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# Independent Consumer Adjudication Scheme ARK Insurance Group

## Service Rules

These Rules apply to application forms received by Centre for Effective Dispute Resolution (CEDR) on or after 1 November 2019 and should be read in conjunction with CEDR's 'Adjudication Guidance for Customers'.

If you require this document in an alternative format, please contact us for further details.

## 1 Introduction

- 1.1 The Code has been developed by Ark Insurance Group for New Homes Limited to ensure that best practice is followed by Developers (as defined in The Code) in respect of the marketing, selling and purchasing of new homes and to set expected standards for after sales customer care service. The Code outlines a complaints procedure that must be followed should a customer register a complaint against a Developer.
- 1.2 These Rules apply to disputes between two parties, a customer (a Buyer) and a company (a Developer) which is a registered Member of the Code for New Homes (a Code Member).
- 1.3 Eligible customers are entitled to request access to CEDR's Independent Consumer Adjudication Scheme ("the Scheme") by following the procedure set out in the Code. They must first have registered their complaint with the company and provided evidence of how they have made all reasonable efforts to resolve it directly with them.

## 2 General

- 2.1 Decisions under the Scheme are taken by independent adjudicators appointed by CEDR to decide on the outcome of disputes dealt with under the Scheme. Decisions by adjudicators on eligible cases are only binding on the customer and the company when the customer accepts the decision. Acceptance by a customer must take place within 30 working days of the decision being issued for the decision to become binding.
- 2.2 Applications to the Scheme will be accepted from customers or their nominated representatives.

- 2.3 If a customer wishes to nominate a representative to act on their behalf, the customer must provide signed authority on their application to the Scheme confirming that they agree to the representative acting on their behalf.
- 2.4 A customer can use the Scheme if they have not been able to settle a dispute in accordance with the procedure set out in the Code.
- 2.5 An adjudicator appointed under these Rules will make a decision on the dispute by considering the information received from the customer and the company.
- 2.6 Any decision made by an adjudicator appointed under these Rules applies only to the specific dispute referred. Under no circumstances do decisions made by adjudicators set precedents.

### 3 Scope of the Scheme

- 3.1 The Scheme can be used to settle disputes between a customer and a company that fall within the scope of The Code.
- 3.2 The Scheme cannot be used to settle disputes which fall into one or more of the following categories:
  - 3.2.1 Claims which are brought by someone who does not fall within the definition of a 'customer' under Rule 1.2 above;
  - 3.2.2 Claims which are made against a company that is not a registered Code Member;
  - 3.2.3 Cases where the customer has not complained to the company at all, or where the timescales and procedures set out in the Code have not been met;
  - 3.2.4 Claims which contain no aspect that falls within the scope of the Code;
  - 3.2.5 Claims made for a total sum exceeding 25% of the purchase price of the new home, subject to a cap of £50,000.00 (inclusive of VAT (if any)) (this sum includes any claims for compensation, refunds, credits and/or waivers);
  - 3.2.6 A dispute which, in the opinion of CEDR, is more appropriately dealt with by a court, regulatory body, or other formal process;
  - 3.2.7 A dispute that is considered by CEDR to be frivolous and/or vexatious;
  - 3.2.8 A dispute that is the subject of an existing or previous valid application made under the Scheme;

- 3.2.9 A dispute which has been or is the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such proceedings or alternative procedure have been abandoned, stayed or suspended).
- 3.3 Putting a dispute through the Scheme does not remove the customer's duty to pay the company any other amounts which are due and which are not disputed.

#### 4 Applying to use the Scheme

- 4.1 To apply to use the Scheme a customer must send to CEDR a completed application form, which can be submitted by post or online. Application forms are available from CEDR and on the Scheme website at [www.cedr.com/consumer](http://www.cedr.com/consumer). If a customer requires any special assistance with their application they can contact CEDR and reasonable adjustments will be made in line with the CEDR reasonable adjustments policy, which can be found on the CEDR website.
- 4.2 On the application form, the customer must request at least one of the following remedies from the company:
- 4.2.1 An apology;
  - 4.2.2 A product or service;
  - 4.2.3 Something to be done about a bill or bills;
  - 4.2.4 Some practical action to be taken;
  - 4.2.5 A payment which must total no more than 25% of the purchase price of the new home, subject to a maximum award of £50,000.00 (including VAT). This sum includes any claims for compensation, refunds, credits and/or waivers;
  - 4.2.6 A payment which must total no more than £1,000.00 (including VAT) for any distress and/or inconvenience that the customer has suffered as a result of the matters complained of;
  - 4.2.7 Referral of the company to the Disciplinary and Sanctions Panel of The Code.

The customer is encouraged to clarify the remedies sought in as much detail as possible, but a failure to do this will not render an application invalid. If, in the opinion of CEDR, any aspect of a customer's application is unclear, CEDR will make one attempt to contact the customer to obtain clarification. This will not affect the case process or the associated timescales.



4.3 The claim should include details of:

- 4.3.1 The service provided by the company which the dispute is about;
- 4.3.2 The precise issues which are in dispute;
- 4.3.3 The steps already taken to attempt to reach a resolution with the company in accordance with the Code;
- 4.3.4 The reasons for requesting the remedy or remedies sought; and
- 4.3.5 The reasons for the amount of any compensation claimed.

4.4 The customer should supply any essential supporting documents with their application.

## 5 The adjudication procedure

5.1 The Claim

- 5.1.1 When an application form is received along with any supporting documents, CEDR will make an initial assessment within 15 working days as to whether or not the dispute falls within the scope of the Scheme. This assessment will be made by reference to Rules 3.1 and 3.2 above.
- 5.1.2 When an application is processed by CEDR, a case reference number will be allocated and communicated to the parties in correspondence from CEDR. Both the customer and the company must quote this case reference number in all subsequent correspondence with CEDR regarding the case.
- 5.1.3 If CEDR considers the application to be valid, it will notify the company by sending an electronic copy of the customer's application form and any supporting documents to the company ("the notification").
- 5.1.4 If CEDR sends the notification to the company before 4.00pm, the company is deemed to have received it on that day. If CEDR sends the notification on or after 4.00pm, the company is deemed to have received it on the following working day.
- 5.1.5 Once the notification is deemed to have been received by the company, the company has 10 working days in which to either:
  - 5.1.5.1 Confirm to CEDR that it is prepared to give the customer all of the remedies requested on the CEDR application form or that it has agreed an alternative

settlement by negotiation directly with the customer (this period cannot be extended); or

5.1.5.2 Send CEDR its written defence to the customer's claim (in exceptional circumstances, CEDR may, at its own discretion, grant the company an extension of the deadline for providing a defence by up to a further five working days).

5.1.6 If, before the expiry of the timescale at Rule 5.1.5 above, the customer contacts CEDR to add further evidence or submissions to their application, the company will be sent the extra documentation and the timescale at Rule 5.1.5 for the company to reach a settlement or file a defence will be restarted.

## 5.2 Settlement

5.2.1 If the company agrees to give the customer all of the remedies they have asked for on their CEDR application form (ie. a settlement in full), the company must notify CEDR of this within the timescale set out at Rule 5.1.5 above. When CEDR receives notification from the company that a settlement in full has been reached, CEDR will close the case. The company must provide the customer with all of the remedies requested on the CEDR application form within 20 working days of CEDR being notified of the settlement in full, unless an alternative timescale has been agreed between the parties.

5.2.2 If the company reaches any other resolution with the customer to settle the dispute (ie. a negotiated settlement), the company must notify CEDR of this within the timescale set out at Rule 5.1.5 above. At the same time, the company must provide CEDR with evidence of the offer made to the customer and evidence confirming that the customer has accepted that offer in exchange for the closure of their CEDR case. When CEDR receives evidence of the negotiated settlement from the company, CEDR will close the case. If evidence of the negotiated settlement is not provided by the company, the case will remain active. The company must provide the customer with the remedies agreed as part of the negotiated settlement within 20 working days of CEDR being notified of the negotiated settlement, unless an alternative timescale has been agreed between the parties.

5.2.3 If the company has not provided the customer with all of the remedies under the settlement in full or negotiated settlement within the relevant timescale, the customer must advise CEDR within 20 working days of the expiry of the relevant timescale (or the case will remain closed). At this time, the customer must advise CEDR which of the

remedies have not been provided. Upon the customer advising CEDR that one or more remedies remain outstanding, CEDR will re-open the case and will give the company five working days to either provide a defence to the customer's claim or to provide evidence showing that the remedies required under the settlement were provided within the relevant timescale. If the company provides evidence showing that the remedies required under the settlement were provided to the customer within the relevant timescale, the case will be withdrawn from the Scheme. If the company does not provide evidence showing that the remedies required under the settlement were provided to the customer within the relevant timescale, or the adjudicator does not accept such evidence, the case will proceed in line with Rule 5.4 below.

### 5.3 Objections to eligibility

- 5.3.1 Within the timescale at Rule 5.1.5 above, the company can object to CEDR dealing with the application if it considers the dispute to be entirely outside the scope of the Scheme.
- 5.3.2 In making an objection, the company must contact CEDR and specify one or more reasons under Rule 3.2 above as to why the application is outside the scope of the Scheme. The evidential burden rests with the company to prove why the application falls outside the scope of the Scheme.
- 5.3.3 A CEDR adjudicator will examine the company's objection and decide whether or not the objection is upheld. This decision will be communicated to the company within two working days of the objection being received by CEDR.
- 5.3.4 If the company's objection is not upheld by the adjudicator, the case will remain active, and an additional two working days will be added to the timeframe under Rule 5.1.5 for the company to file a defence or settle the dispute. This time extension can be applied only once per case, and no time extensions will be given to any subsequent unsuccessful objections made by the company. If an adjudicator is subsequently appointed to determine the dispute, all objection correspondence will be forwarded to that adjudicator to be taken into account when reaching a final decision in the case.
- 5.3.5 If the company's objection is upheld by the adjudicator, CEDR will write to the customer to advise them of this and the reasons given for the objection. The customer will then have a period of five working days to contact CEDR and provide reasons why the case is valid. Upon receipt of the customer's response, a CEDR adjudicator will decide whether or not to reinstate the case within two working days. The evidential burden at this stage

rests with the customer to prove why the application falls within the scope of the Scheme.

5.3.6 In the event that the customer responds to CEDR within five working days after receipt of correspondence from CEDR regarding the objection being upheld, and the adjudicator decides that the case falls within the scope of the Scheme, the case will be reinstated and the company will be given 10 working days to reach a settlement with the customer or to file a defence with CEDR.

5.3.7 If the customer makes no contact with CEDR within five working days of the company's objection being upheld, or the adjudicator does not consider that the case falls within the scope of the Scheme following receipt of the customer's response, the case will be withdrawn from the Scheme.

#### 5.4 The Defence

5.4.1 When CEDR receives the company's defence, a copy of it will be sent to the customer.

5.4.2 Upon receipt of the defence, CEDR will formally appoint an adjudicator to the case.

5.4.3 If the company does not submit a defence to CEDR within the time allowed, the adjudicator will have the discretion to proceed to make a decision considering only the information provided by the customer.

5.4.4 The customer has a period of five working days from the date on which the company's defence is sent to them to provide any comments on the defence that they see fit. The customer is not required to submit comments on the company's defence. Any comments that are submitted must be restricted only to points raised in the company's defence and must not introduce any new matters or any new evidence. Any new matters or new evidence submitted by the customer at this stage will be disregarded by the adjudicator.

5.4.5 If the customer makes any comments on the company's response, CEDR will send a copy of those comments to the company for their information only.

#### 5.5 The Decision

5.5.1 The adjudicator will prepare a written proposed conclusion to the dispute alongside reasons for that proposed conclusion ("the Proposed Decision"). The adjudicator will reach their decision by considering the submissions and evidence received from the customer and the company. The Proposed Decision will be set out in writing and will include full reasons for the outcome reached. CEDR aims for Proposed Decisions to be issued within 30 working days of an application being made to the Scheme.

- 5.5.2 Once CEDR receives the Proposed Decision from the adjudicator, CEDR will send copies of the Proposed Decision to the customer and the company simultaneously, and will invite their comments thereon within 10 working days. Any comments must be restricted to points that have already been raised in the case and must not introduce any new complaints.
- 5.5.3 Any comments that the customer and/or company have on the Proposed Decision will be forwarded to the adjudicator, who may or may not take such comments into account. The adjudicator has the power to make any amendments he or she considers appropriate to the Proposed Decision before finalising it as the Decision. The adjudicator will usually issue the Decision within 5 working days of receipt of the parties' comments on the Proposed Decision.
- 5.5.4 The adjudicator's Decision will only become binding on the customer and the company if the customer advises CEDR that they accept the Decision in full. The customer has 30 working days from the date on which CEDR sent the Decision to the parties to notify CEDR of their acceptance.
- 5.5.5 If, during the time period specified at Rule 5.5.4 above, the customer advises CEDR that they reject the Decision, or that they do not accept the Decision in full, or if the customer fails to contact CEDR during the time period, the adjudicator's Decision will not be binding on either party. The Decision cannot be accepted at a later date.
- 5.5.6 The adjudicator's Decision is final, and cannot be reviewed or appealed under any circumstances.

## 5.6 Compliance with the Decision

- 5.6.1 If the adjudicator's decision directs the company to take an action in relation to the customer, and the customer accepts the decision, the company must complete the necessary action(s) within 20 working days from the date on which CEDR notifies the company of the customer's acceptance of the decision.
- 5.6.2 If the company is for any reason unable to complete the necessary action(s) within the timescale at Rule 5.6.1 above, the company must advise the customer and CEDR why that is before the above timescale expires. At the same time, the company must specify a substitute date by which the necessary action(s) will be completed.
- 5.6.3 If the customer informs CEDR that the company has not completed the required actions



within the timescale set out at Rule 5.6.1 or any substitute timescale advised by the company under Rule 5.6.2, CEDR will contact the company to request compliance with the decision. In the event that the company does not respond or fails to comply with the decision within five working days, the matter will be escalated to a senior member of staff at the company.

5.6.4 In the event that the company's failure to respond and/or failure to comply persists, CEDR will notify Ark Insurance Group, who may take appropriate measures including referring the matter to its Disciplinary and Sanctions Panel in accordance with the Code.

5.6.5 CEDR is unable to enforce compliance with decisions, nor is CEDR able to apply penalties or sanctions to a company for failing to comply with an adjudicator's decision.

## 6 Powers of the adjudicator

6.1 The adjudicator will be fair and unbiased at all times and will make a decision that is in line with the Code, the relevant law, any relevant codes of practice, and contracts between the company and the customer. The adjudicator will act quickly and efficiently.

6.2 The adjudicator has the power to do any of the following:

6.2.1 Change any of the time limits set out in these Rules;

6.2.2 Request further evidence or documents from the customer or the company, and set time limits in which the customer and the company must provide such evidence or documents;

6.2.3 Proceed with the adjudication if either the customer or the company does not keep to these Rules or any instruction or direction made pursuant to these Rules;

6.2.4 Consult any relevant evidence not presented by the parties (but the adjudicator must tell the customer and the company about such evidence and allow them to provide comments);

6.2.5 Receive and take account of any evidence the adjudicator thinks is relevant;

6.2.6 End the adjudication if, in the adjudicator's opinion, the entirety of the claim falls outside the scope of the Scheme (there is no appeal if the adjudicator decides to end the adjudication);

6.2.7 End the adjudication if the customer and the company settle their dispute before a

decision is made;

6.2.8 Determine whether or not the company has complied with their decision, in the event that a dispute arises between the parties regarding compliance.

6.3 If the adjudicator finds that the customer's claim succeeds in full or in part, he or she can direct the company to:

6.3.1 Provide the customer with an apology;

6.3.2 Provide the customer with a product or service;

6.3.3 Take some practical action;

6.3.4 Do something about one or more of the customer's bills;

6.3.5 Make a payment to the customer, the total value of which shall not exceed £50,000.00 (including VAT);

6.3.6 Make a payment to the customer, which must total no more than £1,000.00 (including VAT), for any distress and/or inconvenience that the customer has suffered as a result of the matters complained of;

6.3.7 Be referred to the Disciplinary and Sanctions Panel of The Code.

6.4 In exceptional circumstances, the adjudicator may award more than has been claimed by the customer.

6.5 If the adjudicator finds that the customer's claim does not succeed, the company will not be directed to take any action(s).

## 7 Costs

7.1 The adjudication fees must be paid by the parties in advance. These fees will cover the adjudicator's Fees and CEDR's administration costs and are non-refundable.

7.2 Customers are charged a fee of £100.00 plus VAT (in accordance with Schedule 1 of these Rules) for their use of the Scheme in accordance with the Code. This fee will be payable at the time that the customer applies to the Scheme.

7.3 The company will be charged an adjudication fee (in accordance with Schedule 1 of these Rules) which is payable upon submission of their Defence. The company cannot take legal action against a customer to recover any fees paid to CEDR.



7.4 The customer and the company must pay their own costs of preparing their cases. By using the Scheme, each party agrees not to take any legal action against the other to recover such costs.

## 8 Confidentiality

8.1 No party involved in the adjudication will give details of the adjudication or the decision (including the reasons for it) to any person or organisation not directly involved in the adjudication, unless this is necessary in order to enforce the decision. For the avoidance of doubt, Ark Insurance Group shall be entitled to be informed as to the details of the adjudication, including but not limited to the decision.

8.2 By using the Scheme, the parties agree that CEDR may gather, retain and publish statistics and other information in relation to cases whilst preserving the anonymity of the parties.

## 9 Other rules

9.1 CEDR will appoint a substitute adjudicator if the adjudicator originally appointed is unable to deal with the dispute for any reason. CEDR will inform the parties if such an appointment is made.

9.2 With the exception of amending a decision following any minor error, neither CEDR nor the adjudicator will enter into correspondence relating to any decision.

9.3 If the customer or company has a complaint about the quality of service provided in the course of the administration of a CEDR case, the complaint should be made through the published complaints procedure, copies of which are available from the CEDR website. The complaints procedure cannot be used to challenge the content or outcome of an adjudicator's decision, the decision process adopted by an adjudicator, or the content of these Rules.

9.4 Please do not provide any original documents if you wish to use them in the future. We do not keep any documents on our premises and all documents sent to us will be disposed of securely.

9.5 Any reference in these Rules to working days by definition excludes Saturdays, Sundays and bank/public holidays celebrated in England and Wales.

9.6 The Scheme, including these Rules, may be updated from time to time. Disputes will be settled according to the Rules in force at the time the customer applies to use the Scheme.



**Schedule 1** – Adjudication Fees

1 The adjudication fee of £600.00 plus VAT applies and is payable by the parties as set out below:

a) All eligible claims under the rules:

- Customer (the Buyer): £100.00 plus VAT
- Company (the Developer): £500.00 plus VAT