

LOCAL GOVERNMENT AND HOUSING COMMITTEE

CONSUMER PROTECTION IN HOUSEBUILDING AND REPAIR

Purpose

1. To inform the Committee of the complaints that the Housing Directorate has received from homeowners about poor quality house building and repair work and the apparent lack of consumer protection. In order to assess the situation this paper aims to set out what protection and warranties exist to cover consumer protection and to explore the problems, which have been raised.

Summary

2. The soft mortar issue has highlighted a system that appears in some circumstances to be failing customers. Had it not been for the tenacity of a few customers who were not willing to accept initial findings, the problem would have gone undetected, resulting in latent defects at some time in the future; by which time the period of structural warranty cover may have expired.

3. Purchasers of new homes have no choice in the procurement of structural warranties, as developers decide on the provider before the property is built. Given the level of customers' choice it would appear, that competition does not operate in consumers' interest, which would (as it does in the motor car industry) serve to improve standards and service.

Recommendation

4. The Committee is recommended to
- a) note the problems experienced by homeowners
 - b) endorse the actions taken by the Housing Directorate
 - c. seek a further report on progress in January 2002

Timing

5. None

Background

6. From all complaints received from homeowners the most common problem appears to be a lack of quality control on behalf of the developer/builder and an inspection regime that would appear not to be effective.

7. The Directorate has received numerous complaints from residents of four sites in South Wales, concerning defective mortar used in the construction of their new homes.

8. Rectification works have been carried out to some of the properties, but a number of residents have taken professional advice and are not satisfied with the rectification works proposed nor with the length of structural warranty offered.

9. Officials from the Directorate have visited the homes of some of the complainants to view defects, and examine consultants' reports on defects and their recommendations for rectification work.

10. Preliminary conclusions would suggest that it appears that some British Standards have not been taken into consideration in the consultants' report and recommendations for rectification works. As a result, there is doubt as to whether the houses, once repaired, would comply with the requirements of the Building Regulations.

11. Remedial works to some of the properties have failed. (Specifically re-pointing) One property has been re-pointed on three occasions. This, and the presumption that soft mortar remains in 85-90 per cent of the walls above ground, and all the walls below ground, raises concern over possible structural problems occurring in the future.

12. Meetings have taken place between NHBC and officials of the Directorate. Requests have been made for walls to be opened up to inspect their condition but the NHBC appear to be reluctant to carry out this request.

13. Officials continue to suggest to the NHBC that further investigative work should be carried out, and further meetings are to take place with the NHBC.

14. Following a meeting with the DETR Minister at which concerns were raised, officials from the Directorate met with officials of the Building Regulations Division of DETR.

15. At the meeting Assembly officials expressed the following concerns:

- The lack of quality control on site by the builder/developer.
- The poor inspection regime which not only allowed the problem of 'soft mortar' to

continue through two phases one site, but failed to prevent the same developer from carrying out the same defect on two other sites, which were subsequently developed elsewhere in Wales.

- The lack of consumer protection related to the possibility of future structural defects occurring.
- The reluctance of the NHBC to provide certification that the houses once repaired conforms to the requirements of the Building Regulations.

16. The concerns were noted by DETR officials who intend discussing the matter with NHBC at a future liaison meeting.

Consideration

Current regulations and provisions aimed to protect consumers

17. The Building Act 1984 and Regulations made under it apply to housebuilding in England and Wales. Works of repair are not normally covered by Regulations. Repair is not defined in the Regulations but is usually taken to mean replacement, redecoration, routine maintenance, making good, but not new work or alteration.

The Building Regulations exist to secure the health and safety of building users, promote energy efficiency and make access easier for disabled people. The role of building control is to help ensure that all relevant building work accords with those objectives.

Housebuilding

18. All new houses must comply with the requirements of the Building Regulations 1991. There are options which can be used to obtain Building Regulation Approval.

Use of the Local Authority Building Control Department

Either:

- i. The deposit of *Full Plans*;

or

ii. The giving of a *Building Notice*

- For a *Full Plans application* plans need to be produced showing all constructional details, preferably well in advance of intended commencement on site. For the *Building Notice procedure* less detailed plans are required. In both cases the application should be accompanied by any relevant structural calculations, i.e. to demonstrate compliance with safety requirements on the structure of the building. (For fuller explanation see Annex A)

Use of an Approved Inspector

- Approved Inspectors are companies or individuals authorised under the Building Act 1984 to carry out building control work in England and Wales. Approved Inspectors were introduced to give builders and developers a choice of service provider, and to help improve service quality. The Construction Industry Council (CIC) is responsible for deciding all applications for approved inspector status.
- Where an Approved Inspector is used, the *Initial Notice* procedure takes the place of the Full Plans application and Building Notice procedures. In addition, Approved Inspectors can give formal plans certificates, which will give similar protection to that provided by a Local Authority Building control service.
- If an Approved Inspector is used, the information needed to ensure that the work meets Building Regulation standards is a matter for arrangement between the applicant and the Approved Inspector who will advise about what is required.

Starting Work

Using the Local Authority

19. Once the applicant has submitted a Building Notice or submitted Full Plans; work can commence at any time. However, the Local Authority must be given a *Commencement Notice* at least two clear days before work starts.

Using an Approved Inspector

20. If an Approved Inspector is used work may commence, subject to any arrangements that may have been agreed with the inspector, start work as soon as the Initial Notice is accepted by the Local Authority.

Ensuring Consistency between Local Authority Building Control & Approved Inspectors

21. Competition between local authorities and approved inspectors in the provision of building control services provides a stimulus to greater efficiency and higher standards of service to the customer. However, it has been recognised that these same market forces also have the potential to drive down building control standards, thereby threatening the health and safety of building users. In order to reduce this risk the Building Control Performance Standards were formulated.

22. These Performance Standards are supported by Guidance on how they might be achieved. These Standards and supporting Guidance are analogous to the functional requirements of the Building Regulations and the approved documents supporting them. They can also form the basis of any service agreements between Building Control Bodies and their clients.

23. Building Control Bodies are monitored against the Performance Standards by the Building Control Performance Standards Advisory Group. The Advisory Group consists of representatives from the Construction Industry Council, the Local Government Association, The Association of Approved Inspectors, The District Surveyors Association, the National Assembly for Wales, & DETR.

Penalties for Contravening the Building Regulations

24 Contravention of the Regulations by building without notifying the Local Authority or by carrying out work, which does not comply, can result in prosecution by the local authority. If convicted, the building owner is liable to a penalty not exceeding £5,000 plus £50 for each day on which each individual contravention is not corrected after conviction. Local Authorities have default powers to carry out the work and recover costs from the building owner.

New Home Warranties

25 Almost all new homes built for sale are covered against defects under private sector warranty schemes. Two main schemes exist.

(1) NHBC

26 The National House Building Council (NHBC), which is an independent not-for-profit organisation, provides the ten-year Buildmark cover. Between contract and legal completion, the NHBC provides protection against financial loss caused by the builder's insolvency or fraud or by incomplete or faulty construction, up to a maximum of £10,000, or 10% of the original purchase price, whichever is greater. For the first two years from legal completion, the builder is responsible for putting right any defects caused by breaches of any NHBC technical

requirements. NHBC provides insurance cover for the builder's obligations if the builder is insolvent. In years three to ten, NHBC provides insurance against the cost of repairing defined sorts of defects valued at £500 (indexed) and over. NHBC Buildmark covers approximately 80 percent of private housing developments. Special versions of Buildmark are available to meet the particular needs of housing associations and people building their own homes.

(2) ZURICH

27. Zurich Insurance Company, Building Guarantees provide a similar scheme for builders and developer warranties. Zurich also provides two years' defects cover, with major structural damage covered during years three to ten. Where the builder fails to put right defects, Zurich will deal with the claim directly and thereby protect the policyholder's interests. In addition, the Zurich scheme makes a wide range of options and services available to builder/developer clients and directly to policyholders upon purchase of their new home. For example, the option to extend that warranty for a further five years in year ten, the extension of defect cover from two to five years and many more. Zurich will also handle claims arising from the Foundation 15 warranty marketed by the Housing Standards Company Ltd, which ceased trading in 1992.

NEW MEASURES AIMED AT CONSUMER PROTECTION COVERING WORKS OF REPAIR & MAINTENANCE

Quality Mark scheme

28. In April 1998 Nick Raynsford MP, Construction Minister, launched a consultation paper, *Combating Cowboy Builders* aimed at raising standards in the domestic construction industry and helping consumers to identify cowboy builders.

29. The **Cowboy Builders Working Group** was formed in July 1998, chaired by Anthony Merricks (Chairman of the Construction Skills Certification Scheme). Its task was to build on the positive response to the consultation paper and to drive forward the campaign by developing the detail of a working scheme by summer 1999.

30. The Group's detailed proposals for a robust, but practical certification system were set out in an interim report circulated for further consultation on 9 April 1999. Following consideration of the responses, the Working Group submitted its **final report** on 31 August 1999.

31. The proposals were accepted by Government in December 1999 and became the basis for the **Quality Mark Scheme**.

32. The Quality Mark is an initiative aimed at empowering consumers by providing them with

the tools to identify honest, competent builders and allied traders. The scheme will place quality contractors on a national register that prospective consumers will be able to access by a low cost telephone number, through the Internet or with the help of local authorities or voluntary bodies.

33. The Quality Mark is intended to benefit both homeowners and the builders. The main advantages of the scheme for the consumer are that:

- it provides a guarantee of good workmanship: Quality Mark builders have to demonstrate they are technically competent and have the skills to do the job;
- it provides good customer service: Quality Mark builders have to make clear to consumers, preferably through the use of a fair contract, the nature, extent and cost of the work before starting the job; and
- it protects consumers if the job goes wrong: the Quality Mark is backed by an effective complaints system and scheme warranty.

34. Builders will also benefit because the scheme will:

- provide a means to independently confirm their business competence and reputation;
- make details of their business known to every consumer in their area through a widely publicised single telephone hotline; and
- provide an independent complaints procedure that will protect builders from malicious complaints and give evidence to pursue bad debts.

35. The Quality Mark is currently being piloted in Birmingham and Somerset and is at the stage of enrolling suitably qualified builders. The pilots will open to consumers following evaluation of the pilot schemes in July 2001.

Other measures

36. DETR are considering ways of extending the Building Regulations to cover domestic repair and maintenance sector (in consultation with The Building Regulations Advisory Committee), including development of a common approach to 'competent operatives'.

Financial Implications

37. There are no financial implications for the Assembly beyond commitments already made and accommodated within budgets approved by the Assembly.

Compliance

38. There are no issues of regularity or propriety. In accordance with FN/01 this submission does not require prior ACO clearance but is copied to the Assembly Compliance Office for monitoring purposes.

Cross cutting themes

39. Implementation of the Governments drive to improve quality in construction, and the Assembly's' responsibility to promote sustainable development.

Action for committee

40. To note the contents of the report, to support the actions taken to date and to require a further report.

Contact point

Housing Directorate, Construction & Domestic Energy Branch / Philip Gardiner x 6913

Differences between (i) a Full Plans application and (ii) the Building Notice

- i. A *Full Plans application* will be thoroughly checked by the Local Authority who are required to pass or reject the plans within a certain time limit; or they may add conditions to an approval, with the applicants written agreement. If they are satisfied that the work shown on the plans complies with the regulations, the applicant will be issued with an approval notice within a period of five weeks or up to two months if the applicant agrees to an extension of time. This gives the applicant the protection of being able to show that plans were approved as complying with the Building Regulations.
- ii. Under the *Building Notice* procedure no *approval notice* is given. There is no procedure to seek determination from NAW if there is a disagreement between the applicant and the Local Authority --unless plans are subsequently deposited. However, the advantage of the building notice procedure is that it will allow work to be carried out without the need to prepare full plans. However one must feel confident that the work will comply with the regulations or run the risk of having to correct any work carried out at the request of the Local Authority.

Comparison of Local Authority and Approved Inspectors duties

Local Authority

(i) Full Plans

If the Full Plans procedure is adopted, the Local Authority will check the plans and consult any appropriate authorities (such as fire and water authorities). If the plans comply with the Building Regulations the applicant will receive a notice that they have been approved. If the Local Authority is not satisfied amendments or more details may be required. Alternatively, a conditional approval may be issued. This will either specify modifications, which must be made to the plans; or will specify further plans which must be deposited. A Local Authority may only apply conditions if you have either requested them to do so or have consented to them doing so. A request or consent must be made in writing. If your plans are rejected the reasons will be stated in the notice.

(ii) Building Notice

If the Building Notice procedure is adopted, as with Full Plans applications, the work will normally be inspected as it proceeds; but the applicant will not receive any notice indicating whether the proposal has been passed or rejected. However, the applicant will be advised where the work itself is found by the building control surveyor not to comply with the Regulations. If, before commencement or while work is in progress, the Local Authority require further information such as structural design calculations of plans, the applicant must supply the details requested.

Approved Inspector

If an Approved Inspector is used they will give advice, check plans, issue a plans certificate, inspect the work etc as agreed between the applicant and the inspector. The applicant and the Inspector will jointly notify the Local Authority on what is termed an *Initial Notice*. Once that has been accepted by the Local Authority, the Approved Inspector is responsible for supervision of the building work. The Local Authority will not then be involved further although the applicant may have to supply limited information to the Local Authority to enable them to be satisfied about certain other powers which are linked to Building Regulations - e.g. about the point of connection to an existing sewer.

If the Approved Inspector is not satisfied with the proposals the options set out in section 27 will still be open to the applicant: namely they may alter their plans according to the Approved Inspector's advice; or they may seek a determination from the NAW of any disagreement between the applicant and the Approved Inspector, provided the work has not been started; or if it is appropriate it may be open to the applicant to apply to the Local Authority for a relaxation or a dispensation from the Local Authority of a requirements of the Regulations and, in the event of a refusal by the Local Authority, to appeal to NAW.

If, however, the applicant does not exercise these options and does not do what the Approved Inspector has advised to achieve compliance, the inspector will not be able to issue a final certificate. The inspector will also be obliged to notify the Local Authority so that they can consider whether to use their powers of enforcement (see sections 29 to 31).