

The Consumer Code for Home Builders Independent Dispute Resolution Scheme

Annual Report: 2023



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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 providers¹; NHBC, Premier Guarantee, LABC Warranty and Checkmate, 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 fifth edition, which came into force in January 2024.

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 claim².

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 unconditionally 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 homes that at the time of reservation by the first buyer are covered by the New Homes Quality Board Code (NHQC). Builders operating under the NHQC must still comply with Code requirements for new homes reserved prior to activation with the NHQC.

² These financial limits are based on the fourth edition of the Code, which applied to all cases dealt with by the IDRS in 2023. However, these limits were updated (to £50,000 and £2000 respectively) in the fifth edition of the Code, which went live on 1 January 2024. Cases to which the new limits apply will be covered in the annual report for 2024.

Facts and figures

Caseload

This report covers the period 1 January 2023 to 31 December 2023. During this period, a total of 356 cases were referred to IDRS, an increase of 9.9% on the amount of cases (324) referred to the scheme in 2022.

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 2023, representing 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 Alternative Dispute Resolution (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 2023 there were 210,320 new homes completed in the UK. This is a 2.8% increase from the figures for the year ending 2022, albeit a more modest increase than in previous years. It is important to note that just 0.2% of new homes are therefore subject to a dispute brought to IDRS, showing that an extremely small proportion of disputes in relation to the Code arise in the new homes sector.

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

	2023	2022	2021	2020	2019
Cases found fully in favour of the Home Buyer	64 (18%)	60 (19%)	82 (27%)	81 (33%)	36 (20%)
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)	110 (31%)	92 (28%)	58 (19%)	34 (14%)	45 (25%)
Cases found fully in favour of the Home Builder	110 (31%)	95 (29%)	98 (32%)	78 (31%)	62 (35%)
Cases settled	30 (8%)	44 (14%)	39 (13%)	30 (12%)	27 (15%)
Cases withdrawn or deemed invalid	42 (12%)	33 (10%)	30 (9%)	25 (10%)	8 (5%)
TOTAL CASES	356	324	307	248	178

Case outcomes

2023 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 356 cases dealt with by the Scheme in 2023, 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 204 of them (representing 57% of cases). This is a slight decrease from the 60% of Home Buyers who obtained a positive outcome in the previous two years. Nonetheless, it confirms that a clear majority of Home Buyers continue to achieve a positive result from their engagement with the Scheme.

When considering the 284 cases that went all the way to a final decision from an Adjudicator in 2023, Adjudicators found in favour of the Home Buyer (either fully or partly) in 61% of decisions. This is comparable to the 62% of decisions found in Home Buyers' favour in 2022, showing that Adjudicators agree with some or all of Home Buyers' claims in a majority of cases.

As noted in the previous report, the proportion of cases in which Home Buyers have been entirely successful in their claims – meaning the Adjudicator gave the Home Buyer everything they asked for – has fallen from 24% to 22.5% of adjudicated cases. Meanwhile, the proportion of cases in which Adjudicators found partly in favour of the Home Buyer and partly in favour of the Home Builder has increased to its highest proportion in the last five years. This suggests that, while Home Buyers tend to be successful in their claims, that success is more modest than it has been in previous years. As mentioned in the previous report, this could be due to Home Builders defending claims more successfully, as well as Home Buyers requesting more remedies (including a higher amount of compensation) than is justified by the evidence.

Settlements

Rule 4.3 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 2023, 30 cases (representing 8% of all cases dealt with) were settled between the parties prior to the appointment of an Adjudicator. This is a decrease from the 14% of cases that were settled in 2022, and in fact represents the lowest proportion of settled cases for the last five years. Prior to 2019, very few settlements were reached between the parties prior to the appointment of an Adjudicator, and in 2023 it appears that a similarly low number were achieved. However, settlements can only be achieved where the parties are prepared to consider them. Where a complaint has reached deadlock because the parties are unable to reach an amicable resolution, then it is often difficult to achieve a high rate of settlement when a claim has been brought to IDRS.

Withdrawn and invalid cases

A total of 42 cases were withdrawn or were deemed to be invalid (ie. outside the scope of what the Scheme can deal with) in 2023, representing 12% of all applications to the

Scheme. This proportion represents a slight increase from 2022, when 10% of all applications to the Scheme were withdrawn or were deemed invalid.

Of the 42 cases that did not proceed to adjudication:

- 15 were withdrawn because the subject matter of the dispute referred to the Scheme was outside the scope of the Code;
- 10 were withdrawn at the Home Buyer's request before they had completed the adjudication process;
- Seven were withdrawn as the Home Buyer had not made an initial complaint to the Home Builder before applying to the Scheme;
- Seven 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 2.2.9);
- Three were withdrawn as the Home Buyer had applied to the Scheme more than 12 months after the date on which their complaint with the Home Builder reached deadlock (which is prohibited by Scheme Rule 2.2.4).

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 reservation fee (under Code Section 2.6) has remained low in 2023 at just 7% of disputes, comparable with 2022's rate of 8% of disputes. This contrasts with the higher rate of 14% of disputes in both 2020 and 2019, and shows that there are proportionally fewer cases coming to IDRS about this type of dispute.

Of the 174 decisions in which an adjudicator found the Home Builder to have breached the Code during 2023, the most common sections of the Code found to have been breached were:

- 5.1: a total of 45 decisions (26%) identified a breach of the Home Builder's duty to provide appropriate procedures for handling calls and complaints;
- 4.1: a total of 33 decisions (19%) identified a breach of the Home Builder's duty to provide an accessible after-sales service;
- 1.5: a total of 17 decisions (10%) identified a breach of the Home Builder's duty to ensure that sales and advertising material is clear and truthful;
- 2.1: a total of 16 decisions (9%) 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.

Money claims

In 2023, the Home Buyers who applied to the Scheme claimed a total combined sum of £2,125,279.01. This sum represents an increase of 25% in the total amount claimed by

Home Buyers in 2022. Similarly, the average sum claimed by Home Buyers in 2023 was £6833.69, which is an increase of 31% on the average of £5233.27 claimed in 2022. Given the increase of almost 10% in the numbers of cases coming to the IDRS, an increase in the total amount claimed is to be expected. However, it also appears that Home Buyers have been more demanding in terms of their financial claims than previously.

	TOTAL SUM CLAIMED	TOTAL SUM AWARDED
2023	£2,125,279.01	£108,087.38
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 2023 was £108,087.38. This is an increase of 13% in the total amount awarded when compared with 2022, but this is likely to be the result of an increase of almost 10% in case numbers combined with a very similar percentage increase in the average amount claimed by Home Buyers in 2023. It is also important to highlight that only 5.1% of the total sum claimed by Home Buyers was actually awarded by Adjudicators in 2023, which is lower than the proportion of 6% of the total sum claimed that was awarded in 2022 and 8% in 2021. This shows that Home Buyers continue to claim financial sums that far exceed what they are likely to obtain through the IDRS.

Many Home Buyers claim the maximum amount of compensation available under the Scheme Rules (i.e. £15,000 prior to 1 January 2024, and £50,000 thereafter), on the premise that if money is not claimed then it cannot be awarded. In 2023, 90 Home Buyers claimed the maximum compensation available of £15,000.00, representing 25% of all claims. Nonetheless, 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 put forward by the parties. 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 £851.08, which is a 35% increase on the 2022 average of £626.78, but lower than the 2021 average of £1238.44.

From the data above, it is clear that during 2022 the sums claimed and awarded by the IDRS were markedly lower. On all measures of total and average sums claimed and awarded, 2022 represented a dip which has now bounced back in 2023.

There were 18 decisions made by Adjudicators in 2023 in which the Home Buyer was awarded more than £1000. This is a lower proportion (10%) of decisions in which Home Buyers were awarded more than £1000 in 2022 (13%). Of the 18 higher-value awards in 2023, just one award was for the maximum financial limit of £15,000, with an additional two cases receiving awards over £10,000. In 2022, there was also just one award for the maximum of £15,000, although the next-highest value award was for £7500. Therefore,

2023 had some higher-value awards than the previous year. At the other end of the scale, 56 decisions awarded the Home Buyer £250.00 or less. This is a higher proportion of low-value awards (32%) than in the previous year (25%). This data shows that Home Buyers received more awards at both the higher and lower ends of the scale than in 2022.

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:

	2023	2022	2021	2020	2019	2018
Decision accepted	135	132	103	92	65	61
Decision rejected	81	51	69	61	39	21
No response	68	64	66	40	39	13

In 2023, 48% of decisions were accepted by Home Buyers, which is a decrease from the 53% of decisions accepted in 2022. However, it is above the 43% of decisions accepted in 2021. Given that the proportion of decisions in favour of Home Buyers dropped slightly from 62% in 2022 to 61% in 2023, combined with the higher proportion of low-value awards (i.e. £250 or less), it is perhaps to be expected that fewer decisions were accepted in 2023.

48 decisions were made in 2023 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. This is an increase from the 28 decisions in which this occurred in 2022. 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 43 of these cases the Home Buyers chose not to accept a decision in which they were awarded £500.00 or less.

There was one case in 2023 in which the Home Buyer rejected a decision in which they had been awarded a significant sum of money, being £1500.00. As noted in previous reports where this has happened, the Home Buyer had asked for compensation of £15,000.00, far in excess of that awarded by the Adjudicator, which likely lay behind the reasoning for their rejection of the Adjudicator's decision.

There were nine decisions in 2023 which were accepted by Home Buyers where Adjudicators had found their claims to be entirely unsuccessful. This happened in eight cases in 2022, five cases in 2021 and two cases in 2020, and this continued 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 and the reasoning provided.

Service statistics

Of the 284 cases from 2023 that went to adjudication, 126 of them (representing a total of 44%) were completed within 8 weeks of the date on which the Home Buyer's application was sent to the Home Builder for their response. This is a decrease from the 73% of decisions completed within eight weeks in 2022. However, it is important to note that within this eight-week period the Home Builder has three weeks in which to prepare a response to the claim, and this can also include making one or more objections to the claim falling within the scope of the IDRS and one or more attempts at reaching a settlement prior to adjudication, all of which can extend this timeframe. Following receipt of a Home Builder's response, the Home Buyer then has a further week to provide comments on that response. The reduced number of cases completed within 8 weeks of the date on which the Home Buyer's application was sent to the Home Builder appears to have been caused by an increased length of time for Home Builders to respond to claims and to make objections.

It must also be highlighted that none of the cases dealt with during 2023 exceeded the statutory timeframe of 90 calendar days from the date on which the complete complaint file is received to the date on which the Adjudicator's decision is produced, which is 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 (1 January 2024 edition) can be accessed here:
<https://www.cedr.com/wp-content/uploads/2023/12/CCHB-Consumer-Code-for-Home-Builders-Service-Rules-January-2024.pdf>