

NEW HOMES OMBUDSMAN CASE STUDY



The complaint

The customer complained that the developer had not treated them fairly because they had failed to take account of the circumstances of their mortgage offer during the reservation process.

Relevant section(s) of the New Homes Quality Code

Part 1
Selling a new home

Part 2
Legal documents,
information, inspection and
completion



The circumstances

- The customer reserved a property with an estimated completion date of approximately 7 months after the expected exchange. However, the customer became concerned that the purchase might not be completed within the period of their mortgage offer.
- The reservation occurred during a period of rapid change in the mortgage market. The customer wanted to avoid having to search for an alternative, less favourable offer if the purchase fell through.
- After multiple extensions to the reservation, the parties reached the exchange stage. However, the customer worried that the contract referred to a 'long stop' date that extended beyond the expiry of their mortgage offer.
- A final short extension was agreed upon, attempting to address the customer's concerns. Unfortunately, the parties could not agree on suitable contract amendments, leading to the lapse of the reservation agreement.
- Afterward, the customer decided to proceed with the original terms, but the developer had already chosen to remarket the property and proceeded with another purchaser.

The New Homes Ombudsman decision

The Ombudsman made detailed enquiries to understand what had happened to cause the reservation agreement to expire without contracts being exchanged. Although the customer's concerns about timing were understandable, the nature of buying a new build property is that there can be less certainty about completion dates than is the case with other properties.

The developer's documentation made it clear that they could not guarantee a completion date within the mortgage offer, although they tried to assure the customer that they felt confident about the original dates.

The Ombudsman was satisfied that the developer had followed the requirements of the New Homes Quality Code, including the need to be transparent with the information provided and fair in their treatment of the customer.

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Outcome

The customer complaint was not upheld.

Learnings from this complaint



In this case, the developer had complied with the Code by providing clear and transparent information about the build programme and estimated timescales.

Customers who have not previously purchased a new-build home can be confused by various stages of the process, including but not limited to:

- The need to exchange contracts earlier than usual, compared to buying a pre-owned home which can be much later.
- The timescales for each stage and the references to different dates (i.e. Reservation, Exchange of Contracts*, long stop date, etc).
- Their obligations to have everything in place ready for exchange or risk breaching the terms of the Reservation Agreement.
- Developers will try their best to meet the anticipated timescales, but some factors mean this is out of their control (eg poor weather, materials shortage, etc) and so they cannot commit to completion by a particular date until much later in the process.

Recommendations

1. Sales Advisers should ensure the terms of the Reservation Agreement are clearly explained and check that the customer understands the various dates and their obligations before they sign.
2. Follow up with customers after they have completed a Reservation Agreement to reiterate what is required of them and by when, as well as what will happen if they do not complete what's required in the agreed time.
3. As far as possible, all documentation should use simple, concise language and make it clear that all dates are estimates until the 10 day notice is served towards the end of the sales process.
4. Advise all customers to check with their conveyancing solicitor if they need further guidance.
5. Offer additional support to any vulnerable customers.

*Conclusion of missives in Scotland

