



NEW HOMES
OMBUDSMAN SERVICE

Annual Report 2023/24



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Foreword by Chair Jodi Berg OBE

On behalf of the Board of the New Homes Ombudsman Service I thank you for your interest in our service and in this year's annual report.

It is now two years since the launch of our service in 2022 and I am pleased to report a year of steady growth. The numbers of referrals to the Ombudsman have continued to increase, as have the numbers of completed reviews. As our scheme was not retrospective it has taken time for complaints to filter through developers' internal complaints processes before they can be referred to our service. However, as time goes on, we are beginning to see patterns in the types of complaint issues referred which will enable us to recommend ways in which individual developers and the industry as a whole can deal with customer concerns better.

During the year, our Ombudsman has continued to meet with developers and deliver messages to their senior managers and staff to help them to understand our role and our approach to handling any complaints that arise. These visits have been very well received.

For most people, buying a home is the most significant financial transaction that they will experience and buying a new home adds a new and higher level of aspiration to their purchase expectations. So, it is particularly upsetting and frustrating for people when they feel that things have not gone as they would have hoped and that their complaints to the builder have not resolved matters.

Our service is available to people whose homes are built by developers covered by the customer service and quality standards set out in the New Homes Quality Code. Currently this means that approximately 50% of new homeowners are protected by the scheme. When we can't assist people, we refer them on wherever possible to other organisations who may be of help. However, this is often disappointing both for complainants and for our staff who would hope to be able to help. So, we are pleased that the NHQB Code's reach is expected to grow to 70% of all new home purchases. We continue to meet regularly with the New Homes Quality Board at Chair and senior levels to share information and further develop our mutual interests in improving standards in the sector.

This year we have welcomed the publication of the Competition and Market Authority's Report - CMA Housebuilding and Markets Study (February 2024) which recognised that there is more to be done to ensure that all consumers benefit from the same high standards through a single consumer code and a sector wide Ombudsman covering all new home purchases. NHOS strongly supports the Report's conclusions and looks forward to a time when the whole industry is working to common standards and all consumers can feel confident in their home-buying journey.

Finally, this year our Ombudsman, Alison MacDougall, will be retiring after successfully setting up the service and gaining the respect of our NHQB partners and the wider sector. She will be missed and we wish her well for the future. We have already begun the process of recruiting her successor and are confident that the service will continue to build on the strong foundation she has set.

Jodi Berg OBE

Chair

New Homes Ombudsman Service

Introduction from Alison MacDougall

We have now completed our first full year of operation, following the launch of the scheme in October 2022.

Against a challenging backdrop for the industry and for consumers, we received a rising number of enquiries indicating solid growth in awareness of the scheme among consumers. Although we are not always able to take on their complaints, we see an important part of our role as listening to consumers' concerns and signposting them to other potential avenues of assistance. We have also dealt with our first eligible complaints helping customers achieve a positive resolution in 81% of cases completed during the year.

We have been particularly encouraged by the willingness of customers and developers to engage in assisted negotiation and mediation with NHOS, often building on conversations they have already had. As an independent third party, we are able to help them achieve a satisfactory solution to their issues. Importantly, this type of intervention allows developers and consumers to have an active input into the resolution of their complaints.

As we move into our second full year, over 50% of consumers buying a new home are now covered by the customer service and quality standards in the New Homes Quality Code and have access to independent redress through the New Homes Ombudsman Service. This is an important milestone, and we expect that up to 70% of purchases will be covered when all developers committed to the New Homes Quality Board have completed their registrations.

As market coverage increases further, we expect to see a continuing rise in complaints referred to the service and we look forward to working with developers and their customers to resolve their issues and to supporting the New Homes Quality Board and the industry in raising standards for consumers across the sector.



Membership of the scheme

Developers come under the jurisdiction of the New Homes Ombudsman Service (NHOS) through their membership of the New Homes Quality Board (NHQB). When developers have completed the process of registration with NHQB, they become active members of the NHQB Register of Developers. Details of the register can be found here ([NHQB Register](#)). Any customer who reserves a property with a developer who is an active member of the register can bring an unresolved complaint to NHOS, as long as their reservation took place after the developer joined the register.

By the end of March 2024, 90 developer groups were active members of the register, compared with 33 at the start of the year. A further 91 groups are making the operational and other changes and investments necessary to meet the NHQB's requirements and are expected to complete their registration during the course of the current year.

The active members of the register now account for 55% of all new homes sold in England, Scotland and Wales. When all developers currently engaged with NHQB complete their registrations, market coverage is expected to rise to around 65-70%.

Importantly for consumers, this means that the majority of consumers purchasing new homes are covered by the New Homes Quality Code and NHOS, bringing assurance of an enhanced level of customer service and quality requirements and access to independent redress.

Enquiries

During the course of the year we dealt with almost 4000 enquiries, mainly from consumers wanting to know more about our service. Enquiry levels continued to build throughout the year, demonstrating increased awareness of the service among new home buyers.

As part of our commitment to excellent customer service, we aim to answer calls within an average of 60 seconds, achieving a call response time of less than 7 seconds for the year. We also aim to answer email enquiries within 1 business day, and email communications were dealt with in an average of 49 minutes.

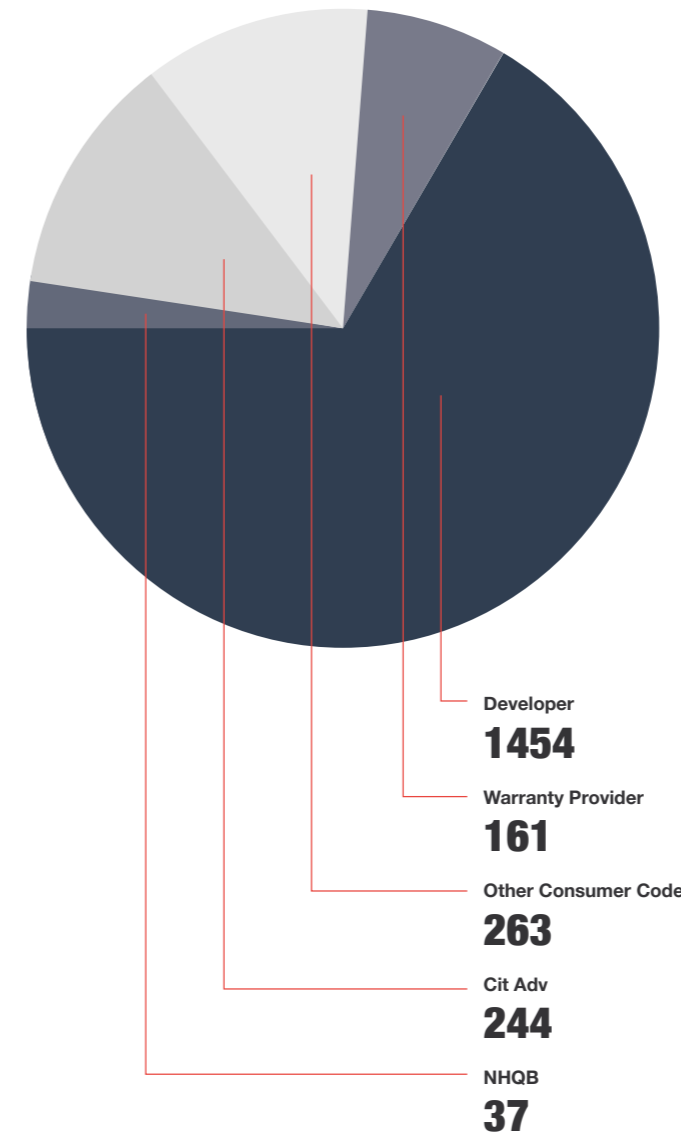
7
secs
Average call response

49
mins
Average email response

Our customer contact team is based in Glasgow and is committed to high service standards, responding efficiently to enquiries both by phone and email.

Signposting service

Enquiry redirection



As our service is still new and not retrospective, applying only to customers of developers on the NHQB register at the point of reservation, it is inevitable that a majority of calls are from consumers whose reservation or purchase pre-dated NHOS' jurisdiction. We see an important part of our service as offering as much support as we can to consumers we are unable to help directly, by taking time to discuss and understand their issues and their attempts to access support, so we can signpost them to any other avenues of redress which might be available to them.

The chart shows our signposting activity, based on the information provided to us during our contact with customers.

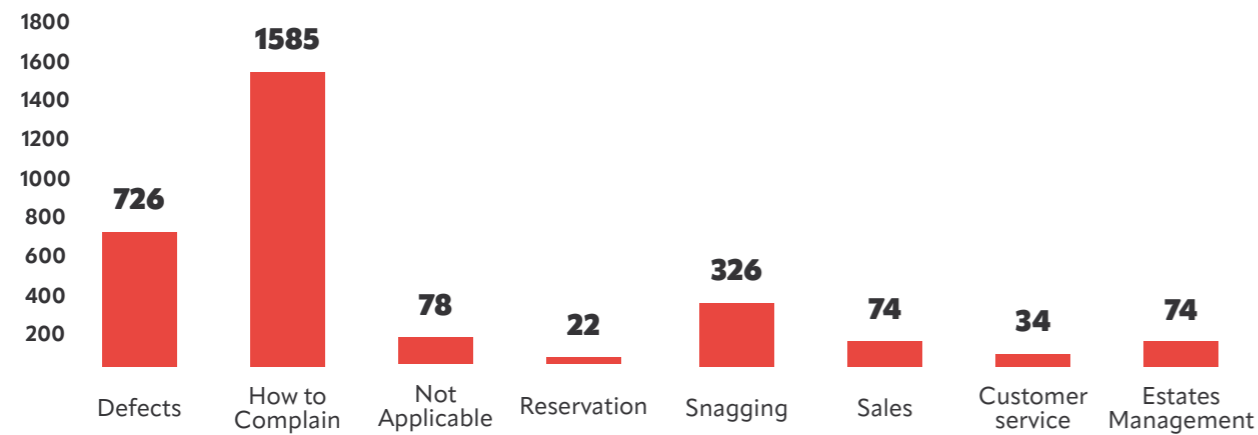
In the majority of cases, we suggest that the customer goes back to the developer in the first instance. This may be because it appears that they have not yet completed the developer's complaints process, or they may need to check their warranty provider or consumer code with the developer if these routes still seem open to them.

Subject matter of enquiries

The graph below shows the types of enquiry made by customers, the most common (54%) being to request more information about how to progress a complaint. These enquiries may come from customers who have yet to complain to their developer, or from those who want to understand what to do next at the end of the developer’s complaints process.

Of the other issues raised by consumers, defects and snagging issues (36%) are prominent, illustrating the concerns customers have about quality issues in their new homes, which was one of the main driving factors behind the introduction of the New Homes Quality Code, with its emphasis on post completion quality and service issues.

Enquiries - subject matter



Complaints

As we have noted above, NHOS’ jurisdiction is not retrospective, meaning that, for a complaint to be eligible, it needs to be made by a customer who reserved a property with a developer after the developer joined the NHQB’s register. The first developers joined the register in October 2022 and the first complaint falling within NHOS’ jurisdiction was lodged in May 2023.

By the end of March 2024, 231 consumers had raised complaints via our online portal, with the complaints spread across 17 registered developer groups. One complaint was raised by post. Most of the complaints (90%) related to properties in England, with 8% arising in Scotland and 2% in Wales.

In 32 cases, the customer started the complaints process but ultimately opted not to complete it. We were able to contact most of these customers to understand the reasons why they did not proceed and in a number of instances we were able to help them continue their discussion with the developer direct to resolve their issue.

After further enquiries, 68 complaints were rejected as ineligible for the reasons shown in the table below.

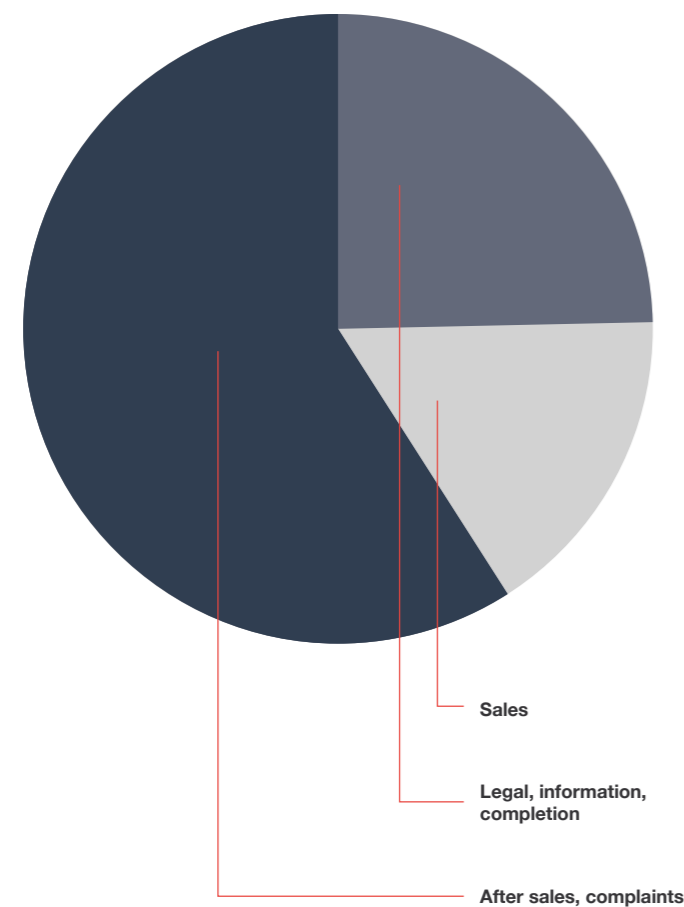
Analysis of rejected complaints

Reason for rejection	Number of rejected complaints
Complaint arose before developer joined	28
Developer complaints process not exhausted	25
56 days not elapsed from initial complaint	1
No breach of code	2
Complaint referred to other Ombudsman scheme	4
Other	8
Total	68

A total of 55 complaints were accepted for further investigation during the year, most of which were multiple issue, ranging over at least two areas of the code. The areas of the code represented in the complaints are shown in the chart below, with Part 3 of the code (After-sales, complaints and the New Homes Ombudsman) being the most commonly cited by complainants.



Complaints by code category



Resolution of complaints

Early resolution by negotiation and mediation

At NHOS, we want to help consumers and developers resolve their differences in a fair, transparent and proportionate way. Sometimes this will require the ombudsman team to make a formal decision, looking independently at the evidence, making further enquiries where necessary and deciding whether the requirements of the code have been met.

However, when we look at the circumstances of a complaint, we often see that there is scope for the issue to be settled by agreement between the parties, with the assistance of the NHOS team. This may be because:

- the developer has already made efforts to resolve the issue.
- the customer is not sure whether the developer is being reasonable or not.
- the customer is unsure of the outcome they are seeking.
- the customer is more interested in being heard than “winning”.
- the customer experience has been poor but there is not necessarily a breach of the code.

In these cases, we discuss the outstanding issues with the parties to understand their appetite for reaching an agreed settlement, allowing them to retain control over the outcome. This approach is suitable for a wide variety of cases, including complex and higher value disputes; the crucial issue is the willingness of the consumer and developer to engage constructively with the process.

Most of our early resolution cases are resolved successfully by negotiation, but we also offer mediation sessions with a member of our team who is a qualified mediator. These sessions allow consumers in particular the opportunity to explain their experience to the developer face to face (remotely) with the mediator guiding the discussion where necessary.

We are delighted that consumers and developers have responded positively to this opportunity to resolve their problems in constructive way, leading to an agreed outcome usually at an earlier stage than would be achieved through a formal ombudsman decision.

During the year to 31 March 2024, 52% (14) of resolutions were achieved through negotiation or mediation, resulting in compensation payments of almost £14,000 to consumers and further value in the form of upgrades and sale price adjustments of over £32,000 in addition to the completion of outstanding works.

£46,000

Early resolution
compensation and
consumer value

Negotiated settlements and positive mediation outcomes are confirmed in writing with the parties, although they are not currently represented in the case studies published on our website.

Formal ombudsman decisions

Methodology

Not all cases are suitable for negotiated settlement or mediation, and not all attempted negotiations are successful. These cases are considered by the ombudsman team, based on evidence provided by the customer and developer. Where necessary to understand the circumstances of the complaint better, the ombudsman may ask for further information. All evidence obtained during the investigation is shared between the parties using NHOS' online evidence portal before a decision is made.

The ombudsman considers the evidence in relation the requirements of the NHQB code including its ten guiding principles ([New Homes Quality Code](#)) and relevant laws and regulations to determine whether the developer has acted appropriately.



Where it has been decided that the developer has not met the requirements of the code, the ombudsman looks for a remedy to put matters right for the customer. This means putting the customer in the position they would have been in if the developer had met the code requirements.

The remedies available under NHOS' Rules (NHOS Scheme Rules) include requiring the developer to:

- apologise for their shortcomings, or to provide a fuller explanation for the customer
- complete work or make good defects
- make financial payments for losses or for stress and inconvenience caused, up to a maximum of £75,000.

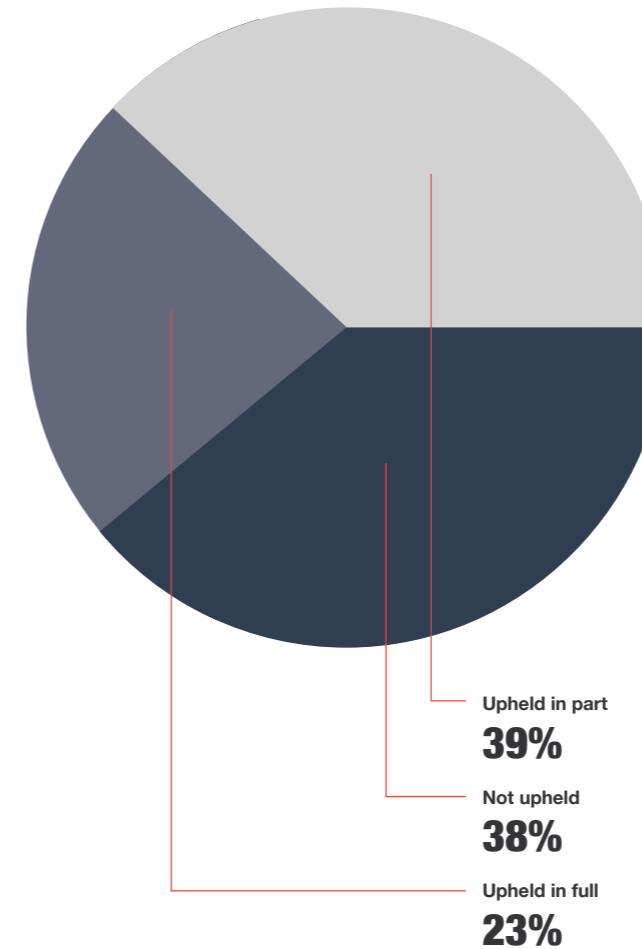
Ombudsman decisions are issued in draft form to the parties to allow them the opportunity to comment on them before a final decision is made. Although all comments will be considered the primary aim of this stage is for the parties to make representations about any factual or legal errors they consider have been made.

The final decision is issued after all comments have been taken into account. If the decision upholds the complaint in full or in part, the customer is asked to confirm whether they accept the decision before the developer is required to take the action set out. The decision is only binding on the developer if it has been accepted by the customer.

Decisions finalised

In the year to 31 March 2024, 13 final decisions were issued by the scheme, 8 (62%) of which were upheld in full or in part, as shown below.

Formal decision outcomes



In terms of subject matter, all formal decisions covered more than one issue, with aspects of sales and marketing (Part 1 of the code) cited 8 times; legal documents, information, inspection and completion (Part 2 of the code) arising 8 times, and after-sales, complaints management and access to NHOS (Part 3 of the code) cited 7 times.

The average time to issue a draft decision from the point at which all information was available was 15.3 working days compared to the scheme's target of 20 days. From initial acceptance until the issue of the final decision, the average handling time was 56.1 days (target 65 working days).



Decision outcomes

As noted above, 8 (62%) of the finalised decisions recognised that some or all of the customers' concerns were supported by the evidence and detailed the further action the developer should take. The outcomes included compensation payments totalling £7,136 ranging from £200 to £3661, requiring the developer to undertake further action to fix defects or to make an apology for poor customer service.

Fuller details of the individual decisions are available in the form of anonymised case studies on our website ([NHOS case studies](#)).

The decisions were accepted by the customers in all but one of the cases, meaning that the developers were required to undertake the action specified in the decisions. The developers complied in each case.

Emerging themes

The outcomes represented in the early resolution cases and final decisions completed within the year covered a wide range of individual issues. A number of common themes were however evident from these cases and from those which were ongoing at the end of the financial year.

Customer trust in developer information

Customers buying a new home from a developer are making a significant financial and emotional investment in their purchase. The nature of the purchase means that they are usually committing to buy something which is at most incomplete and often not even started at the point they make their decision to buy.

Understandably customers are placing a high level of trust in the process of delivering their home according to the expected timeframe and to high quality standards. The complaints we have seen also demonstrate that customers are placing a high level of trust and reliance on what they are told by the sales team during their initial discussions and the reservation process. Often these discussions are not recorded by the customer and developer and there is no contemporaneous record of what was discussed. This can lead to misunderstandings and disappointment on the customers' part when things do not work out as they had expected.

Although customers should bring to the attention of their legal advisors any statements from the developer which are important to them, it seems that they do not always do so. When dealing with a complaint, the developer and then NHOS will have difficulty establishing what was said. We would encourage developers and customers to make an agreed written record of what was discussed as part of the reservation process so that any subsequent misunderstandings can be minimised.

Navigating the formal complaints process

The New Homes Quality Code sets out the steps developers should take when addressing a formal complaint made by a customer. However a customer's first point of contact in dealing with any concerns is likely to be with the on-site or after-sales teams. Concerns will often be addressed successfully at this point, but some issues will take time and customers do not always realise that they can escalate their complaint into a formal process if they do not feel they are making progress, or their concerns are not being addressed to their satisfaction. This can also lead to frustration when they feel they are having to "start again" in raising a complaint more formally after many months of communication with the developer.

It is in the best interests of both developers and their customers that issues are resolved as quickly as possible and we have seen encouraging evidence of the efforts developers are taking to address their customers' concerns without the need for a formal complaint. Where it seems that it will not be possible to meet the customer's expectations in a reasonable time, developers should remind customers of the steps they can take to escalate their concerns internally and ultimately, if necessary, to NHOS.

Provision of affordable housing

Towards the end of the reporting period a number of cases were brought to NHOS which centred around the representation of affordable housing provision on developments, and customers' understanding of the information they had been provided with.

In each of the cases, the customer had access to information at reservation demonstrating the expected provision of affordable housing on the development, designated as part of the planning process.

In all but one of the cases, the customers moved into their homes and found that the developer had sold further properties on the development to councils or housing associations. In some cases, the additional sales were made in bulk and had the effect of altering the proportion of what the customers had understood to be affordable housing on the development.

The customers addressed their complaints in different ways. Some complained that their properties had been mis-sold, others that they should have been informed of the ongoing sales, and others that the value of their properties had been affected as a result of the developers' actions.

It was clear from the information provided by the parties that the developers regarded the provision of affordable housing as limited to what they were required to develop as part of the planning process. When they spoke to customers at the sales and marketing stage about affordable housing this is what they were referring to. These properties are designated as affordable housing in perpetuity and can be utilised as affordable rent or shared ownership at the discretion of the housing provider.

From the developers' standpoint, all other properties on a development were available for open market sale to private individuals for owner occupation, or to investors for use in the private rented sector, or to housing associations, councils or housing associations to meet their need for social or affordable housing.

It was equally clear that customers had not understood the distinction the developers were drawing, and that generally they considered that what developers referred to as private or open market sales would be to private individuals for owner occupation.

The ombudsman considered that the information developers were providing about the nature of private or open market sales was not as transparent as it should be, and that they had made assumptions about customers' understanding of the term affordable housing which were unrealistic. This meant that any conversations about affordable housing risked being misunderstood by their customers.

The ombudsman's decisions in these cases required developers to look again at the information they provide about the nature of private or open market sales to ensure that customers understand the variety of buyers who may be involved and the possibility that sales may be made in bulk. Staff training also needs to be updated where necessary to cover this and the way discussions about affordable housing are framed, bearing in mind that customers are unlikely to appreciate the distinction between plots which are designated at the planning stage and those subsequently sold to providers of social or affordable housing.

Specific aspects of the individual complaints around mis-selling and the loss of property value were not upheld. The ombudsman also considered that the provisions of the code would not require developers to inform customers about additional sales to councils or housing associations, although in one case the developer made that information available to the purchaser before completion.

The NHQB has issued additional guidance to developers around best practice arising from these cases.





CASE STUDY 1 – Build quality Outcome: Complaint Upheld

The Issues

The complaint concerned the appearance of the property on completion, in particular that the mortar bed joints to the brick work were too large in a band around the house.

The Circumstances

Shortly after moving into the property the customer noticed that the size of the mortar joints to the stone of the external walls of their property differed to those to a similar property across the road, and they raised concerns with the developer about the quality of the workmanship and the structural stability of the property.

The developer returned to the property and replaced some stonework around the front door, but the customer remained dissatisfied.

Further work was then carried out to the front elevation by the developer but the customer continued to complain about the side and rear elevations. The developer reviewed these areas and proposed further action to reduce the dimensions of the mortar joints. The developer also agreed to the customer's request to appoint an independent company to inspect the property.

The independent surveyor concluded that the stonework was untidy but there was no risk to the structural integrity of the building.

The customer did not accept the report's findings and appointed a second surveyor, who reported that there was a variation in the depth of the mortar beds, the mortar varied in colour and the recessed pointing was untidy. The second expert considered that the value of the property at resale could be affected by the quality of the work and that the total impact, including any costs if the customer had to move out for the work to be completed could be in the region of £25,000.

Prior to completing the decision, a member of the Ombudsman team met with both surveyors to discuss their findings in an effort to resolve the complaint through mediation. Although the customer did not wish to pursue mediation, the experts agreed that, although there are defects in the elevations of the property, its structural integrity was not at issue. There were problems with the aesthetics, caused in part by poor workmanship. Both experts considered that the affected area might amount to 50% of the side and rear elevations.

The Ombudsman's Decision

The Ombudsman concluded that there were defects in the property which the developer had also acknowledged as falling beneath their quality standards. Although the customer had wished to appoint a third part contractor to undertake the remedial work, the Ombudsman considered that the appropriate remedy was for the developer to take the steps necessary to put these defects right, taking account of the conclusions of the two independent experts.

The developer also accepted that the customer had been frustrated by some delays and poor communication in their response to the customer's concerns and had offered a compensatory payment of £1000. The Ombudsman considered this to be an appropriate level of redress for the poor service levels experienced by the customer. The developer was also asked to reimburse the customer for the cost of the second expert report, bringing the total level of compensation to £1540.

The Ombudsman noted that, as the defects were to be addressed, any future marketing of the property would not be affected by the poor workmanship.



CASE STUDY 2 – Build delays and customer service Outcome: Complaint upheld

The Issues

The customer complained that the developer lied to them throughout the process and concealed information about the progress of the build. The property was completed late causing distress and inconvenience for their family through the need to move into temporary accommodation.

The Circumstances

The customer reserved the property in late 2022 with an estimated completion date of June/July 2023. There were a number of delays in the build process which resulted in completion not taking place until early November 2023.

The customer was living in rented accommodation with a lease ending in late August 2023, allowing time for some delay. Although the customer was able to secure a brief extension to the lease, it was not possible for them to remain in the rental as the deadline for completion was extended further.

The developer arranged for the customer to move into a property which they had taken in part-exchange and the developer covered the costs of this until completion. The customer encountered problems with the property during their stay and these were addressed by the developer.

The customer complained to the developer about the information they had been given throughout the process, including information posted on their portal page indicating that a key build stage had been completed when it had not. The customer felt they had needed to chase the developer repeatedly for updates, and that the estimated completion date had been moved a number of times. The customer had a young family including one child with a disability and was distressed and anxious as the end of their lease approached and uncertainty about completion continued.

The developer acknowledged that there had been delays with the build and that incorrect information had been posted on the customer's portal page about the progress of the build. The developer felt they had acted reasonably in securing and covering the costs of temporary accommodation for the family and had relied on their agent's assurance that the property was ready for occupation. The concerns raised by the customer about cleanliness, the boiler and the oven were addressed promptly. During their handling of the customer's complaint the developer had provided a partial refund for an extra paid by the customer and a goodwill payment of £500.

The Ombudsman's Decision

The Ombudsman considered the available information about the communications between the developer and the consumer about the progress of the build. Elements of this were unclear but the customer had to chase the developer for information and the anticipated completion date moved several times, creating continuing uncertainty. Overall, there was a delay of three months on an estimated completion time of 6-7 months.

The complaint was upheld on the basis of the standard of communications around the delays, the number of changes to the anticipated completion date and the error in the information posted on the developer's portal about the stage completion. However, there was no evidence to suggest that the developer deliberately concealed information from the customer.

The Ombudsman acknowledged the efforts made by the developer to accommodate the customer's family while the build continued, and the payments already made. Taking account of the customer's evidence of their family situation and levels of stress and anxiety over the continuing delays, poor communications and changes of completion date, the Ombudsman considered that the developer should make a further payment of £735 to the customer, taking overall compensation to £1500.



CASE STUDY 3 – Covenants and complaint handling Outcome: Upheld in part

The Issues

The customer complained about the information provided by the developer in relation to covenants and that support promised by the developer failed to materialise. The customer also complained about the time taken to communicate with them once they had raised their concerns and the way in which their complaint was handled.

The Circumstances

Shortly after the customer moved into the property, they contacted the developer with concerns about how a neighbour was using an area of shared access. The developer offered to send a letter to the neighbour to remind them about the restrictive covenants attaching to their purchase. At the same time, the developer suggested to the customer that they took independent legal advice, as covenant issues ultimately need to be resolved directly between homeowners.

The customer took their own legal advice, which was initially to await the outcome of the developer's contact with the neighbour, and the customer let the developer know about this. Several weeks passed, and the customer contacted the developer on a number of occasions to ask about progress. Eventually the customer was told that the developer would not write directly to the neighbour as had originally been offered, but would send a general circular to all residents, reminding them of their responsibilities.

The customer complained to the developer about the time that had been taken, the uncertainty it had created and the delays this had caused to their own potential action. The customer raised a number of additional concerns about the neighbour's actions and questioned whether the developer had been aware of these in advance of their purchase.

The customer followed the developer's complaints process but had to chase the developer for responses and was ultimately not satisfied that the complaint had been addressed fully or in accordance with the code.

The Ombudsman's Decision

Following further enquiries, we concluded that there was no evidence that the developer had been aware of the covenant breaches before the customer told them. This aspect of the complaint was not upheld, although the Ombudsman commented that it may be helpful to provide customers with written information about covenants during the initial reservation phase so they can understand more about their purpose and means of enforcement.

The Ombudsman concluded that the way in which the developer had handled the offer to help the customer fell below the standards of transparency in the code, took too long and required the customer to chase repeatedly for progress. Some aspects of the way the complaint was dealt with did not meet the timescales set out in the code and not all of the customer's concerns were addressed. These aspects of the complaint were upheld.

The Ombudsman concluded that the developer should pay the customer £200 in recognition of delays and inconvenience caused by the way in which the customer's concerns had been handled.

The customer and developer accepted the outcome.



CASE STUDY 4 – Mis-selling and legal Outcome: Complaint upheld in part

The Issues

The customer considered that the plot they reserved was mis-sold as having full planning permission in place when there were outstanding conditions to be discharged. The customer also complained about the way they had been treated by members of the developer's team.

The Circumstances

The customer reserved the property, paying a reservation fee and further sums for optional extras. Their solicitor subsequently told them that not all planning conditions on the plot had been discharged and discussions took place between the developer and the customer's solicitor to put in place an indemnity or indemnity insurance to allow the sale to proceed while the developer investigated the issue with the council.

Before the investigation was concluded, the customer's lender withdrew their mortgage offer, citing issues with planning. The customer decided to withdraw from the transaction and purchased another property. The developer was able to resolve the issues with the council and it was confirmed that the planning conditions for the plot had been discharged retrospectively.

The developer agreed to return the customer's reservation fee and extras payments in full. The customer also wished the developer to meet the costs of their legal fees on the transaction and brought their complaint to the Ombudsman. The complaint included concerns about the customer's interaction with a member of the developer's team. The customer said they were shouted at and threatened that the police would be called.

The developer accepted that there had been an issue with the mechanism for discharging the planning conditions which they had been unaware of until the customer's solicitor raised it. The developer felt they had acted appropriately in offering practical solutions to allow the sale to proceed and then reimbursing the customer in full for payments made. The developer offered a contribution towards the customer's legal fees during the course of the Ombudsman's investigation, but the customer declined the offer.

The developer denied that they had treated the customer inappropriately.

The Ombudsman's Decision

The Ombudsman acknowledged the assistance the developer had offered the customer and that the customer's reservation fee and extras payments had been returned in full which went beyond the requirements of the code. We also accepted that the developer had been unaware of an issue with how planning conditions were being discharged until it was raised by the customer.

However, from the customer's perspective, the situation should not have arisen and their reservations about proceeding were understandable in light of the advice they had received from their solicitor and the communications from their mortgage lender. The customer had provided evidence of the legal costs they had incurred in pursuing the transaction. Although the sum was higher than indicated on the solicitor's website, the Ombudsman accepted that the transaction had involved additional complications and concluded that the developer should pay the customer's legal costs in full.

The complaint about inappropriate treatment was not upheld.

CASE STUDY 5 – Return of deposit Outcome: Not upheld

The Issues

The customer complained that the developer provided misleading or incomplete information about various aspects of the property and its surroundings and that matters did not become clear until after the cooling-off period. As a result, when the Customer decided to withdraw from the purchase, they were unable to secure a full refund of their reservation deposit and the deposit paid for extras.

The Circumstances

The customer paid a reservation fee and an additional 50% deposit for wardrobes after the expiry of the 14 day cooling off period.

At reservation the customer was given a presentation about the development including plans showing access and green/recreational areas. The customer said that they had asked specifically about parking and access arrangements at reservation and were assured that it would not be possible for unauthorised parking to take place in a turning circle adjacent to the plot they were interested in. When further information was released to their conveyancer as part of the contract process, details of covenants and their method of enforceability were included, at which point the customer became aware that the developer was unlikely to play an active part in the enforcement of covenants relating to access and parking.

The customer was also concerned about upkeep of an area of amenity land in front of the plot and the designation of a further area of green space in the development, both of which had been illustrated on the plans shown at reservation, with further details provided in the pre-contract disclosures.

The customer asked their conveyancer to undertake further enquiries but ultimately was not satisfied with the information provided about access and green spaces and decided to withdraw from the transaction. The developer refunded the customer's reservation fee less a deduction of £500 as specified in the agreement, on the basis that the customer had withdrawn after the cooling-off period and the issue of legal documentation. The developer was not prepared to refund the 50% deposit for the optional extras.

The Ombudsman's Decision

The Ombudsman recognised the customer's disappointment that they felt unable to continue with the purchase but concluded that the developer had not misled them about access arrangements and the nature of the green space. As a result, although the developer could have exercised their discretion to return the fee and extras deposit in full, they were not obliged to do so.

There is a balance to be struck, as identified in the Code, between the information given to customers at reservation, and the more detailed information which forms part of the pre-contract process. At reservation, the customer is paying a fee entitling them to exclusivity in their negotiations to purchase up to the end of the reservation period. The customer needs to have enough information to feel they are making the correct choice for them and be comfortable in paying their fee, part of which may be retained by the developer if the customer decides not to proceed after the cooling off period. It is therefore helpful if any questions which the customer asks at this stage are recorded in writing to avoid any misunderstanding at a later stage.

More information is provided to the customer's conveyancer as part of the contract process and it is important that customers check with their legal team any issues they have previously discussed with developer's sales team to ensure they are fully informed before they become legally committed to the purchase.

CASE STUDY 6 – Price reduction Outcome: Complaint not upheld

The Issues

The customer complained that the developer did not tell them that neighbouring plots had been reduced in price prior to them completing their purchase. The customer considered the developer's behaviour to have been unfair and unethical.

The Circumstances

The customer reserved the property in June 2023 at a price of £250,000 and completed the purchase in August. Several weeks prior to completion the developer reduced the prices on 4 nearby plots by £7,500. The customer did not become aware of the price reductions until after they had moved in and complained to the developer that they had not been told about the reductions and offered the opportunity to withdraw from the purchase and buy one of the reduced properties.

The developer argued that they are not required to tell customers who have reserved a property of changes in prices upwards or downwards prior to exchange of contracts and that there were a number of factors which affected sales prices, including general economic factors.

In response to further enquiries the developer confirmed that the new sales prices had been available on their website and on the price list in the sales office. Although direct marketing emails were usually discontinued at the point of reservation, in this case the customer continued to receive them until they opted out of further communications. This happened shortly before the new prices were released.

The Ombudsman's Decision

The Ombudsman acknowledged that the customer would have withdrawn from the purchase if they had been aware of the price reduction or would at least have discussed with the developer whether the price of their property could be reduced by a similar amount.

However, the central issue was whether the provisions of the Code would require the developer to inform the customer specifically of the reduction in the sale price of similar properties prior to exchange.

The Code requires developers to notify customers of major changes affecting their property. The definition of a major change includes reference to "value", but the Ombudsman concluded that this is not the same as the selling price of a particular property or other similar properties, which can be affected by a number of factors. On that basis, the developer was not required to inform the customer about the price changes.

The Code also expects developers to treat customers fairly and to be transparent in their dealings with them. The customer's view that the outcome from their perspective was unfair was understandable, particularly given the sequence of events and the significance of the financial transaction. Other than commercial factors, there was nothing to prevent the developer alerting the customer directly to price changes, or to have recognised the customer's dissatisfaction when handling their complaint.

Having taken all the factors into account, the Ombudsman concluded that the principle of fairness in the Code did not extend to a general requirement for the developer to inform customers proactively of changes in prices on a development during the course of a transaction.

In relation to transparency, the Ombudsman concluded that developers should ensure that customers have ready access to information throughout the sale process, which might influence their decision to complete the transaction. This would apply whether prices were generally rising or falling but is particularly important in an environment where selling prices may be reduced, making it more likely that a customer would cancel their agreement, or seek to agree a price reduction.

In this case, the customer opted out of direct marketing shortly before the price reduction became effective, meaning that they did not receive the information which could have resulted in them withdrawing from the transaction.

**NHO SERVICE LIMITED REGISTERED NUMBER:
13769937
BALANCE SHEET AS AT 31 MARCH 2024**

	2024
	£
Fixed assets	
Intangible assets	0
Tangible assets	0
Investments	0
	0
Current assets	
Debtors: amounts falling due within one year	202,620
Cash at bank and in hand	0
	202,620
Creditors: amounts falling due within one year	(50,655)
Net current assets	151,965
Total assets less current liabilities	151,965
Non-current Liabilities	
Other creditors	0
Deferred taxation	0
	0
Net assets	151,965
Capital and reserves	
Profit and loss account	151,965
	151,965

**NHO SERVICE LIMITED DIRECTORS' REPORT
AND FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 MARCH 2024**

	2024
	£
Turnover	609,724
Cost of sales	0
Gross profit	609,724
Administrative expenses	(407,104)
Other operating income	0
Fair value movements	0
Operating profit	202,620
Profit before taxation	202,620
Tax on profit	(50,655)
Profit for the financial year	151,965

Governance

The New Homes Ombudsman Service is a subsidiary of the [Dispute Service Ltd](#), which is a not for profit company specialising in dispute resolution work in relation to tenancy deposits in the private rented sector and tenant-landlord mediation and conciliation for issues arising during a tenancy.

The NHO Service Board oversees the work of the Ombudsman and meets four times a year. It has a majority of directors who are independent of the housebuilding industry. It has no involvement in decisions taken by the Ombudsman, but does review the operation and management of the Service. The New Homes Ombudsman attends Board meetings, but is not a director.

The Board has a majority of independent directors and consists of:



Jodi Berg OBE Chair

Chair, National Residential Landlords Association

Following an early career as a Solicitor, Jodi Berg OBE has held senior Board positions in the public, private and not for profit sectors and, amongst other roles, is currently Chair of NRLA and an NED Board member of TDS. An expert in complaint and dispute resolution, much of her past professional work has been as the Independent Complaints Reviewer for public bodies, including Land Registry and the Housing Corporation.



Professor Martin Partington, KC, CBE

Emeritus Professor of Law, former Law Commissioner

Martin Partington CBE is a founding member of the NHOS Board. Until recently he chaired the TDS Board. He was a Law Commissioner for England and Wales, 2001-2007. He is an Emeritus Professor of Bristol University.



Steve Harriott

Group Chief Executive, The Dispute Service

Steve Harriott MA (Oxon), PGCE, MSc, FCIH is the Chief Executive of The Dispute Service Ltd. He has been Chief Executive since September 2010.

He has worked as chief executive of three housing associations as well as chairing a housing association and a regeneration charity.

He is currently a Director at SafeDeposits Scotland, a Director of TDS Northern Ireland and a Director of the TDS Charitable Foundation.

He is a Chief Examiner with Property Qualifications.



Malcom MacLeod

former Regional Director in Scotland with NHBC

Malcolm Macleod is a Chartered Surveyor and Chartered Builder and prior to retiring in 2021 was NHBC's Director for Scotland, a post he held for 21 years. In that role Malcolm worked with new home builders and other stakeholders to deliver NHBC's purpose of improving house building standards and protecting new home-buyers.



Sarah Daniel

Waterways Ombudsman

Sarah Daniel is an experienced ombudsman who has worked in a variety of sectors. She is a strong advocate of using the learnings from complaints to work with providers and regulators to improve services for all.



Mike Biles

former Housing Ombudsman

Mike Biles was the Housing Ombudsman for England for 13 years after which he became the group chair of the Aster Group of companies. As an academic he specialised in Housing Law, Land Law, and Landlord and Tenant law and was Head of the Law School at Solent University.

Independent Complaints Reviewer



Janey Milligan

Janey Milligan is the NHOS Independent Complaints Reviewer with responsibility for reviewing complaints about the way in which the New Homes Ombudsman Service handles cases. Her role is not to review decisions of the Ombudsman but instead to ensure that the NHOS policies and procedures have been complied with where there is a complaint that has exhausted the internal complaints procedure.

She is fully independent of the NHOS and reports directly to the Board of the NHOS.

Janey has worked in the construction industry for 40 years initially qualifying as a Chartered Quantity Surveyor in 1985. Janey is a qualified Arbitrator, Adjudicator & accredited Expert Witness and continues to lecture and tutor on various professional bodies courses and conferences on dispute resolution topics.



NEW HOMES
OMBUDSMAN SERVICE

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