

The Consumer Code for Home Builders Independent Dispute Resolution Scheme

Annual Report: 2022



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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, LABC Warranty and Checkmate¹, 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 June 2019.

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 can bring their claim to the Independent Dispute Resolution Scheme (IDRS) once 56 calendar days have passed from the date of their original complaint, and no later than 12 months after the date of the home builder's final response.

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.

An independent, experienced Adjudicator will make a Decision on disputes by considering the 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.

¹ Excludes those homes where home builders had activated their membership under the New Homes Quality Code at the point of reservation.

Facts and figures

Caseload

This report covers the period 1 January 2022 to 31 December 2022. During this period, a total of 324 cases were referred to IDRS, an increase of 5.5% on the amount of cases (307) referred to the scheme in 2021.

Since the Scheme began functioning in 2010, case numbers have steadily increased year on year, with a slight reduction noted in 2017. The Scheme has seen another increase in case numbers in 2021, and again represents the highest ever amount of cases referred to the Scheme in a year. As noted in previous reports, this is a trend that is evident across other industries, where consumer awareness of ADR has grown year on year.

In the context of the increasing numbers of disputes brought to the Scheme, it is interesting to note that the Office for National Statistics has reported that in the financial year ending March 2022 there were 204,530 new homes completed in the UK. This is a 33% increase from the figures for the year ending March 2021. It is important to note that just 0.1% of new homes are subject to a dispute brought to IDRS, showing that an extremely small proportion of disputes arise in the new homes sector.

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

	2022	2021	2020	2019	2018
Number of cases found fully in favour of the Home Buyer	60 (19%)	82 (27%)	81 (33%)	36 (20%)	7 (6%)
Number of cases found partly in favour of the Home Buyer (ie. where not all of the Home Buyer's claims were proved or they were awarded less than they claimed)	92 (28%)	58 (19%)	34 (14%)	45 (25%)	65 (60%)
Number of cases found fully in favour of the Home Builder	95 (29%)	98 (32%)	78 (31%)	62 (35%)	23 (23%)
Number of cases settled	44 (14%)	39 (13%)	30 (12%)	27 (15%)	5 (5%)

Number of cases withdrawn from the Scheme or deemed invalid	33 (10%)	30 (9%)	25 (10%)	8 (5%)	6 (6%)
TOTAL CASES	324	307	248	178	106

Case outcomes

2022 has continued to see a clear majority of Home Buyers being successful in their claims against Home Builders, a consistent trend that has been noted for many years. Of the 324 cases dealt with by the Scheme in 2022, 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 196 of them (representing 60% of cases). This is an increase from the 58% of Home Buyers who obtained a positive outcome in their previous two years. This confirms that a solid and increasing majority of Home Buyers achieve a positive result from their engagement with the Scheme.

When considering the 247 cases that went all the way to a final decision from an Adjudicator in 2022, Adjudicators found in favour of the Home Buyer (either fully or partly) in 62% of decisions. This is an increase from the 59% of decisions found in Home Buyers' favour in 2021, showing that an increasing amount of Home Buyers are achieving positive outcomes from cases in which an adjudicator determines the outcome of their dispute.

It is interesting to note that the proportion of cases in which Home Buyers have been entirely unsuccessful – meaning the Adjudicator has found no breach of the Code on the part of the Home Builder – has fallen from 41% of adjudicated cases in 2021 to 38% in 2022. This means fewer Home Buyers are bringing claims against Home Builders that have no merit. By the same token, the proportion of cases in which Home Buyers have been entirely successful - meaning the Adjudicator gave the Home Buyer everything they asked for – has also fallen from 34% of adjudicated cases in 2021 to 24% in 2022. This shows that Home Buyers have been more likely to achieve some success in their claims, but are not succeeding in full as often as in previous years. This could be down to a number of reasons, including that Home Builders are defending claims more successfully, or that Home Buyers are requesting more remedies (including a higher amount of compensation) than the evidence shows they are entitled to.

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 2022, 44 cases (representing 14% of all cases dealt with) were settled between the parties prior to the appointment of an Adjudicator. This is a slight increase from the 13% of cases that were settled in 2021, continuing the trend since 2019 of settling

between 12% and 15% of cases. Until and including 2018, the amount of settlements per year was always in single figures. Therefore, the amount of settlements reached in 2022 continues to be encouraging, as it shows that parties are consistently more willing to compromise and reach an agreement that both can be satisfied with, thus avoiding the need to go through the full adjudication process.

Withdrawn and invalid cases

A total of 33 cases were withdrawn or were deemed to be invalid (ie. outside the scope of what the Scheme can deal with) in 2022, representing 10% of all applications to the Scheme. This proportion represents a slight increase from 2021, when 9% of all applications to the Scheme were withdrawn or were deemed invalid. For the past three years, the rate of withdrawn and invalid cases has stood at around 10%.

Of the 33 cases that did not proceed to adjudication:

- Sixteen were withdrawn because the subject matter of the dispute referred to the Scheme was outside the scope of the Code;
- Five were withdrawn as the Home Buyer had applied to the Scheme more than 12 months after the date of the Home Builder's final response to the original complaint (which is prohibited by Scheme Rule 3.1);
- Four were withdrawn as the Home Buyer had not made an initial complaint to the Home Builder before applying to the Scheme or had not waited 56 calendar days from the date of their original complaint before applying to the Scheme;
- Four were withdrawn because the disputes had been subject to previous cases brought to the Scheme involving the same Home Buyer and the same property (which is prohibited by Scheme Rule 2.8);
- Two were withdrawn at the Home Buyer's request before they had completed the adjudication process;
- Two were withdrawn as the Home Buyer had already reached a settlement with the Home Builder before making an application to the Scheme (which is prohibited by Scheme Rule 2.1).

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 5.1 (ie. procedures for handling calls and complaints), 4.1 (ie. an accessible after-sales service), 2.1 (ie. pre-purchase information) and 1.5 (ie. clear and truthful sales and advertising material). These have consistently been the most commonly alleged breaches of the Code since the Scheme began operating.

The proportion of disputes about Home Builders' failure to reimburse a registration fee (under Code Section 2.6) has remained low in 2022 at just 8% of disputes, comparable with 2021's rate of 7% of disputes. This contrasts with the higher rate of 14% of disputes in both 2020 and 2019.

Of the 152 decisions in which an adjudicator found the Home Builder to have breached the Code during 2022, the most common sections of the Code found to have been breached were:

- 5.1: a total of 41 decisions (27%) identified a breach of the Home Builder’s duty to provide appropriate procedures for handling calls and complaints;
- 4.1: a total of 25 decisions (16%) identified a breach of the Home Builder’s duty to provide an accessible after-sales service;
- 2.1: a total of 19 decisions (13%) 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 15 decisions (10%) identified a breach of the Home Builder’s duty to ensure that sales and advertising material is clear and truthful.

Money claims

In 2022, the Home Buyers who applied to the Scheme claimed a total combined sum of £1,695,579.40. This sum represents a decrease of 6% in the total amount claimed by Home Buyers in 2021. Similarly, the average sum claimed by Home Buyers in 2022 was £5233.27, which is a decrease of 15% on the average of £6158.13 claimed in 2021. These statistics are perhaps surprising given the 5.5% increase in overall case volumes received in 2022, but they indicate that Home Buyers may have more realistic expectations about how much they are entitled to and how much they are likely to obtain by using the Scheme.

	TOTAL SUM CLAIMED	TOTAL SUM AWARDED
2022	£1,695,579.40	£95,271.00
2021	£1,804,332.32	£144,614.42
2020	£1,446,070.49	£105,051.46
2019	£1,066,715.23	£79,963.37
2018	£694,540.02	£64,984.63

The total amount awarded to Home Buyers by Adjudicators in 2022 was £95,271.00. This considerable decrease of 34% in the total amount awarded when compared with 2021 brings the total sum awarded closer to the 2020 level. It is also important to highlight that only 6% of the total sum claimed by Home Buyers was actually awarded by Adjudicators in 2022, which is comparable to the proportion of 8% of the total sum claimed that was awarded in 2021 and 7% in 2020. This continues to show that Home Buyers are claiming financial sums that exceed what they are likely to obtain by using the Scheme.

Many Home Buyers claim the maximum amount of compensation available under the Scheme Rules, on the premise that if a figure is not claimed for then it cannot be

awarded. However, the Independent Adjudicator's role is to give an objective assessment of the value of a Home Buyer's claim based on the evidence that has been provided. Therefore, it is inevitable that every year the amount awarded by Adjudicators is significantly lower than the amount claimed by Home Buyers.

The average amount of compensation awarded by Adjudicators in cases where the Home Buyer's claim was successful was £626.78, which is a significant decrease from the 2021 average of £1238.44, but more in line with the 2020 average of £913.49.

It is interesting to note that while the average sum claimed by Home Buyers in 2022 decreased by 15%, the average amount awarded decreased much more sharply by 49%. This indicates not only that Home Buyers are making more realistic and considered claims for monetary compensation, but also that Adjudicators are finding that Home Buyers are entitled to a more modest amount of compensation.

There were 20 decisions made by Adjudicators in 2022 in which the Home Buyer was awarded more than £1000. This is a comparable proportion (13%) of decisions in which Home Buyers were awarded more than £1000 to 2021 (14%). Of the 20 higher-value awards in 2022, just one award was for the maximum financial limit of £15,000, while the next-highest value award was for £7,500. This represents a lower share of high-value awards than in 2021, where three awards were for £15,000 while a further three award were for sums exceeding £10,000. At the other end of the scale, 38 decisions awarded the Home Buyer £250.00 or less. This is a lower proportion of low-value awards (25%) than in the previous year (39%), but is comparable to the 28% of low-value awards in 2020. Much of this data indicates that 2021 was an outlier in terms of the amounts claimed and awarded, and that the data for 2022 is more akin to 2020.

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:

	2022	2021	2020	2019	2018	2017
Decision accepted	132	103	92	65	61	42
Decision rejected	51	69	61	39	21	27
No response	64	66	40	39	13	8

In 2022, 53% of decisions were accepted by Home Buyers, which is a notable increase from the 43% of decisions accepted in 2021. This means that, for the first time since 2018, a majority of decisions were accepted by Home Buyers. This may be due to the increased rate of success for Home Buyers (from 59% in 2021 to 62% in 2022), but it confirms that, despite the amounts of compensation awarded by Adjudicators going down in 2022, this has not resulted in fewer decisions being accepted.

28 decisions were made in 2022 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 26 of these cases the Home Buyers chose not to accept a decision in which they were awarded £500.00 or less.

There were two instances in 2022 where Home Buyers rejected decisions in which they were awarded compensation of more than £1000.00, in contrast to 2021 where this did not happen at all. One Home Buyer rejected an award for £1500.00, while another rejected an award for £2105.00. In both cases the Home Buyers had asked for compensation and actions far in excess of those awarded by the Adjudicators.

There were eight decisions in 2022 which were accepted by the Home Buyer where the Adjudicator had found their claims to be entirely unsuccessful. This happened in five cases in 2021 and two cases in 2020, and this upward trend is positive. This shows that there are an increasing number of Home Buyers who, despite being entirely unsuccessful in their claims, are satisfied with the outcome that the Adjudicator has reached.

Service statistics

Of the 247 cases from 2022 that went to adjudication, 181 of them (representing a total of 73%) were completed within 8 weeks of the date on which the Home Buyer's application was received. This is a decrease from the 90% of decisions completed within eight weeks in 2021, but the same as the rate of 73% reported for 2020.

It is important to note that, of the 66 cases from 2022 which took more than eight weeks to complete, 50 of them were finalised within one further week after the expiry of the eight-week timescale, with all but one of the remaining 16 cases being resolved within an additional week thereafter, due to the Adjudicator granting one or both of the parties an extension of time to make submissions or provide evidence. One case was issued three weeks after the eight-week timescale due to protracted IT problems associated with the transmission of a high amount of documentation to a Home Builder, which necessitated all case documentation being sent by post.

It must also be highlighted that none of the cases dealt with during 2022 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.

Case Studies

Summary versions of every case that has been dealt with by the Scheme and which have gone all the way to an Adjudicator's decision can be found at the following link:
<https://consumercode.co.uk/home-buyers/how-are-complaints-dealt-with/adjudication-case-summaries/>

Scheme Rules

The latest version of the Scheme Rules (11 November 2021 edition) can be accessed here: <https://www.cedr.com/wp-content/uploads/2021/11/CCHB-IDRS-Scheme-Rules-Nov-2021.pdf>