



Ministry of Housing, Communities & Local Government

Consultation

New Homes Ombudsman

Submission from CIBSE

22nd August 2019

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SUMMARY

We have in the past expressed concerns about the performance of homes and the very low levels of consumer protection in this area, which generally represents consumers largest asset. We broadly welcome the intent of the proposals in this consultation. We have responded in detail to the questions of direct relevance to CIBSE and its members. Our two main points relate to the following:

- The **operational performance** of homes should be very firmly within the scope of the Ombudsman and Code of Practice. This must not relate to the theoretical asset rating (e.g. Energy Performance Certificate- EPC), which often bears little relation to actual performance. This is a significant area where consumer protection is needed, both because energy bills can be a significant expense to home occupiers, and because the current information available to consumers, such as EPCs, is confusing and is often misunderstood as a reliable predictor of actual performance. In addition, the scope of the Ombudsman must include other performance issues that affect the health and comfort of home owners, in particular overheating and air quality (both also related to energy performance). This would not only provide a significant enhancement of current consumer protection, but would also contribute to the UK's climate mitigation and adaptation efforts, as well as providing better consumer protection. See further details in our response to Question 28.
- The scope of the Ombudsman and Code of Practice should not only include new build homes, but also **newly converted homes** i.e. those created by change of use. This is particularly the case given the extensions to **Permitted Development Rights** in recent years, which have considerably reduced the oversight by local authorities on the creation of such newly converted homes. There is growing concern and evidence that this can lead to the creation of homes of very low standards. See further details in our response to Question 6.

CIBSE would be happy to support the development of the Code of Practice.

CONSULTATION RESPONSE

Q1: Are you responding (please tick one)

~~As a private individual?~~

✓ On Behalf of an organisation

~~Q2: If you are an individual, in which capacity are you completing these questions?~~

~~(Please tick one) A person who has bought or knows someone who has bought a new build home? A person who works for a developer?~~

~~Other (please specify)~~

Q3a: If you are an organisation, which of the following best describes you?

- A housing association/private registered provider
- A Local Authority
- An ombudsman or redress scheme
- A developer
- A sector representative body
- A charity
- A government body
- Other (please specify) Professional institution

Q3b: What is the name of your organisation?

The Chartered Institution of Building Services Engineers (CIBSE). CIBSE is the professional engineering institution that exists to 'support the Science, Art and Practice of building services engineering, by providing our members and the public with first class information'. CIBSE members are engineers who design, install, operate, maintain and refurbish life safety and energy using systems installed in buildings. As well as members who specialise in a range of disciplines related to building performance, CIBSE members also include specialists in fire safety systems and fire engineering. Others, who belong to the Society of Façade Engineering, a Division of CIBSE, specialise in the design and installation of cladding systems.

CIBSE is unusual amongst built environment professional bodies because it embraces design professionals and also installers and manufacturers and those who operate and maintain engineering systems in buildings, with an interest throughout the life cycle of buildings.

CIBSE has over 20,000 members, with around 75% operating in the UK and many of the remainder in the Gulf, Hong Kong and Australasia. CIBSE is the sixth largest professional engineering Institution, and along with the Institution of Structural Engineers is the largest dedicated specifically to engineering in the built environment.

CIBSE publishes Guidance and Codes providing best practice advice and internationally recognised as authoritative. The CIBSE Knowledge Portal makes our Guidance available online to all CIBSE members, and is the leading systematic engineering resource for the building services sector. It is used regularly by our members to access the latest guidance material for the profession. Currently we have users in over 170 countries, demonstrating the world leading position of UK engineering expertise in this field.

Of particular relevance to this consultation is our guidance on good practice in relation to the design of homes, CIBSE TM60. A pdf copy is attached with this response, for use by MHCLG officials and other relevant parties.

Q4. Who should be required to belong to a New Homes Ombudsman? (Tick all that apply)

- ✓ Developers who build and sell homes on the open sales market
- ✓ Self-Builders
- ✓ Developers who convert and sell properties
- ✓ Other (Please specify?) All organisations building or converting homes, including housing associations (including those destined to shared ownership)

Q5. Should a New Homes Ombudsman only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere? (For instance, it would not cover a complaint in relation to the sales process for a new build home bought through an estate agent as redress is sought through the redress scheme an estate agent belongs to)

- ✓ Yes . This seems the most sensible way to start; this would not prevent the scope to expand once the Ombudsman is established, depending on feedback and analysis of how well the system is working.
There is, however, a significant potential for confusion and for developers to play one redress mechanism off against another. The consultation states that it does not intend to address the building control regime. Developers may use either the local authority or an Approved Inspector. However, where an Approved Inspector is employed, the local authority cannot intervene. This means that a developer who uses an AI can avoid any intervention in the development by the LA as an enforcement body. If the AI fails to discover non-compliance with the building regulations, then the homeowner has very limited redress. Whilst the ombudsman scheme may not be intended to consider failings of the building control system or its practitioners, it absolutely has to be able to address non-compliance that is discovered after purchase. Even if it is argued that they could, in theory, seek redress elsewhere, this must not be allowed to become a hiding place for developers. This would be especially inappropriate given the emphasis on developers taking responsibility for the compliance of their developments under the reforms recently proposed via the Building A Safer Future Consultation.
It is also very important that the Ombudsman has a remit to consider complaints about responses from warranty providers where the homeowner feels that they have not received a satisfactory answer to their concerns. If this scheme is to have reasonable success then the message to housing developers needs to be very clear, that the Ombudsman will have the power to address inadequate quality and performance of new homes, whether new build or newly converted, without fear or favour.
- No
- Not sure Please explain

Q6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?

- ✓ Yes - purchasers of newly-converted homes, not necessarily new build homes. This is really important as the creation of homes through change of use has grown in recent years due to the extensions to **Permitted Development Rights (PDRs)**, and it is subject to considerably reduced oversight by local authorities compared to new build homes, or

homes created by change of use without PDR. There is growing concern and evidence that this can lead to the creation of homes of very low standards, and we think it is extremely important that redress is available to all consumers, and not just for those purchasing new build homes¹.

- No
 Not sure If so, who?

Q7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?

- Yes
 No
 Not sure If so, who or what should be excluded?

Q8. How can the Government best ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman?

no response

Q9a. Should there only be a single New Homes Ombudsman?

- Yes . In order to help consumers and build confidence in the system, we think it would be best to create a single Ombudsman organization; this would enhance the chance of the Ombudsman being powerful and truly independent from housebuilders, and would have the benefit of providing that organization with visibility over recurring issues over the whole market, therefore potentially helping government identify the need for systemic changes rather than case-by-case redress.
 No
 Not sure Q9b. If not, why not?

Q10a. How long after the initial complaint should a purchaser of a new build home be able to access a New Homes Ombudsman?

- 2 to 4 weeks ; this would depend on issues, as some may not require urgent action, however in some cases a period of 2 weeks could already be the cause of considerable inconvenience to the consumer, and therefore we are enclined towards short periods. However, This is probably the wrong question to ask. The critical question is how long after the discovery of a defect should a consumer be able to take up a complaint. This could be some time. For example, a new homeowner could observe a crack in plasterwork a few weeks after moving in. At that stage it is impossible to know whether it is merely an unsightly consequence of drying shrinkage, or something more serious. It will take time and professional investigation to ascertain the true cause and seriousness. That in turn will lead to a period of time to pursue a complaint through the Code of Practice route with the developer. For a more serious structural issue this could take months. On the basis that the Ombudsman is to be a final arbiter and of last resort, then the system needs to

¹See for example the report by Levitt Bernstein: <https://www.levittbernstein.co.uk/research-writing/why-the-government-should-end-pdr-for-office-to-residential-conversions/>

encourage all reasonable channels to be explored and exhausted before the Ombudsman is involved. That may require significant time from first discovery. The time limits need much further thought and may need to be framed in terms of the time after a developer has given a final response to a consumer. It is strongly advised that those who deal regularly with these cases are consulted.

4 to 6 weeks

Q10b Are there any other circumstances that a purchaser of new build home should be able to access a New Homes Ombudsman?

Yes

No

6 to 8 weeks

Other **Please explain**

Not sure **Please explain**

Q11. Are there any other specific standards to the new build sector that a New Homes Ombudsman should meet?

Yes

No

Not sure Please explain

Q12. Should a New Homes Ombudsman be delivered by a public sector body?

Yes – This is essential to give confidence to consumers. Homes are the single largest purchase for the vast majority of consumers, and they need the confidence that the Ombudsman is independent and not beholden to any industry interest group. Holding housebuilders to account is a very significant public interest role and it should be carried out in the public sector. In a property owning democracy the state has a key role to play in protecting the investment of homeowners in their homes. The role is too important to be contracted out.

No

Not sure **Please explain**

Q13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?

Tendering process

Request for proposals

Minimum Scheme Standards

A combination of these

Other (please specify?)

Q14a. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?

- Yes , if the Ombudsman is delivered by a private body, which is NOT our recommendation
- No if the Ombudsman is delivered by a public sector body, which is our recommendation. In that case, if it failed to deliver effective standards the first step should be to carry out a review and seek to improve these standards.
- ~~Not sure~~

Q14b. If so, what should count as shortcomings in service standards to merit disapproval, how can this be verified and by whom?

The Ombudsman should have a service agreement with the sponsoring government department, which should be public, and the Ombudsman should report regularly on its performance against key performance indicators.

Q15. Are there any alternative sanctions, other than withdrawal of approval, that could be used to ensure a New Homes Ombudsman or other housing redress scheme continue to deliver an effective service?

Q16. Should access to a New Homes Ombudsman be free for purchasers of new build homes to access?

- ~~Yes~~
- ~~No~~
- Not sure **Please explain** ; A free system would provide more protection to consumers; on the other hand, it could lead to excessive requests. Maybe a low fee would be appropriate, if only to support the resources needed in order to identify in the first instance whether the application is relevant to the scope of the Ombudsman. A small fee would at least give cause to stop and think about the complaint, and should perhaps be linked to the value of the home. It should probably be refunded where a complaint is wholly or substantially upheld.

Q17. What would be the most appropriate way for a New Homes Ombudsman to charge property developers?

- ~~A price per unit~~
- ~~A pay per complaint system~~
- ~~A flat membership rate~~
- ~~A mixture of the above~~
- ~~Don't know~~
- ~~Other **Please explain**~~

Charges should reflect the size of the housebuilder and also their record of claims. It might be appropriate for part of the funding to be based on a fee per house built, with the remainder to be levied on those housebuilders with the worst claims records, or perhaps an additional charge to the housebuilders who have complaints against them upheld. Those with a poor claims record should be expected to contribute significantly more to encourage them to spend that money avoiding problems, not resolving them.

Potentially, where complaints are upheld, the housebuilder should not only compensate the homeowner fully, but also cover the investigative costs of the Ombudsman.

Q18. Would any of these models have an adverse impact on smaller housebuilders? Yes No The model above (taken account of comments) is designed to burden those who fail to meet the standards. Not sure **Please explain****Q19a. Should smaller housebuilders pay a smaller fee than larger housebuilders?** Yes No Not if the fee per dwelling is realistic. With roughly 200,000 new homes built a year at present, £5 per house would raise £1m. £50 per house would raise £10m. These are hardly huge sums of money on dwellings selling for prices into six figures. Not sure**Q19b. If so, how should this be achieved/calculated?****Q20. Are there different sanctions in addition to those available in other sectors of the housing market that a New Homes Ombudsman should have access to? (Tick all that apply)** Different levels of financial award to the consumer; Expulsion from scheme unless a developer instigates and follows an improvement plan; Publish the details and reasons why developers have been expelled from a New Homes Ombudsman; Suspension from scheme until problems are rectified; Ability to make recommendations, for example: that the developer purchases the property back; reviews the terms of leasehold agreement and amends them; and to review the terms of estate maintenance fees and amend them; Set timescales to rectify faults/defects with a property; All of the above.**Please explain****Q21. Are there any other powers or sanctions a New Homes Ombudsman should have?** Yes No Not sure **Please explain** There should be a close link between the Ombudsman and the proposed new Regulator for the Building sector set out in "Building a Safer Future". The Ombudsman should regularly share the details of its work with the Regulator, and also with local authority enforcers, so that compliance and enforcement activity is focussed on known problem areas and problem builders.

Sharing information will also provide a feedback mechanism in relation to Building Regulations and the training of building control professionals.

Q22. If a New Homes Ombudsman offers awards, what should the maximum amount

be?

- Up to £15,000
- Up to £25,000
- Up to £50,000
- Over £50,000

Other (*please specify?*) There should be no limit. If a housebuilder has failed to build a house to the accepted standard then they should be expected to remedy the failings at whatever cost that may incur. This scheme has to remedy the whole loss, unless it can be shown that by some act of the owner they have made the cost of remedy worse, when they should reasonably have understood the detrimental impact of that action.

Q23. What information should be published by a New Homes Ombudsman to empower consumers?

Annual reports including the number of cases, the housebuilders involved, the types of cases, and the Ombudsman's decisions, with full disclosure of the penalties imposed, within the limits of legitimate privacy concerns. There should be a league table to incentivise good behaviour and deter the worst offenders.

Q24. What is the best way to publish complaints data so that it incentivises developers to improve their service?

- ✓ Complaints data provided to the Ministry of Housing, Communities and Local Government
- ✓ Data published in an annual report – to be available online
- ✓ Case studies on their website
- ✓ Other (please specify?) all of the above, available online and by hard copy on request **Significant rulings by the Ombudsman should also be publicised in the industry press.**

Q25. What data from a New Homes Ombudsman would be useful for consumers when they are making a decision about purchasing a new home?

- The information provided in our response to Question 23
- The redress mechanism and options available to consumers
- The Code of Practice (see Question 28)

Q26. Should a New Homes Ombudsman remit be UK-wide?

- Yes
- No
- Not sure

Q27. Are there distinct practices in the different countries of the United Kingdom that require consideration for how a New Homes Ombudsman should operate if it were to be UK-wide?

- Yes
 No
 Not sure **Please explain**

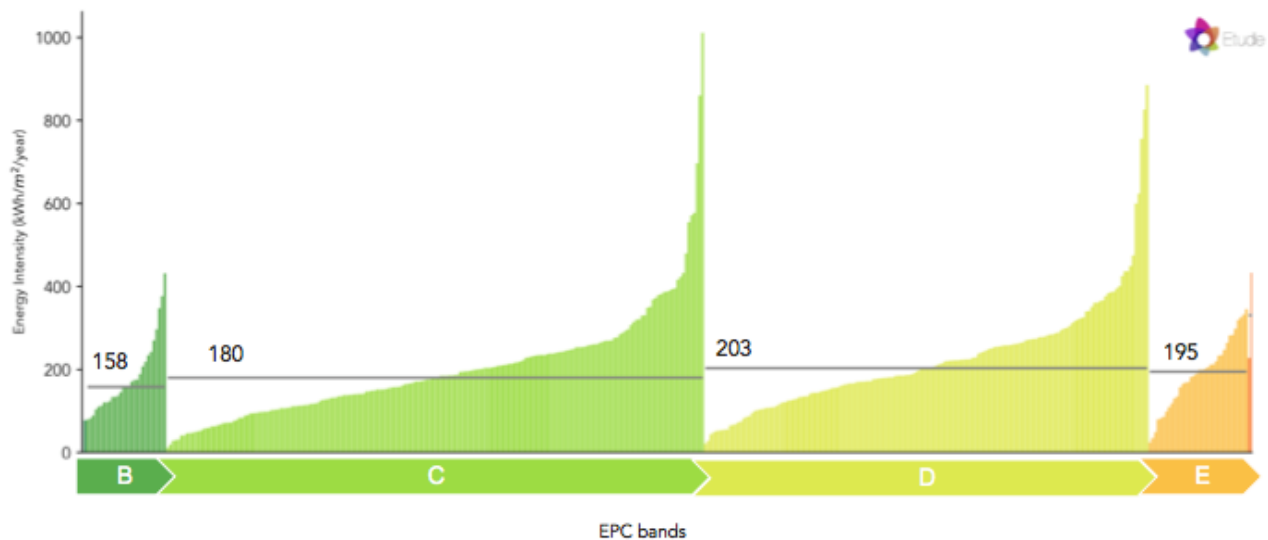
Q28. What should be included in a Code of Practice for developers of new build homes? Tick all that apply:

- ✓ Complaints procedures
- ✓ Pre-purchase information and reservation agreements
- ✓ Customer Service Standards
- ✓ Sales and advertising standards including, but not limited to, the requirement to provide clear information for; energy performance ratings, warranty provision, management services, leasehold charges, future development phases and connectivity - see our comments below on “energy performance ratings”
- ✓ Protection of deposits
- ✓ Minimum warranty standards
- ✓ Specifications that new homes should meet – including health, comfort and energy performance, see comments below
- ✓ Transparency in relation to the receipt of fees a developer receives if they recommend a product or service, such as a solicitor
- ✓ Clear after-care responsibilities of builders
- ✓ Contracts to allow homeowners to appoint an independent building consultant/surveyor to review and agree with builders
- ✓ Timescales for responding to complaints, rectifying defects and compliance with requirements of a New Homes Ombudsman
- ✓ Standardised Contracts
- ✓ A right of access for the purchaser to view the property prior to completion and to be accompanied by a professional advisor if they so wish
- ✓ The ability of homebuyers to carry out surveys before final completion
- ✓ Other (please specify?) – information to be provided to homeowners at handover, including operation and maintenance requirements, in clear and simple language; A right of access to the information required by Regulation 40 of the building regulations, which should be amended to make that information available prior to completion, and not five days afterwards.

Energy performance must be part of the Code of Practice and within the scope of the Ombudsman. Clear information needs to be provided to consumers about the expected performance of their homes, expressed as expected annual energy consumption and associated costs; ideally, this would be provided alongside a means of comparison, such as

the annual average equivalent for new homes as an average across the country or geographic region.

We assume that the “energy performance ratings” mentioned here refer to Energy Performance Certificates (EPCs) and/or SAP ratings. If so, this would NOT be sufficient nor appropriate information, as they bear little relation to the actual operational performance of homes in practice. This is partly due to consumer lifestyles and behaviours (i.e. not within the scope of the Ombudsman) but also to the methodology behind EPCs themselves, which are widely known as poor predictors of actual average performance. This is illustrated by the graph below (kindly provided by Etude, and created with data across 410 homes across a local authority in England), which shows that actual energy consumption has little, if any, correlation with homes EPCs.



This can be a highly confusing area for consumers, and better protection is therefore needed. It would also contribute to the UK’s efforts of climate change mitigation and adaptation, and help respond to recommendations by the Committee on Climate Change for housing that is “fit for the future”, of low carbon emissions and low overheating risk².

We anticipate this may become even more critical as homes will need to be built to be “zero carbon”, with the risk that consumers would interpret this as “zero or very low energy bills”, while in fact this may be far from reality – for example if energy consumption is supplied from renewable sources, or even if the housebuilder has paid for carbon offset mechanisms without necessarily improving the energy performance of the home itself.

In addition to energy performance, the scope of the Ombudsman must include other performance issues that would affect the **health, safety and comfort of home owners, in**

² CCC report Housing Fit for the Future, 2019 <https://www.theccc.org.uk/publication/uk-housing-fit-for-the-future/>

particular overheating and air quality (both also related to energy performance). There is worrying evidence that the current system does not protect home purchasers when problems occur, with substantial health, safety and comfort issues found and not remediated, and the home purchasers not able to obtain remediation due to prohibitive legal efforts and expenses, and to the fear of affecting the value of their home. We have provided in appendix a short document on this topic, which we recently submitted as part of our response to the Building a Safer Future consultation.

CIBSE provide good practice guidance on the design, construction and operation of homes³, and we would be happy to support the development of the Code of Practice. A copy of CIBSE TM60 – Good Practice in the Design of Homes, is provided alongside this response for use by MHCLG.

Q29a. Should a Code of Practice for developers of new build homes be underpinned by statute?

Yes - this seems the only appropriate option. In the alternative, some developers may not follow the Code of Practice; if the Code has any standing (which one obviously would wish for), this means the homes built by these developers would likely have a lower value, and potentially only attractive to the least informed and least well-off consumers. This would not meet the government's objectives for a fair system. As the consultation makes clear, the market is weighed against consumers; it is therefore not reasonable to rely on incentives and market-only mechanisms to redress its balance.

No

Not sure

Q29b. If not, why not?

Q30a. How should failure to belong to a New Homes Ombudsman be enforced?

By serious sanctions against the most senior executives of the business, including, perhaps disqualification for the most serious cases.

Q30b. Who should enforce this?

Local Government

Redress schemes

Central Government

New or existing Regulator

Courts and Tribunals

Other (please specify?)

Q31. What should the penalty for non-compliance be?

Criminal offence

³ see for example our recent publications TM59, on assessing overheating risk, and TM60, on good practice design and operation.

- Civil sanction
- Financial penalty (please give details of suggested level)
- Banning developers
- Banning Directors of property development companies
- Other (please specify?)

.The sanctions must be serious and disausive, and make people think very hard before they break the law.

APPENDIX – BUILDING BETTER FEEDBACK FROM LEGAL CASES THROUGH TO PRACTICE AND REGULATION

(extract from CIBSE response to the Building a Safer Future consultation, August 2019).

The consultation is largely concerned with better implementation and enforcement of regulations, at the design and operational stages. However, there are also instances where regulations have been followed, but the health and safety of occupants is compromised by building design or operational issues. This is the topic of this appendix, which focuses on one particular area which we think merits attention in order to allow a quicker and better system of continuous improvement of regulations and practice: **how to draw better and quicker lessons from legal cases.**

Concerns about the current situation

Health and safety issues found in occupied dwellings take a number of years to become widely known in the industry, and even longer to come to the attention of the regulator. A stark example is the occurrence of overheating, on which expert witnesses have told us they have been working “for 20 years”; the industry has devoted significant attention to the issue in the past 10 years, and only in the past year have MHCLG acknowledged it as an issue to be addressed as part of the upcoming review of Building Regulations Part L & F. One of the reasons for the current lack of speed is the natural rhythm of construction and operation of buildings, however 20 years is clearly beyond this and is an inadequate length of time; issues should be able to be recognised and addressed by regulations much quicker.

One of the reasons we have identified is the use of out-of-court settlements: while collectively, the industry has known for a number of years that occurrences of overheating are increasing, the actual body of publically available evidence is relatively small: this applies to industry case studies (as consultants and developers and housebuilders are understandably reluctant to publicise such stories) but also to legal case studies: while anecdotally many consultants and expert witness departments report being involved in legal cases, very few of these cases are publically available as they are settled out of court, before an actual court case. This makes it difficult to quantify the preponderance of the issue, and we understand this perceived lack of evidence has been one of the reasons for slow action by MHCLG to address overheating risk in regulations.

In the spirit of contributing to the creation of a robust and comprehensive building safety system which would allow continuous review and improvement of regulations, CIBSE have carried out a small number of informal enquiries with designers (architects and engineers) and expert witness departments. Our recommendations here are informed by the feedback we received; examples are also provided at the end of this document. Key points from the feedback we have received are:

- **The use of out-of-court settlements is very common** in the industry. Individual homeowners are particularly likely to resort to this rather than a court case, as they are faced with potentially very high legal fees, have limited experience on how to approach court cases, fear losing a legal case against the much better equipped legal teams of the housebuilders, and worry that any legal case (particularly if it was lost) would devalue their home. The pressures to choose an out-of-court settlement are therefore very significant.
- Out of court settlements can cover **very significant health and safety issues**: the cases we have been told about include fire safety risks, structural defects, legionella, and serious overheating (see examples at the end of this document).
- Our respondents agreed that the common use of out of-court settlements contributes to **preventing or delaying issues coming to the attention of the regulator**.
- Two particular topics singled out by our respondents are overheating risk in dwellings, and legionella risks in buildings such as hospitals and care homes. Both these cases arise from a combination of factors including not only regulations but also the broader environmental, industry and societal context: overheating risk is exacerbated by climate change and the increase in dense urban living. Instances of legionella in hospitals and care homes are occurring due to a combination of changes to health and social care practices: more patients have their own en-suite rooms (i.e. more fittings, for the same number of patients); the number of patients with dementia, who tend to wash less often, has increased; and the use of sanitizing gels has reduced handwashing. All of these factors have led to much lower water circulation through individual fittings, and the problem is often compounded by water circulating (or stagnant) through tight ceiling spaces in very warm corridors. These examples highlight the fact that regulations, designers and builders may not be at fault, but **the system of regulations and guidance does need to be more responsive**.
- Legal cases are typically covered by **non-disclosure agreements (NDAs)** which restrict the ability of the experts involved to disclose details of the case, or even, by measure of precaution, the existence of a case and the nature of the issue itself. Only after many years and with a large volume of schemes may experts feel they can raise the issue in general terms.

We would highlight that **this is a well-known problem (if not often openly talked about) in the industry**. The difficulty is how to address it, given the pressures that legitimately constrain what homeowners and expert witnesses can and will do. Expert witnesses, by definition, hold extremely valuable knowledge on the design, construction and operation of buildings. The experts we have talked to would be keen to contribute to industry knowledge and regulations, but are currently understandably wary of doing so without legally breaking their NDAs and/or undermining their position with clients.

We recommend a working group should be created, including MHCLG, the upcoming regulator (or parties that will contribute to its creation), legal experts, and CIC representatives. As a starting point, CIBSE are proposing that the following ideas should be explored; these are only tentative and others would surely arise from a working group:

- Requirement on expert witnesses to disclose the type of issues they have had to deal with, for example as annual **reporting to a central repository**. The system should not be burdensome, and the descriptions could be brief (e.g. “5 out of 7 cases this year were about overheating in new build high rise apartments”, or a similar level of detail as in the examples we have provided at the end of this document). The expert witnesses (individuals and their companies) would be anonymous and the schemes would be anonymised, though potentially one could

imagine a system where the regulator could send a request for more details. The focus would not be on individual schemes; instead, the objective would be to identify issues occurring frequently and which therefore warrant attention by industry and the regulator. To some extent, this could be seen as an extension of whistleblowing proposals in this consultation, but it is important to understand that this system would not simply be about flagging up cases of non-compliance, but instead to identify whether some issues are occurring which are not properly dealt with by existing regulations. The central repository should be managed by the regulator, but the information should be accessible to the industry: we think this would be crucial to allow professional bodies and the industry visibility on the issues, allowing them to gather lessons and create or update their guidance to professionals.

- Requirements to disclose, for example to the above central repository, should come with **legal assurances to protect expert witnesses** against legal pursuits, where disclosure has been anonymous (e.g. requirements to disclose should trump overly onerous NDAs)
- Clear mechanisms ensuring that the feedback from expert witnesses finds its way to **national competence schemes and to the 5-year reviews of regulations**, whether through nominated individuals or via their professional bodies.

Examples

Note – as part of our enquiries, we were also provided with many cases where worrying health and safety issues were found on new dwellings, which related to non-compliance by the developer / designer / housebuilder, and poor enforcement by the building control authority. We have included them here, but identified them separately from issues which occurred despite regulatory compliance; we are aware that systemic compliance and enforcement issues are addressed in the consultation proposals, however it is possible that, should a central repository (or other system) be created, there would be value in including non-compliance issues too: this could help identify topics where non-compliance was found repeatedly, and which would therefore benefit from better guidance to project teams and building control bodies.

Date	Building Description	Description of issues
ISSUES PRESENT DESPITE REGULATORY COMPLIANCE		
Varied	Hospitals and care homes (several)	Legionella due to little draw from appliances, and water circulating or stagnant on warm spaces – see combination of causes described above

Date	Building Description	Description of issues
Practical Completion (PC) circa 2017	recently completed town houses in London	<p>Overheating - We measured room temperatures that were often ten degrees warmer than outside. When the outdoor temperature reached 25 deg.C it reached 35 deg.C in some bedrooms. On a particularly hot day, during the 2018 heat wave, we measured maximum air temperatures of 40 deg.C when it reached 30 deg.C outside. Mean bedroom air temperatures were 26 deg.C.</p> <p>Reasons for overheating included:</p> <ul style="list-style-type: none"> a. Large areas of glazing (east and west facing, so difficult to protect from overhangs. b. Poor internal air movement c. Inadequate window openings to provide purge ventilation d. MVHR took fresh air from a hot roof location so supplied hot air into the accommodation
PC circa 2010	College Building, northern England	Overheating of rooms due to inadequate ventilation from restricted windows.
PC circa 2008	300 apartments in two blocks in NW England	Overheating due to window restrictors.
PC circa 2017	Student accommodation block, midlands	Overheating due to variation to seal windows and inadequate mechanical ventilation.
ISSUES CAUSED BY NON-COMPLIANCE AND INADEQUATE ENFORCEMENT		
PC circa 2015	10 storey residential tower NW England	Fire, smoke ventilation - Numerous life safety defects including inappropriate over-cladding material, defective smoke ventilation, defective fire stopping all signed off by AI and building guarantor.
PC 2007	Hotel, northwest England	Fire - Serious defects with fire stopping.

Date	Building Description	Description of issues
Various over last 5 years.	Numerous housing developments nationwide.	Gas safety - Flues installed with inadequate support and facilities for annual inspection.
PC circa 2010	12 apartment block in NW London	Fire - Serious fire separation issues especially between basement carpark and apartments above due to poor workmanship.
PC circa 2012	200 bedroom hotel and 3 residential towers, NW London.	Fire & life safety - Serious defects with fire alarm installation to hotel. Serious defects to electrical supplies to life-safety systems. Apartment towers communal LTHW distribution insufficient pressure rating giving rise to safety risk. No action taken by Developer as no legal case initiated. Defects still exist?
PC 2006	Hospital NW England	Fire - Significant fire stopping defects.
PC in last few years	third floor flat in a block of new flats, southern England	Fire, mould, drainage, life safety – we were supporting the client (an prospective home owner) in the purchase of a flat. The whole block of flats was found to be lethal in the event of fire. Service penetrations to the escape corridor were not protected, service risers were lethal, a doorway from a carpark was non-compliant. There were mould problems, drainage problems and a large cantilevered balcony designed to be bolted to the structure with 16 bolts, had only 6 of the bolts tightened effectively. The balcony was sagging and is in our view lethal. Settled out of court, and the prospective owner managed to have their deposit returned and cancel the sale. An unofficial visit a few months later seems to show the defects have not been rectified.
	3 storey detached house, part of larger development, southern England	Fire, life safety, airtightness -_we were supporting the client (an prospective home owner) in the purchase of a house. <u>We</u> carried out a survey at a property on a new development. We found numerous fire and safety problems. We found a strong breeze in the ceiling void over the utility room, there is clearly a major air leakage problem that means the building could never have achieved the airtightness it claimed. We also calculated the u-value of the walls of these houses according to the information provided by the contractor; the walls failed to meet the u value

Date	Building Description	Description of issues
		requirements of the Building Regulations by a long way. When we and the client’s lawyer told them of our calculations and asked for comment, nothing was forthcoming and we were not allowed to see any detailed drawings. After some bargaining, our client received a full refund of their deposit in order not to buy the property.
Last few years	Penthouse flat, London	Envelope defects, airtightness - At the request of the homeowner, I visited a flat. I went on a windy day and the wind was literally whistling through the ceiling cavity beneath the insulated curved metal roof. The bathroom had a flat false ceiling with some plant above it. The access hatch to the void space was lifting in the wind. The client said they had complained to the housebuilder who referred them to the warranty provider. The warranty provider didn’t visit but said the building was totally compliant with regulations and pointed out that the warranty period had nearly expired anyway. I told the client that there is no way this was compliant and I would be happy to argue the case against the warranty provider. The client instead decided to sell the flat, probably because they found they would need to fight the warranty provider’s lawyers by employing their own. If the dispute was not resolved, the failed dispute would need to be declared in any sales questions.
Last few years	Flat, London	Air quality and ventilation - inadequate and non-compliant ventilation and air tightness, leading to health issues of the occupant

END

Please do not hesitate to contact us for more information on this response.