, and these are not specifically included in the Reservation Agreement, they should be set out and agreed in writing using a separate quotation and written order signed by both parties. The Developer should make clear the terms of this agreement, including cancellation and refund rights.

If, as a result of this extra work, the Developer needs more time to complete the New Home beyond that originally stated in the Contract of Sale, this should be agreed and recorded by the legal advisers acting for the parties.

The Code does not cover agreements for extra work or agreements between the Customer and third-party contractors.

**Cooling Off Period**

See New Homes Quality Code for mandatory Requirements.

**Cancellation after the Cooling Off Period**

See New Homes Quality Code for mandatory Requirements.

**Cancellation by the Developer**

See New Homes Quality Code for mandatory Requirements.

**Pre-Contract of Sale**

Full details of the New Home Warranty should have been provided to the Customer prior to the Contract of Sale. The Developer should provide the Customer with details of insurance documents that the Customer will be presented with when ownership of the New Home transfers from the Developer to the Customer at Legal Completion.

See also Regulation 6 of the Consumer Protection from Unfair Trading Regulations

The information the Developer provides to the Customer should be clear, fair and not misleading, in plain language, without jargon and include:

- a) information in relation to Management Services (Scotland: 'factoring') which includes explaining to Customers of freehold properties any costs and liabilities they will be committed to, relevant to the type of property they are buying, as a result of the wider Development works including:
  - roads & sewers which will not be adopted by the Local Authority;
  - electrical or mechanical plant or facilities;
  - new recreational areas and facilities;
  - other covenants or features of the Development; which exist outside of the immediate New Home boundary and as a result of which the Customer may have an element of financial or legal liability.
- b) information in relation to Event Fees, where applicable. This should include explaining when such fees may be triggered such as upon the sale of the New Home, sub-letting the property, or taking out an equity release mortgage.
- c) information in relation to tenure, where Leasehold and/or ground rent, should include (but is not limited to):
  - providing clear details of the length of the lease
  - the period and the basis of calculation for any reviews of the ground rent

The Detailed Planning Consent reference number should be provided and the number of dwellings and primary facilities to be provided within that consent stated e.g., open space, recreational areas, retail, commercial, infrastructure, etc.

If the New Home is incomplete the Developer must provide the Customer with brochures or plans reliably illustrating the New Home's general layout, appearance, plot position and orientation. The utilities provided and where they are located, energy performance ratings of the New Home. To help avoid later disputes, the Developer should record with the Customer the plans, list of contents and any elevational drawings they have shown to a Customer, and ensure that the Customer acknowledges having seen these.

### **Contract of Sale**

See also Consumer Rights Act 2015

The Developer should ensure that all information provided to Customers on timings is accurate at the time it is provided.

What the Developer informs the Customer about when the New Home is likely to be ready will depend on what stage construction is at relevant to when they provide the information.

The Developer may follow their own process and methods. However, they may use the following approach:

- Before completing the foundations and ground floor – give the calendar quarter when the New Home is likely to be ready.
- When the roof is completed and the building weatherproof – give the month when the New Home is likely to be ready.
- When the New Home is decorated and main services are connected – say what week the New Home is likely to be ready.

The construction stages and time periods will vary according to the type of Development; for example, whether the Developer is building flats or houses.

It is important that the Developer considers carefully the expected date given in the Contract of Sale and that it is consistent with the information they give the Customer before Contract Exchange.

In the Contract of Sale, the Developer should give the expected date by which notice of Legal Completion should be served. This date should be based on the guidance above or follow similar guidelines.

If the Developer has agreed to do additional works for the Buyer beyond those in the Reservation Agreement and Contract of Sale, which will change the timescale for completing the New Home, the parties' legal advisors should record such a timing change.

The extension of time may require the long-stop date to be amended.

The Contract of Sale should clearly define the notice period within which Legal Completion will occur, this is expected to be no less than 14 calendar days from the serving of notice to complete.

If a New Home is complete, the Contract of Sale may state a fixed date for Legal Completion.

To avoid disputes over spoken statements, immediately before Contract Exchange, the Developer should ensure that the Customer, through their legal representative, states in writing what spoken statements they are relying on when entering into the Contract of Sale.

Minor changes to the New Home that do not alter the size, appearance or value from that shown to the Customer, in the Reservation Agreement and Contract of Sale, should be notified to the Customer. However, such changes do not give the Customer the right to cancel the Contract of Sale and the Customer's formal agreement to them is not required.

The Developer does not need to notify the Customer of changes of construction materials that do not affect the New Home's size, appearance, value or the ability to insure or provide security for a mortgage. If in doubt the Developer should refer the Customer to their Professional Advisor.

### ***Important note on extra work and extra items.***

If the Developer agrees to do extra work or incorporate extra items that the Customer will pay for, and these are not specifically included in the Contract of Sale, they should be set out and agreed in writing using a separate quotation and written order signed by both parties. The Developer should make clear the terms of this agreement, including cancellation and refund rights.

If, as a result of this extra work, the Developer needs more time to complete the New Home beyond that originally stated in the Contract of Sale, this should be agreed and recorded by the legal advisers acting for the parties.

The Code does not cover agreements for extra work or agreements between the Customer and third-party contractors.

### **Keeping the Customer Informed and Pre-Completion Inspection Checks**

The Customer, or their representatives, visit to undertake a Pre-Completion Inspection of the New Home should be arranged by appointment between the parties from 5 calendar days (earlier by mutual agreement) after the Notice to Complete has been served to enable the Customer (or their representative) to see the New Home in its virtually complete condition, but with sufficient time to enable the Developer to remedy, where practical, any outstanding Snags or incomplete items before Legal Completion.

Where not practical to remediate prior to Legal Completion agreement should be reached with the Customer on the timescale for remediation.

The Developer should facilitate access for Customers (or their representative) in line with the relevant health & safety provisions.

The Developer should not prevent or deny Customers (or their representatives) the opportunity to inspect the New Home prior to Completion and should provide the Customer (or their representative) with reasonable time during which to undertake an inspection of the New Home.

The Customer may wish for an accredited professional (e.g., snagging checker) to represent them to inspect the New Home on their behalf and the Developer should provide the same facility as for the Customer.

The Developer should take into consideration the relevant needs of all site visitors when making the decision as to whether access is suitable and safe.

The Developer may accompany the Customer (or their representative) during the inspection.

#### **Changes, agreement to substantial changes and termination of contract for unacceptable changes**

To avoid disputes over spoken statements the Developer should ensure that the Customer, through their legal representative, states in writing what spoken statements they are relying on when entering into the Contract of Sale.

The Developer does not need to notify the Customer of changes of construction materials that do not affect the New Home's size, appearance, value or the ability to insure or provide security for a mortgage. If in doubt the Developer should refer the Customer to their Professional Advisor.

Minor changes to the New Home that do not alter the size, appearance or value from that shown to the Customer, in the Reservation Agreement and Contract of Sale, should be notified to the Customer. However, such changes do not give the Customer the right to cancel the Contract of Sale and the Customer's formal agreement to them is not required.

If the Developer agrees to do extra work or incorporate extra items that the Customer will pay for, they should be set out and agreed in writing using a separate quotation and written order signed by both parties. The Developer should make clear the terms of this agreement, including cancellation and refund rights.

The Code does not cover agreements for extra work or agreements between the Customer and third-party contractors.

#### **Complete New Home**

See New Homes Quality Code for mandatory Requirements.

#### **Legal Completion**

The Developer should provide the Customer with a 'Home Demonstration' appointment to explain and demonstrate the functions, facilities, equipment, operation and maintenance of the New Home.

This should include an explanation of how the appliances included within the New Home operate. It is recommended that full operational documentation is provided to the Customer along with the Developer's explanation.

It is recommended that a schedule of all available guarantees and warranties is provided, including clear details of how long each guarantee or warranty lasts and any responsibilities the Customer may have that might affect cover.

All documentation issued to the Developer for each guarantee or warranty should be passed onto the Customer and should have been made specific to the New Home if that is a requirement of the provider - generic sample documents should not be provided to Customers.

Building Regulation Control Inspection Records should not be confused with the Building Regulation Completion Certificate as the relevant Local Authority may not provide this certificate until after completion. Where Building Control services have been provided by the Home Warranty Body, additional Building Control documentation is required over and above the New Home Warranty insurance cover note/policy certificate.

#### **Incomplete Works**

The Developer should explain that security for completing works not part of the New Home, but serving it, is normally contained in legal agreements between the Developer and Local Authority (planning conditions, highways agreements etc.). The Developer should clearly explain to the Customer where the Developer has no control, is not responsible for or is reliant on other parties to be able to complete any incomplete work at the point of Legal Completion.

#### **TERMINATION OF CONTRACT AND REPAYMENT OF FINANCIAL DEPOSITS**

See New Homes Quality Code for mandatory Requirements.  
Examples of circumstances when a right to terminate exists would include:

- a) a substantial and significant change to the New Home that the Customer has not agreed to and which directly or materially affects the value or appearance of the New Home.
- b) excessive or unreasonable delay in the completion of the construction of the New Home and serving the notice to complete.

Unreasonable delay may be defined by including a long-stop date in the Contract of Sale, for example by using a clause along the following lines;

The Buyer may terminate the contract if the Developer fails to serve notice on the Buyer to complete the sale within [x] months from the anticipated date stated in the Contract of Sale.

The period [x] months should be no more than 6 months for houses or 12 months for apartments if the Contract of Sale is exchanged before the roof is completed and the building weatherproof.

This period should be no more than 2 months for houses or 4 months for apartments if the Contract of Sale is exchanged at an advanced stage of construction.

The aim of the long-stop date is to take into account possible delays in matters such as third parties providing services or facilities to the Development that are essential to occupation (for example, electricity substations or sewerage plant and other matters outside the Developer's reasonable control).

It is acceptable to include a clause protecting the Developer for unforeseeable excessive delays where an event out with their control or influence results in a significant delay e.g., a pandemic

If the Developer fails to serve notice on the Customer to complete the sale before the long-stop date, the Customer may have the right to cancel the Contract of Sale.

The Developer should ensure the Customer understands what will happen in the event that the Developer becomes insolvent and how their Contract Deposit, Reservation Fee or pre-payment will be protected and refunded.

The Developer should explain the terms under which the Reservation Fee, Contract Deposit, and any administration fees or similar which the Developer may deduct, are refundable and any applicable costs or penalties in the event that the Customer does not proceed with the purchase of the New Home.



## SECTION THREE: LEGAL DOCUMENTS, INFORMATION, INSPECTION AND COMPLETION

### After-Sales Service

Staff who provide the After-Sales Service should be well-trained and knowledgeable on the Code.

All references to "written" includes a clearly written and easily accessible statement on the Developers website.

In the absence of a free-phone number being provided, a national or local rate telephone number should be used. A premium rate number should not be used.

The Developer should give the Customer guidance in the Developers After-Sales Service and information on:

- a) the timescales within which written response to enquiries will normally be provided.
- b) an explanation of how notification of Snags and Defects will be received, arrangement for inspection and confirmation of remedy where appropriate, the need for access to the New Home, and the potential timescales for remediation according to the nature of the Snag or Defect.

The Developer should advise the Customer of the principal aspects of the New Home which are the Customer's responsibility to maintain, such as boilers, appliances, etc. This should include advice on initial 'running in' of the New Home including appropriate ventilation and acclimatisation of the building and expectation of possible shrinkage and minor adjustments which may arise.

The Customer should be advised as to what may be assessed as a Defect and the Developer's liability to remediate, giving reference to the Home Warranty Body's relevant building finishes and tolerances publications.

Where Snags are not resolved within the agreed timescales, the Buyer will be able to raise a Complaint which ultimately could be referred to the New Homes Ombudsman service.

The obligation to provide information about the After-Sales Service does not apply to second and subsequent owners. However, the Developer should still take responsibility for After-Sales matters which are reported by a second or subsequent owner within two years from date of Legal Completion of the original sale by the Developer.





## **SECTION FOUR:** SOLVENCY, LEGAL AND JURISDICTION

*See New Homes Quality Code for mandatory Requirements.*

The Developer should inform Customers who move into a New Home on a development that is still under construction about the health and safety precautions they should take.

The Developer should give the Customer the Health & Safety File for the New Home in compliance with the relevant regulations.

### **Snagging Period and Resolution of Snagging Issues**

Where Snags are not resolved within the agreed timescales, the Customer will be able to raise a Complaint which ultimately could be referred to the New Homes Ombudsman service.

### **Complaints Management**

See New Homes Quality Code for mandatory Requirements.

### **Complaints Process**

There should be proper, prompt and professional co-operation between the Developer and the Customer's appropriately qualified Professional Advisors.

Such advisors may include, family members, trading standards departments, the Citizens Advice consumer service (which can make referrals to trading standards departments), consumer centres and Professional Advisors such as solicitors and qualified surveyors, formally appointed under a relevant professional institute's rules.

Good practice under recognised consumer guidance allows a Complaint to be raised with an ombudsman 56 calendar days after the Complaint Initiation Date. When the New Homes Ombudsman service is appointed the NHQB will consider how this is approached, particularly where resolution could take longer than 56 calendar days due to the need to source specialist components e.g., equipment, materials, trades, etc. Similarly good practice also allows a Complaint to be escalated to an Ombudsman within 12 months of a Customer receiving the Developers final Response Letter. This will also be considered with the New Homes Ombudsman service when appointed and further guidance given.

### **Referrals to the New Homes Ombudsman service**

There should be proper, prompt and professional co-operation between the Developer and the Customer's appropriately qualified Professional Advisors.

Such advisors may include, family members, trading standards departments, the Citizens Advice consumer service (which can make referrals to trading standards departments), consumer centres and Professional Advisors such as solicitors and qualified surveyors, formally appointed under a relevant professional institute's rules.

The Developer should provide the Customer with information relating to the New Homes Ombudsman service operated as part of this Code. It should be clear that the New Homes Ombudsman service can deal with matters that fall within the scope of this Code, as described in "About the New Homes Ombudsman service" section above.

The Developer should inform the Customer that using their Complaints procedure or the New Homes Ombudsman service does not affect their legal rights. The Customer should be advised how to access each stage of the Complaint escalation process as may be required, who to contact and with relevant names, address, telephone numbers and e-mail address.

The obligation to provide information about the After-Sales Service does not apply to second and subsequent owners. However, the Developer should still take responsibility for After-Sales matters which are reported by a second or subsequent owner within two years from date of Legal Completion of the original sale by the Developer as these could result in a referral to the New Homes Ombudsman service if resolution is not agreed.



[www.nhqb.org.uk](http://www.nhqb.org.uk)