Graham Simpson MSP  
Room M3.14 Scottish Parliament  
Edinburgh  
EH99 1SP  

Ref JSL/JR  
26 June 2019  

Dear Sir  

PROPOSED NEW BUILD HOMES (BUYER PROTECTION) (SCOTLAND) BILL  
STEWART MILNE HOMES NORTH SCOTLAND RESPONSE  

1. What are your views on the establishment of statutory standardised clauses for builders' missives?  

1.1 We are fully committed to improving our processes related to consumer protection. However, we do not believe the introduction of mandatory statutory clauses is the solution to address this. We believe that the current voluntary standardised missives drafted and updated annually by the Scottish Law Society currently provide the best format of standardised missive if a home builder decides to use this.  

1.2 The use of standard missives across the board would make the system unwieldy from a practical point of view and would not serve the buyers interests given the many different types of transactions which take place and equally due to specific requirements of individual lenders.  

1.3 Specifically, whilst there are many straightforward sales where a buyer simply purchases the property for sale and where a standard form of missive may be of benefit, there are a large number of transactions which require part exchange of existing properties, many necessitate Help to Buy with this schemes own requirements, many are either shared equity of shared ownership where specific requires for staircasing of financial requirements of lenders are needed and which would also require standard varying needs of securitisation.  

1.4 Notwithstanding these issues, most new homes in Scotland are delivered by providers who also sell properties across the United Kingdom who will have their own legal and corporate requirements which need to be satisfied and which may consider that further costs involved in transactions as being a barrier to the ever growing need to deliver more homes to meet Scotland's growing population and satisfy the country's growing household formation requirements.  

2. What are your views on providing a statutory route for home buyers to obtain redress for major failings on new-build property?  

2.1 All of our new homes built for sale come with the comprehensive set of protections through our warranty provider NHBC who offer 10year cover for structural defects. This warranty cover is provided free of charge to each buyer of our new homes.  

2.2 As we are registered with the above warranty provider, we also adhere to the consumer code and are actively supporting the ongoing work that is taking place between HFS, the Home Builders Federation (HBF), The Consumer Code for Home Builders and representatives from other codes and warranty bodies to:
- Work to establish a, single common consumer code
- Work to establish one set of warranty standards that conform to best practice
- Review and improve existing governance structures to ensure independence
- Review and improve the existing Independent Dispute Resolution Scheme by providing free access to consumers and extending it to cover any gaps identified
- Implement of an Ombudsman redress scheme

3. What do you think would be the main practical advantages and disadvantages of the proposed Bill?

3.1 One of the main disadvantages with the proposed Bill as a whole, is that it is pre-empting the ongoing work our representative body Homes for Scotland is already involved in regarding the establishment common consumer code that brings together one universal set of warranty standards, consumer protections and the creation of a New Homes Ombudsman. We believe that any improvements to the system of new home purchase should be industry-led and covers the whole of the UK in order, to give consumers adequate protection as well as providing clarity over what is required of the development community, regardless of where homes are being built. If the proposals were to be taken ahead they pose the threat of creating a two-tier system for redress that will inevitably only create further confusion for the purchaser.

3.2 The proposals also have the potential to adversely impact what mortgage providers are currently offering, if Scotland were to depart from the rest of the UK in the development of any future consumer protections. Already in Scotland, small differences in conveyancing have prevented some lenders who offer mortgages to buyers in England from participating in the Scottish market. Even a small difference can mean significant implications for lenders in terms of processes or automated systems. In some cases, lenders have taken the decision to withdraw from, or not enter the Scottish market rather than make the investment required. In maximising choice for new build customers, we are keen to see everything possible done to ensure a consistent approach to customer redress.

4. What length of time do you think is most appropriate for a builder’s warranty for a new-build home?

4.1 We believe that the current 10-year warranty currently offered by the mainstream warranty providers is the most appropriate.

4.2 Under the mainstream warranty providers, the home builder is made liable for the first two years for any defects that may arise. The warranty provider then covers the remaining eight years for any major structural defects that may arise (including years 0-2 if the home builder becomes insolvent or fails to resolve any defects). If the customer believes the home builder has not obliged in their duty to correct any snagging or defects within the first two years, the home buyer can seek resolution through the home warranty body. Then, if the home buyer is dissatisfied with how the home warranty body has dealt with the case, they have recourse to complain to the Financial Ombudsman Service.

4.3 It should also be noted that purchasers of a new home have significantly more protection than if they were to buy an older existing property. Other than a Home Report, unless the purchaser pays additional costs for further checks such as structural surveys on the property, they have to rely on their own buildings insurance if they discover any major defects.

5. What are your views on having standard missives that provide a right for buyers to carry out a full survey of the property within a specified period, and a right to pull out of the purchase if severe or very serious defects are discovered?

5.1 We would highlight that the majority of homes purchased in Scotland are previously owned properties which are not to the quality build standard of new homes or meet the modern technical requirements which new homes deliver to the market.
5.2 There could be an unintended consequence which undermines confidence in the second hand market impacting property values thus preventing homes owners having the ability to meet their life time housing needs which may put additional pressure on the Scottish Government and Local authorities to allocate more land for residential development to deliver an extra over requirement for more new homes. This impact, we would contend, would materially alter buyer behaviour which would manifest into an unintended outcome and consequences for the broader Scottish housing market. Careful consideration supported by adequate research should therefore be undertaken to ensure these likely behavioural changes would have on the housing market and fabric of Scottish society.

5.3 We are of the view that the buyer should be confident in relying upon the warranty provider being satisfied that the home meets the necessary technical standards and is free of severe or very serious defects. The certification of the warranty provider to this effect is a requirement in place which lenders require prior to releasing mortgage funds. Given that lenders already accept this warranty, it should follow that buyers have the same comfort.

5.4 The lack of detail included in this proposal also causes further series concerns where we query the following:
- Further clarification on the definition of severe or serious defects is needed to ensure that minor snagging issues are not conflated with structural defects, both of which are covered by home builder warranties. It should also be noted that it is incredibly unlikely that, in the rare instances there is a structural defect, this will be picked up by a surveyor, pre-purchase.
- Without the clarification over what is referred to here by severe or very serious defects there are concerns over the ability this may give to surveyors to conflate issues that would be considered minor snagging and the home builder is obliged to remedy within the first two years of purchase.
- Dependent on when the proposed survey was to be carried out, the ability for a customer to fully pull out of a purchase will create larger uncertainty throughout the sales process for both home builder and purchaser. Given that most purchasers have already sold their home or given notice to a landlord, they want certainty of entry dates as much as the lender and the developer does.

5.5 Consideration must be given to the disruption the proposals would cause across the whole home building sector, with developers likely facing increased uncertainty from sales falling through, more complex misses to conclude and with no detail on who would pay for the survey. Whilst larger developers may be able to absorb some of these costs, the impact will be felt acutely by the SME sector. Small scale home builders often tend to operate in more dispersed rural areas, in secondary or tertiary markets; where economies are the first to be hit by any slowdown, and usually the last to experience a recovery. This will result in yet another hurdle for SMEs to overcome and discourage new entrants from entering the market.

6. If you have bought a new-build home in the past, please tell me about your experience, taking care not to name individuals/companies or the location of the property/development.

6.1 The high levels of customer satisfaction in relation to the purchase of new build homes should not be ignored. Results from the last four years National New Homes Survey operated by NHBC has demonstrated the consistently high level of satisfaction customers have with their purchase.

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6.2 We would like to highlight the fact that any anecdotal evidence given here should be carefully reviewed. Consideration must also be given as to whether respondents are directly referring to Scottish developments and that issues associated with developments south of the border are not conflated with the quality of Scottish new build homes. Further clarification should also be given as to what is classified as a new build home. Additionally, thought should be given as to when the homes were constructed to allow for reflection on longer term trends in customer satisfaction.

7. What financial impact would you expect the proposed Bill to have on Government and the public sector, Businesses – including housebuilders, individuals – including new house buyers?

7.1 Home builders would inevitably face significant increases in costs if the proposals set out within the consultation were taken forward issues surrounding:

- Initial set up costs aligning legal departments to deal with any new statutory missives and any subsequent delays faced in concluding them

- Uncertainty in the sales process if the purchaser were to pull out of the sale completely. Whilst this would be incredibly detrimental to any home builder, for PLCs who have to report to their shareholders, setting out the total number of anticipated completions in the financial year, the uncertainty has the potential to impact share values. Further it would be even more acutely felt by the SME sector where companies already often operate in more uncertain markets.

- Lack of clarity over who would be responsible in covering the cost of any survey carried out before the purchase.

7.2 Purchasers of new build homes would be equally likely to face some increase in cost if the proposals were taken forward due to the anticipated longer times it would take to conclude missives and therefore experience an increase in legal fees associated with the purchase of any home. Additionally, if lenders were to pull out of Scotland as a result of the proposals, this could potentially result in the reduction in access to competitive mortgage rates for aspiring home owners, consequentially pushing up the cost to borrow and impacting on the overall housing market.

8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

8.1 No response.

9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

9.1 We have serious concerns over the viability of taking forward the proposals set out within the consultation without causing significant disruption to home builders and purchasers alike. As outlined throughout our response we urge consideration of the impact these proposals may have on further restricting or hindering the supply of new homes Scotland desperately needs to meet the demands of its growing population, particularly in the context of the backlog of 80,000 homes amassed over the last 10 years and the subsequent need to deliver approximately 25,000 homes per annum. If carried out in isolation to the rest of the UK, Scotland may be at risk of:

- **Increased costs:**
  The inclusion of statutory standardised clauses within missives is overly prescriptive and will most likely add further delays to the sales process. The lack of clarity over who is financially responsible for carrying out the pre-inspection survey, will this come at increased cost to the home builder or the purchaser?

- **Increased uncertainty:**
  Separate standards in relation to customer redress will ultimately result in the creation of a two-tier system which only achieve in adding further confusion to the purchaser and home builders in terms of what they are entitled to and what is required of them respectively.
- Lender withdrawal:
  Including the provision for a customer to pull out of a purchase entirely not only creates
  uncertainty for us but has the potential to cause lenders offering mortgages to aspiring home
  owners to withdraw from Scotland or not enter the Scottish market entirely.
- SME Home Builder Sector:
  All of these potential disruptions will be felt most acutely by the SME home builder sector
  which is still recovering from the 2008 crash and operating on much thinner margins as their
  costs are proportionally higher than larger builders.

10. **Do you have any other comments or suggestions on the proposal?**

10.1 We are fully committed to increasing our levels of customer redress and the quality of new build
homes. However, we would strongly encourage that any changes made to strengthen the existing
structures regarding customer redress in Scotland are not made in isolation to the rest of the UK,
with collaboration between the home building industry and all concerned stakeholders. The
proposals set out within the consultation will not deal with issues of build quality and customer
service but rather simply address problems as they arise. Like HFS, we believe that a more
strategic approach to improving the quality of new homes and customer redress is required with
full industry buy-in. In this light the industry led work currently being undertaken by between HFS,
HBF and the Consumer Code for Home Builders presents the most viable platform to improve the
specific areas of concern outlined within the consultation.

10.2 For further details on the issues raised in our response we would direct you to the Homes for
Scotland response as our representative body for the new build home industry.

Yours faithfully