



HomeOwners
Alliance

KING'S
College
LONDON



Buying a new home

Your rights explained

Chief Executive's message



Paula Higgins
CEO of HomeOwners Alliance

One of the attractions of a newly built home is that it should be more straightforward to buy and own than an old home. But far too many people buying newly built homes end up in extreme difficulties, often costing them thousands of pounds. Every day, the HomeOwners Alliance team help new home buyers to try to resolve their problems.

The system is not fit for purpose. Consumer protection is limited, with people having more rights if they buy a toaster than if they buy a house. Warranties that sound impressive when sold turn out to be valueless. It is often not clear what responsibilities housebuilders have to put things right when they go wrong.

We are pushing for reform through our Better New Build Campaign. We want higher quality housebuilding, better information for homebuyers and stronger consumer protection. But there is little sign of government action.

In the meantime, if you are buying a new home, the best way to avoid problems - or to quickly resolve them when they arise - is to become fully informed. That is why we have put together this practical guide, to help homeowners successfully navigate the sometimes murky world of buying a new build property. The aim of this guide is to help you get the most out of your newbuild home.

This guide has been produced in partnership with the King's College London Research Group, which we would like to thank for providing much of the content.



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Terms used in this guide

A word or phrase which is in small capitals in the text, like LEGAL ACTION, is defined in the Key Terms section at the end of the Guide.

Introduction

Buying a newly built home (a house or a flat) is a complex process and, if the quality of the home is poor, can sometimes lead to disappointment. This Guide will help you know your rights, as well as what to do if DEFECTS appear.

This guide is for you if you're the first buyer of an OFF-PLAN new home from a DEVELOPER (newly constructed, or perhaps newly converted from – or part of – an existing building). If you are a second or later buyer of your home, see the section on Second or later buyer of a newly built home.

In July 2016, a group of MPs, the All-Party Parliamentary Group for Excellence in the Built Environment, published a report into new homes: More homes, fewer **complaints**. The report found that, though more homes are now being built (but still not enough to meet demand), the quality of what is being built has declined.

Here is what one consumer is facing:

- Skirting boards pulling away from walls (I can fit coins in the gaps)
- Light switches left unsecured and unfitted to the wall
- Lights throughout the property flicker constantly
- Little or no sound proofing. Developer has refused to give their site specifications
- Three inches of pooling water in the back garden
- No door in the property meets fire regulations standard, despite the developer replacing them three times.

How could situations like this be avoided, or at least reduced? The report suggests several bold measures – none yet implemented by government or industry-wide. Consumers need to be more aware of their rights and understand what they can do to protect themselves, as well as what to do when things go wrong with a new home.

Purpose of this Guide

This Guide is a step towards informing consumers where they stand. It comes from a Research Group based in the **Centre of Construction Law & Dispute Resolution** (part of the Dickson Poon School of Law), King's College London, in association with HomeOwners Alliance.

It applies only to England & Wales, as both Northern Ireland and Scotland have different rules and procedures. Under devolution, Wales is starting to adopt its own BUILDING REGULATIONS for new construction projects; these differ from those in England. If your home is in Wales, make sure you are aware which regulations apply.

General guidance is no substitute for professional help on a specific situation, so please contact a skilled expert if you need detailed advice or representation. There are suggestions in this Guide about how to find such a person; or you can contact **HomeOwners Alliance** to help.

Neither the authors, the HomeOwners Alliance nor King's College London can accept any liability in respect of any use to which this Guide, or any information or views expressed in it, may be put, whether arising through negligence or otherwise.

The buying process: overview

Buying a newly built or newly converted home is a process which may include several stages. If it's an OFF-PLAN sale, you may enter into a RESERVATION AGREEMENT first.

Many DEVELOPERS are bound by the **Consumer Code for Home Builders**; others observe different Codes approved by the Chartered Trading Standards Institute. All the organisations who provide new home WARRANTIES require those DEVELOPERS who take out policies with them to sign up to one of these Codes.¹

These Codes all require accurate and reliable information to be made available to potential buyers about an OFF-PLAN home, together with a statement of the standards (eg BUILDING REGULATIONS, or other technical standards) which the home will comply with. They also require RESERVATION AGREEMENTS to include the following items in writing:

- The amount of the reservation fee
- What is being sold
- The purchase price
- How and when the agreement will end
- How long the price for the home remains valid
- The nature and estimated cost of any management services the home buyer must pay for after purchase (service charges for a flat in a block, for example)
- The nature and method of assessment of any extra fees that might be incurred later, such as transfer fees, fee for consent to alterations or similar liabilities.

After the RESERVATION AGREEMENT, there are usually two stages, normally with a period of time in between:

Stage 1

'Exchange of contracts'

You enter into a CONTRACT to BUY from the DEVELOPER and pay a deposit – usually 10% of the total purchase price.

Stage 2

'Completion'

You pay the rest of the purchase price, some or all of which may be funded by a mortgage from a bank or building society. You then become the home's legal owner (or long leaseholder) and can move in.

From the buyer's side, it's a PURCHASE CONTRACT; from the DEVELOPER'S side, it's a SALE CONTRACT, so the documents may use either term.

¹ See our guide on **Warranties: what they do and don't cover** - <https://hoa.org.uk/advice/guides-for-homeowners/i-am-buying/new-home-warranties-cover/>

Large-scale OFF-PLAN developments often include a 'show house' or 'show flat' and a sales team on site, hoping to encourage potential buyers. Two sources of later problems are:

- When the sales team for the DEVELOPER suggest to an OFF-PLAN buyer what the home will contain, what it will look like or how it will perform; the reality after completion then fails to match this.
- Where an actual home sold OFF-PLAN fails to match, in aspects of its specifications or construction, the show house or flat, or illustrations in the DEVELOPER'S sales literature or on its website, or models which the DEVELOPER has shown to the buyer.

What the buyer is told, or encouraged to believe, in the sales process can often be an issue; also what remedies (if any) a buyer then has. [See Your rights under legislation.](#)

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When I viewed the flat I was explicitly told, in the presence of a friend who was with me, that the site would be gated (ie there would be gates with electronic controls). This was a lie... [The developer] only clarified it in November 2016 (I completed end April 2016). Of course the legal documents go along with this, but I had no reason to disbelieve them and check when I bought. I am honestly not sure I would have bought on the ground floor in this area had I known this.

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Consumer Alert 1:

If you are considering buying a home off-plan, sales staff may encourage you to buy, or to enter a reservation agreement, by making exaggerated or inaccurate statements to you about the home. Keep your own note at the time of any such statements which you think important, and make clear to the developer in writing or by e-mail, before you exchange contracts, that you are relying on them. The purchase contract may attempt to take away any remedies you have for such statements, if the home does not match them, but the Consumer Rights Act 2015 protects consumers by making this more difficult. Note that your purchase contract may entitle the developer to vary the specifications from what you have been told or shown, but such changes should not affect the value of the home, nor reduce its overall size.



After-sales service from your developer

Most major DEVELOPERS offer a specific after-sales service, with a named contact or office that you can call if you think your home has DEFECTS or if it fails to match what has been promised. If your home has a WARRANTY from a body other than your DEVELOPER, a WARRANTY PROVIDER may set minimum standards for after-care (see section on third-party warranties). The published Codes lay down service standards (but do not increase your legal rights); each offers a free dispute resolution service.

It's always best to try and resolve any concerns you have about build quality directly with your DEVELOPER. Your WARRANTY, if you have one, may actually require you to take this route in Years 1 and 2 after completion, even for structural or other serious DEFECTS. It's often worth taking professional advice from a chartered building surveyor or architect with relevant experience (though this can be expensive). S/he can help you understand the seriousness of the situation before you contact the DEVELOPER. For example, what you see as a dangerous crack in plasterwork may be evidence of a structural problem – or a professional may reassure you that it's only natural shrinkage and 'drying out' soon after construction.

You can search for an appropriate chartered surveyor or architect via HomeOwners Alliance. Once you narrow the field to someone in your area who does this sort of work, meet them and ask to see sample reports on cases like yours. Also ask whether you can contact former clients, to find out how happy they were with the service.

A DEVELOPER concerned about its reputation, locally or nationally, will wish to respond to all serious complaints promptly and effectively, which usually means sending someone to investigate the problem and – if it agrees that further work needs doing – organising this. In such a scenario, it may not matter whether there really is a 'DEFECT' in a legal sense (see What in law is a defect?) or whether the problem is something more trivial or cosmetic: what in the trade is often called 'snagging'. But if this doesn't happen, or if you're still unhappy after the DEVELOPER has done extra work, you as a buyer need to be aware of other options.

What in law is a defect?

When we refer to **DEFECT** in this Guide, we mean any aspect of your home which does not meet one or more of the quality standards the **DEVELOPER** has undertaken to meet. These may relate to the materials used, the way they have been used, the installations in the home (eg appliances, especially if you as buyer paid extra for different appliances from those offered as standard) or to how well the home performs the functions which it (or part of it) is expected to fulfil ('fitness for purpose').

Such a **DEFECT** may be in your own home, or in shared facilities which come with your home (in a block of flats, the 'common parts' like an entrance hall, stairway and services to and from your flat, but a detached house may also have shared car parking or other facilities).

In order to establish whether you have any recourse in relation to such a **DEFECT**, you need to look at what your contract says, terms that may be implied in your contract as well as your rights under the general law.

What does your contract say?

Your first step should be to look at the words in your **PURCHASE CONTRACT**, so that you can understand what the **DEVELOPER** has taken on and then hold it to these obligations. However, the words used are often very general, like 'in a good and workmanlike manner'. This means, in effect, that the Developer has to carry out the works to the standards reasonably expected of a **DEVELOPER** in the business of construction – so the industry standard for new homes is what counts.

A construction professional, like a building surveyor, will be able to advise you on how this standard applies to aspects of your home. It usually means that absolute perfection in every detail is not expected. Some **CONTRACTS** lay down actual limits ('tolerances') within which slight deviations from the plans and specifications are acceptable, but this is rare; and you may not easily get access to those plans and specifications anyway. **If you are able to get detailed plans and specifications referred to in your **PURCHASE CONTRACT** that can be very helpful if there is a problem later.**



Beyond what the contract actually says

The law does not lay down precise requirements for every SALE CONTRACT for a new home not yet completely built (or converted). However, in such a situation several obligations on the DEVELOPER are implied – meaning that you can rely on these obligations, even if they are not spelt out in the documents which form the CONTRACT:

- Compliance with national minimum standards of construction (eg those BUILDING REGULATIONS which apply to your type of home or to the development of which it is part).
- Compliance with the detail of the planning and other permissions applicable to the development (for example, listed building consent) and any other planning-related agreements between the DEVELOPER and the relevant planning body.
- The general requirements every TRADER has to comply with in providing services (in your case, the work of design and construction) to individual consumers: these are summarised under Your rights under legislation below.
- The obligations which apply to anyone ‘taking on work’ for the provision of a dwelling under the Defective Premises Act 1972 (more details below)

Consumer Alert 2:

If you are buying off-plan, be careful if you are offered the chance to inspect the home before you complete on the purchase. If you take this opportunity, the developer may then argue that you had the chance to find out about every detail of the construction at that point, which may make it harder for you to make a claim if defects appear later.

Either:- ask a property professional (building surveyor or professional snagger, for example) to do a proper inspection on your behalf – and in their report make clear that it is not conclusive and is without prejudice to further DEFECTS which may be discovered or make clear to the developer in writing or by e-mail that, if you inspect, you are not giving up any legal rights.

See [Appendix 1: Pre-Inspection Letter](#) for a set of words you could use for that.



Your rights under legislation

After looking at the wording in your purchase contract, you can then also consider if you could avail of any protection under various pieces of legislation.

Under your purchase contract

If the building works are carried out badly, or if the design is defective, you may have a claim under the **Consumer Rights Act 2015** (CRA). The CRA imposes duties on a **TRADER** in every **CONSUMER CONTRACT** which includes the provision of services. These obligations benefit only the first buyer of a new home, who has a **CONTRACT** with the **DEVELOPER**. For building works, involving the provision of construction services, which will apply to every **OFF-PLAN** situation, some of the most important duties are compulsory:

- They must be performed ‘with reasonable skill and care’ (section 49)
- They must be completed ‘within a reasonable time’ (section 52)
- Materials used must be ‘of satisfactory quality’ and must be ‘fit for purpose’ (section 9).

This means that the **CONTRACT** includes these duties, whatever the words in the documents actually say (or don’t say): section 10 of the CRA. So the **DEVELOPER** cannot argue that the duties do not apply to them.

Special protection for new homes

The **Defective Premises Act 1972** (DPA) can also help you if your home has **DEFECTS**. It doesn’t operate to give you extra rights in **CONTRACT**; instead, its section 1 puts legal duties on anyone who ‘takes on work’ in relation to the provision of a dwelling (residential property).

The DPA requires each person to make sure that their own work (their contribution to the construction of your home) is done:

- In a ‘workmanlike and professional manner’ and
- So that, when complete, the home is ‘fit for habitation’.

Like the duties under the CRA, these are compulsory for everyone who contributes to the project which results in construction of your home (whether you had a **CONTRACT** with them or not), though the DPA may not apply to a new home created by conversion of an existing building.

Under the DPA, you may be therefore able to take **LEGAL ACTION** against the main contractor (or anyone else involved on the development), if the **DEVELOPER** is no longer trading. You do not have to be your home’s first purchaser to be able to use the DPA, as long as you are its owner and act fast enough (see **Time limits**). However, making a building ‘fit for habitation’ is much less demanding than the three CRA obligations above, so only in rather extreme circumstances will the DPA apply, like subsidence from inadequate foundations.²

² *Bole v Huntsbuild*: <http://www.bailii.org/ew/cases/EWCA/Civ/2009/1146.html>

Misleading statements in the purchase process

The Consumer Rights Act 2015 is written in such a way that it should catch any situation where a DEVELOPER or its sales staff make statements, either in the CONTRACT or in the run-up to it, which are misleading or not correct. However, if for some reason the CRA does not assist you, you have rights under another piece of legislation, the [Misrepresentation Act 1967](#). This steps in if the DEVELOPER makes a false statement to you about something which is important to your decision to enter into the CONTRACT.

If so, you may be able to bring a claim for DAMAGES, or at the very least recover some of the expenses the misleading statement has caused you to incur. You may also be entitled to have the CONTRACT set aside, which would put you back in the position you would have been in before entering into it – both physically (handing your home back to the developer) and financially (getting the purchase price back). We should point out, however, that this result is extremely rare.

Unfair terms

The CRA, following earlier rules, also limits the power of TRADERS to put terms in CONSUMER CONTRACTS which are unfair. Whether a term is unfair will be a matter for the relevant judge to decide, but they will apply this test:

The CRA lists possible examples of unfair terms in schedule 2, including ones which make it difficult for consumers to make a claim or to take LEGAL ACTION when the TRADER has not complied with its duties.

If a court finds that a term is unfair, it will not be applied against you as the consumer, but the rest of the CONTRACT will usually survive.

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A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

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Consumer Alert 3:

Do not delay contacting your developer if you have quality issues about your home, or about any services or parts of the development which you share with others. If the developer has a specific department or named individuals to contact, use these: make clear in writing or by e-mail what you are unhappy about, keeping a copy of what you send and the response you get back (including a note of what was said in any phone conversations). See [Appendix 2](#) for a framework you could use for that.



Resolving a dispute with your developer (if you are your home's first buyer)

Action against your developer

It's vital to find a way of resolving a dispute informally if you can: LEGAL ACTION should always be the very last resort. Even if you're confident that the law is on your side, you may have to incur significant costs up front (which you may well not get back) to make a threat to sue the DEVELOPER convincing. Although you can abandon a claim at any point, to formally commence LEGAL ACTION in court takes you down a very risky road, with court fees, a sequence of procedural steps imposed by the court and a potential liability for part or all of the DEVELOPER'S legal costs. These can easily amount to far more than the amount you win in DAMAGES (or the equivalent, if the court instead orders the DEVELOPER to come back and do repairs).

Your DEVELOPER will probably have access to good legal advice (and may have faced many such claims in the past), so will know that it won't be worth your while to take LEGAL ACTION unless the repair bill is very substantial and its liability easy to show - or unless you have money to burn in order just to make a point.

If you seem to reach stalemate in trying to get action out of your DEVELOPER, consider:

- The dispute resolution scheme available against the DEVELOPER (under the Consumer Code for Homebuilders or its equivalent, if your complaint is about **after-sales service**) - the particular scheme will depend on whose third-party WARRANTY you have. If you have NO WARRANTY, no scheme may be available.
- Asking your DEVELOPER to negotiate, or asking it to agree to Alternative Dispute Resolution (ADR) - simpler, cheaper and quicker ways of resolving a dispute than LEGAL ACTION. ADR depends on the agreement of both parties but (if successful) can lead to an outcome which has legal force.

Consumer Alert 4:

What counts as a defect in the legal sense is often unclear, especially in relation to paintwork and other finishes: this may not include every aspect of your home which you think inadequate or substandard. Often what has in fact actually gone wrong may not be obvious, as well as what's needed to solve the problem. All these uncertainties often work in favour of your developer and against you as a consumer, unless you already have your own professional backup (eg a surveyor) - which may be a worthwhile investment if the problems with your home appear serious.

Forms of ADR

- **Negotiation:** here the parties themselves come to an agreement resolving their dispute. This process is voluntary, private and final (if agreement is reached). It can be formalised by drafting a written document summarising the terms of the agreement; this can be confidential if required.
- **Mediation:** this involves asking a neutral and independent person to help the parties towards an agreement which resolves their dispute. If managed well, mediation can be less expensive than other methods of dispute resolution and is therefore encouraged by the courts. Like negotiation, it is a voluntary process and is private, it will be final (if it succeeds) and can be confidential.
- **Adjudication:** this involves asking a neutral and independent person to decide the dispute in a relatively short period of time. The decision is binding but not always final, as either of the parties may be able to refer the matter to arbitration or to the courts. Adjudication is the dispute resolution procedure provided under the Consumer Code for Homebuilders.
- **Arbitration:** this is an alternative to court litigation and involves a neutral and independent arbitrator (or panel of more than one arbitrator) delivering a final and binding decision; but arbitration is legally unfair (hence the outcome will not bind the consumer) if it relates to a CONSUMER CONTRACT and where less than £5000 is claimed.

Considering legal action through the courts

If you have no informal or private options for dispute resolution available, or if you use one of these forms of ADR but it produces no solution, then, if you are considering LEGAL ACTION through the courts, please ensure that:

- The DEVELOPER is still in existence, with enough funds or assets available if a court found in your favour. Your PURCHASE CONTRACT may be with a company specially set up to construct your development and with very few, if any, assets – rather than with the parent company you thought you were dealing with; you can search at Companies House against the names of all relevant companies.
- You are within the time limits for actually starting LEGAL ACTION (see [Time limits](#)).

Remedies in court

The remedies you may be able to gain in court under a CONSUMER CONTRACT include:

- DAMAGES
- Requiring the DEVELOPER to complete the work properly
- Requiring the DEVELOPER to undertake repairs
- A reduction in the price you've paid (in other words, a partial or total refund).

The Consumer Rights Act 2015 also creates a right, if you are the first buyer, to terminate your CONTRACT, entitling you to refuse to complete the purchase, where there has been a serious breach of any of the statutory duties. However, it is not clear whether this is available where part of the contract is for a sale of land. If yours is an OFF-PLAN purchase, you may find out about serious problems with build quality only after you've completed on the purchase, unless you have been able to organise a professional inspection before completion.

As **What in law is a defect?** explains, in practice it may be difficult to persuade a court that the DEVELOPER has failed to carry out its duties. This is because terms like 'satisfactory quality' and 'reasonable skill and care' are notoriously difficult to define, so can be argued over.

Other possible avenues

You may consider using social media as a way to discover others whose problems are similar to yours and then generating collective pressure on the DEVELOPER, including crowdfunding in order to threaten or start LEGAL ACTION. Or you could ask for help from a local councillor, your MP or a local or national newspaper or radio/TV. But it's wise to try direct contact with the DEVELOPER first.

If you think that your home doesn't comply with BUILDING REGULATIONS, the Building Control department at the local authority where your home is may be willing to advise you. Your DEVELOPER may instead have used a private-sector Approved Inspector. However, local authorities have no direct consumer protection responsibility, so cannot put legal pressure on your DEVELOPER about build quality once the project has been 'signed off', close to completion.

By contrast, if you think there are planning issues, the PLANNING AUTHORITY which gave planning permission will want to know about any failures to comply with the detail of what was permitted: it may be willing to consider enforcement action against the DEVELOPER.



I live on a development of approx 40 houses that was built 4-6 years ago that has needed a massive remedial works programme. To get the work done home owners/residents had to form a group and confront the developer, builder and NHBC.



Consumer Alert 5:

The protections in the CRA 2015 do not apply to a CONTRACT for the sale or purchase of land (or buildings which are part of land) as such. But they do cover a supply of services or sale of goods, as in an OFF-PLAN sale of a home yet to be built (construction services), or the sale of a home which includes appliances (goods).

Consumer Alert 6:

The terms and conditions (also the financial limits) contained in each warranty change regularly, as does the way the information is organised in the documentation. So you need to know which version of your warranty applies to you. Check out the date on your certificate: note that this may be earlier than the date your home was sold to you or to the first buyer. This certificate date will also include the time limits for making a claim.

Third-party warranties

There is no legal requirement on a DEVELOPER to offer a new home buyer a WARRANTY from a separate organisation ('third party' here simply means not the DEVELOPER itself). However, most large DEVELOPERS in fact choose to do so. If your purchase needs mortgage finance, most lenders require such a warranty. They may instead accept a Professional Consultant's Certificate (PCC) from a qualified person – usually an architect – who has inspected the process of construction and is happy to confirm its quality.

Many DEVELOPERS consider a WARRANTY an important selling point. Some commit to a particular provider by becoming registered with it – which means that the consumer usually has no choice. Buildmark from the National House-Building Council (NHBC) is the best known, but in fact there are several different WARRANTY PROVIDERS in the market in England & Wales, though many offer a level of cover closely similar to the NHBC.

Scope of a warranty

The marketing of some WARRANTIES encourages consumers to believe that they respond to every DEFECT (in the sense explained in [What in law is a defect?](#)) this is a misleading exaggeration. All the available WARRANTIES are concerned principally with structural DEFECTS, offering payment to 'the insured' (the homeowner) in order to repair any DAMAGE caused by such DEFECTS. The cover is actually more complex than that: to understand it needs a close reading of the wording of your own WARRANTY.

So WARRANTIES do not help with the 'snagging' problems consumers often raise, nor with issues just about the quality of construction, or of installations, or about how the house performs. And WARRANTIES do not help with whether the house matches what the consumer reasonably thought it would look like, or what it would contain. All claims of these sorts have to be taken up with the DEVELOPER, and usually only with the DEVELOPER.

Consumer Alert 7:

No warranty promises to respond to a claim for every quality issue in a new or recently built home. But to make a claim under it costs nothing and risks no further expenditure on your part. Before you contact your warranty provider, have a clear idea where your problem fits within the scope of cover of your warranty; and be ready for the warranty provider to rely on the small print to refuse a claim or to impose a limit on what it offers to pay. Some warranty providers have the right to do repair work themselves, rather than paying you the cost of having it done.



Key features of a warranty

It's wise to know – by looking at the documentation you have – how yours stands on all these issues:

	YES	NO
Is the WARRANTY PROVIDER approved by the Council of Mortgage Lenders?		
Does the WARRANTY PROVIDER have an 'A' credit rating in relation to its ability to meet its financial commitments?		
Does the WARRANTY cover loss of the fee paid under a RESERVATION AGREEMENT?		
Is the WARRANTY clear about what risks it does, or does not cover?		
Must you look first to the DEVELOPER for all claims in Years 1 and 2 of the WARRANTY? (More on this below)		
Are claims under the WARRANTY subject to any excess, minimum amount or overall maximum – for the home itself, or for the development (eg a block of flats) of which it is part?		
Are you clear on the actual date when WARRANTY cover started in relation to your home, so when cover will run out? (The start date could be before you completed on your purchase)		

Limitations on cover

Buildmark and those other WARRANTY PROVIDERS which closely copy the NHBC approach expect the consumer to look to the DEVELOPER in Years 1 and 2, even for claims covered by the WARRANTY. The WARRANTY PROVIDER will respond in those early years only if the DEVELOPER fails to do so, but there is a dispute resolution procedure which you as a consumer can trigger (for free), if you attempt to get a remedy out of your DEVELOPER under the WARRANTY and get no adequate response. In Years 3 to 10, you can claim directly against the WARRANTY PROVIDER.

Each third-party WARRANTY has a fixed time limit on the cover it offers (usually ten years from the start date on the policy, but some WARRANTY PROVIDERS offer cover for twelve years for some DEFECTS). Most have financial minimum claim values (or an 'excess' deducted from each successful claim) and maximum payouts, either individually or cumulatively over the life of the WARRANTY.

No WARRANTY undertakes to pay for all the elements which the courts would award as DAMAGES if you successfully took LEGAL ACTION – so professional fees in establishing your claim may not be covered, nor loss of income or compensation for distress. On the other hand, making a claim under a WARRANTY – unlike going to court – normally involves no expense on your part, and most WARRANTY PROVIDERS will generally have greater financial stability than some DEVELOPERS. If you show the WARRANTY PROVIDER that ‘an insurable risk’ has arisen, it has a legal duty to pay out.

Challenging a warranty provider

Since a third-party new home WARRANTY is in effect an insurance product, all WARRANTY PROVIDERS are heavily regulated. Their dealings with policyholders are subject to review by the independent Financial Ombudsman Service (FOS). This is free to the consumer, and an award from the FOS can order compensation for distress and inconvenience. But there are disadvantages too:

- The FOS is essentially a regulator of financial services, so its case officers and adjudicators understand issues about financial products but are not experts in building DEFECTS and WARRANTIES. They may therefore have difficulty in engaging with your complaint.
- You can't have two bites at the same cherry. If you bring a complaint to the FOS you can't then make a claim in court arising from the same facts, even if a court would award you more money. In an important Court of Appeal decision on this issue in 2014, the judge explained that if you go to the FOS but then decide you want to switch horses to LEGAL ACTION through the courts, then you must reject the FOS award. Even that may be unsafe, because of the various rules against re-litigation.

Warranty providers

On the [HomeOwners Alliance's website](#) you can find a full list of the major warranty providers and details of what they cover and don't. The major ones are.

- BLP: www.blpinsurance.com
- Build-Zone: www.build-zone.com
- Checkmate: www.checkmate.uk.com and
- LABC Warranty: www.labcwarranty.co.uk
- NHBC: www.nhbc.co.uk
- Premier Guarantee: www.premierguarantee.co.uk
- Zurich: web.zurich.co.uk/buildingguarantee

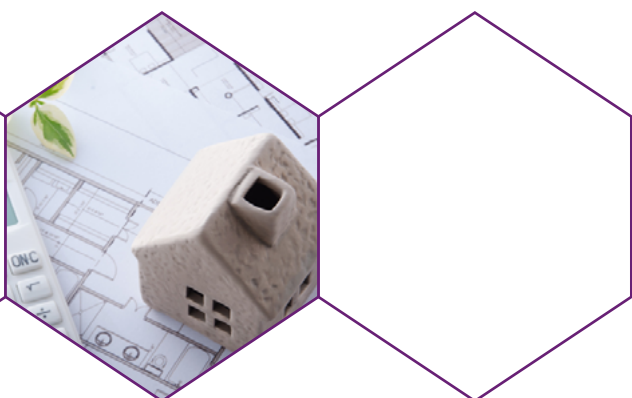
Defects in a multi-unit development (block of flats)

If you think there are, or could be, the same build quality problems in several homes within a larger development, a valuable first step is to get together with as many of the other homeowners as possible. The same would apply to services shared by other homes in a block of flats, like inadequate fire protection between each floor of the block or between the landings and each individual flat, which may not comply with BUILDING REGULATIONS): contact those in other blocks in your development, in case the DEFECTS may be widespread. Create an informal action group which can investigate the problems – perhaps jointly funding an initial look by a building surveyor or architect. Then a representative of the group can speak to the DEVELOPER from a position of strength, on behalf of several (ideally, all) homeowners.

The way in which some third-party WARRANTIES apply to serious DEFECTS within ‘the common parts’ of a development means that the financial limits on a claim, together with minimum claim rules, can make it difficult to use this route. Threatening to sue the DEVELOPER may be the better – or only real – remedy, but this is potentially a high-risk, expensive strategy, unless you can persuade the DEVELOPER to settle informally at an early stage.

It’s seldom clear under the leases of flats within blocks (especially if the DEVELOPER has sold the freehold on) whether the current landlord is responsible for original construction DEFECTS. Nor is it always clear whether the Residents’ Management Company (if there is one, it will collect service charges and organise maintenance and repair) can take LEGAL ACTION against the landlord – or anyone else – for such DEFECTS, except as representing individual flat-owners. The unhappy outcome may be that the current residents together have to fund repair work for original construction DEFECTS.

Multi-unit developments often raise complex legal issues – a situation needing specialist legal advice. You may need to instruct a lawyer who has experience in new home DEFECTS. [HomeOwners Alliance](#) can help you find a specialist lawyer or you can use the Law Society’s [Find a Solicitor](#) service.



A second or later buyer of a newly built home

If you're not the original buyer of your home, you will have no CONTRACT with the DEVELOPER, so can't directly rely on the DEVELOPER'S legal duties in the SALE CONTRACT to get remedies for DEFECTS. However:

- The person from whom you bought your home or flat can usually pass on to you (technically, 'assign') their rights to take LEGAL ACTION against the DEVELOPER, including under the Consumer Rights Act 2015 – but this rarely happens, and you're unlikely to be able to insist on it.
- You are protected – but only to a very limited extent – by the Defective Premises Act 1972 (see Your rights under legislation). This allows LEGAL ACTION FOR DAMAGES against any original construction party (even though you may have had no CONTRACT with them), but see also [Time limits](#).
- If your home has the benefit of a Third-party warranty and you are able to act within the first two years from the date your own WARRANTY started, you can claim against the DEVELOPER under the Consumer Code for Home Builders or its equivalent, if one of these Codes applies to you (see [After-sales service from your developer](#)).
- If your home has the benefit of a Third-party warranty, you can claim on this against YOUR WARRANTY PROVIDER, within the scope of your cover and within its total duration.

Consumer Alert 8:

If you have a standard home contents policy, this may cover some of the costs deriving from a problem in your home which YOUR WARRANTY may not. And this may include legal expenses insurance, which might assist you in making a claim under your warranty or even legal action against your developer

Consumer Alert 9:

The protection you gain under the Defective Premises Act 1972, the Consumer Code (or equivalent) or a third-party warranty is much less in scope than if you could claim in contract against the developer. You are very unlikely to have a claim against the previous owner of your home, from whom you bought the house or flat, as the usual rule when an existing building is sold is that the risk of all defects is on the buyer. There's an exception if the person from you bought your home ought to have disclosed an ongoing dispute with someone else about the home and failed to do so. The protections for consumers in the Consumer Rights Act 2015 do not usually benefit a second or later buyer of a home.

Time limits

Under a third-party warranty

If you're considering claiming under a **WARRANTY**, most run for ten years – and its start date is likely to be when your own home was complete and ready for occupation, not when the rest of the development (if there is one) was complete, or all other units sold. It's too late to start a claim after your period of cover has run out, so it's worth finding your **WARRANTY** documents and being aware when cover will end.

You must notify your **WARRANTY PROVIDER** as soon as you think you may have grounds for a claim. Your **WARRANTY PROVIDER** may argue that it's not liable for extra costs which come from your failure to take reasonable steps to minimise loss and **DAMAGE** when the problem first arose; or from your delay in making a claim.

For possible legal action

If you're a first buyer and considering taking **LEGAL ACTION** against a **DEVELOPER**, including by relying on the Consumer Rights Act 2015, you must formally start a case within six years of the breach of **CONTRACT** which you are alleging. So time may start to run when whoever designed, for example, the heating system did so in a way which failed to comply with **BUILDING REGULATIONS**; or when plumbing was installed in your home during construction with some of the joints loose, causing a flood once you moved in.

If you are considering taking **LEGAL ACTION** under the Defective Premises Act 1972, you must formally start a case within six years of the completion of construction. This may mean when your home was completed (which could be earlier than its being sold to you), but if your home is part of a larger development, the date could be earlier or later.

You don't ever gain extra time if you only found out about a **DEFECT** long after construction was complete, or after you moved in, even if you had no reasonable way of discovering the problem earlier.

Consumer Alert 10:

If you did have a survey and the person who carried it out missed something a reasonable surveyor would have spotted, within the scope of the survey you agreed to, the surveyor may be liable to you in negligence, with insurance cover against this liability.

Consumer Alert 11:

If you start legal action too late, the defendant (in this case, the developer) has a complete defence and can ask the court to have your action stopped ('struck out'): you'll then have to pay the defendant's costs.

Prevention and cure: practical advice

- **Get good independent legal advice** before you enter into a **CONTRACT** to buy a new home from a **DEVELOPER**.
- **Don't go along with a discount or cashback which the DEVELOPER offers you to exchange on a purchase quickly**, on condition that you use a solicitor or licensed conveyancer off the **DEVELOPER's** own list.
- Don't assume that a solicitor or licensed conveyancer recommended by the **DEVELOPER** or its sales staff will be as keen to protect your interests as one you've selected but who isn't on the **DEVELOPER's** list.
- **The DEVELOPER is likely to agree only limited amendments to its own draft SALE CONTRACT** (especially for a flat within a block, where the sale documentation and the leases normally need to be identical)
- **Read the SALE CONTRACT carefully** and ask your solicitor or licensed conveyancer to clarify any point which you don't understand before you sign it.
- Be aware whether your new home has (or will have) a third-party **WARRANTY**, what scope of protection it offers against what sorts of **DEFECTS** (see **Third-party warranties**) and what its terms and start and end date are.
- Keep your **PURCHASE CONTRACT** (especially if you've bought directly from the **DEVELOPER**) and **WARRANTY** document safe.
- **If you suspect that there's a problem with your home, don't delay** investigating it: you may lose your right to a remedy if you leave it too long (see **Time limits**).
- Document the problem as far as you can, with photographs (dated) as evidence.
- **Contact the DEVELOPER, making clear in writing what you think is wrong** and what you'd like them to do about it; make clear that you're happy for them to come and inspect with reasonable notice.
- Keep a note (including times and dates) of any phone conversation you have with anyone about your problem, and a copy of any letter or e-mail which you send or which is sent to you.
- If the **DEVELOPER** agrees to do repair work, make sure you get a statement in writing (or by e-mail) of what they're going to do and within what timescale.
'The snag list at the outset had 100 plus items on it and I have been battling with [the developer] for over 2 years to get everything resolved. It is now saying that it will not complete work that it previously said it would.'
- If you think that any repair work done isn't of adequate quality, you have the same rights and remedies in relation to the quality of this work as you did in relation to the quality of your home when it was first completed.

Appendix 1: Pre-Inspection Letter

Name and address of developer

Your name and address

Date

Dear [name of contact]

Proposed inspection of [address of property] “the Property”

Thank you for your offer of an inspection of the Property on [date proposed of inspection] which I would like to accept.

[Optional - I would like to bring my [surveyor/solicitor/other person] with me to the inspection.]

Please note that the inspection is undertaken by me with all rights reserved. The inspection and any discussions by me [and my companion[s]] with your employees and agents during the inspection will not constitute an acceptance of any defects, latent or otherwise, structural or otherwise, that the property may be found to have on later inspection and/or purchase. By ‘defect’ I mean a part of the Property [or of the rest of the Development over which I will have access or other rights - omit if your new home is not part of a larger development or block of flats] which is not in accordance with the terms of the contract or with the law applicable to the contract or with the design which I or my representatives initially accepted prior to the inspection.

Please also note that the inspection and any discussions by me [and my companions] will not constitute acceptance of any performance of service provided by your employees and agents or any other party to the contract, the standard of which falls below the standard of reasonable care and skill as required by the Consumer Rights Act 2015 section 49 or is in breach of any other terms, express or implied, of the contract.

Kindly confirm receipt of this letter to me by writing to the above address.

Yours sincerely

[your signature]

[Your name]

Appendix 2: Record of a Conversation with Developer

This is an example of how you might record a conversation: it is important to record the words used, any agreed outcomes or 'next steps' and the tone in which the conversation took place.

Note of [face to face] or [telephone] conversation between [your name] and [name of other party]

On [date] at [time]

X called me [could be I called X] – to discuss [insert subject of conversation]

X began by stating:

I said:

X said:

I said:

X said:

I was upset and said:

X became angry and said:

We agreed that: [action points for each side]

X's final comment to me was:

I replied:

The conversation ended on [date] at [time]

Key terms

BUILDING REGULATIONS	The legally enforceable minimum technical standards of design and workmanship applicable to all significant works of construction: they derive the Building Act 1984. They are administered by public-sector bodies (mostly the Building Control departments of local authorities) and by private-sector Approved Inspectors, who review plans, inspect construction and issue certificates.
BUY	Buying a home outright as a freeholder OR Acquiring a long leasehold (often 99+ years) of a house or of a flat within a block, with an annual 'ground rent' payable to the landlord, as well as (in a block of flats) a duty to pay variable service charges. If you are the first owner, the landlord (at the start, usually the same person as the DEVELOPER) will be granting you a lease; if you are a second or later owner, the present leaseholder will be assigning to you the rest of the lease already running.
CONSUMER CONTRACT	A CONTRACT for goods or services made between a TRADER and one or more individuals (not a company or other LEGAL ENTITY). CONSUMER CONTRACTS give the consumer special legal protection under legislation. If you are a buy-to-let purchaser of a home, not all the protections available to individual consumers may be available to you.
CONTRACT	An agreement between two or more parties (a party can be an individual, company or other body) which creates rights and obligations, enforceable by LEGAL ACTION. See also CONSUMER CONTRACT and TRADER.
DAMAGE	Something which is part of your home and which has been negatively affected by an event for which your DEVELOPER is, or may be, responsible – for example, carpets which have been flooded because the heating system was not properly installed. Most third-party WARRANTIES offer cover for DAMAGE caused by a structural DEFECT: see Third-party warranties above.
DAMAGES	Money payable to you as compensation for something which has gone wrong – could be awarded by a court as the result of successful LEGAL ACTION. Usually calculated as the cost of repairing or replacing something in your home, but could also cover additional costs you have incurred as a result of something which has gone wrong for which someone else is responsible in law, like temporary alternative accommodation if you have to move out.
DEFECT	See What in law is a defect?
DEVELOPER	A company or other LEGAL ENTITY which is in the business of offering new homes for sale, by new build or conversion as a TRADER, and with whom a buyer (see BUY above) makes (usually) a RESERVATION AGREEMENT and then a PURCHASE CONTRACT. Some call this person 'the builder', though many developers in fact use separate construction companies (and others) to do the work of construction.
LEGAL ACTION	A homeowner who goes to a civil court ('suing') is a claimant, asking the court to make an order against the DEVELOPER (as a defendant – the person being sued), or (less often) against another party responsible for construction. The order will be to do repair work on your home, or on the services or parts of the development you share with others; and/or to pay you DAMAGES. The aim is usually to compensate you for a breach of CONTRACT, or some other wrong, by the defendant – putting you in the position that you would have been in, had the defendant carried out its obligations properly. Punishing the DEVELOPER – or anyone else – for having behaved badly is not the ordinary role of a civil court; nor can the court usually order a DEVELOPER to buy your home back from you, except where there's been misrepresentation. The usual rule in civil LEGAL ACTIONS is that the loser pays the winner's reasonable costs of bringing the action, which will include some or all of the winner's professional fees.

LEGAL ENTITY	A company, partnership or other body which is not an individual human being and can enter into CONTRACTS and can take LEGAL ACTION, or have LEGAL ACTION taken against it.
OFF-PLAN	Where your home is not yet complete at exchange of CONTRACTS. Its construction may not have even started at that moment, so you may have only images, a model or a brochure to go on. When the DEVELOPER serves notice on you that the home is ready, you must complete on the purchase and can then move in. You will usually have no chance to inspect your own home during construction – though you may be able to see a show home – or to see its detailed plans and specifications, so it’s only after you’ve moved in that any DEFECTS will come to light.
PLANNING AUTHORITY	The public-sector body (usually a local authority) which grants planning permission, where necessary, for development, including usually imposing conditions which the development must comply with.
PURCHASE CONTRACT	The CONTRACT by which a buyer commits to BUY a home from a DEVELOPER. From the DEVELOPER’S point of view, this is a SALE CONTRACT; and its terms will usually have been drafted by or on the DEVELOPER’S behalf.
RESERVATION AGREEMENT	The CONTRACT – which may have a different title – by which a DEVELOPER agrees with you, as a possible buyer, to reserve a specific OFF-PLAN house or flat for that buyer for a fixed period, often for a fee. It does not commit you to BUY, but it stops the DEVELOPER from committing to sell that house or flat to anyone else while the RESERVATION AGREEMENT is in force. Following a RESERVATION AGREEMENT, you may then either: commit to BUY, by entering into a PURCHASE CONTRACT with the DEVELOPER or let the reservation lapse.
SALE CONTRACT	The CONTRACT by which a DEVELOPER agrees to sell a home to a buyer From the buyer’s point of view, this is a PURCHASE CONTRACT.
TRADER	An individual, company or partnership which operates as a business; its CONTRACTS with individual consumers are usually CONSUMER CONTRACTS.
WARRANTY	Protection against some structural DEFECTS, giving a homeowner a right to make a claim against a third-party WARRANTY PROVIDER for the cost of remedying DAMAGE caused by specific categories of DEFECTS over a fixed period:
WARRANTY PROVIDER	A commercial organisation, separate from the DEVELOPER, offering a WARRANTY for a new or newly converted home: this is a policy of insurance, on which the home owner may be able to claim.



Help and guidance

HomeOwners Alliance is an independent consumer organisation providing help and assistance to our members. We are a member-led organisation fighting to get homeowners and aspiring homeowners a better deal from government and industry.

We publish free advice and guidance on everything to do with **buying, **selling** and **owning** your home. See below for specific advice on new builds.**

Step by Step guide to buying

Buying a new build home - problems and tips

New homes and getting a mortgage

How do I choose the best new home builder?

How to fix problems in your new build home

Do I need a snagging list for my new build home?

Find a snagging surveyor

New Home Warranties - What they do and don't cover

Living in a leasehold house: what you need to know

- » As a member, you will gain access to the Home Helpline, giving expert advice on the full range of homeowner issues as well as a legal advice line to speak to experienced lawyers. See [here](#) for a full list of benefits.
- » By becoming a member, you can add your voice to our Better New Build Campaign for better quality housebuilding and stronger consumer protection for new homebuyers

HomeOwners Alliance toolbox

Choice tools to help you make wise choices

Here are our best tools and explanations at the HomeOwners Alliance. They'll help you understand issues, find and connect with knowledgeable people who can help, and keep you up to date with offers in the market.

HOA Membership

[Click and Join Us](#)

The one thing you shouldn't be without! Members of the HomeOwners Alliance receive a 10% discount off conveyancing fees, access to our home helpline, expert advice and legal service.

HOA General House Buying and Selling Tools

Comparisons

[Compare Conveyancing Quotes](#)

Conveyancers from a quality assured panel of over 150 regulated conveyancing firms, a straightforward top 3 ranking, and a special offer for HomeOwner Alliance members.

[Compare Online Estate Agents](#)

Thinking of using an online agent? Our tool lets you compare online estate agents on price, tells you what is and isn't included in their packages, and gives our verdict and customer rating.

[Compare Local Estate Agents](#)

Want to find the right local agent? Our tool compares agents in your local area by the fees they charge, average time to sell a property like yours, how close they might get to achieving an asking price and how successful they are at selling similar homes.

[Compare House Removal Companies](#)

Up to 5 competitive quotes from Local and national Ombudsman regulated house removals companies, in seconds, all through our partnership with reallymoving.com.

[Find a Local Surveyor](#)

Need a building survey or structural survey? We'll provide a list of local surveyors who can carry out your survey together with a price for the job and their contact details. Contact them when you are ready.

Leasehold Calculator

[Leasehold Extension Calculator](#)

Looking to extend your lease? Our calculator can help estimate how much it will cost to purchase more years.



HomeOwners
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