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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 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 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 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.

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 & FIGURES

Caseload

This report covers the period 1 January 2020 to 31 December 2020. During this period, a total of 248 cases were referred to IDRS, an increase of 39% on the amount of cases (178) referred to the scheme in 2019.

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 substantial increase in case numbers in 2020, which has been the year in which the highest ever amount of cases were referred to the Scheme, surpassing 200 cases for the first time. 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. It is also of potential significance that the effects of the Covid-19 pandemic, notably the UK-wide lockdowns during 2020, may have led to an increase in the volumes of cases being referred to the Scheme.

In the context of the increasing case numbers, it is interesting to note that, during the 12-month period to June 2020, a total of 147,180 new homes were completed in England. This is a decrease of 15% from the previous year. Therefore, despite the fact that fewer homes have been built in the past year, many more disputes have arisen which have come to IDRS. It is important to note that just 0.001% of new homes end up 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:

	2020		2019		2018		2017		2016	
	QTY	%	QTY	%	QTY	%	QTY	%	QTY	%
Number of cases found fully in favour of the Home Buyer	81	33%	36	20%	7	6%	5	6%	7	6%
Number of cases found partly in favour of the Home Buyer *	34	14%	45	25%	65	60%	47	52%	59	58%
Number of cases found fully in favour of the Home Builder	78	31%	62	35%	23	23%	25	28%	20	20%
Number of cases settled	30	12%	27	15%	5	5%	5	6%	8	8%
Number of cases withdrawn from the Scheme or deemed invalid	25	10%	8	5%	6	6%	7	8%	8	8%
TOTAL CASES	248		178		106		89		102	

* where not all of the Home Buyer's claims were proved or they were awarded less than they claimed.

Case outcomes

2020 has continued to see a clear majority of Home Buyers being successful in their claims against Home Builders, a trend that has been noted for many years. Of the 248 cases dealt with by the Scheme in 2020, 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 143 of them (representing 58% of cases). This is comparable to the 60% of Home Buyers who obtained a positive outcome in 2019. This confirms that the majority of Home Buyers consistently achieve a positive result from their engagement with the Scheme.

When considering the 193 cases that went all the way to a final decision from an Adjudicator in 2020, Adjudicators found in favour of the Home Buyer (either fully or partly) in 60% of decisions. This is an increase from the 57% of decisions found in Home Buyers' favour in 2019.

Furthermore, 81 of the 193 decisions (representing 42% of decisions) made by Adjudicators in 2020 succeeded in full for the Home Buyer - meaning the Adjudicator gave the Home Buyer everything they asked for. This is the highest proportion of decisions made fully in the Home Buyer's favour since the Scheme began.

In 2020, more decisions than ever before have been found either wholly in the Home Buyer's favour or wholly in the Home Builder's favour, with a comparatively smaller proportion of decisions being found partly in the Home Buyer's favour than in previous years.

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 2020, 30 cases (representing 12% of all cases dealt with) were settled between the parties prior to the appointment of an Adjudicator. Although this is a decrease from the 15% of cases that were settled in 2019, it represents a continuing strong trend towards settling more cases than in previous years. Until and including 2018, the amount of settlements per year was always in single figures. The amount of settlements reached in 2020 is encouraging, as it shows that parties are much 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 25 cases were withdrawn or were deemed to be invalid (ie. outside the scope of what the Scheme can deal with) in 2020, representing 10% of all applications to the Scheme. This proportion is an increase from 2019, when 5% of all applications to the Scheme were withdrawn or were deemed invalid. Of the 25 cases that did not proceed to adjudication:

- Thirteen were withdrawn because the subject matter of the dispute referred to the Scheme was outside the scope of the Code;
- Five were withdrawn at the Home Buyer's request before they had completed the adjudication process;
- Four were withdrawn as the Home Buyer had not made an initial complaint to the Home Builder before applying to the Scheme;
- Two were 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 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.

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), 1.5 (ie. clear and truthful sales and advertising material), 5.1 (ie. procedures for handling calls and complaints), 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.

The proportion of disputes about Home Builders' failure to reimburse a registration fee (under Code Section 2.6) is comparable to the previous year, with 34 cases of this type dealt with in 2020 and 25 cases in 2019.

Of the 115 decisions in which an adjudicator found the Home Builder to have breached the Code during 2020, the most common sections of the Code found to have been breached were:

- 5.1: a total of 62 decisions (54%) identified a breach of the Home Builder's duty to provide appropriate procedures for handling calls and complaints;
- 2.1: a total of 37 decisions (32%) 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;
- 4.1: a total of 22 decisions (19%) identified a breach of the Home Builder's duty to provide an accessible after-sales service;
- 1.5: a total of 15 decisions (13%) identified a breach of the Home Builder's duty to ensure that sales and advertising material is clear and truthful;
- 2.6: a total of 13 decisions (11%) identified a breach of the Home Builder's duty to reimburse the Home Buyer's reservation fee upon the cancellation of the reservation agreement.

Money claims

In 2020, the Home Buyers who applied to the Scheme claimed a total combined sum of £1,446,070.49. This sum is an increase of 36% on the total amount claimed by Home Buyers in 2019, and is the highest total sum of money claimed within a calendar year since the Scheme began operating. This increase is of course an expected reflection of the increase of 39% in the total amount of cases dealt with by the Scheme in 2020 when compared with the previous year.

The average sum claimed by Home Buyers in 2020 was £8310.75. This is an increase of 3.6% on the average of £8020.42 claimed in 2020, indicating that although the total sum claimed has increased, this does not reflect a significant increase in the sum being claimed per case.

		TOTAL SUM CLAIMED	TOTAL SUM AWARDED
	2020	£1,446,070.49	£105,051.46
	2019	£1,066,715.23	£79,963.37
	2018	£694,540.02	£64,984.63
	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

The total amount awarded to Home Buyers by Adjudicators in 2020 was £105,051.46. This increase of 31% in the total amount awarded when compared with the previous year is broadly in line with the increase of 36% in the total sum claimed by Home Buyers. Just 7.3% of the total sum claimed by Home Buyers was actually awarded by Adjudicators, which is almost identical to the 7.5% noted in 2019. This continues to indicate that Home Buyers have unrealistic expectations of the financial awards that they are likely to obtain by using the Scheme.

Many Home Buyers claim the maximum amount of compensation available under the rules of the Scheme, 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 £913.49, which is comparable to both 2019's average of £987.20 and 2018's average of £902.56. It is interesting to note that while the average sum claimed by Home Buyers in 2020 increased by 3.6%, the average amount awarded decreased by 7.5%. Again, this may indicate that Home Buyers have unrealistic expectations of what they can obtain by using the Scheme.

There were 21 decisions made by Adjudicators in 2020 in which the Home Buyer was awarded more than £1000. This is the same proportion (18%) of decisions as in 2019. Of the 21 higher-value awards in 2019, the highest value award was for £14,280, and two other awards were for £10,000 or more. This is a reduction in the amount of very high awards from 2019, when one award was for the maximum financial limit of £15,000, and one was for £14,500. At the other end of the scale, 32 decisions awarded the Home Buyer £250.00 or less. This is a higher proportion of low-value awards (28%) than in the previous year (21%), continuing the trend in recent years of Home Buyers receiving a higher number of low-value financial awards through the Scheme.

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:

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Decision accepted	92	65	61	42	51	42	19	8	6	7	1
Decision rejected	619	39	21	27	17	6	11	6	5	3	0
No response	40	39	13	8	18	3	2	5	3	2	0

In 2020, 48% of decisions were accepted by Home Buyers, which is a slight increase from the 45% of decisions accepted in 2019. This is most likely due to the increase in decisions found in Home Buyers' favour from 57% to 60% between 2019 and 2020. As is the case every year, the majority of Home Buyers whose claims are successful accept the Adjudicator's decision, while those who are unsuccessful either reject the decision or provide no response to it.

24 cases were dealt with in 2020 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 15 of these cases the Home Buyers chose not to accept a decision in which they were awarded £500.00 or less while they had claimed over £10,000.00.

There was one instance in 2020 in which a Home Buyer rejected a decision in which they were awarded compensation of more than £1000.00. This decision awarded the Home Buyer £1070.96, although the Home Buyer had claimed the maximum amount of £15,000.00 which may explain why the decision was not accepted.

There were two decisions in 2020 which were accepted by the Home Buyer where the Adjudicator had found their claims to be entirely unsuccessful. This happened in four cases in 2019 and one case in 2018.

Service statistics

Of the 193 cases from 2020 that went to adjudication, 140 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 80% of decisions completed within eight weeks in 2019, but comparable to the 75% figure from 2018.

As in the previous report, the statistics here are strongly influenced by the introduction in October 2018 of a new process by which the appointed Adjudicator prepares and issues a 'Proposed Decision' containing their preliminary conclusions on the dispute, which both parties have 10 working days to provide their comments on, and then the Adjudicator has a further five working days to finalise and issue their Final Decision. This process has added an average of three weeks to the case process, and means that the time required for a case to be fully completed is now longer than in previous years.

Of the 53 cases from 2020 which took more than eight weeks to complete, 31 cases were late due to the Adjudicator granting one or both of the parties an extension of time to make submissions or provide evidence. Such time extensions were more prevalent in 2020 than in previous years, owing to the Covid-19 pandemic and its associated impact on the public at large. A further 22 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.

It is important to note that 47 cases were finalised within a further one week after the expiry of the eight-week timescale, with the remaining six cases all being resolved within an additional week thereafter. This means that all cases were resolved within 10 weeks of the date on which the Home Buyer's application was received.

It must also be highlighted that none of the cases dealt with during 2018 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 (1 March 2021 edition) can be accessed here:

<https://www.cedr.com/wp-content/uploads/2021/03/CCHBIDRS-Rules-March-2021.pdf>



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