

THE CONSUMER CODE FOR HOME BUILDERS

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THE CONSUMER CODE FOR HOME BUILDERS

INDEPENDENT DISPUTE RESOLUTION SCHEME (IDRS)

The Consumer Code for Home Builders (the Code) is an industry-led code of conduct for builders, which was developed to make the home buying process fairer and more transparent for purchasers. The Code, which came into effect in April 2010, applies to all home builders registered with the UK's main new home warranty providers; NHBC, Premier Guarantee and LABC Warranty, and consists of 19 requirements and principles that home builders must meet in their marketing and selling of homes and their after-sales customer service. The Code is now in its fourth edition, which came into force in April 2017.

Under the Code, home builders are required to have a system for dealing with complaints. However, if a home buyer is not happy with their response, they should contact the home warranty provider within three months of the date of the home builder's final response to the original complaint. The home warranty body will either deal with the complaint under the terms of the warranty or provide the home buyer with an application form and a set of the Independent Dispute Resolution Scheme (IDRS) rules so that the complaint can be referred to independent adjudication.

IDRS is provided independently by Centre for Effective Dispute Resolution (CEDR) for resolving disputes between Home Builders and Home Buyers covered by the Code. The scheme can consider a dispute arising from anything a Home Builder does or does not do that the Home Buyer thinks is a breach of the Code and which may have caused the Home Buyer disadvantage or financial loss. A Home Buyer can make a claim for up to £15,000, including any consequential damages and VAT. This also includes any amount for inconvenience, which is limited to £500 per claim. The limit of £500 for inconvenience is low when compared with dispute resolution schemes in other industries. For example, consumers with disputes about their water and/or sewerage provider can be awarded up to £2,500 for inconvenience, while in the telecommunications industry consumers can be awarded up to £10,000.

An independent, experienced Adjudicator will make a Decision on disputes by considering written evidence received by the parties. The Adjudicator's Decision will become binding on a Home Builder if the Home Buyer tells the administrator that they accept the Decision. If a Home Buyer rejects the Decision or does not tell the administrator that they have accepted the Decision within six weeks, the Decision will not take effect and will not be binding on either party.

Further details of the adjudication process can be found within the Scheme Rules section of this report.

FACTS AND FIGURES

Caseload

This report covers the period 1 January 2017 to 31 December 2017. During this period, a total of 89 cases were referred to IDRS, which represents a decrease of 13% on the amount of cases referred to the scheme in 2016. After a six year period of consecutive yearly growth in the total amount of cases referred, 2017 has seen a reduction in case volumes. This would indicate that Home Builders are showing an improved adherence to the requirements of the Code such that disputes do not arise as frequently, which would be consistent with the Consumer Code Secretariat's active promotion of the Code and its requirements to Home Builders during 2017. It is also possible that Home Builders have improved their performance in resolving disputes to Home Buyers' satisfaction without having recourse to the scheme.

It is important to note that, during the period covered by this report, a total of 178,360 new homes were completed, a figure 18% higher than the 131,350 new homes completed in 2016. Bearing in mind that the amount of disputes referred to the scheme in 2017 was 13% lower than the previous year, it is apparent that an even smaller fraction of new home purchases resulted in a dispute that was referred to IDRS.

The cases referred to the Scheme in this reporting period can be broken down as follows:

	2017	2016	2015	2014	2013	2012	2011	2010
Number of cases found fully in favour of the Home Buyer	5	7	3	1	0	1	0	1
Number of cases found partly in favour of the Home Buyer	47	59	43	21	10	5	6	0
Number of cases found fully in favour of the Home Builder	25	20	5	10	9	8	6	0
Number of cases settled	5	8	6	6	0	1	0	0
Number of cases withdrawn from the Scheme or deemed invalid	7	8	9	5	3	2	2	2
TOTAL CASES	89	102	66	43	22	18	14	3

Case outcomes

2017 has continued the trend of previous years of a high proportion of Home Buyers being successful in their claims against Home Builders. Of the 89 cases dealt with by the Scheme in 2017, Home Buyers achieved a positive outcome (ie. a decision either fully or partly in their favour, or a settlement reached by agreement with the Home Builder) in 57 of them (representing 64% of cases). While this is not quite as high as the 73% of Home Buyers who obtained a positive outcome in 2016, a decisive majority of Home Buyers continue to achieve a beneficial result from engaging with IDRS.

When considering the 77 cases that went all the way to a final decision from an adjudicator in 2017, adjudicators found in favour of the Home Buyer (either fully or partly) in 68% of decisions. This is only a small reduction in the 77% of decisions found in Home Buyers' favour in 2016. Furthermore, 5 of the 77 decisions made by adjudicators in 2017 succeeded in full for the Home Buyer - meaning the adjudicator gave the Home Buyer everything they asked for. Therefore, although Home Buyers are rarely awarded everything that they ask for from a Home Builder, the vast majority of Home Buyers receive a positive outcome from using the Scheme.

Settlements

Rule 4.4 of the Scheme Rules allows the Home Buyer and the Home Builder to reach a settlement by mutual agreement before an adjudicator is appointed to make a decision. Where a settlement is reached, the Home Builder pays a reduced administration fee to the Scheme.

In 2017, five cases (representing nearly 6% of all cases dealt with) were settled between the parties prior to the appointment of an adjudicator. This is similar to the 8% of cases that settled between the parties in 2016, and continues a long-standing trend of a low proportion of cases being settled once the Home Buyer has decided to refer their dispute to the Scheme.

Withdrawn and invalid cases

A total of seven cases were withdrawn or were deemed to be invalid (ie. outside the scope of what the Scheme can deal with) in 2017.

Of the seven cases that did not proceed to adjudication:

- Two were withdrawn as the Home Buyer had not made an initial complaint to the Home Builder before applying to the Scheme;
- One was withdrawn because the Home Builder against which the claim was brought was not registered with a home warranty body, which brought the dispute outside the scope of the Code and the Scheme;
- One was withdrawn because the applicant was not a 'Home Buyer' within the definition set out in the Scheme Rules;
- One was withdrawn because the applicant had not fully completed the application form and failed to remedy this after being requested to do so;

- One was withdrawn as the Home Buyer had applied to the Scheme more than three months after the date of the Home Builder's final response to the original complaint (which is prohibited by Scheme Rule 3.1);
- One was voluntarily withdrawn at the Home Buyer's request as they no longer wished to proceed with the case process.

Alleged and identified breaches of the Code

Where a Home Buyer alleges in their application to the Scheme that a particular part of the Consumer Code for Home Builders has been breached, the most commonly alleged sections are 2.1 (ie. pre-purchase information), 5.1 (ie. procedures for handling calls and complaints), 1.5 (ie. clear and truthful sales and advertising material), and 4.1 (ie. an accessible after-sales service). These have consistently been the most commonly alleged breaches of the Code since the Scheme began operating.

It had been noted in the 2016 annual report that the number of disputes about Home Builders' failure to reimburse a registration fee (under Code Section 2.6) had increased after a decline. This number has fallen dramatically from 22 cases in 2016 about this issue to just 9 cases in 2017.

Of the 52 decisions in which an adjudicator found the Home Builder to have breached the Code during 2017, the most common sections of the Code found to have been breached were:

- 2.1: a total of 25 decisions (48%) identified a breach of the Home Builder's duty to provide the Home Buyer with enough pre-purchase information to help them make a suitably informed purchasing decision;
- 1.5: a total of 23 decisions (44%) identified a breach of the Home Builder's duty to ensure that sales and advertising material is clear and truthful;
- 5.1: a total of 16 decisions (31%) identified a breach of the Home Builder's duty to provide appropriate procedures for handling calls and complaints;
- 1.3: a total of 12 decisions (23%) identified a breach of the Home Builder's duty to have suitable systems and procedures to ensure it can reliably and accurately meet the commitments on service, procedures and information in the Code;
- 2.6: a total of 9 decisions (17%) identified a breach of the Home Builder's duty to reimburse the Home Buyer's reservation fee upon the cancellation of the reservation agreement;
- 3.1: a total of 9 decisions (17%) identified a breach of the Home Builder's duty to ensure that contract-of-sale terms and conditions are clear and fair, comply with all relevant legislation, and clearly state the contract termination rights.

Money claims

In 2017, the Home Buyers who applied to the Scheme claimed a total combined sum of £555,893.98. This is a lower total figure than in the previous two years, and represents a decrease of 25% on the total amount claimed by Home Buyers in 2016 (£695,012.57). This reflects the 13% decrease in the total amount of cases referred to the Scheme from 2016 to 2017, and may indicate that Home Buyers are being more modest and realistic in their claims for money.

The average sum claimed by Home Buyers in 2017 was £7219.40. This is a slight increase from the average of £6813.85 in 2016, reflecting the high volume of cases received in 2016 for relatively low sums of money.

	TOTAL SUM CLAIMED	TOTAL SUM AWARDED
2017	£555,893.98	£77,043.06
2016	£695,012.57	£65,108.42
2015	£584,514.46	£93,456.78
2014	£304,899.93	£48,832.52
2013	£133,845.40	£26,512.47
2012	£139,615.30	£4,680.00
2011	£70,023.92	£18,205.70
2010	£5,000.00	£5,000.00

Although the total sum claimed by Home Buyers decreased in 2017, the total sum awarded to Home Buyers by adjudicators increased by 18% to £77,043.06. However, the average amount of compensation awarded by adjudicators in cases where the Home Buyer's claim was successful was £1510.64. This continues a general trend noted since 2013 of reducing average awards. Although the average award in 2016 was a very low £986.49, it was £2,031.67 in 2015, £2,219.66 in 2014 and £2,651.25 in 2013. In retrospect, it appears that in 2016 the Scheme dealt with a high volume of cases which resulted in low monetary awards.

There were 12 decisions made by adjudicators in 2017 in which the Home Buyer was awarded more than £1000.00. This is a slight decrease from the 17 decisions in 2016 in which this occurred. Of these 12 decisions, six were for £5000.00 or more, with the highest amount awarded being £15,000.00, the highest available amount under the Scheme. On the other end of the scale, 19 decisions awarded the Home Buyer £250.00 or less, with the lowest amount awarded being £50.00. In comparison with the previous year, 2017 had a higher proportion of very high monetary awards, and a much lower proportion of low financial awards. This accounts for the higher total and average sums awarded by adjudicators in 2017 when compared with 2016.

Accepted or rejected

Any decision made by an adjudicator through the Scheme will only be binding on the parties if the Home Buyer chooses to accept it within six weeks of its publication. Where a Home Buyer chooses to reject a decision, or where a Home Buyer fails to respond within six weeks of the decision being made, the decision has no effect whatsoever on either party. Decisions are not open to review or appeal under any circumstances.

Below is a breakdown of the cases that have been accepted, rejected and not responded to by Home Buyers:

	2017	2016	2015	2014	2013	2012	2011	2010
Decision accepted	42	51	42	19	8	6	7	1
Decision rejected	27	17	6	11	6	5	3	0
No response	8	18	3	2	5	3	2	0

In 2017, 55% of decisions were accepted by Home Buyers, which is a slight reduction on the 59% of decision accepted in 2016. As in previous years, Home Buyers generally accept an adjudicator's decision where they have succeeded in their claim against a Home Builder, whereas decisions in which the Home Buyer is unsuccessful are generally rejected.

Eight cases were dealt with in 2017 where the adjudicator found the Home Buyer's claim to be successful, but the Home Buyer did not accept the decision and therefore lost out on the redress awarded by the adjudicator. As noted in previous years, this most often occurs where the redress awarded by the adjudicator has been a very small fraction of that sought by the Home Buyer. As illustration, in five of these eight cases the Home Buyers chose not to accept a decision in which they were awarded £250.00 or less as they had claimed £15,000.00, being the maximum amount that can be claimed through the Scheme.

There were no instances this year of Home Buyers rejecting decisions where they were awarded significant sums of compensation. All of the decisions in which adjudicators awarded at least £1000.00 were accepted by Home Buyers.

Just as in the previous year, there were no decisions in 2017 which were accepted by the Home Buyer where the adjudicator found the claim to be unsuccessful.

Service statistics

Of the 77 cases from 2017 that went to adjudication, 29 of them (representing a total of 38%) were completed within 8 weeks of the date on which the Home Buyer's application was received. This is a decrease from the 76% of cases completed within 8 weeks in 2016.

Although this statistic is disappointing, it is important to emphasise that 40% of cases taking more than eight weeks were completed just one calendar day after the due date, while 71% of all late cases were completed within nine weeks of the date on which the Home Buyer's application was received (ie. within one week of the due date). It is clear that the significant administrative workload and staffing changes that took place during 2017 resulted in a short but consistent time lag between an adjudicator's decision being completed and the decision being issued to the parties, causing a high number of cases to be issued just outside of the eight-week timescale.

Of the 14 cases which took more than nine weeks to complete, the reasons for these delays are as follows:

- Six cases were late due to the adjudicator being unable to complete the final decision due to scheduling difficulties.
- Four cases were late due to the adjudicator granting one or both of the parties an extension of time to make submissions or provide evidence.
- Three cases were late because they contained a particularly high volume of documents and information, which took the adjudicators longer than usual to analyse and render a final decision.
- One case was late as the adjudicator requested further information from the parties before a final decision could be reached.

It must also be highlighted that none of the cases dealt with during 2017 exceeded the statutory timeframe of 90 calendar days mandated by the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 for all consumer dispute resolution schemes in the UK.

The Scheme has taken steps to improve the efficiency of the case process, so as to ensure that the majority of cases are completed within eight weeks in future.

CASE STUDIES

Since 2015, our Annual Report has contained a selection of interesting and novel case studies from the total amount of cases the Scheme has dealt with. For the 2017 Report, the following nine case studies have been selected from the 77 disputes that went to adjudication:

ADJUDICATION CASE 1

COMPLAINT

The Home Buyer submitted that the Home Builder had failed to build a decorative chimney stack in accordance with the specification for the plot. The Home Buyer also stated that the Home Builder had failed to provide any explanation for the omission.

The Home Buyer sought an explanation; that the Home Builder build the decorative chimney stack; and compensation in the sum of £250.00 for inconvenience.

DEFENCE

The Home Builder admitted that the decorative chimney stack should have been fitted to the Property and stated that it was unable to explain why the chimney stack was omitted, but that this would now be fitted in accordance with the specification for the plot providing it was able to get consent from the neighbouring plot.

FINDINGS

It was not in dispute that the Home Builder failed to construct the decorative chimney stack to the Property in accordance with the specification for the plot. The evidence showed that the Home Builder ignored the Home Buyer's complaint and that it was not until the Home Buyer was forced to bring the matter to CCHBAS before the Home Builder took action.

DECISION

The claim succeeded. The adjudicator directed that the Home Builder provide the Home Buyer with an explanation; fit the decorative chimney stack in accordance with the specification for the plot; pay compensation in the sum of £250.00 for inconvenience and pay the Home Buyer the sum of £120.00 to cover the cost of the case registration fee.

ADJUDICATION CASE 2

COMPLAINT

The Home Buyer's claim was that they did not proceed with the purchase of a Property but the Home Builder refused to return any of the reservation fee. The Home Builder's position was that the reservation agreement detailed various set percentages that would be deducted from the reservation fee. Therefore, the Home Builder refused to refund the reservation fee.

DEFENCE

The Home Builder did not accept any liability to the Home Buyer. The Home Builder submitted that the set percentage deductions from the reservation fee were clearly detailed on the reservation agreement.

FINDINGS

The reservation agreement merely stated that certain percentages will be deducted from the Home Buyer's reservation fee and did not set out any reasonable costs that will be genuinely incurred by the Home Builder as required by the Code. Consequently, the Home Builder was in breach of section 2.6 of the Code and the Home Buyer experienced inconvenience as a result of this breach.

DECISION

The claim succeeded. The adjudicator directed that the Home Builder provide the Home Buyer with an apology, a refund of her £1500.00 reservation fee, compensation in the sum of £250.00 for inconvenience and £120.00 for the cost of their adjudication fee.

ADJUDICATION CASE 3

COMPLAINT

The Home Buyer submitted that the Home Builder failed to fit tiles to an acceptable standard. Further following piling which took place on the estate, the tiles cracked - approximately 5/6 tiles. The Home Builder denies that the damage was a result of piling and advised that the cracked tiles were due to settlement. She was never advised of the risk of cracked tiles when making the purchase.

The Home Buyer sought an apology; a refund of the cost of the tiles; and a refund of the case registration fee.

DEFENCE

The Home Builder accepted that the tiles were not fitted to an acceptable standard due to missing grout and but stated that this issue had been resolved. The Home Builder also accepted that there are hairline cracks to a number of tiles, but stated that this was due to settlement of the Property and not a defect under the builder's warranty.

FINDINGS

Complaints about the quality of workmanship fall outside the scope of adjudications under CCHBAS. The Home Buyer's complaints about the piling undertaken by the Home Builder close to her home also fell outside the scope of the Scheme. In respect of the Home Buyer's complaint that she was never informed of the risk of cracked tiles due to settlement, section 2.1 requires the Home Builder to provide list of the contents and appearance of the Home. It does not impose a requirement on the Home Builder to provide a list of all the potential future risks to items/areas in the Property. This aspect of the Home Buyer's claim therefore also fell outside the scope of the Scheme.

DECISION

The claim was unable to succeed. None of the remedies requested were due.

ADJUDICATION CASE 4

COMPLAINT

The Home Buyer's claim was that the Home Builder breached section 2.1 of the Code. Specifically, the Home Buyer submitted that a sales agent verbally assured him that a ditch outside his Property would be completely filled in; however, it was only partially filled in. Furthermore, the Home Buyer submitted that he was not advised that a sink in his bathroom would not have a pedestal attached to it.

DEFENCE

The Home Builder did not accept any liability to the Home Buyer and submitted that it had not breached any element of the Code. The Home Builder submitted that there was no substantive evidence that proved the Home Buyer was verbally misinformed with regards to the ditch as alleged. The ditch was detailed in the plans (which were signed by the Home Buyer) and was essential for drainage and could not be fully filled in. The Home Builder further submitted that there was no pedestal for the bathroom sink because it would not comply with building regulations. In any event, the Home Builder did not advise that a pedestal would be attached to the bathroom sink.

FINDINGS

Upon review of all the evidence available, there was no substantive evidence that objectively proved the Home Builder (or its agents) ever advised the Home Buyer that the ditch would be fully filled in. To the contrary, the Property plans (signed by the Home Buyer) showed that the ditch would be present as intended. Furthermore, there was no evidence submitted which proved that the Home Builder ever guaranteed a pedestal would be attached to the bathroom sink. Consequently, there was no substantive evidence that proved the Home Builder has breached section 2.1 of the Code under the circumstances.

DECISION

The claim was unable to succeed.

ADJUDICATION CASE 5

COMPLAINT

The Home Buyer claimed that the railings outside her Property were not as she had expected. The Home Buyer submitted that the railings illustrated on the sales brochure were of a different type and she expected to have these installed. The Home Buyer submits that she complained to the Home Builder about this issue but was unable to reach a resolution to her satisfaction. The Home Buyer therefore submitted that the Home Builder has breached sections 1.5, 4.1 and 5.1 of the Code.

DEFENCE

The Home Builder did not accept any liability to the Home Buyer and submitted that it had not breached any element of the Code. The Home Builder submitted that the sales brochure was merely a guideline for illustrative purposes and did not detail any specifics (such as design of the railings). Furthermore, the Home Builder submitted that the sales brochure and information pack make it clear that these are only intended as a guide and should not be construed as detailing the final specifics of the Property.

FINDINGS

In light of the evidence provided, the adjudicator was only able to conclude that the sales brochure was only a guide and did not constitute or form any part of a contract of sale and that no specific type of railing was contractually agreed upon between the parties at the sale and advertising stage. Consequently, the adjudicator had no other option but to conclude that the Home Builder had not breached section 1.5 of the Code in this instance.

The adjudicator was also mindful that the Home Builder's information pack detailed the after-sales service system and who to contact. It was noted that the Home Builder's solicitor had stated this was provided to the Home Buyer on completion. In light of the solicitor's statement, on balance, the adjudicator was inclined to accept that this was provided to the Home Buyer. Furthermore, the Home Builder's website also provided a contact system to contact the Home Builder. Accordingly, based on this evidence, the adjudicator was only able to conclude that the Home Builder did have an accessible after-sale service in place for receiving and handling complaints. Based on the evidence provided, the adjudicator could only objectively conclude that the Home Builder had not breached sections 4.1 or 5.1 of the Code.

DECISION

The claim was unable to succeed.

ADJUDICATION CASE 6

COMPLAINT

The Home Buyer claimed that the Home Builder did not install the bedroom wardrobe which should have been included as standard. The Home Buyer submitted that the sales brochure expressly stated that the bedroom wardrobe would be fitted as standard. Accordingly, the Home Buyer claimed that the Home Builder breached sections 1.5 and 2.1 of the Code.

DEFENCE

The Home Builder did not provide any defence to the Home Buyer's claim.

FINDINGS

Based on the evidence provided, the adjudicator had no other option but to conclude that the Home Builder had breached section 1.5 of the Code. Specifically, the adjudicator found that the Home Builder's sales and advertising material was not truthful under the circumstances with regards to the bedroom wardrobe installation and the Home Buyer experienced loss as a result of this breach. The Home Buyer had made a claim for £2793.00 as this represents the loss she incurred in having the bedroom wardrobe installed. The Home Buyer had substantiated this sum by providing a quote in the amount of £2793.00 for the installation of the bedroom wardrobe. Consequently, in light of the breach of the Code and the loss established by the evidence provided, the adjudicator was satisfied that it was fair and reasonable that the Home Builder provided the Home Buyer with compensation in the sum of £2793.00.

DECISION

The Home Buyer's claim succeeded. The Home Builder was directed to provide the Home Buyer with compensation in the sum of £2793.00 and £120.00 for the adjudication fee.

ADJUDICATION CASE 7

COMPLAINT

The Home Buyer submitted that the position of the roof light and front door were not as depicted in the Home Builder's sales brochure and plans provided pre-reservation in breach of clauses 2.1 and 3.1 of the Consumer Code for Home Builders ('the Code'). Further the Home Buyer alleged that the Home Builders failed to provide an adequate explanation for the changes and they also failed to provide an adequate explanation for the changes, contrary to clause 1.3.

The Home Buyer claimed £15,000.00 in compensation for the costs of rectifying the Home Builders' breaches of the Code and for the Home Builders to provide an apology, explanation and action (unspecified).

DEFENCE

The Home Builders asserted that the slight change in position to the roof light and change to the doorway arrangement were minor in nature and do not affect the appearance of the property or its value. In addition, such changes were accepted in the course of the construction of the property and were acknowledged in the documentation completed and signed by the Home Buyer.

They denied any breach of the Code. The Home Builders made no settlement offer.

FINDINGS

Whilst there were changes to the position of the roof light and doorway from that depicted in the sales brochure, they were minor and did not significantly alter the Home's size, appearance or value and a breach of clause 3.1 was therefore not established. Further, there was a lack of the evidence that the Home Builders failed to provide the Home Buyer with enough pre-purchase information to help her make a suitably informed purchasing decision. As such, no breach of 2.1 of the Code was proven. The Home Builders had systems and procedures in place for dealing with the issues raised by the Home Buyer and so no breach of clause 1.3, or any other part of the Code, was proven.

DECISION

The adjudicator found that the claim did not succeed. Therefore, the Home Builders were not liable to compensate the Home Buyer or provide any other remedy or reimburse the Home Buyer's registration fee.

ADJUDICATION CASE 8

COMPLAINT

The Home Buyers submitted that there were various delays in the completion of their Property and the Home Builder had to keep contacting them to advise of amended completion dates. The initial completion date was in September 2015 but the Property was finally completed in April 2016. The Home Buyers submitted that they incurred expenses as a result of this issue. Specifically, the Home Buyers stated that they had already ordered furniture for the Property which they needed to pay to store and that they decided to stay in the local Hilton hotel until the Property was completed (as this seemed the most flexible option). The Home Buyers submitted that the Home Builder had breached section 3.2 of the Code and they therefore claimed £15000.00 in compensation.

DEFENCE

The Home Builder accepted that there were delays in the completion of the Property and it stated that it had continuously apologised for this issue. The Home Builder submitted that these delays were for reasons outside its control but it did its best to expedite the completion of the Property. It confirmed the Home Buyers' submission that it kept them informed about the delays and provided amended completion dates as issues progressed. However, the Home Builder did not accept the Home Buyers' claim for redress. It submitted that the claimed compensation was unreasonable and the Home Buyers have not sought to mitigate their losses.

FINDINGS

Based on all the evidence provided, the adjudicator was unable to objectively conclude that the Home Builder had breached section 3.2 of the Code.

Neither party disputed there were various delays in the completion of the Property. However, it was clear from the parties' respective submissions that the Home Builder did constantly provide amended completion updates to the Home Buyers as and when new information was available. Accordingly, under the circumstances, the adjudicator was unable to conclude that the Home Builder's actions overall amounted to a breach of section 3.2 of the Code. By way of further explanation, the adjudicator highlighted that section 3.2 of the Code does not impose a requirement on the Home Builder to strictly adhere to a set completion date but to keep the Home Buyer updated of realistic completion dates based on the information available at the time. Accordingly, based on the evidence provided, the adjudicator was unable to conclude that the Home Builder had breached section 3.2 of the Code.

DECISION

The Home Buyers' claim did not succeed.

ADJUDICATION CASE 9

COMPLAINT

The Claimants complained that the Builder had wrongly told them at the reservation stage that the affordable housing on the estate would contribute to the service charge and their service charge would be 1.3% of the total and the cost spread between 88 homes. In fact the contract and transfer stated that they had to bear 1.8% and the cost was spread between 53 homes.

DEFENCE

It was denied that the Home Buyers had been told this, although they had got hold of a matrix which showed that the managing agents proposed to impose a service charge on all homes. The Builder was prevented from doing this by reason of the terms of the section 106 Agreement to which the Buyers solicitors had access on their portal and to which they had been referred. Accordingly, the contract showed that the Home Buyers would bear a cost of 1.8% of the service charge. Moreover, the amount of the service charge in the first year was less than the estimate in the reservation agreement, so the Home Buyers were not misled.

FINDINGS

The adjudicator found that there were breaches of sections 1.5 and 2.1 of the Code because it was more likely than not that the Home Buyers were told that all houses would bear a proportion of the service charge, whereas this was not correct. It was relevant information as it meant that the Home Buyers would be paying a larger proportion of the total and the occupiers of the affordable housing would benefit from the services paid for by other residents. This was misleading, was not irrelevant and, as this incorrect information was given, it may have led to a misapprehension instead of a suitably informed purchasing decision. There was no breach of section 2.6, however, because the reservation agreement stated that the sums shown as services (for which there was a breakdown) were an estimate. There was no breach of clause 3.1 of the Code because the proportion of the service charge (1.8%) was correctly stated and the section 106 agreement was made available to the Buyers' solicitors or, even if it was not, the Buyers' solicitors were on notice and could have asked for this.

DECISION

The claim succeeded in part. As the Buyers had, through their solicitor, agreed to the proportion of service charge set out in the contract and transfer, and as any alteration in the service charge would adversely affect third parties because there would be an overall shortfall, it was not appropriate to direct any reduction in the service charge. Moreover, the claim for compensation was for moving house, which would in the circumstances, have been compensation for distress and not financial loss because the Buyers wanted to move due to a 'toxic atmosphere' on the estate. Furthermore, as the service charge in the first year was less than that estimated, there was no evidence of any ongoing financial loss. The adjudicator awarded £350.00 for inconvenience however, and reimbursed the registration fee.

SCHEME RULES

The Consumer Code for Home Builders

The Independent Dispute Resolution Scheme Rules (2017 Edition)

THESE RULES APPLY TO APPLICATIONS RECEIVED ON OR AFTER THE 1ST APRIL 2017

Meaning of words

Adjudicator	the person appointed by the Independent Dispute Resolution Scheme to decide the dispute.
Decision	the Adjudicator's written decision in the dispute, with the reasons, as sent to the Home Buyer and the Home Builder.
Home	a property that a Home Builder registers with a Home Warranty Body to obtain Home Warranty cover, excluding properties listed under section 4 of the Scope of the Code.
Home Builder	a Home Builder or Developer of new or newly converted domestic properties for sale to the public, and who is registered with a Home Warranty Body.
Home Buyer	a Customer who goes on to reserve or buy a Home, excluding those properties listed under section 4 of the Scope of the Code. For Homes reserved or bought jointly by two or more people, the Home Buyer's rights will be joint.
Home Warranty Body	an organisation that: <ul style="list-style-type: none"> ■ has agreed to support the Consumer Code for Home Builders Scheme; ■ maintains a register of builders and developers; ■ provides Home Warranty cover; ■ has undertaken to enforce the Code.
Home Warranty	an insurance-backed warranty that a Home Warranty Body issues to protect Home Buyers.
Rules	these Rules, which govern the conduct and operation of the Independent Dispute Resolution Scheme.

1 Introduction

- 1.1 A dispute may arise where a Home Buyer believes the Home Builder has failed to meet the Code's Requirements but it falls outside the Home Warranty Body's resolution scheme for defects or damage. If so, the dispute may be resolved by the Home Buyer applying to the Consumer Code's Independent Dispute Resolution Scheme. This means a trained Adjudicator will review written submissions from both parties and issue a decision based on his or her conclusions. The Adjudicator will decide whether or not a Home Buyer has a legitimate dispute and has suffered financial loss because their Home Builder has breached the Consumer Code's Requirements.

2 Scope of the Scheme

- 2.1 The Independent Dispute Resolution Scheme provides an informal and independent way of settling disputes between the Home Builder and the Home Buyer (the parties).
- 2.2 The Independent Dispute Resolution Scheme can consider disputes arising from anything a Home Builder does or does not do that the Home Buyer thinks is a breach of the Code and which may have caused the Home Buyer disadvantage or financial loss
- 2.3 An independent Adjudicator appointed under these Rules will make a Decision on disputes by considering written evidence received from the parties.
- 2.4 The Adjudicator can ask for extra information about anything from any party, if this is needed, in order to settle the dispute in a fair and reasonable way, in line with the law and the Code.
- 2.5 The Adjudicator's Decision will become binding on a Home Builder if the Home Buyer accepts the Decision. If a Home Buyer rejects the Decision or does not accept the Decision within six weeks, the Decision will not take effect and will not be binding on either party. The Home Buyer cannot accept the Decision after the six-week deadline.
- 2.6 A Home Buyer cannot claim for more than £15,000, including any consequential damages and VAT. The Adjudicator may make a discretionary award for inconvenience, up to a maximum of £500. They will do so if, in their sole consideration and opinion, the Home Buyer has been caused more than minor inconvenience as a result of the complaint and/or how the Home Builder handled it. The Home Buyer may not receive an award for inconvenience alone if the Adjudicator does not find a breach of the Code. The Home Buyer may not receive an award for emotional upset and stress as awards will be judged as a matter of fact and on the resulting financial loss. The £15,000 maximum award includes any award for inconvenience. The Adjudicator will also decide whether or not the Home Builder must reimburse the Home Buyer's registration fee.
- 2.7 The dispute must not be subject to any current or previous court action unless that action is suspended or discontinued by agreement between the parties or by a court order.
- 2.8 The matters in dispute must not be the subject of any current or previous adjudication involving the same Home Buyer and the same property.

3 Applying to use the Independent Dispute Resolution Scheme

- 3.1 To apply to use the Independent Dispute Resolution Scheme, the Home Buyer must ask for an application form from the Home Warranty Body that issued the Home Warranty for their Home. The Home Buyer may bring the claim only after 56 calendar days have passed from the date of the original complaint, and no later than 12 months after the date of the Home Builder's final response. The Home Builder must accept an application for adjudication under the Independent Dispute Resolution Scheme if:
 - 3.1.1 the Home Builder is registered with the Home Warranty Body;
 - 3.1.2 the Home is registered with the same Home Warranty Body; and
 - 3.1.3 the dispute has not been resolved to the Home Buyer's satisfaction through the Home Builder's own complaints-handling procedure.

4 Adjudication procedure

- 4.1 Adjudication begins when the Independent Dispute Resolution Scheme receives the Home Buyer's claim.
- 4.2 The adjudication will be based only on written evidence presented by the parties in dispute, except where the Adjudicator decides either to get more information under Rule 5.5.2 or to consult an independent expert under Rule 5.4.

- 4.3 The Home Buyer's application must give reasons for the items claimed, including:
- a) the events leading up to the dispute;
 - b) the precise nature of the dispute;
 - c) the alleged breach(es) of the Code by the Home Builder;
 - d) the grounds for claiming the items or the remedy the Home Buyer wants, including all available receipts or other proof of expenditure if making a financial claim;
 - e) the reasons for the amount of any money claimed.
- The application can be supported by documents (for example, photographs, technical reports or other documents) but should not consist only of correspondence. The application must include a copy of the contract of sale, where available.
- 4.4 When the Independent Dispute Resolution has received a properly completed application form, the Home Builder will be sent a copy of that form. The Home Builder has 15 working days from the date of receipt to give the Independent Dispute Resolution Scheme either of the following:
- a) Written confirmation that the claim has been settled and details of the settlement. The details must include whether they have reimbursed the Home Buyer's registration fee, and include the early settlement fee in accordance with schedule 1 to these Rules.
 - b) Their response to the claim and payment of the case fee in accordance with schedule 1 to these Rules.
- 4.5 The Home Builder may offer settlement terms to the Home Buyer. The adjudication procedure will be closed only when the Independent Dispute Resolution Scheme confirms that the Home Buyer has accepted the settlement in writing. The Independent Dispute Resolution Scheme will inform both parties that they have received the acceptance and that the adjudication procedure is closed.
- 4.6 An Adjudicator will be appointed unless, within 15 working days of the date the Home Builder receives the application form, the Home Builder informs the Independent Dispute Resolution Scheme that the claim has been settled in accordance with Rule 4.5.
- 4.7 If there is no written confirmation of settlement, or the Home Builder does not file its response in the time allowed, the Adjudicator will decide the dispute by considering only the information the Home Buyer has provided.
- 4.8 When the Independent Dispute Resolution Scheme receives the Home Builder's response, it will send a copy to the Home Buyer, who will have five working days to provide any further comments on that response. The Home Buyer's comments must be restricted to points arising from the Home Builder's response and must not introduce any new complaints. The Adjudicator will disregard new complaints in these comments.
- 4.9 If the Home Buyer makes any comments on the Home Builder's response, the Independent Dispute Resolution Scheme will send a copy of them to the Home Builder.
- 4.10 The Adjudicator may contact the parties by phone, fax, letter or e-mail to ask for further documents or information the Adjudicator may need to make the Decision. If the parties do not provide the extra information within the time the Adjudicator sets, the Adjudicator may decide the dispute by considering only the information already provided. The Independent Dispute Resolution Scheme will copy to the other party any additional documents supplied in response to the request.
- 4.11 The Adjudicator will make a Decision, usually within eight weeks of receiving the application.
- 4.12 The Independent Dispute Resolution Scheme will give the parties a copy of the Decision, including the reasons for it. A copy of the Decision will be sent to the Code's Secretariat to help it to monitor the effectiveness of the Code.

- 4.13 When the Home Buyer receives the Adjudicator's Decision, the Home Buyer must contact the Independent Dispute Resolution Scheme in writing within six weeks of the issue date of the Decision to state whether or not they accept the Decision. The Independent Dispute Resolution Scheme will inform the Home Builder whether or not the Decision has been accepted by the Home Buyer.
- 4.14 The Adjudicator's Decision is only binding on the Home Builder if the Home Buyer has unconditionally accepted it in writing as set out in Rule 4.14. No party can appeal the Decision. It can only be accepted or rejected by the Home Buyer.
- 4.15 If the Home Buyer or the Home Builder wants their original documents back, they must ask the Independent Dispute Resolution Scheme for them within six weeks of the date of the Adjudicator's Decision. If the Independent Dispute Resolution Scheme does not receive such a request within six weeks, all paper documents will be destroyed.
- 4.16 If the Adjudicator makes a financial award under Rule 5.7 and the Home Buyer unconditionally accepts it in writing, the Adjudicator must give the Home Builder written notification of this. The Home Builder must pay the award to the Home Buyer within 20 working days of the date of the Adjudicator's written notification. When the Adjudicator instructs the Home Builder to pay the award, the Home Builder must pay the Home Buyer direct and tell the Independent Dispute Resolution Scheme that this has happened.
- 4.17 If the Adjudicator decides that the Home Builder must take any other action under Rule 5.7 and the Home Buyer accepts that Decision, the Home Builder must complete the necessary action within four weeks, or within any other timescale the Adjudicator gives, and must tell the Independent Dispute Resolution Scheme that they have done so. If the Home Builder cannot do what is needed within four weeks or the timescale the Adjudicator gave, then the Home Builder must tell the Home Buyer and the Independent Dispute Resolution Scheme why and give a date for it to be completed.
- 4.18 The Independent Dispute Resolution Scheme will keep a record of the outcome of the adjudication procedure to monitor and report its performance and effectiveness.

5 Adjudicator's powers

- 5.1 The Adjudicator will remain fair and unbiased throughout the adjudication and will decide the case in line with the relevant law, any relevant contracts between the parties, and the Code. The Adjudicator will act quickly and efficiently, deciding the dispute in a fair and reasonable way.
- 5.2 If a delay may prevent the Adjudicator making the Decision within eight weeks, the Adjudicator may refuse to consider documents or other evidence not provided within timescales set down by these Rules, or the timescales the Adjudicator gives when requesting extra information.
- 5.3 Only the Adjudicator can decide whether a dispute is suitable for the Scheme to resolve under its Rules. If the Adjudicator decides that a dispute is not suitable for the Scheme to resolve, they will issue a direction to the parties saying the case has been withdrawn from the Scheme, giving their reasons and refunding the fees to the parties.
- 5.4 For some disputes the Adjudicator may need to get advice from an independent expert. In such cases the Adjudicator will consult the parties before appointing an expert, giving reasons for the independent advice. The parties will pay any reasonable fees involved in accordance with schedule 1 to the Rules.
- 5.5 The Adjudicator can do the following:
 - 5.5.1 Change time limits for the parties to provide their comments, and set time limits within which the parties must provide extra information.
 - 5.5.2 Allow the parties to give more evidence, or change any previous comments or details of the claim (but not the amount claimed on the application form).

- 5.5.3 Make any necessary enquiries, but the Adjudicator must tell the parties about those enquiries and allow them to comment on the findings.
- 5.5.4 Receive and take account of any spoken or written evidence the Adjudicator thinks is relevant.
- 5.5.5 Carry on with the procedure if either party does not keep to these Rules or follow any instruction they are given.
- 5.5.6 End the adjudication procedure if it appears that the dispute cannot be settled under the Scheme or if the parties settle their dispute before a Decision is made. (If the parties settle the matter themselves, they must immediately notify the Independent Dispute Resolution Scheme of the settlement, in writing.)
- 5.6 If the parties do not provide something needed under these Rules, nor within five working days of the Independent Dispute Resolution Scheme reminding them, then the following will apply:
 - 5.6.1 If a Home Buyer does not return the application or supporting documents, the Independent Dispute Resolution Scheme will assume that the Home Buyer does not want to go ahead with the claim.
 - 5.6.2 If the Home Builder does not respond to the Home Buyer's claim, the Adjudicator may base their Decision only on the information the Home Buyer provides.
 - 5.6.3 If either party does not provide any information the Adjudicator has asked for, the adjudication will continue in a way that the Adjudicator considers appropriate within the Rules.
- 5.7 If the Adjudicator agrees with the claim, they can tell the Home Builder to do any or all of the following:
 - 5.7.1 Give the Home Buyer an apology or explanation.
 - 5.7.2 Take some practical action that will put right the matters complained of.
 - 5.7.3 Pay the Home Buyer the cost of putting right the matters complained of.
 - 5.7.4 Pay the Home Buyer the expenses reasonably incurred as a result of the Home Builder not complying with the Code.
 - 5.7.5 Pay the Home Buyer an amount for inconvenience.
 - 5.7.6 Reimburse the Homeowner their Registration fee.

The Home Builder must bear the cost of resolving the complaint under Rule 5.7.2 or pay the Home Buyer the costs (including VAT) of resolving the complaint under Rule 5.7.3, provided that they both:

 - use a suitably qualified contractor or supplier,
 - use competitive tendering.
- 5.8 The total amount payable under Rule 5.7.5 may not exceed £500. The Home Buyer may not receive an award for inconvenience alone if no breach of the Code Requirements has been found. The Home Buyer may not receive an award for emotional upset and stress as awards will be judged as a matter of fact and on the resulting financial loss. The total amount payable under Rules 5.7.3 and 5.7.5 may not exceed £15,000 including VAT.
- 5.9 If the Adjudicator does not agree with the claim, they can dismiss it.

6 Costs

- 6.1 The Home Buyer and the Home Builder must pay the Independent Dispute Resolution Scheme the case fees shown in schedule 1 to these Rules
- 6.2 The parties will pay their own costs of preparing their cases. They may not take legal action to recover these costs.

7 Confidentiality

- 7.1 Details of the proceedings must not be disclosed to anyone not involved in them by any party to a dispute referred to the Scheme or by the Independent Dispute Resolution Scheme or the Adjudicator. The only exception is their professional and legal advisers or when disclosure is needed to enforce the Decision or as may be required by law.
- 7.2 Despite Rule 7.1, the Independent Dispute Resolution Scheme, Secretariat and the relevant Home Warranty Body may:
- a) collate and process data about the use of the Scheme;
 - b) compile, analyse and publish statistics;
 - c) monitor and review the operation of the Scheme.
- 7.3 They may do this provided no personal data or confidential information is published, such as data that might identify a Home Buyer or Home Builder.

8 The Independent Dispute Resolution Scheme's immunity

- 8.1 Neither the Independent Dispute Resolution Scheme, nor any person chosen by them or the parties to appoint an Adjudicator, is liable for anything done or omitted in doing or trying to do their job unless the act or omission was in bad faith. The parties must fully protect the Independent Dispute Resolution Scheme, or the chosen appointing person, against any possible legal action brought by a third party, arising from the carrying out of that job, unless the act or omission was in bad faith.

9 Adjudicator's immunity

- 9.1 Neither the Adjudicator nor any of their employees or agents is liable for anything done or omitted in doing or trying to do their job as Adjudicator, unless the act or omission was in bad faith. The parties must fully protect the Adjudicator against any possible legal action brought by a third party, for any act or omission.

10 Other rules

- 10.1 If necessary, the Independent Dispute Resolution Scheme will appoint a substitute Adjudicator.
- 10.2 The Home Buyer may accept or reject Decisions made under the Scheme. Decisions are not open for review or appeal and the Independent Dispute Resolution Scheme will not discuss a Decision made under the Scheme.
- 10.3 If a party has a complaint about the Scheme, or the Adjudicator's application of the Rules, or a member of the Independent Dispute Resolution Scheme's staff, they should follow the Independent Dispute Resolution Scheme's complaints procedure. Copies of the procedure are available on request from the Independent Dispute Resolution Scheme.
- 10.4 The Rules may be updated. Disputes will be decided according to the Rules in force at the time the Home Buyer applies to use the Scheme.
- 10.5 The version of the Consumer Code applicable to any case referred to the Adjudicator will be the one that was in force at the time of Reservation.

Schedule 1

1. The Home Buyer must pay a registration fee of £1001 plus VAT to the Independent Dispute Resolution Scheme when making an application.
2. The Home Builder agrees to pay a case fee of £3001 plus VAT for any case they are involved in. The case fee is only payable if an Adjudicator is appointed to decide the case.
3. If the Home Builder and the Home Buyer agree a settlement after the case has been accepted but before the Adjudicator has been appointed, the Home Builder will only pay £100 plus VAT per case (the early settlement fee).
4. The early settlement fee is due for payment when the Home Builder involved in any case notifies the Independent Dispute Resolution Scheme that they have settled the case:
 - after the Independent Dispute Resolution Scheme has received a valid application form but has not yet appointed an Adjudicator in accordance with the Rules; and
 - after the Home Buyer has informed the Independent Dispute Resolution Scheme of the settlement.
5. The Home Builder's case fee is due for payment when the Home Builder involved in a case submits their response to the claim to the Independent Dispute Resolution Scheme, under the Rules.
6. The Home Buyer's fee, early settlement fee and the Home Builder's case fee are not refundable in any circumstances.
7. The parties will pay the reasonable professional fees of any independent technical expert an Adjudicator appoints in accordance with the Rules, their respective shares of such fees having been negotiated between them and agreed with the Adjudicator before the expert is appointed.



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