

BRIEFING NOTE ON THE HCA'S REQUIREMENTS IN RELATION TO THE CONSUMER CODE FOR HOME BUILDERS AND DEFECTS WARRANTIES/INSURANCE PRODUCTS

The HCA is issuing this briefing note in response to a number of queries raised by Providers participating in the Help to Buy scheme in relation to our requirements (as set out in the Help to Buy Funding Administration Agreement (the **Agreement**)), specifically in relation to the provision of new build home warranties/insurance and the requirement for the Provider to adopt and comply with the Consumer Code for Home Builders.

1 **New Build Home Warranties/Insurance**

The definition of Eligible Unit in the Agreement requires that an Eligible Unit:

"has the benefit of an NHBC guarantee or similar warranty by a reputable insurance company as agreed by the Agency (which includes inter alia the protection of purchaser's deposits between exchange and completion)";

We have been contacted by a number of Providers who would prefer to utilise warranty or insurance products which do not offer loss of deposit cover. In response to this, we have reviewed our policy on this and have concluded that we are prepared to accept the provision of such products by Providers providing the following conditions are satisfied:

Where a Provider wishes to provide a form of new build home warranty which does not offer loss of deposit cover between exchange and completion, they shall procure (in advance of exchanging contracts for the sale of any Eligible Unit with Help to Buy) that the Provider's Solicitor (and/or any legal advisor acting on behalf of the Provider in relation to a sale of property which is subject to Help to Buy funding) provides one undertaking (per legal advisor) in respect of all Areas to the Agency to ensure that:

- (a) any contracts for the purchase of an Eligible Unit by an Eligible Purchaser using Help to Buy funding provide for any pre-completion deposit to be held as stakeholder between exchange and completion; and
- (b) any deposit monies received from any Eligible Purchaser upon or prior to exchange of contracts for the purchase of an Eligible Unit shall not be released to the Provider (or to the seller as applicable) prior to completion.

Where such an undertaking has been provided, the HCA will provide written confirmation of our consent to the provision of home warranty cover which does not offer loss of deposit cover (provided such home warranty cover provides an acceptable level of cover to satisfy the HCA's requirements in all other respects). We have prepared a pro forma undertaking for use in these circumstances which will be made available on request.

For further clarity we would also note that the reference in the definition of Eligible Unit to "a guarantee or similar warranty" is intended to include any product offering a similar level of cover to that offered by NHBC and will include insurance only products

2 Consumer Code for Home Builders

As many reading this Briefing Note will be aware, the Consumer Code for Home Builders (the Code) was introduced on 1 April 2010 after consultation between three of the larger warranty providers; the NHBC, Premier Guarantee and LABC warranty.

The Code's aim is to set standards that developers must meet in their marketing and selling of homes and in their after-sales customer service. Developers are required to comply with the Code as part of their registration with any of the currently participating warranty providers (which at the time of writing comprise the three listed above).

During the drafting of the Agreement, the HCA consulted with a number of key stakeholders to ascertain their views on the draft Agreement. As a result of the feedback we received, we specified, as part of the Agreement, that Providers should be required to adopt and comply with the Consumer Code for Home Builders (the Code).

Subsequently, this requirement was included in paragraph 8 of Schedule 5 of the Agreement in the form of the following warranty:

The Provider has adopted and complied with (and shall continue to adopt and comply with) the Consumer Code for Home Builders in respect of each Eligible Dwelling

The HCA has now received feedback that the inclusion of the requirement to comply with and adopt the Code may inadvertently preclude some providers of defects insurance/warranties (other than the NHBC, Premier Guarantee and LABC warranty) from providing cover to Eligible Purchasers.

Concerns raised include the fact that, in order to become a warranty provider within the meaning of the Code (a "Home Warranty Body"), warranty providers must:

- (a) Maintain a register of builders/developers;
- (b) Provide an insurance backed warranty, as opposed to just a defects insurance product.

In response, the HCA now issues this Briefing Note to clarify its position in this regard.

3 The HCA's position in relation to the Code

3.1 The HCA does not wish to exclude any defects insurer/warranty provider from accessing the Help to Buy market.

3.2 The intention (at paragraph 8 of Schedule 5 of the Agreement) was that Providers adopt and comply with the *spirit* of the Code. This will involve Providers adopting and complying with the good practice principles in sections 1 to 5 of the Code.

3.3 For clarity in terms of construing our requirements in relation to the Code:

- (a) We do not require Providers to be registered with any "Home Warranty Body" as defined in the Code;

- (b) References to defined terms in the Code are to be construed in light of our view on the Code. For example:

The "*Home Builder*" should be construed as a reference to the Provider;

The "*Home Buyer*" should be construed as a reference to the Eligible Purchaser;

A "*Home*" means an Eligible Dwelling;

A "*Home Warranty Body*" means any reputable provider of defects insurance or defects warranties.

- (c) We do not require Providers to participate in the "Dispute Resolution Scheme" provided for in Appendix A of the Code.