Bearing in mind the stoicism of the British people and their reluctance to complain, coupled with the emotional attachment to a home, I don't think a 90% satisfaction rating is a good result. In the days when I was the member of a Primary Care Trust Board with the Board-level responsibility for consumer affairs in the local NHS, I would not have been comfortable with a provider that was pleased with a 10% dissatisfaction rate on major elements of effectiveness of care.

It does not surprise us that the substantial majority of new homes are well built, any more than it surprises us that the substantial majority of new cars are driveable, the substantial majority of toasters are capable of toasting bread and the substantial majority of MPs are honest and conscientious. It would be deeply shocking if that were not the case. It would be deeply shocking if only 90% of toasters toasted bread or only 90% of MPs were honest. It is not a high enough standard to say only that things should be right considerably more often than they are not.
As well as ensuring that things are right considerably more often than they are wrong, any quality system must

- Recognise "zero events" – things for which it is not acceptable that they should ever happen and when they do there must be an investigation to find out what went wrong. Trains should never pass signals. Surgical instruments should never be left in patients. Houses should never be built with missing drains and with unsafe roofs that do not comply with building regulations.
- Have effective mechanisms to put things right when they do go wrong
- Aim at continuous improvement.
- Be candid and open about mistakes and learn from them. Use complaints and failures as lessons from which improvement can be achieved.

None of these characteristics are present in the quality system of the construction industry.

It is extremely difficult to be sure of the prevalence of problems when the NHBC uses confidentiality clauses which, whatever their intention, serve as gagging clauses and we do feel that NHBC should be asked to waive them for the purposes of this debate and that if it refuses to do so adverse inferences should be drawn.

As to Lord Lytton's specific question he may have found our answer in his copy of our oral evidence (which he would not, of course, have seen at the time of his query) where we said in the words italicised below:-

Last week [7th December], *RICS advocated an on site person ensuring compliance. That won't happen when builders and warranty providers get away with tolerating poor quality. There should be inspection systems which confirm compliance with a mandatory set of technical and quality standards covering all the things that the consumer reasonably expects. They should be supported by a comprehensive warranty.*
In our written evidence you can see a list of defects present in our house when the NHBC finalled it. NHBC is mainly interested in the risks covered in its warranty –it said as much in its evidence last week. Its warranty is very limited [as we said in our written evidence it does not even cover the NHBC's own mandatory or technical standards].
In our case the warranty doesn't cover
- *Defective roof ventilation. Building regulations require it in order to prolong the life of the roof but NHBC say the damage hasn't yet occurred*
- *A sinking drive. It is a defect in the grounds not in the house*
- *Give in the gable end walls. It is said not to be causing damage*

- *Defects in the sewage system, including failing pumps and infestation with Japanese knot weed, which the builder was contracted to rectify and didn't. It isn't covered because it wasn't a newly constructed system*
- *The roof is insufficiently strong for the attic room to be used as a store room or bedroom. It hasn't been used yet, so NHBC say there has been no damage.*

All the organisations that gave evidence last week [7th December] *said regulation should focus on issues that affect health, safety and environment rather than consumer quality. That is like suggesting that if you buy a toaster you should have a warranty that covers you if it catches fire but not if it doesn't toast bread.*

As a public health doctor I give professional evidence today that the emotional stress of dealing with quality defects in housing is a health issue every bit as much as those covered by building regulations. Heart disease, cancer, infections, anxiety, depression and gastrointestinal disturbances result from a threat to an aspect of well being, central to a person's identity, hanging over them for a prolonged period of time without the power to influence it. That describes the situation of victims of quality issues in their home under our present system. Consumers deserve quality.

We agree with Lord Lytton's suggestion of a statutory liability on contractors and an independent New Homes Ombudsman to adjudicate. We would add six further points to that

- It must protect against the possibility that the contractor will be unable to comply. Theoretically this could be provided by the builder self-insuring but demonstrating its own financial strength linked to a reinsurance scheme for insolvency or by the builder lodging a deposit either in cash or in the form of charges on assets. In the overwhelming majority of cases however the protection will be provided by a warranty provider. Builders should be required to offer purchasers the option of the LABC warranty (since that is publicly accountable as it is provided via a body owned by local authorities) but builders should be free also to offer purchasers the option of other warranties and more information should be available to customers about the features of different warranties before they are committed to the purchase of the property or the choice of warranty. Where the purchaser is known, before the building work commences, then the right of the purchaser to choose the warranty, coupled with adequate information about the available warranties, would be the prime safeguard. However with speculative builders who will have completed the house before the purchaser is known, the requirement to offer the choice of a specific publicly accountable warranty is necessary to protect the consumer who will be unidentifiable at the time the construction work takes place. It should be a basic requirement of any such warranty, whether the public warranty or any alternatives that are offered, that the warranty provider provides the policyholder with complete protection if the contractor fails, for whatever reason (eg insolvency) to comply with orders of the Ombudsman.
- There may be times, especially with a builder in denial or with very poor quality work or work well below specification, where the Ombudsman or warranty provider may prefer the remedial work not to be done by the builder even if that builder pays for it. The statutory duty should be framed so as to include that possibility.
- As was said by a number of witnesses on 14th December there should be sufficient photographic records of construction to permit subsequent investigation. Warranty providers should not provide their warranty on the basis of blind faith in a builder or a probabilistic assessment of risk. They should be evidence-based. This should not be a tick box exercise but must involve inspecting and certifying items.

These photographic records and records of inspections and certification should become part of the deeds of the property available to purchasers

- It is important that the Ombudsman is independent, that it isn't paid for by voluntary contributions from the industry and that it is able to form independent views not just review the information from the builder or warranty provider. The Ombudsman must also consider evidence from the homeowner and obtain independent evidence.
- There should be time limits for dealing with complaints so that they do not become egregiously delayed as occurred in our case.
- Registration of builders should take place under the auspices of a public body and registered builders should be required to use subcontractors who are also registered. (see points 2.5 and 2.6 of our written evidence dated 28th October 2015)

As we said in our evidence it would be a pity to waste the opportunity of using the legislation to address also the problem of extensions and renovations, as can be seen regularly on television programmes like Cowboy Builders. We do however appreciate the point made by Oliver Colvile that the enquiry has looked only at new homes. Perhaps a way to balance these two considerations would be for the legislation to cover new homes but to include a power to extend it to other home construction work by statutory instrument. There could then be a proper distinct debate about extensions and renovations but that debate need not be constrained by the necessity for further primary legislation.

So far as the scope of the scheme is concerned we think it should broadly cover the kind of things that are covered by NHBC mandatory and technical guidelines. Indeed it might be that the scheme could start by statutorily adopting those standards. Although we and others are dissatisfied with NHBC as a redress scheme and a warranty provider, we have never heard any criticism of its role as a standard setting and quality promotion body. Stripping it of the functions it performs badly would allow it to concentrate on the functions it performs well.

So far as the duration of the scheme is concerned we understand Lord Lytton to suggest that 2 years should normally suffice for raising complaints about finishes, that for most things the warranty should be 7 years and that it should be 10 years for some things. We would make the following comments

- The shortest period should be 3 years not 2. This corresponds to the shortest limitation period currently applied in the law of tort or contract (3 years is the period applicable to personal injury and to latent defects discovered after the end of the normal limitation period)
- As well as "constructor installed plant and finishing" (we don't really understand what that is) the 10 year period should <u>also</u> apply to all the things for which a 10 year warranty is currently normally provided and <u>also</u> to any damage that would be covered by product liability laws if a house were a product covered by the Consumer Protection Act 1987 and to breaches which threaten health and safety
- The period of 3, 7 or 10 years should apply to the date at which a manifestation of the defect is noted. If investigations take longer, or if a period of monitoring is called for, then cover should still apply. Cover should still apply even if the defect has not at that stage caused damage. (The "causing damage" proviso is a feature of the NHBC warranty which is misused by its Claims staff)
- Rectification should be normal and the *Ruxley* principle should be applied only in extreme cases

- Where a defect does not affect the current function of an item, but alters its life expectancy, immediate rectification may not be sensible but if it isn't rectified the warranty provider should either accept a liability for that item up to its normal life expectancy or it should compensate for the loss of that expectation
- There should be cover for serious latent defects up to 3 years after they manifest themselves with a long stop of 15 years, the same as the limitation period that applies to negligence
- The New Homes Ombudsman should have power to extend the period if it is fair and reasonable to do so. The Financial Ombudsman Service has this power. The courts have this power in a personal injury claim. No doubt warranty providers will protest that this would make it difficult for them to plan and account, but insurance companies live happily with the FOS having this power
- The scheme should co-exist with tortious liabilities under the Defective Premises Act and treating the house as a product under the Consumer Protection Act 1987. We know of a case where a central heating boiler was dropped and then glued together and, of course, there was the horrifying death a few years ago of Baroness Tonge's daughter.

We hope these comments have been helpful.