

12 February 2009

Rod MacEachrane  
Chair, Shadow Body for Consumer Code for Home Builders  
sent by email

## **Consumer Code for Home Builders**

Dear Mr MacEachrane,

Consumer Focus welcomes the opportunity to comment on the draft Consumer Code for Home Builders. The huge financial and emotional investment that people make when building a new home, together with the complexity and risks inherent in this process, makes it vital that consumers can expect home builders to meet certain core standards, and that they have access to an efficient and affordable route to redress.

The home building sector was examined by the Office of Fair Trading in 2008. The OFT's market study gave the industry a largely clean bill of health in terms of competition, but identified a range of consumer protection concerns. We therefore welcome the commitment of the eleven organisations that form the Advisory Forum, to introduce a fully operational code of practice by March 2010. In the event that the industry fails to achieve OFT Consumer Code Approvals Scheme status for the code within a reasonable timeframe, in our view it would then be necessary for Government to step in to legislate for a mandatory code.

Below we make a number of detailed points on the draft code as it stands, which reflect concerns raised in the OFT's market study and by Consumer Focus's predecessor organisations, the National Consumer Council and Scottish Consumer Council.

### **Detailed points**

The code's main components seem to map well across the problem areas identified in the OFT's market study. However, there are a number of areas where we consider the draft code needs strengthening or more detail is needed. We list these below in the order they appear in the draft code.

### *Section 1.2: making the code available*

We consider that the Consumer Code should be given to all customers prior to them reserving a property. The financial value involved, together with the complex nature of the home building process, makes it important that consumers are fully aware of what they can expect from a home builder before entering into a commitment.

### *Section 1.2: vulnerable individuals*

We welcome the focus on consumers who have 'special needs'. However, this focus should not be limited to the format of the Consumer Code. Instead, we would welcome a broad requirement on homebuilders to take account of the needs of vulnerable consumers in all aspects of the customer relationship. Consumer Focus defines vulnerability as relating to consumers whose needs are not ordinarily provided for in the market concerned. Consumers can end up being disadvantaged in markets either due to their personal circumstances or as a result of the actions of providers.

### *Section 2.1: pre-purchase information*

We suggest this section should include a reference to being open about the possibility of snagging problems. The mystery shopping exercise carried out as part of the OFT's market study highlighted that 90% of researchers were given information on quality assurance but only after prompting in 70% of these cases. Snagging is a key feature of this market, so we consider that consumers should be alerted up-front.

### *Section 2.6: reservation*

We are pleased to note the requirement for the reservation fee to be returned to the homebuyer in the event of cancellation (section 3.3). We suggest that the agreement should include details of the reservation fee amount and the circumstances under which it is refundable (including any deductions). Details about maintenance fees should also be included here.

### *Section 3.2: contract termination rights*

Consumers should be able to terminate the contract **without penalty or loss of money** in the event of unreasonable delay. The OFT found that even where delays are unreasonably long, homebuyers are usually unable to withdraw from the contracts with the homebuilders without penalty or loss of money. We agree with the OFT that this

situation signifies an imbalance between the degree of risk carried by the homebuyer and the homebuilder.

#### *Section 3.4: timing of construction*

Delays are a primary source of consumer detriment in this sector – nearly one-fifth of homebuyers surveyed by the OFT who were given a moving in date experienced a delay of more than two months. We understand that some delays will be incurred for reasons outside of the homebuilder's control, but these are largely known risks for homebuilders and there currently appears to be little incentive for homebuilders to do all they can to complete construction on time.

We welcome the staged timing advice as a means of providing consumers with greater certainty about completion in good time. However, it is unclear why the draft code uses the terminology 'could' rather than 'should' – this leaves too much wiggle-room.

Homebuilders should face financial penalties for unreasonable delays – we would expect such financial guarantees to be a feature of a competitive market place where providers seek to differentiate themselves from rivals in any case. Further, compensation to cover loss suffered by consumers, for example the cost of finding temporary accommodation, should be incorporated into the redress scheme.

#### *Section 5.1: complaints handling*

The code should specify when homebuyers should be advised of the dispute resolution arrangements. Reflecting our earlier comments about making the code available, this information should be given to all customers prior to them reserving a property.

We would prefer to see 'reasonable time' more tightly defined. The Advisory Forum may wish to consider practice in regulated industries, such as the telecommunications and energy sectors, where consumers may access the dispute resolution scheme after eight weeks following their complaint or sooner if deadlock is reached.

#### *Appendix A – redress scheme*

We are concerned about a number of aspects of the redress scheme:

- The collection of a referral fee from the homebuyer and allocation of costs – we are concerned these measures could dissuade homebuyers from making legitimate complaints. This risk would be exacerbated if the referral fee was high (the amount is not specified in the draft code) or the costs awards are

unlimited. We encourage the Advisory Forum to follow good practice in ombudsman, consumer adjudication and some arbitration schemes, where consumers are not charged for accessing the redress scheme and nor do they face paying the other sides costs if they lose. In addition to access to justice considerations, a free of charge consumer redress scheme reflects the principle that businesses should bear the cost of their own regulation.

- The arbitrator's remit is limited to 'significant detriment' – it seems inequitable that consumers are unable to seek redress for all non-trivial circumstances where they have suffered loss. Further, 'significant' escapes easy definition and could lead to satellite litigation.
- Out of pocket expenses – we welcome the inclusion of out of pocket expenses; it would be useful to specify the types of expenses this could cover, for example expenses incurred due to unreasonable delays.
- Compensation limit – the upper compensation limit should reflect the upper level of financial harm that consumers might suffer; the arbitrator should have freedom to decide whether the case involves complex or novel issues that would be more suitable for a court to determine. The currently suggested limit of £5000 is far too low.
- Loss of property value – homebuyers could suffer loss if shoddy workmanship impacts on the value of the property when it comes to resale – this should be included within the scope of the redress scheme.
- Sanctions – an intermediate sanction is needed between further training and temporary suspension (a serious sanction which we assume would only be invoked as a last resort) to give homebuilders a sufficient incentive to comply with the code requirements.

Related to our point about sanctions, we would encourage the Advisory Forum to explore reputational incentives to achieve compliance. To this end, firm-specific information generated from compliance monitoring, such as audits and customer feedback forms, could be published as a means of exposing the performance of firms to the competitive market place.

We hope these comments are helpful and look forward to seeing the code develop further over the coming months.

Yours sincerely,



Steve Brooker  
**Head of Fair Markets**