

**LLOYDS  
BANKING  
GROUP**



**LLOYDS BANKING GROUP PLC**  
**CMA Review of NHBC Structural Warranties**  
**Undertakings**  
**Response to Provisional Decision**

20<sup>th</sup> July 2017

## Response to Provisional Decision to vary NHBC's undertakings

Lloyds Banking Group ("the Bank") has significant involvement in the new build sector, primarily through our role as a leading supplier of mortgages for new build properties. As well as offering mortgage products to customers, we continue to support housebuilders to improve the supply of housing and accelerate the development of homes as detailed in our Helping Britain Prosper Plan.

We are supportive of the CMA's review of the National House Building Council's (NHBC) undertakings, as we understand that structural warranties play an important role for home owners as well as for housebuilders and the mortgage market, to ensure quality and accountability of the building works.

In the Provisional Decision, the CMA found that since the Monopolies and Mergers Commission (MMC) report in 1995, there have been material changes in regulatory requirements and the number and range of structural warranties available. Therefore, some aspects of the undertakings are no longer appropriate, in particular, where they have resulted in NHBC assuming a 'quasi-regulatory' role in relation to other structural warranty providers. However, some concerns originally raised by the MMC remain (primarily NHBC's market share remains 70-90%) and therefore, it is not appropriate to release the undertakings completely.

We are supportive of the proposal to vary the undertakings in the following three ways:

- i. Remove any expectation that NHBC should continue to play a 'quasi-regulatory role' in relation to other structural warranty providers who are NHBC's competitors.**

We acknowledge NHBC's historical role in the market and the wider role NHBC plays in maintaining good standards, and the benefit this brings to customers. Regulatory and market changes 1995 support the formal removal of the 'quasi-regulator' label from NHBC. However, there is real potential for the quality and standards of new builds to deteriorate if there is not sufficient, impartial, governance in place. Following the removal of this responsibility from NHBC, reliance will fall to the Consumer Code to deliver a regulatory framework to maintain standards. A review of the operation, structure and practise of the Consumer Code is therefore warranted to ensure that there is sufficient impartial oversight of new build standards.

Following the removal of the 'quasi-regulatory' role of NHBC, the ongoing provision of additional services will instead become a commercial opportunity and point of competitive difference. Such services include:

- i. published guidance to drive high building standards, supported by strict inspection regimes to ensure compliance;
- ii. Health & Safety briefings and awards such as the Pride in the Job award for site managers; and,
- iii. Sponsorship of the NHBC foundation which is a research body providing relevant insights for their builders.

Whilst NHBC currently provides these services, the removal of the 'quasi-regulatory' role may encourage other competitors to compete on similar non-price factors.

Care must be taken to ensure this value is not lost as a result of varying the undertakings however, as housebuilders raised in their submissions to the review, there is value in such services and so should create a foundation for competition in this space.

**ii. Continue to ensure that NHBC's rules should not have the objective or the effect of discouraging its registered builders from dual sourcing from, or switching to, other providers of structural warranties.**

The proposed variation to ensure that dual sourcing is open to builders will be important to ensure further growth and competition in this market. The ability of builders to capitalise on the diversity of providers will be further enhanced by the explicit and now more widely recognised, ability to dual source warranty providers.

Since the undertakings were put in place, numerous suppliers of structural warranties have entered and exited the market. The Provisional Decision notes that there are up to 15 providers in the current market. Whilst the net volume of alternative providers has increased, the concentration in the market does not appear to have significantly reduced: NHBC remains the leading home warranty and insurance provider with 70-90% market share. This may be in some part due to the concentrated nature of the new build market, where the five largest UK housebuilders account for 30% of the UK's New Build market, and only three of these five builders currently dual source, albeit to a very limited extent.

Whilst small and medium sized builders may be more likely to switch provider than to dual source, any change in market composition away from NHBC's strong market share, would be reliant on movements by the larger UK new build firms.

For the dual sourcing rules to have full effect, both push and pull factors must operate. Warranty providers must meet the market's needs; i.e. organised to reflect the builder's structure, offer fair fees and provide training/inspection services. There is also an obligation on Lenders to adapt to the changing market and ensure efficient, fair and transparent paths to acceptance.

The structural warranty is an important consideration in the lending process, for customers as well as builders. The warranty covers the customer (as the purchaser of a newly built home) providing recourse for major faults in design or construction, to the builder initially and then warranty provider in the mid-later years post construction.

It remains essential that warranty providers are subject to stringent qualifying criteria given the potential impact on customers if this quality slips or they are left without protection in the case of builder default. For example, the advent of Modern Methods of Construction (MMoC), including off-site manufacturing, will require lenders to review acceptable warranty providers closely and perhaps, more frequently. As building technology develops and changes, we will require current

reassurance that the warranty provider has tested the materials and closely inspected the construction process to satisfy durability, safety and longevity for our customers and with regards to credit exposure.

Recognised in the Provisional Decision, we currently accept warranties from Consumer Code Approved providers. This covers both Consumer Code for Home Builders (CCHB) and Chartered Trading Standards Institute (CTSI). Our acceptance of consumer code approved providers facilitates increased competition and choice on the builder's behalf, as to the provider of a structural warranty, whilst still meeting our internal risk mitigation requirements for lending.

### **iii. Remove the CMA approval process for changes to the NHBC's rules.**

The current process of requiring NHBC to seek approval to amend their rules is not in line with other CMA remedy monitoring and enforcement processes. The proposal for the CMA to amend the process and bring oversight in line with standard process is supported.

### **Future of the Structural Warranty Market**

The proposed variations will begin to address some of the key concerns around competition in the structural warranty market.

In the short to medium term, the challenge will remain addressing NHBC's large market share. Since the amended rules to allow dual sourcing, there has been little fundamental change to the landscape of the structural warranty market. The varying of the undertakings and protection of the ability to dual source and switch will be helpful, in raising the profile of this option for other structural warranty providers.

Further, the variance will indicate to the market that the 'quasi-regulatory' role of NHBC will be formally removed, which may assist in changing perceptions of potential competitors, encouraging them to enter and remain in the market. However, there are some concerns as to how the new build industry will maintain good standards and provide recourse for customers when things go wrong, if this change is viewed as a relaxation of overall regulation. In the 'More homes, Fewer complaints' report<sup>1</sup>, the All Party Parliamentary Group (APPG) made some key recommendations that would help to ensure ongoing quality of new builds and provide customers with enhanced transparency and access to swift and efficient recourse in the case of claims. Customers, builders and structural warranty providers would benefit from clear and impartial regulation of the new build market and the recommendations of the APPG report together with a review the Consumer Code would meet this need.

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<sup>1</sup> All Party Parliamentary Group (APPG), *More Homes, fewer complaints, Report from the Commission of Inquiry into the quality and workmanship of new housing in England*, House of Commons, London, 2016. <https://policy.ciob.org/wp-content/uploads/2016/07/APPG-Final-Report-More-Homes-fewer-complaints.pdf>