

In the UK warranties for new build homes are effectively mandatory.

Lenders and homeowners are protected against structural failure, with warranties issued by a range of insurers. That means – unlike in New Zealand – that all new homeowners have warranty protection, and repair bills won't end up with ratepayers and taxpayers. Doesn't that sound a good idea?

## **A Better System**

Home Building Warranties –  
New Zealand and the UK  
compared

**Gordon Harcourt**

With funding from the WINSTON  
CHURCHILL MEMORIAL TRUST  
2016

---

<b>Introduction .....</b>	<b>3</b>
<b>1. Overview &amp; Recommendations.....</b>	<b>3</b>
<b>2. The New Zealand home building guarantee market .....</b>	<b>5</b>
<b>i) The Master Build Guarantee.....</b>	<b>5</b>
<b>ii) Guarantee or “contract of insurance”? .....</b>	<b>6</b>
<b>iii) Other providers.....</b>	<b>7</b>
Halo Guarantee.....	7
Bultin Homefirst Builders Guarantee.....	8
Stamford Insurance.....	8
Signature Homes .....	8
<b>iv) Guarantee coverage in New Zealand.....</b>	<b>8</b>
<b>3. The UK system.....</b>	<b>9</b>
<b>i) NHBC .....</b>	<b>9</b>
History .....	9
<b>ii) Other providers .....</b>	<b>9</b>
LABC Warranty & Premier Guarantee.....	10
Checkmate.uk.com.....	10
BLP Insurance.....	10
<b>4. The NZ/UK comparison .....</b>	<b>10</b>
<b>i) ‘Like the UK before the Second World War’ .....</b>	<b>11</b>
<b>ii) Gobsmacked.....</b>	<b>11</b>
<b>iii) Independence is key .....</b>	<b>11</b>
<b>iv) Quite shocking.....</b>	<b>12</b>
<b>v) The Gilchrist house .....</b>	<b>13</b>
Dealing with the NHBC .....	14
<b>vi) NHBC response.....</b>	<b>14</b>
<b>5. The NZ Government’s position .....</b>	<b>15</b>
<b>i) Continuing to consider ... ..</b>	<b>15</b>
<b>ii) The Law Commission’s view.....</b>	<b>16</b>
<b>6. Conclusion .....</b>	<b>17</b>
<b>The video .....</b>	<b>19</b>
<b>Costs .....</b>	<b>19</b>
<b>Links to video .....</b>	<b>19</b>
<b>Transcript.....</b>	<b>20</b>

## Introduction

This project was born of years of frustration.

For eight years (2008-2016) I was a reporter and presenter on TVNZ Fair Go. In that time I did too many stories about the Master Build Guarantee, the best-known home building guarantee product in New Zealand.

In my view the guarantee has a big problem: you are not buying your Master Build guarantee from an independent third party, as you do with insurance. In essence, you buy your protection from the same people you are seeking protection against: your Master Builder.

The company that runs the Master Build Guarantee is 100% owned by the Registered Master Builder Association. Your builder, against whose work you may have to claim, is a fee-paying member Master Builder. The Master Builders say that gives them clout and leverage over their member. I say it's a conflict of interest.

As I said on Fair Go in October 2014, Steve Hansen coaches the All Blacks. You don't give him the referee's whistle too.

So, I wanted to find out if the UK system was a better system than that in New Zealand. It turns out the UK system is far from perfect, but I think it's a great deal better than what we've got.

The report first sets out the system as it is in New Zealand and in the UK, and compares them. It then describes the New Zealand government's position, and the current low likelihood of any imminent change to it.

The funds granted to me by the Winston Churchill Memorial Trust were used to travel to the UK and to produce a [video](#). This report is intended to support and expand upon that video. A transcript of it is included, below.

NB: The terms "guarantee" and "warranty" are used interchangeably throughout this report.

## 1. Overview & Recommendations

I firmly believe that New Zealanders would be better off with a mandatory home warranty scheme, as exists in most states of Australia and de facto in the UK. This report describes the existing UK schemes, and contrasts them (mostly) favourably with those in New Zealand

The key difference is that UK lenders require a warranty before lending. Therefore such warranties are de facto mandatory. The CEO of a British insurer told me she was “gobsmacked” to learn that New Zealand lenders do not require a warranty. There is vanishingly small prospect of such a fundamental change in the behaviour of lenders here.

However, as noted below the Law Commission recommended a compulsory scheme in its 2012 report on Joint and Several Liability. Getting on for five years later, that recommendation has not been acted on.

MBIE’s website states that the Government is considering the recommendation, and Building and Construction Minister Nick Smith occasionally hints at one, without any real progress.

A compulsory scheme would likely require some government guarantee, but because there are existing private providers it seems reasonable to assume that those providers could issue the guarantees and bear the bulk of the risk. A compulsory scheme would surely have basic quality requirements, such as the independence and financial transparency so woefully lacking in the Master Build product.

In the absence of such a scheme, I would like to see greater scrutiny of the Master Build Guarantee document. Potential exists, I believe, for it to fall under the new Unfair Contract Terms (UCT) provisions of the Fair Trading Act, as enforced by the Commerce Commission. As I currently work for the Commission that is not an avenue I can pursue.

A far more expensive (and unlikely) course would be a High Court action to rule on whether the Master Build Guarantee is in fact a “contract of insurance”. Such contracts fall under the Insurance (Prudential Supervision) Act 2010 (IPSA), as enforced by the Reserve Bank of New Zealand, which entails some onerous requirements. This avenue is simply not open to me to pursue

However, the IPSA is about to be reviewed, and I do intend to make a submission to the RBNZ about the Master Build Guarantee contract.

In my career with Fair Go I waged what felt like a solitary and fruitless campaign against the deep unfairness I see in the status quo, especially for customers who purchase the Master Build Guarantee. I have left Fair Go but I do not intend to leave this issue behind.

### **Personal benefit**

Travelling to the UK to prepare this report and the accompanying video has been extremely beneficial to me in reaching greater understanding of how New Zealand could move forward. I gained much clearer understanding of the UK system and - perhaps most usefully - I glimpsed the shortcomings of the NHBC, the dominant UK provider. They are detailed below.

I hope that my work can inform change here in some small way, and I am immensely grateful to the Winston Churchill Memorial Trust for allowing me to pursue this goal.

## 2. The New Zealand home building guarantee market

### i) The Master Build Guarantee

As noted above, the market is dominated by the Master Build Guarantee. It is administered by Master Build Services Ltd (MBS), a subsidiary of Registered Master Builders Association of NZ Inc. (RMB).

The TV campaign used to claim “award winning excellence, guaranteed”. The updated slogan is now “building excellence, guaranteed.”



No financial information is available for MBS but the website states that the guarantee has backed up 100,000 homes and renovations since 1991.

MBS is not an insurer licensed with the Reserve Bank, and it has no underwriting relationship with a licensed insurer. It is not on the register of financial service providers (FSPR) and is not a member of a dispute resolution scheme.

I note that RMB does now offer independent dispute resolution with a reputable disputes company called Fairway Resolution Ltd, an independent crown-owned company.

The July 2015 guarantee document allows for disputes to be referred to mediation and arbitration.

No sample guarantee documents are available on the MBS site and there is minimal information about the guarantee terms.

According to the MBS website the company “*undertakes an actuarial review by an independent actuary from Australia every six months and is independently audited by Deloitte annually.*” The audit and actuarial review do not appear to be publicly available.

MBS has a (mostly) separate board, but MBS and RMB share the same chief executive and the same central Wellington registered address. In a long running case I covered, the substantive emails all came from the in-house counsel for RMB, not from a separate MBS person.

MBS says it is compulsory for Master Builders to “offer” the guarantee to clients. The MBS website includes this warning:

It is important to note that a Guarantee is not automatic upon hiring a Registered Master Builder - you must complete the documentation with your builder and ensure that it is sent through to Master Build Services.

In 2016 rival trade body NZCB made it mandatory for guarantees to be in place for work over \$30,000.

During my time at Fair Go I dealt with at least one situation where a homeowner attempted to claim on a Master Build guarantee only to discover it did not exist. If that happens, tough – the customer may have paid their money but they get no cover.

In 2010 two directors of Christchurch building company Balmoral Homes Ltd [pleaded guilty to multiple charges](#). They had taken money for guarantees but did not initially forward the money to MBS.

#### ii) Guarantee or “contract of insurance”?

This sounds an arcane sort of question, but it really counts when it comes to purchasing a guarantee. The Master Build Guarantee document explicitly states that it is “neither a contract of insurance or indemnity”, and MBS relies on a 2001 High Court ruling to back that up.

That very neatly sidesteps some relatively onerous legal requirements.

All licensed insurers are covered by the Insurance (Prudential Supervision) Act 2010 (IPSA), with its solvency requirements and fit and proper person test, as administered by the Reserve Bank.

Three other providers (detailed below) offer insurance products, and they therefore fall under the IPSA, which explicitly excludes guarantee products.

But just stating something doesn’t make it true: if it quacks and waddles it’s probably a duck. Three of four insurance lawyers [I quizzed in 2015](#) agreed yes, it’s a duck – it’s insurance. The fourth said no it’s not insurance, not a duck, but it is a turkey!

As part of that 2015 story I asked the Reserve Bank if the Master Build Guarantee should be considered “insurance”. The Bank avoided giving an answer but a 2011 cabinet paper from then Building and Housing Minister Maurice Williamson notes:

[T]here are legal differences between a contract of guarantee and a contract of insurance. The key difference is in relation to who owes a primary obligation to the homeowner. In a building guarantee, the homeowner must look to the builder first. If the builder cannot or does not remedy the defect, the homeowner can then look to the guarantor for remedy. <sup>1</sup>

---

<sup>1</sup> Building Act Review: Regulation of guarantee products and services

And what of that High Court ruling? It clearly states “[i]t was a contract of guarantee.”<sup>2</sup> But that ruling was ten years before the IPSA, and the law has changed substantially since then.

MBS seems rather unlikely to put up its hand and volunteer to become an insurer, so in the absence of the Reserve Bank deciding the MBS guarantee is a “contract of insurance” it might take another High Court ruling. It is very difficult to see who would take that case, so the awkward status quo is likely to continue.

However, the IPSA is to be reviewed during 2017 and I intend to use this report as the basis for a submission to the Reserve Bank, that the Master Build Guarantee should be regarded as a “contract of insurance”.

Alternatively, a complaint might be taken to the Commerce Commission, alleging that it is misleading and deceptive conduct for MBS to hold out that its guarantee is not a contract of insurance. As I now work for the Commerce Commission that is not a course of action open to me. The Commission receives thousands of complaints each year and such a complaint would need to demonstrate a reasonably high level of detriment to the public.

There is another possibility. In March 2015 new provisions of the Fair Trading Act came into effect, relating to unfair contract terms (UCT). They allow the Commerce Commission to seek a court declaration that a term in a standard form consumer contract is unfair. It is relevant to note that the UCT provisions do not apply to insurance contracts. The current MBS guarantee document is dated July 2015, and therefore might be the subject of a complaint under those new provisions of the FTA.

As Auckland University insurance law expert Rohan Havelock told Fair Go in June 2016, the guarantee document is “highly complex ... it’s not written for the layman. It’s written for the benefit of Master Build, when a claim is made, and Master Build can rely on its provisions to either deny the claim or to limit the claim.”

### iii) Other providers

It is my strong view that the three alternative providers to MBS offer demonstrably better protection for the consumer because of the genuine independence, the backing by licensed insurers, and the access to independent financial dispute resolution.

#### Halo Guarantee

This product is offered by NZ Certified Builders, a rival trade organisation to RMB.



The guarantee is administered by a fully independent third party company, BrokerWeb Risk Services Ltd, an insurance broker. At least one individual within that

<sup>2</sup> Quin v Master Build Services Ltd et al, CP359/96 High Court, Auckland, 2000

company is on the FSPR, and customers therefore have access to an independent dispute resolution service.

It is underwritten by Lloyd's of London, about which consumers can find copious financial information.

As noted above the guarantee is mandatory for all work by NZCB members on work over \$30,000.

In 2014 I did [this story](#) about a dispute concerning the Certified Builders Guarantee, where the customer felt CB was working against her, and a CB board member acted for the builder. The builder involved was later convicted of three charges under the Fair Trading Act, for making false representations about providing Homefirst building guarantees to homeowners.

#### **Builtin Homefirst Builders Guarantee**

This is administered by Built in NZ Ltd, a company which formerly administered the NZCB product.

It is not a licensed insurer but the guarantee products are backed by licensed insurers such as CBL Insurance and IAG NZ Ltd.



A director is a Registered Financial Adviser and customers therefore have access to an independent dispute resolution service.

#### **Stamford Insurance**



Stamford Insurance Ltd offers building warranty insurance. It is a coverholder for Lloyd's of London, underwriting on behalf of Lloyd's syndicates.

It has access to independent dispute resolution with Financial Services Complaints Ltd.

It works with and is endorsed by HOBANZ, a housing issues lobby group. HOBANZ offered funding for the post-production of this video project.

#### **Signature Homes**

Franchise group Signature also offers what it describes as its "exclusive and independently-bonded guarantees." No specific information is available on its website.

#### **iv) Guarantee coverage in New Zealand**

According to a 2011 cabinet paper, the Master Build and Certified Builders products covered "approximately 50 per cent of new builds and approximately one third of all residential building work."<sup>3</sup>

I have not been able to obtain more up to date or precise information.

---

<sup>3</sup> Building Act Review: Review of Joint and Several Liability



### 3. The UK system

When I first read about the UK system I was immediately struck by how superior it appeared to be, at least from afar.

The key difference is that a home warranty is effectively mandatory for all new builds: lenders will not lend without one.

#### i) NHBC

The National House Building Council (NHBC) totally dominates the UK market, claiming 80% market share. Competitors I spoke to doubted that figure was still accurate.



It provides warranties and carries out building inspection work of the type that local authorities do here in New Zealand.

Its key claim is to be independent of builders and homeowners, though the homeowners I met in Cambridgeshire were contemptuous of its claim to be independent of builders. Lee and Jacque Gilchrist were still in a long and bitter dispute with NHBC when I met them in October 2016. Their story is detailed later in this report.

#### History

NHBC was created in 1936, “to tackle the sub-standard building practices seen in the inter-war years” and was initially a “voluntary venture into self-regulation and consumer protection by the industry.”<sup>4</sup> According to Checkmate.uk.com, a smaller rival, it was motivated by a desire to avoid legislation.

In the 1950s it became independent of the building industry, with income from builder registrations.

NHBC’s ten-year warranty concept was introduced in 1965.

From [NHBC website](#)

NHBC is the UK’s leading independent standard-setting body and provider of warranty and insurance for new homes. Our purpose is to work with the house-building industry to raise the standards of new homes and to provide protection for homebuyers in the form of Buildmark warranty and insurance.

Established in 1936, NHBC is the home warranty provider of choice, currently insuring over 1.6m homes, with a market share of approximately 80%. Over the course of our history, we have provided warranty for around 30% of the total existing housing stock in the UK, which equates to over 7 million homes.

#### ii) Other providers

There are three main brands but only two main players in the UK home warranty market.

---

<sup>4</sup> <http://www.nhbc.co.uk/AboutNHBC/OurHistory/>

## LABC Warranty & Premier Guarantee



I was initially puzzled to find that the two other main players in the UK home warranty market are headquartered in the same building on the Wirral peninsula, across the Mersey from downtown Liverpool.



LABC Warranty and Premier Guarantee are both owned by the same company, MD Insurance Services Ltd.

With NHBC these three big players participate in the Consumer Code for Home Builders, a consumer protection code (dispute resolution process) launched in 2010.

Underneath them are numerous smaller players, often with their own consumer codes. I made contact with two of them,

### Checkmate.uk.com

Checkmate.uk.com was set up in 2010. It's a small outfit – 25 individuals are listed on the Checkmate website. It is part of Lockton, a global insurance brokerage group.



Chief executive Martin Horsler claims Checkmate to be the fourth largest player in the market, though he did not supply data for that. He's happy for his company to be described as an insurgent.

### BLP Insurance

BLP Insurance is managed by large insurance player Thomas Miller Group. According to information supplied to me by BLP it has UK home warranty market share of 3-4%.



BLP told me a key difference in their cover is that homeowners need not try and get the developer to fix a defect in the first two years of cover, as is typical with other guarantees.

BLP also offers higher total cover. Typically there is a £1 million limit to cover per single structure, and £25 million for a continuous structure, for example a block of flats.

BLP applied to join NHBC's consumer code but was refused, and BLP developed its own, now approved by CTSI, the Chartered Trading Standards Institute.

## 4. The NZ/UK comparison

This is the core of this project. While I wanted to understand how the UK model works, my key intention was to compare it to the NZ model.

Therefore I described the NZ model to the players I was meeting, and asked for their reactions on camera.

### i) 'Like the UK before the Second World War'

Martin Horsler of Checkmate turned out to be a very affable home warranty insurance veteran. He formerly worked for NHBC, and now competes against them, on greatly smaller scale.

He says NHBC is “an arrogant competitor”, and as the box below describes I found that easy to understand.

I had emailed him my assessment of the New Zealand situation, and his view was surprisingly trenchant: “It looked like the UK market pre-Second [World] War” which, in his view, was not a good place to be.

Did it surprise him that New Zealand mortgage lenders do not require some sort of warranty protection?

“Yes it does. You need some protection because .... the lender has an investment in property. They need to know that in the event there’s a problem with their investment in the house, it will be right and will be protected.”

It is typically the developer or builder which purchases the warranty, because they must do so to get finance. And in his view, New Zealand lenders should also be insisting on warranty protection. Why would a New Zealand builder or developer pay extra, if there is no effective compulsion?

“The driver in our market is the lenders,” he told me.

### ii) Gobsmacked

I met with BLP Insurance CEO Kim Vernau and marketing manager Adrian Stahl. They were shy of a video interview but were extremely generous with their time and information.

As with my other interviewees, I had emailed my assessment of the New Zealand situation. Kim’s response was striking: “I’m gobsmacked [NZ lenders] are happy to run with that risk”, she told me. It means funders and developers have a vested interest in the life of a structure.

“Why would you not have this requirement?” she wondered.

### iii) Independence is key

The UK’s Home Builders Federation (HBF) is very similar organisation to the Master Builders and Certified Builders in New Zealand. It calls itself “the voice of the home building industry” in England and Wales, and says that its members deliver around 80% of the new homes built each year.



So, it is a membership body acting for the interests of its members, and it does not pretend to be anything else.

It works closely with NHBC, for example in managing the consumer code. Communications Director Steve Turner

reckons the UK home warranty situation works pretty well: “Clearly we in this country are very focused on ensuring that we’ve got that protection for the buyer.”

“We’ve not had any systemic failures since probably the 1960s, the concrete cancer issues, so I think that says we’re doing something right,” he told me.

Where New Zealand has the leaky building catastrophe, the UK had “concrete cancer”, particularly in pre-1980s buildings, where a reaction within the concrete causes it to expand and crack, allowing water ingress and further damaging reactions and expansion.

So how did he react to my description of the New Zealand situation? Remember, the best-known product here is that offered by Master Builders, an organisation directly equivalent to HBF.

“Well I think we at HBF would find it difficult to be a warranty provider. One, you’ve got to have the financial backup to enable you to service the insurance claims but two **you need a level of independence**, I think, so we wouldn’t want that role.”

I think that is the crucial comment that was made to me during this project: “you need a level of independence”. HBF does not feel it has that independence, yet somehow its direct New Zealand equivalent has no similar concern.

“I think the model that we’ve got [with] an independent body providing the warranties and an independent insurance company, or a number of independent insurance companies, provides that balance for protection between the various parties needed.”

He said different systems develop in different countries “but getting the independence and consumer protection is key if you’re going to have an effective warranty system.”

So, would HBF consider offering its own warranty?

“I don’t think we would like to do that,” said Steve Turner, laughing.

#### iv) Quite shocking

The Homeowners Alliance, a consumer protection group, is run from Paula Higgins’ north London kitchen. Paula is NOT a fan of the UK home warranty system.

“Well the thing is it’s not really worth the paper it’s written on,” she told me.



She says that, on the face of it, UK warranties look quite good because they are for ten years and are effectively mandatory. The reality is different, she says.

“It’s very difficult to get them to pay out, it’s very difficult to navigate the system and it’s the bigger developers against the small homeowners.”

She would like to see considerably more competition in the market, with independently-verified data about what is paid out. She is especially critical of NHBC, who she says “seem to be very much on the side of the builder” and “always seem to be looking at ways to not pay out.”

But what does she feel about the New Zealand situation?

“Well to be honest I think that’s quite shocking,” she says.

“It’s a trade association backing their own members so clearly there needs to be more protection for the consumer in New Zealand but I’m not sure whether the UK system is the right way to go.”

The Gilchrists of Cambridgeshire are just one story to illustrate her contention.

#### v) **The Gilchrist house**

On the face of it, Tom and Jacquie Gilchrist have a lovely new build home in the village of Papworth Everard, just west of Cambridge.

Their home is in a new estate, overlooking a playground with a wind turbine just beyond it. It’s when the chill wind blows across the flat lands of eastern England that the problem with the home becomes acute: it is drafty and cold.



#### ***The smoker test***

*Smoke coming out of the Gilchrist house equals drafts coming in*

On top of various minor problems such as breaking fixtures, the Gilchrists say their energy bills are much higher than they should be. Since they purchased it in late 2014 there has been a constant stream of workmen through, and they’ve had to move out of then back into the house, all of which has been extremely stressful for their autistic son.

“It’s a massive amount of stress, anxiety, sleepless nights and it’s effectively a second job dealing with the builder and the NHBC in the evenings after already doing a full day’s work,” Lee told me.

Initially NHBC appeared to be on their side, Lee says, but by the time I met him he firmly felt the NBHC is “out to protect the interests of the NHBC” and “seem to be very much interested in the builder’s interests.” “It feels like the warranty’s

not worth the paper it's written on. The builder has a hold over the NHBC and it's a toothless organization."

### Dealing with the NHBC

I first contacted the NHBC in late 2015, or rather I first attempted to contact them.

After seven unanswered emails and two late night telephone calls to Milton Keynes, I was becoming extremely frustrated with the lack of response. Using an old journalist's trick I asked to speak to the CEO's executive assistant and it worked. I got through to the office, explained the situation, sent an email and it was rapidly answered – my first reply email from the NHBC. Finally I was in.

In early March I was I could meet the CEO, Mike Quinton. By that time – three months after my first contact – it was no longer possible for me to travel to the UK because of my commitments with TVNZ, for whom I still worked.

Then in September and early October 2016 I again tried to make contact. By that time I no longer worked for TVNZ. Eventually I got the answer that there would be no interview, no meeting.

### vi) NHBC response

As a courtesy I put all the key points that would appear in the video to the NHBC, though with little expectation of a response. I was wrong. I suspect that my inclusion of the Gilchris touched a raw nerve at NHBC.

Their story had featured on BBC local radio in Cambridgeshire, and then also in a consumer programme on BBC Radio 4, a station equivalent to RNZ's National Radio.

So, it came as a pleasant surprise when I received a statement from NHBC soon after I left the UK. Here it is in full:

*"As the UK's leading independent standard-setting body and provider of warranty and insurance for new homes, NHBC works with the house-building industry to raise the standards of new homes and provide protection for homebuyers.*

*"We set and maintain construction standards for new homes, inspecting at key stages of construction - carrying out over 790,000 inspections in 2015/16 alone.*

*"Our records show that less than 1% of new homeowners experience serious problems with their homes and of the 1.6 million homeowners covered by NHBC's warranty and insurance, nearly 95% never need to contact NHBC to make a claim.*

*"We appreciate that it is very distressing for homeowners when they experience problems. Thankfully this is rare, and when things do go wrong, we are committed to ensuring that problems are put right as quickly and*

*with as little disruption as possible.”*

It was a bland and generic statement, but at least it was something.

Then events took a very strange turn. Days after I filmed with Lee Gilchrist, a top executive in the parent company of the Gilchrists' builders was arrested on suspicion of bribery. Soon after that, Lee told me via email that his builders David Wilson Homes “made a complete u-turn and said they will do everything and appointed an independent contractor to do the work.”

As this report is being completed, he and his family had moved out of their home for five months to allow – they hope – remediation of all the faults.

So, good news for the Gilchrists, but is such change likely to the guarantee system in New Zealand? No, at least none led by government.

## 5. The NZ Government's position

### i) Continuing to consider ...

A [note](#) on the MBIE website states the “Government is also considering the Law Commission's recommendations<sup>5</sup> to cap building consent authority liability and to develop a residential building warranty scheme.”

In reality, I feel there is clear reluctance at ministerial and official level to develop anything, especially a compulsory scheme. This was the fairly damning verdict in a 2010 cabinet paper:<sup>6</sup>

Mandatory surety was considered in some detail and significant costs and risks were identified including:

- likely increases in the upfront direct costs of building in the order of 1% of the total cost of building
- risks of provider failure, as evidenced by recent experience of insurer failure as well as providers exiting the market for home warranty insurance in Australia
- the potential to erect barriers to entry, which would potentially come at a high economic cost because of the need for industry capacity to respond to changes in demand
- risks of curbing innovation in the sector, as surety providers may take very cautious approach when writing and pricing surety products
- risks that surety providers may act as de facto regulators of builder competence and building quality, overlapping with the role of building consent authorities and licensing boards.

In late May 2016 (then) Building and Housing Minister Nick Smith briefly offered some hope to those, such as myself, who strongly believe some stronger warranty regime is required.

---

<sup>5</sup> See below

<sup>6</sup> Regulatory Impact Assessment – Building Act Review: Proposals and options for reform, July 2010



According to RNZ and Fairfax media reports, Dr Smith told the Certified Builders conference that the Government was looking at a building warranty scheme.

The Fairfax (Stuff.co.nz) [report](#) quoted him as saying:

*"The warranties provided by Master Builders and Certified Builders are certainly a whole lot better than having none, but there is a question that if we are going to limit the liabilities of councils that the warranty system is robust."*



In comments [quoted by RNZ](#) he said a discussion paper would be put out in late 2016 but none has so far appeared.

In late April 2017 Dr Smith's office replied to my query about that discussion paper, saying MBIE is "continuing work on a builder warranty-type scheme but the work programme has been expanded to include the related issues of liability, building material controls and occupational regulations. The more comprehensive paper is now due mid-year."

In September 2016 I met then-Consumer Affairs and Commerce Minister Paul Goldsmith, and during that meeting I raised with him my concerns about building warranties.

Mr Goldsmith expressed interest but took no action and in December 2016 he relinquished the Commerce and Consumer Affairs portfolios as part of new Prime Minister Bill English's cabinet reshuffle.

## ii) The Law Commission's view

The most definitive and positive public statement comes not from a minister but from the Law Commission, which considered building warranties as part of its 2012 review of joint and several liability.

It set out the Australian approach of compulsory builder's warranty insurance. However, opponents of this approach make much of the collapse of a major Australian insurer and warranty provider in 2001.

The Commission notes that private companies have largely exited the market in Australia and schemes are now underwritten or run by state government agencies.

*There has been some recognition in discussions about the operation of joint and several liability of the importance of consumer protection. Local Government New Zealand has proposed that there should be a compulsory*



*building warranty scheme. This is seen as one of the necessary elements, along with the new regulatory regime that is being introduced to improve building quality. However, the experience of the Australian states shows that an effective warranty scheme will either have to be provided by government, or have a government guarantee.*

*... The Law Commission's present view in respect of at least the residential sector of the building industry is therefore that **a shift from joint and several liability to proportionate liability would have to be accompanied by the establishment of a compulsory building warranty scheme that would provide cover in the event that the builder failed to rectify defects.** There would need to be a clear indication from Government that a compulsory warranty scheme would be established as an element of any changes to the liability regime that weaken the ability of homeowners to recover fully from defendants. It is likely that the two propositions of a change in liability regime and the introduction of a builders warranty scheme would need to be introduced as a package to ensure continuity of consumer protection. The package should also detail how the interests of commercial building owners would be addressed.*

**Law Commission**

**Issues Paper 32 – Review of Joint and Several Liability  
November 2012** [Emphasis added]

The MBIE website dutifully carries that note about “considering the Law Commission’s recommendations ... to develop a residential building warranty scheme” but nothing happens.

## 6. Conclusion

Despite flaws in the UK system, to me it appears manifestly superior to the situation in New Zealand. There is effective compulsion, as lenders require a warranty.

The current government has little appetite for compulsion of any sort, so it seems unlikely that the Law Commission’s recommendation for a compulsory building warranty scheme will be implemented any time soon.

Perhaps the discussion paper now due in mid-2017 will spur Building and Construction Minister Nick Smith into action, but that too seems unlikely with an election looming.

In the absence of compulsion I believe a minimal intervention would improve prospects for New Zealand home owners: home warranties should only be issued by licensed insurers, or on behalf of licensed insurers (as is the case with the three alternatives to the Master Build Guarantee).

If Master Build Services Ltd wishes to continue offering the Master Build Guarantee, it should have to become an insurer and fulfil the requirements of the Act.

In my view this would broaden and deepen the market for existing warranty products, and potentially encourage new entrants. At the very least it would compel Master Builders to overhaul their product and its provision.

It would be a poor substitute for a UK-style scheme, but it would be a start.

## The video

### Costs

The funding covered travel costs to the UK, hiring a cameraman in London for a day, some minor equipment purchases (eg a lapel microphone and lightweight tripod to allow better quality video recording with my iphone) and incidental costs.

A full budget is available on request.

### Links to video

The video can be found [here](#) (on the Youtube channel of video editor Ben Selkirk) and [here](#) on Stuff.co.nz, where it appeared in December 2016 under the headline ***Gordon Harcourt: NZ needs to boost protection for owners of newly built houses.***



The screenshot shows a news article from the website 'stuff' (Stuff Nation). The headline is 'Gordon Harcourt: NZ needs to boost protection for owners of newly built houses'. Below the headline is a video player with a play button. The video shows a man with glasses and a mustache, wearing a black jacket over a pink shirt, standing in front of a row of brick houses. The video player has a timestamp of 'Last updated 12:02 14/12/2016' and social sharing options for Facebook (15 shares), Twitter (26 tweets), and Google+ (1 share). Below the video player is a caption: 'New Zealand needs more consumer protection when it comes to the building of houses, says Gordon Harcourt.'

The story included this disclosure: *Harcourt's trip was funded by the Winston Churchill Memorial Trust, with assistance from HOBANZ.*

## Transcript

The information in caps indicates the images which accompany the voiceover.

BUILDING SITE

**Yet another huge residential development in London**

GORDON HARCOURT TO CAMERA

*This is a wee bit special for me, this is my old workplace, the BBC TV Centre in West London, now luxury flats. They'll sell for millions of pounds*

BUILDING SITE

**Unlike NZ, all of them will have a home warranty of some sort – insurance against defects and structural problems for ten years**

AUCKLAND SKYLINE

**Why does this matter to Kiwis? Because we've already had the leaky homes disaster, I think NZ homeowners need more and better options to protect themselves**

GORDON HARCOURT TO CAMERA

*For years, I did stories on TVNZ Fair Go about home warranty nightmares I think the NZ system is rubbish. So, I've come to the UK to find out how they do it better here*

STEVE TURNER – Home Builders Federation

*Clearly we in this country are very focused on ensuring that we've got that protection for the buyer*

PAULA HIGGINS – Homeowners Alliance

*On the face of it it looks quite good because you've got a ten-year warranty*

MARTIN HORSLER – Checkmate.uk.com

*It works for the consumer, ah, not as well as it might do*

LONDON STREETS

**I'll explore that but how does it work in the UK**

**It's effectively mandatory for all new builds – lenders require them, so nothing gets built without one**

STEVE TURNER – Home Builders Federation

*We've not had any systemic failures now since probably the 60s so I think that says that we're doing something right*

NHBC VIDEO

**One company dominates – NHBC, the National House Building Council  
It claims 80 per cent of the market, it's a regulated insurer, its own inspectors check the build as it goes along, but they're a weird mob to deal with and they wouldn't talk to me**

MARTIN HORSLER – Checkmate.uk.com

*They're an arrogant competitor*

**Martin Horsler worked for them. He now runs a much smaller competitor**

MARTIN HORSLER – Checkmate.uk.com  
*The driver in our market is the lenders*

**Because no warranty, no mortgage for a new build. Effectively, lenders make it mandatory**

MARTIN HORSLER – Checkmate.uk.com  
*They need to know that in the event that there's a problem, that their investment in the house will be right, will be protected*  
*GH - Does it surprise you that in NZ the lenders don't require any sort of warranty?*  
*Yes it does*

**And listen to his assessment of the NZ situation**

MARTIN HORSLER – Checkmate.uk.com  
*I thought it looked like the UK market pre-second war.*  
*Pre-Second World War?*  
*Yeah, because that's basically where we were at then*  
*And was that a good place to be at?*  
*No!*

**And at least one competitor agrees**

GORDON HARCOURT TO CAMERA  
*I've just had about an hour and a half with another of the home warranty issuers here, and they were, quote, gobsmacked that mortgage lenders in NZ don't require home warranties because that is the crucial difference between the market here and in NZ*

**There are a few products in NZ – the best known is the Master Build guarantee**

MASTER BUILD GUARANTEE TV COMMERCIAL  
*But there is a guarantee when you use a Registered Master Builder*

GRAPHICS

**It's not backed by an insurer, unlike those other products.**  
**There's no financial information.**  
**There's no independent dispute resolution.**  
**And the company that runs it is owned by Master Builders.**

STEVE TURNER – Home Builders Federation  
*I don't think we would like to do that*

HBF BUILDING

**The Home Builders Federation is a UK equivalent of Master Builders**

STEVE TURNER – Home Builders Federation  
*Well I think we at HBF would find it difficult to be a warranty provider. I mean one you've got to have the financial backup to enable you to service the insurance claims, but two you need a level of independence I think, so we wouldn't want that role*

PAULA HIGGINS – Homeowners Alliance

*Well to be honest I think it's quite shocking if you think how much we're complaining about*

**Paula Higgins runs a consumer protection body**

PAULA HIGGINS – Homeowners Alliance

*Clearly there needs to be more protection for the consumer in NZ but I'm not sure whether the UK system as it is, is the right way to go*

GILCHRIST HOUSE

**This house is an example of why she says that. The smoke test shouldn't be so spectacular.**

**The house is covered by the NHBC, the major UK home warranty insurer, but the owner is furious**

LEE GILCHRIST – Cambridgeshire homeowner

*We've got the impression that the NHBC have no teeth. They can't force the builder to do anything as we've been told many many times*

**Lee Gilchrist's been fighting the NHBC over his Cambridgeshire house.**

LEE GILCHRIST – Cambridgeshire homeowner

*They are an insurance company with the builder's interest at heart*

GRAPHICS

**NHBC told me less than one per cent of new homeowners experience serious problems.**

**Of their 1.6 million customers nearly 95% never make a claim, and if things do go wrong they're committed to putting things right quickly**

GORDON HARCOURT TO CAMERA

*Well clearly the UK home warranty system isn't perfect, none is, but I think it is way better than what we've got in NZ.*

*An avalanche of home building is coming.*

*A decent home warranty system would help prevent an avalanche of life-destroying home building nightmares*

*Let's get a better system*