

New-Build Homes - Client Guide

Check all plans | Builder warranties | Road Adoption

The Consumer Code for Home Builders

The Code was developed by the home-building industry to make the home buying process fairer and more transparent for buyers. You can find it at:
www.consumercode.co.uk.

The Code is designed to help you understand what levels of service to expect from your builder, feel fully informed about your purchase, and know your consumer rights before and after you move in. In the unlikely event that problems arise, a speedy, low cost dispute resolution scheme is available to deal with complaints about breaches of the Code.

However, most of the Code deals with pre-sales issues and marketing, and not defects in the property. Under the Code, the builder is simply required to have a system and procedures for receiving, handling, and resolving home buyers' service calls and complaints in the first two years from the start of the warranty period.

Service connections

The builder will have made arrangements for electricity, telecoms (and sometimes gas) to be installed, but not necessarily connected. You may have to pay for the connection, and you must check this before exchange of contracts. In some cases these costs can be considerable.

Planning Permission

The planning permission for your new house will usually have conditions that the local authority can enforce against you as the new owner. We will send you a copy of the conditions before exchange of contracts, but it may be difficult for us to check this, because we do not see a copy of the original planning application or visit the property. If the property has been completed you must check that all the conditions have been complied with before exchange of contracts.



Plans, layouts, finishes and specifications

Before exchange of contracts (and also before completion) you need to check that the property you intend to move into is in fact the one shown on the contract and transfer, and that position of the property's boundaries, its parking spaces, driveways, paths, and fences are in the places they should be. The show-house you may have walked around when you made your plot reservation may turn out to be different in important respects from the actual house that you will have to buy when it is completed. We will not be able to check these points for you, since we do not visit the property. Check any contract or transfer plan or we send you very carefully. Do not assume anything, especially if you bought 'off plan'. Tell us immediately if you think anything might be wrong. If issues arise later, we may not be able to register your property at Land Registry.

Builders often make changes without telling anyone, and sometimes make mistakes. Occasionally, buyers even move into the wrong flat or house. The builders standard sale contract usually gives the builder the right to make minor variations to the boundaries, fences, internal layouts, structure, external appearance, decorative finishes, boilers, bathroom and kitchen equipment, etc.

You need to check the property 'as built' carefully against the specification you originally reserved, to make sure it includes everything you expected. In the first instance raise any problems with the builder direct, and tell us what is agreed. We will then confirm this with the builder's solicitors - as you cannot rely on any verbal assurances given by the site office, or their sales staff. Unfortunately, if you do not check such things before you exchange contracts (or complete) you may become committed to buying something slightly different to what you expected.

New-build home warranties, NHBC, and 'Snagging'

Virtually all new homes are sold with a 10 year warranty, either from NHBC, Premier Guarantee, or another provider. The warranty has three sections.

Firstly, any deposit paid on exchange of contracts is protected if the builder becomes insolvent.

Secondly the **builder** (not NHBC) gives a limited guarantee for 2 years, that the property meets, for example, 'NHBC requirements'. If there are defects, you have to claim against the builder, and enforce the terms of any guarantee through the



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Floating completion dates

Unless the property is almost complete, there will be not be a fixed completion date in the contract. Instead, legal completion will normally take place on 10 days notice from the builder that the house is physically complete. The contract is very one-sided, and the builder is generally not responsible for any delays in completing his construction of the house. You must consider and accept this risk before deciding to proceed any further in the purchase of any new-build house.

If you have linked sale, that needs to be completed simultaneously with your purchase, you must discuss the possibility of a floating completion date with your buyer. If they do not agree to this, then you may have to move into temporary accommodation after you have sold your current property, until the new one is ready.

On a large development, building work may not be finished for many months or even years. It may never even be finished. You may be living on what is effectively a building site for a long time. The builder will not compensate you for this.

Also, although the builder might show you a plan of how the estate will be laid out, there will be no commitment on the builder's part to complete it like this. They may, for example, get planning permission to substitute smaller or larger houses, or even flats or social housing in a later part of the development.



courts (or a mediation scheme) yourself. NHBC or other warranty providers will not generally get involved until you have exhausted this stage, or the builder becomes insolvent. This is not part of our conveyancing service either.

Thirdly, from years 3 to 10, the warranty provider (such as NHBC) guarantees a very limited range of mainly structural defects only (e.g. foundations, walls, staircases, retaining walls, double glazing, below ground drainage). It does not cover, for example, boundary problems, title conflicts, shrinking, cracking, electrical, kitchen or bathroom fittings, or minor snagging issues.

Neither warranties, nor the local authority's Building Control department, provide any sort of comfort that items such as finishings and fittings will be defect free when your home is handed over to you. None of the warranties cover what is called 'consequential losses', such as hotel bills if you have to move out for a time.

You do not have the same extensive 'consumer rights' for new houses that you would have were you buying, for example a car from a motor dealer, or a washing machine on the High St. This is why you must read and check everything carefully.

Indeed, recent government reports revealed a high level of frustration and disappointment from buyers of new homes, both in terms of the number of defects that new homes had on handover, and also the problems they encountered getting them fixed. In general terms, under the terms of most builders contracts for sale, you have to accept and complete the purchase of your new home, despite the existence of minor defects.

You could have the property surveyed, or you can also employ an expert to check for defects, known as '**snagging**'. This typically costs around £500 for a detached house, but this would not normally cover negotiating any necessary repairs with the builder. You would have to do that yourself. You would generally not be able to delay completion until minor snagging problems have been resolved.

Although your lender will check that the house is complete to some extent, this will **not** be a detailed inspection, and you cannot rely on the lender's inspection to pick up all the problems. You need to check it yourself, or have it surveyed or snagged.

Estate Road Adoption as 'public highway'

Normally, the builder builds the new estate roads, enters into a road adoption agreement with the local highway authority, and once completed and inspected, the roads are taken over and maintained by the highway authority as a new 'public highway'. In theory, this is protected by a bond, enabling the highway authority to do any remedial work needed, and then claim the cost of the work from the bond. In most cases this is what happens and there is no problem.

However, this system has broken down in some areas of the country, as some highway authorities do not have enough staff or money to enforce the road agreements, carry out inspections or do any repair work. As a result, the estate roads are sometimes never taken over by the highway authority. The roads may eventually become potholed and cracked. Often the highway authority will do nothing to help resolve the problems. As you are not a party to the original road agreement, you cannot enforce its terms yourself either.

Indeed some well-known national house-builders have also decided not to enter into any formal road adoption agreements at all. As a result, there is a growing problem of unadopted roads on new housing estates.

In practice, builders will refuse to agree to any retention to cover the potential costs of dealing with the problem of unadopted roads, and often adopt a 'take it or leave it' approach with plot purchasers, threatening to keep your reservation deposit if you don't just accept the situation as it is.

Mortgages

If you are buying a home that is in the process of being built, your mortgage offer will be issued 'subject to final inspection'. You will need to exchange contracts first, and when the property is finished the lender will send in their surveyor to confirm that the property has been completed before they will release the mortgage money to us. This is usually a formality, but if the surveyor is not satisfied for any reason, you will not be able to complete the purchase - but you would be in breach of contract with the builder, and possibly lose your deposit (and be sued for any other losses which the builder has incurred). This is a risk that cannot be avoided if you are buying a property that has not been built yet.

Conditional exchange?

The builder may suggest a conditional exchange, perhaps conditional upon us receiving a 'satisfactory' searches or mortgage offer with 'reasonable or usual conditions'. This is not a very satisfactory arrangement, as there can be many disagreements about the meaning of such clauses, and so they should be avoided if at all possible.

If you have a related sale, a conditional contract is not usually a practical proposition, as your buyer is not likely to agree that his purchase of your current house will be on a floating completion date that he has no control over.

Timescales

Builders will frequently give a deadline for exchange of contracts, usually 4 weeks from receipt of draft documents by us, or from the date your offer is accepted. When house prices are rising it must be taken very seriously as the builder will often increase the price at the end of this period, sometimes substantially.

Although the legal work for new-build properties can be substantially more complex to deal with than second-hand properties, we can usually deal with it in this period.

However, lenders often take longer than 4 weeks to issue mortgage offers.

Also, if you have a chain below you, it can be quite difficult to achieve an exchange on your related sale this quickly.

Surprisingly, lenders are not concerned about this as long as there is either a road agreement in place or the contract has a contractual obligation on the builder to complete the roads and drains. Rarely will the your new-home warranty cover this problem either. If in due course the roads are in poor condition it may be more difficult to sell the property and its value may even be less than you paid for it.

Drainage, Communal Areas, and SuDS

The same problems can affect new foul drainage systems that are not built to the right standards, and so are not taken over by the local water company. However the water companies are more likely to take action to fix the problem. The costs may fall on you however, and you might have to try and recover these from the builder.

Some estates have communal or play areas. The builder may transfer these to a local authority, or to a management company. If you are to be a member of the management company, you will need to check that this is run properly, that public liability insurance is in place, and that company accounts are filed each year.

In addition, the new emphasis on 'Sustainable Drainage Systems' (or 'SuDS') to prevent flooding has resulted in many new estates being designed with large landscaped areas to deal with surplus rainwater ('surface water'). These areas need to be properly maintained indefinitely, to prevent the houses on the estate being flooded. You need to look at the layout plan to see if any of it is being sold to you.

However, sometimes it isn't clear who is going to do the maintenance, or pay for it. Often these areas are not taken over by the water company, but instead they are left with the plot owners or a management company. If this isn't legally structured in the right way, the maintenance work may not be done, the plots may flood, and in some cases any damage may not be covered by household insurance.

So what can I do?

If you are the first purchaser of the house from the builder, your conveyancer should ensure there is a clause in your purchase contract requiring the builder to do what is necessary to ensure the roads and drains become adopted.

However, if the builder fails to do this, you (and all the other house owners) might ultimately have to take the builder to court to enforce this obligation in the contract. If this becomes necessary you will have to contact a litigation solicitor for advice on your rights at that time, as we cannot deal with this area of law.

You may be offered 'title insurance' on these points. However, the title insurance company will not generally pro-actively fix or maintain the roads, drains, or SuDS areas, as the cover is generally only against claims by the relevant authority (who might in practice take no action). It may even be a condition of the title policy that you do **not** complain about the situation to the relevant highway authority or water company, or do anything that may bring the problem to their attention.

Unfortunately this is a general problem with new houses, and there isn't much you can do, other than understand the risks and accept them, or buy another property with adopted roads and drains instead.

