



# Independent Adjudication Service Ark Insurance Group

## Service Rules

These Rules apply to application forms received by Centre for Effective Dispute Resolution (CEDR) on or after **1 September 2023** and should be read in conjunction with the guidance that can be found on the CEDR website.

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

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## 1. Introduction

- 1.1 The Ark New Home Buyers Consumer Code (“the Code”) has been developed to ensure that best practice is followed in respect of the marketing, selling and purchasing of new homes and to set expected standards for after-sales customer care service. The Independent Adjudication Service (“the Service”) is administered by Centre for Effective Dispute Resolution (“CEDR”). The Service provides an informal and independent way of resolving disputes between two parties, a “Home Buyer” and a “Code Member” as defined in the Code, together known as “the Parties”. This is done by way of an adjudication process (“the Adjudication”).
- 1.2 To use the Service, the Home Buyer must follow the complaints procedure set out in the Code. The Home Buyer must have been provided with a notice by Ark Insurance Group Limited signposting them to CEDR (“the Referral Notice”) in order to access the Service. The Home Buyer must then send a completed application form (“the Application”) to CEDR setting out their complaint. The Service is free of charge to Home Buyers.
- 1.3 Where applicable under these Rules, an independent adjudicator will be appointed by CEDR from its Adjudication Panel to decide the outcome of the complaint (“the Adjudicator”). The Adjudicator’s decision (as set out at Rule 4.6) is only binding on the Parties if the Home Buyer accepts it within 30 working days of the decision being issued.
- 1.4 The Service can only be used to resolve complaints where the Home Buyer alleges that the Code Member has failed to comply with the requirements of the Code and, as a result, the Home Buyer believes they have suffered financial loss or any other disadvantage.
- 1.5 Applications to the Service will be accepted from Home Buyers or their appointed representatives. A representative can only be appointed if:
  - 1.5.1 the Home Buyer provides, with their application to the Service, signed authority confirming that they agree to the representative acting on their behalf; or

- 1.5.2 the representative provides, with the application to the Service, a valid legal document giving them authority to act on the Home Buyer's behalf (e.g. a valid will or lasting power of attorney).
- 1.6 An adjudicator appointed under these Rules will make a decision by considering the information received from the Parties, the Code, and those laws, regulations, codes of practice, contracts and guidance documents that an adjudicator considers to be relevant.
- 1.7 Any decision made by an adjudicator applies only to the specific complaint referred to the Service. Under no circumstances do decisions made by adjudicators set precedents for other complaints.

## **2. What the Service covers**

- 2.1 The Service can be used to resolve complaints between a Home Buyer and a Code Member where the Home Buyer alleges that the Code Member has failed to comply with one or more requirements of the Code.

N.B. All issues in relation to a particular new home that are in dispute between the Parties (and that the Home Buyer wishes to pursue) at the time that the claim is made to the Service must be raised by the Home Buyer in their Application.

- 2.2 The Service cannot consider complaints, or parts of complaints, which fall into one or more of the following categories:
- 2.2.1 applications made to the Service by (or, in the case of nominated representatives under Rule 1.5, on behalf of) someone who does not fall within the definition of a 'Home Buyer' in the Code;
  - 2.2.2 complaints made against a company that is not a 'Code Member' within the definition set out in the Code;
  - 2.2.3 complaints where the Home Buyer has not complained to the Code Member at all, or where the timescales and procedures set out in the Code have not been met;

- 2.2.4 applications received by the Service where the Home Buyer has not received a Referral Notice, or applications received by the Service more than six months from the date on which the Home Buyer received the Referral Notice, unless the Parties agree to extend this timeframe. For notices sent by post, in the absence of evidence of an alternative date of receipt, this timeframe will begin three working days after the date on which the notice was sent to the Home Buyer;
- 2.2.5 complaints that contain no aspect relating to the issues set out at Rule 2.1;
- 2.2.6 applications where a total sum has been claimed that exceeds 25% of the purchase price of the new home, subject to a maximum of £50,000.00 (inclusive of VAT (if any)) (this sum includes any claims for compensation, refunds, credits and/or waivers);
- 2.2.7 complaints, which in the opinion of CEDR, are more appropriately dealt with by a court, regulatory body, or other formal process;
- 2.2.8 complaints that CEDR considers to be frivolous and/or vexatious;
- 2.2.9 complaints that are the subject of either:
  - 2.2.9.1 an existing application made by the Home Buyer; or
  - 2.2.9.2 a previous valid application that reached a resolution through the Service, whether by settlement or by adjudication, by the Home Buyer;
- 2.2.10 complaints that have been, or are, 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);
- 2.2.11 complaints about the fairness of the Code Member's general commercial practices and/or commercial decisions;
- 2.2.12 complaints about one or more of the following matters:
  - 2.2.12.1 damage to property that cannot be considered snagging under the Code;
  - 2.2.12.2 fraud or other criminal matters;
  - 2.2.12.3 data protection;
  - 2.2.12.4 personal injury;
  - 2.2.12.5 discrimination;

- 2.2.13 complaints that have been agreed by the Parties to be settled before the date on which the Application was sent to the Code Member (in line with Rule 4.1.3), unless CEDR considers that the terms of that settlement have not been fulfilled within a reasonable time;
  - 2.2.14 where, in the opinion of CEDR, the details of the complaint set out in the Application materially differ from the details that were provided by the Home Buyer when following the complaints procedure set out in Rule 1.2;
  - 2.2.15 applications where the Home Buyer has not requested any of the remedies set out at Rule 3.2;
  - 2.2.16 complaints that would seriously impair the effective operation of CEDR if considered.
- 2.3 If the whole complaint falls outside the scope of the Service, it will be withdrawn from the Service. If part of the complaint falls outside the scope of the Service but part is in scope, only the part that is in scope will proceed (unless it is not practicable to do so).
- 2.4 Any complaint, or part of a complaint, that falls outside the scope of the Service can proceed if the Code Member gives its express agreement for this to happen.
- 2.5 Making an application to the Service does not take away the Home Buyer's duty to pay the Code Member any amounts billed or charged.

### **3. Applying to use the Service**

- 3.1 To apply to use the Service, a Home Buyer must send to CEDR a completed application form, which can be done by post or online. Application forms are available from CEDR and on the Service website at [www.cedr.com/consumer/homes/new-homes/aig/](http://www.cedr.com/consumer/homes/new-homes/aig/). The Home Buyer must have been provided with a Referral Notice, and this should be included alongside a completed application form. If a Home Buyer requires any special assistance with their application they can contact CEDR and reasonable adjustments will be made in line with CEDR's reasonable adjustments policy, which can be found [here](#).

3.2 In the Application, the Home Buyer must request at least one of the following remedies from the Code Member (the requested remedies must be able to be directed by an adjudicator in line with Rule 5.4, and must only affect and/or apply to the Home Buyer):

3.2.1 an apology;

3.2.2 a product or service;

3.2.3 some practical action to be taken by the Code Member;

3.2.4 a payment that must total no more than 25% of the purchase price of the new home, subject to a maximum of £50,000.00 (including VAT (if any)) (this sum includes any claims for compensation, refunds, credits and/or waivers);

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

3.2.6 referral of the Code Member to the Disciplinary and Sanctions Panel of the Code.

N.B.

- Irrespective of the remedies requested by the Home Buyer in line with Rule 3.2, the Adjudicator's powers to direct remedies (set out under Rules 5.4.2 to 5.4.5 (inclusive)) are subject to an overall cumulative monetary limit of 25% of the purchase price of the new home, capped at £50,000.00 (inclusive of VAT (if any)), across all cases involving the same parties and the same new home. For clarity, this overall cumulative monetary limit on the Adjudicator's powers to direct remedies includes all sums awarded as compensation, refunds, credits and/or waivers, as well as the costs incurred by the Code Member in providing any products or services directed, and in carrying out any practical action directed, such as repair works.

3.3 The Application should include details of:

3.3.1 the service provided by the Code Member that the complaint is about;

3.3.2 the background to the complaint;

3.3.3 the precise issues that are in dispute;

- 3.3.4 the steps already taken to attempt to reach a resolution with the Code Member;
- 3.3.5 the reasons for requesting the remedy or remedies asked for; and
- 3.3.6 the reasons for the amount of any money requested, including any amount requested for distress and/or inconvenience.

3.4 The Home Buyer should provide with the Application any relevant documents and/or evidence that supports their complaint. It is the Parties' responsibility to provide the documents and/or evidence that they wish to rely on. CEDR only has access to information and evidence that the Parties have specifically provided in connection with the complaint.

3.5 The Home Buyer is encouraged to clarify the remedy or remedies requested in as much detail as possible, but a failure to do this will not make the Application invalid unless Rule 2.2.15 applies.

#### **4. The Adjudication process**

##### **4.1 The Application**

- 4.1.1 When the Application is received along with any supporting documents, CEDR will make an initial assessment within 15 working days as to whether or not the Application appears to meet the requirements of Rules 2 and 3 (NB. This initial assessment does not prevent the complaint from being withdrawn from the Service at a later date in line with the objection process (at Rule 4.4) or an adjudicator's powers (at Rule 5.2)).
- 4.1.2 When the Application is processed by CEDR, a case reference number will be given to the Parties. The Parties must quote this case reference number in all communication with CEDR regarding the complaint.
- 4.1.3 If the Application is initially assessed as appearing to meet the requirements of Rules 2 and 3, CEDR will notify the Code Member by sending an electronic copy of the Application, and any supporting documents that the Home Buyer has provided, to the Code Member ("the Notification").

- 4.1.4 If CEDR sends the Notification to the Code Member before 4.00pm, the Code Member is considered to have received it on that day. If CEDR sends the Notification at or after 4.00pm, the Code Member is considered to have received it on the following working day.
- 4.1.5 Once the Notification is considered to have been received by the Code Member, the Code Member has 15 working days to take one of the following actions (in exceptional circumstances, CEDR may, at its own discretion, grant the Code Member an extension to this deadline):
- 4.1.5.1 notify CEDR, in line with Rule 4.2, that one or more remedies, or an aspect of those remedies, that the Home Buyer has requested does not meet the requirements of Rule 3.2; or
  - 4.1.5.2 confirm to CEDR that it wishes to settle the complaint in line with Rule 4.3; or
  - 4.1.5.3 object, in line with Rule 4.4, to the complaint being considered by CEDR to fall within the scope of the Service; or
  - 4.1.5.4 submit to CEDR its written response to the Home Buyer's complaint ("the Response") in line with Rule 4.5.
- 4.1.6 Once the Application is submitted to CEDR, an amendment to any aspect of it, or addition of further evidence or submissions, can only be requested by the Home Buyer if none of the following apply:
- 4.1.6.1 the complaint has been resolved as settled in line with Rule 4.3;
  - 4.1.6.2 the complaint has been withdrawn in line with Rule 4.4 because it is out of scope;
  - 4.1.6.3 the Code Member has submitted the Response to the complaint in line with Rule 4.5.

If the Home Buyer requests to amend any aspect of the Application or to add further evidence or submissions, they must contact CEDR with the amendments and/or additions and give reasons why they should be taken into account. It will be at the sole discretion of CEDR whether or not to allow this. If it is allowed, the Code Member will be sent the updated information and the timeframe for the Code Member to take one of the actions in Rule 4.1.5 will be restarted.



## 4.2 Remedy Review

- 4.2.1 Within the timeframe at Rule 4.1.5, the Code Member can notify CEDR that one or more remedies, or an aspect of those remedies, that the Home Buyer has requested does not meet the requirements of Rule 3.2 (a “Remedy Review” request).
- 4.2.2 To make a Remedy Review request, the Code Member must contact CEDR and specify the reason(s) as to why one or more remedies, or an aspect of those remedies, that the Home Buyer has requested requires a Remedy Review.
- 4.2.3 An adjudicator will consider the Code Member’s Remedy Review request and decide whether or not they agree that the Code Member has shown that one or more remedies, or an aspect of those remedies, that the Home Buyer has requested does not meet the requirements of Rule 3.2. CEDR will aim to communicate the outcome of the Remedy Review to the Parties within two working days of the Remedy Review being requested.
- 4.2.4 When a request for a Remedy Review is made, the timeframe at Rule 4.1.5 will be put on hold until the outcome of the Remedy Review is communicated to the Parties by CEDR.
- 4.2.5 If an adjudicator does not agree the Code Member has shown that one or more remedies, or an aspect of those remedies, that the Home Buyer has requested does not meet the requirements of Rule 3.2, the complaint will remain active and an additional two working days will be added to the remaining timeframe for the Code Member to take one of the actions in Rule 4.1.5. This time extension can only be applied once, and no time extensions will be given to any subsequent rejected Remedy Review requests.
- 4.2.6 If an adjudicator agrees that the Code Member has shown that one or more remedies, or an aspect of those remedies, that the Home Buyer has requested does not meet the requirements of Rule 3.2, CEDR will notify the Home Buyer. The Home Buyer will be given 10 working days to change their requested remedies so that they meet the requirements of Rule 3.2 if they wish to.
- 4.2.7 At the expiry of the 10 working days, CEDR will communicate to the Code Member any changes that the Home Buyer has made to their requested

remedies and the timeframe will be restarted for the Code Member to take one of the actions in Rule 4.1.5.

4.2.8 If an adjudicator is subsequently appointed to make a decision on the complaint, all details of the Remedy Review will be given to that adjudicator.

### 4.3 Settlements

4.3.1 If the Code Member agrees to give the Home Buyer all the remedies requested (subject to Rule 4.3.2) in the Application (a “Settlement in Full”), the Code Member must notify CEDR of this within the timeframe set out at Rule 4.1.5.

4.3.2 A Settlement in Full is generally reached where the Code Member agrees to provide all of the remedies requested in the Application. However, in the event that the Home Buyer has requested one or more remedies (or an aspect of those remedies) that do not meet the requirements of Rule 3.2, the Code Member need only agree to provide those remedies that meet the requirements of Rule 3.2, provided that the Remedy Review process set out at Rule 4.2 has been followed.

4.3.3 When CEDR receives notification from the Code Member that a Settlement in Full has been reached, CEDR will close the complaint as resolved. In order to fulfil the settlement, the Code Member must provide the Home Buyer with all these remedies within 20 working days of CEDR closing the complaint as resolved, unless an alternative timeframe has been agreed between the Parties.

4.3.4 If the Home Buyer considers that the settlement offered by the Code Member under Rule 4.3.1 is not a Settlement in Full, the Home Buyer must notify CEDR within 20 working days of the date on which CEDR closed the complaint as resolved (in exceptional circumstances, CEDR will allow such a notification outside of this timeframe). When notifying CEDR of this, the Home Buyer must detail which of the remedies have not been offered. CEDR will then consider whether or not a Settlement in Full has been offered by the Code Member. If CEDR considers that a Settlement in Full has been offered by the Code Member, the complaint will remain closed as resolved. If CEDR considers that the settlement offered by the Code Member is not a Settlement in Full, the

timeframe will be restarted for the Code Member to take one of the actions in Rule 4.1.5.

- 4.3.5 If the Code Member reaches any other resolution with the Home Buyer to settle the complaint (a “Negotiated Settlement”), the Code Member must notify CEDR of this within the timeframe set out at Rule 4.1.5. At the same time, the Code Member must provide CEDR with evidence of the offer made to the Home Buyer and evidence confirming that the Home Buyer has accepted that offer in full and final settlement, and therefore closure, of their complaint. When CEDR receives evidence of the Negotiated Settlement from the Code Member, CEDR will close the complaint as resolved. If evidence of the Negotiated Settlement is not provided, the complaint will remain active. In order to fulfil the settlement, the Code Member must provide the Home Buyer with all the agreed remedies within 20 working days of CEDR being notified of the Negotiated Settlement, unless an alternative timeframe has been agreed between the Parties.
- 4.3.6 If the Home Buyer considers that the Code Member has not fulfilled the Settlement in Full or Negotiated Settlement, the Home Buyer must notify CEDR within 20 working days of the expiry of the relevant timeframe (in exceptional circumstances, CEDR will allow such a notification outside of this timeframe). When notifying CEDR of this, the Home Buyer must detail which of the remedies have not been provided. Upon the Home Buyer notifying CEDR that one or more remedies remain outstanding, CEDR will consider whether or not the settlement appears to have been fulfilled. If CEDR considers that the settlement does not appear to have been fulfilled, it will re-open the complaint and give the Code Member five working days to either show that the remedies required under the settlement have been provided, or object to the complaint being considered by CEDR (in line with Rule 4.4), or to submit the Response (in line with Rule 4.5). If the Code Member provides sufficient evidence showing that the settlement has been fulfilled, the complaint will be closed as resolved. If the Code Member does not provide sufficient evidence showing that the settlement has been fulfilled, the complaint will proceed in line with Rule 4.6.

#### 4.4 Objections

- 4.4.1 Within the timeframe at Rule 4.1.5, the Code Member can object to the complaint being considered by CEDR to fall within the scope of the Service. For clarity, the Code Member can object if it considers the complaint to fall partly or entirely outside the scope of the Service.
- 4.4.2 In making an objection, the Code Member must contact CEDR and specify one or more reasons in Rule 2.2 as to why part or all of the complaint falls outside the scope of the Service. The Code Member must show why part or all of the complaint falls outside the scope of the Service.
- 4.4.3 An adjudicator will consider the objection and decide whether or not they agree that the Code Member has shown that part or all of the complaint falls outside the scope of the Service. CEDR will aim to communicate this to the Parties within two working days of the objection being received.
- 4.4.4 When an objection is made, the timeframe at Rule 4.1.5 will be put on hold until the outcome of the objection is communicated to the Parties by CEDR.
- 4.4.5 If an adjudicator does not agree that the Code Member has shown that any part of the complaint falls outside the scope of the Service, the objection will be rejected. If the objection is rejected, the complaint will remain active and an additional two working days will be added to the remaining timeframe in Rule 4.1.5 for the Code Member to request a Remedy Review, to settle the complaint, to make a further objection or to submit the Response to CEDR. This time extension can only be applied once, and no time extensions will be given to any subsequent rejected objections. If an adjudicator is subsequently appointed to make a decision on the complaint, all details of the objection will be given to that adjudicator.
- 4.4.6 If an adjudicator agrees that the Code Member has shown that all of the complaint falls outside the scope of the Service, the objection will be upheld. If the objection is upheld, the Home Buyer will be given 10 working days to provide reasons and/or further evidence as to why part or all of the complaint falls within the scope of the Service, if they wish to do so. An adjudicator will then consider whether or not to reject the objection (NB. The adjudicator may agree to only part of the complaint continuing). CEDR will aim to communicate this to the Parties within two working days. At this point, it is for the Home

Buyer to show why part or all of the complaint falls within the scope of the Service.

4.4.7 If an adjudicator agrees that the Code Member has shown that part of the complaint falls outside the scope of the Service, the objection will be upheld in relation to that part only. If the objection is upheld in relation to that part, the Home Buyer will be given 10 working days to provide reasons and/or further evidence as to why part or all of the complaint falls within the scope of the Service, if they wish to do so. An adjudicator will then consider whether or not to reject the objection (NB. The adjudicator may agree to only part of the complaint continuing). CEDR will aim to communicate this to the Parties within two working days. At this point, it is for the Home Buyer to show why part or all of the complaint falls within the scope of the Service.

4.4.8 Following the completion of the relevant process under either Rule 4.4.6 or Rule 4.4.7, if an adjudicator decides that part or all of the complaint falls within the scope of the Service, the objection will be rejected and the timeframe will be restarted for the Code Member to take one of the actions in Rule 4.1.5. If an adjudicator decides that no part of the complaint falls within the scope of the Service, the complaint will be withdrawn from the Service. The decision to withdraw the complaint from the Service is final and cannot be reviewed or appealed.

#### 4.5 The Response

4.5.1 When CEDR receives the Response, a copy of it will be sent to the Home Buyer.

4.5.2 If the Code Member does not submit the Response to CEDR within the timeframe set out at Rule 4.1.5 (including any relevant variations to this timeframe made in Rules 4.2, 4.3 and 4.4), the Adjudicator will have the power to make a decision considering only the information provided by the Home Buyer as set out at Rule 5.2.3.

4.5.3 The Home Buyer has five working days from the date on which the Response is sent to them to provide any comments on the Response (in exceptional circumstances, CEDR may, at its own discretion, grant the Home Buyer an extension of the deadline for providing comments on the Response). The Home Buyer does not have to provide comments on the Response. If the Home Buyer

does provide comments on the Response, those comments can only relate to points raised in the Response and must not introduce any new matters. Any new matters put forward by the Home Buyer at this stage will not be taken into account by the Adjudicator when making their decision.

- 4.5.4 If the Home Buyer makes any comments on the Response, CEDR will send a copy of those comments to the Code Member for their information only.
- 4.5.5 Upon receipt of the Home Buyer's comments on the Response, or the expiry of the timeframe at Rule 4.5.3, CEDR will appoint the Adjudicator to decide the outcome of the complaint.
- 4.5.6 Any further comments, information and/or evidence received from the Parties after this point will be sent to the Adjudicator. However, the Adjudicator will have the power to decide whether or not to take some or all of the comments, information and/or evidence into account (as set out at Rule 5.2). If the Adjudicator decides to take such further comments, information and/or evidence into account, these will be shared with the other party for their information only.

#### 4.6 **The Proposed and Final Decisions**

- 4.6.1 The Adjudicator appointed under these Rules will produce a written proposed decision on the complaint ("the Proposed Decision") by considering the information received from the Parties, the Code and those laws, regulations, codes of practice, contracts and guidance documents that the Adjudicator considers to be relevant. The Proposed Decision will generally be issued within 30 working days of the Application being initially assessed as falling within the scope of the Service in line with Rule 4.1.1.
- 4.6.2 The Proposed Decision will be set out in writing and will include full reasons for the outcome reached.
- 4.6.3 Once CEDR receives the Proposed Decision from the Adjudicator, it will be sent to the Parties simultaneously.
- 4.6.4 The Parties have 10 working days from the date on which the Proposed Decision is sent to them to provide any comments on the Proposed Decision (in exceptional circumstances, CEDR may, at its own discretion, grant the Parties an extension of the deadline for providing comments on the Proposed

Decision). The Parties do not have to provide comments on the Proposed Decision. If one or both of the Parties do provide comments on the Proposed Decision, those comments can only relate to points raised in the complaint and must not introduce any new matters. Any new matters put forward by the Parties at this stage will not be taken into account by the Adjudicator.

- 4.6.5 If one or both of the Parties make any comments on the Proposed Decision, CEDR will send a copy of those comments to the other party for their information only.
- 4.6.6 Any comments on the Proposed Decision provided by the Parties will be forwarded to the Adjudicator, who will consider such comments (subject to the restrictions set out at Rule 4.6.4). The Adjudicator has the power to make any amendments they consider appropriate to the Proposed Decision before producing a written final decision on the complaint (“the Final Decision”). The Final Decision will generally be issued within five working days of the expiry of the timeframe set out at Rule 4.6.4.
- 4.6.7 Any further comments, information and/or evidence received from the Parties after the expiry of the timeframe set out at Rule 4.6.4, but before the Final Decision is issued, will be sent to the Adjudicator. However, the Adjudicator will have the power to decide whether or not to take some or all of the comments, information and/or evidence into account (as set out at Rule 5.2). If the Adjudicator decides to take such further comments, information and/or evidence into account, these will be shared with the other party for their information only.
- 4.6.8 In exceptional circumstances, the Adjudicator may issue a further Proposed Decision after receiving comments from one or more of the Parties. This further Proposed Decision will override any previous Proposed Decision. In these circumstances, the same process set out under Rules 4.6.2 to 4.6.7 (inclusive) will be followed.
- 4.6.9 Once CEDR receives the Final Decision from the Adjudicator, it will be sent to the Parties simultaneously.
- 4.6.10 The Home Buyer has 30 working days from the date on which the Final Decision is sent to them to notify CEDR whether they accept the Final Decision in full or reject it. Final Decisions cannot be accepted in part.

- 4.6.11 If, during the timeframe set out at Rule 4.6.10, the Home Buyer notifies CEDR that they accept the Final Decision in full, the Final Decision will become binding on the Parties. CEDR will notify the Code Member of this.
- 4.6.12 If, during the timeframe set out at Rule 4.6.10, the Home Buyer notifies CEDR that they reject the Final Decision or do not accept the Final Decision in full, or the Home Buyer does not otherwise clearly notify CEDR that they accept the Final Decision in full, the Final Decision will not be binding on either of the Parties. CEDR will notify the Code Member of this.
- 4.6.13 The Final Decision cannot be accepted once the timeframe set out at Rule 4.6.10 has expired, unless the Code Member gives its express agreement for this to happen.
- 4.6.14 The Adjudicator's Final Decision is final. It cannot be reviewed or appealed. Any further comments, information and/or evidence received from the Parties after the Final Decision has been issued will not be considered.

#### 4.7 **Compliance with the Final Decision**

- 4.7.1 If the Final Decision directs the Code Member to take any of the actions set out at Rule 5.4, and the Home Buyer accepts the Final Decision in line with Rule 4.6.11, the Code Member must comply with the Final Decision by completing the necessary action(s) within 20 working days from the date on which CEDR notifies the Code Member of the Home Buyer's acceptance of the Final Decision.
- 4.7.2 If the Code Member is, for any reason, unable to comply with the Final Decision within the timeframe in Rule 4.7.1, the Code Member must notify CEDR why this is before the timeframe expires. At the same time, the Code Member must provide a substitute date by which it will comply with the Final Decision.
- 4.7.3 If the Home Buyer considers that the Code Member has not complied with the Final Decision within the timeframe set out at Rule 4.7.1, or any substitute timeframe in Rule 4.7.2, the Home Buyer must notify CEDR. When notifying CEDR of this, the Home Buyer must detail which of the remedies have not been provided. Upon the Home Buyer notifying CEDR that one or more remedies remain outstanding, CEDR will consider whether or not the Final Decision appears to have been complied with. If CEDR considers that the Final Decision



appears to have been complied with, the complaint will be closed as resolved. If CEDR considers that the Final Decision does not appear to have been complied with, CEDR will contact the Code Member to request that it complies within 10 working days.

- 4.7.4 In the event that a dispute arises between the Parties regarding compliance at any point, the Adjudicator will determine whether the Code Member has complied with the Final Decision. If the Adjudicator determines that the Code Member has complied with the Final Decision, the complaint will be closed as resolved. If the Adjudicator determines that the Code Member has not complied with the Final Decision, CEDR will contact the Code Member to request that it complies within 10 working days.
- 4.7.5 In the event that the Code Member does not comply with the Final Decision within 10 working days as set out at Rule 4.7.3 (or the 10 working days under Rule 4.7.4 if a dispute arises between the Parties regarding compliance), the matter will be escalated to a senior member of staff of the Code Member.
- 4.7.6 In the event that non-compliance with the Final Decision continues, CEDR will report the non-compliance to Ark Insurance Group Limited.
- 4.7.7 CEDR is unable to enforce compliance with the Final Decision, nor is CEDR able to apply penalties or sanctions to the Code Member for non-compliance with the Final Decision.

## **5. Powers of the adjudicator**

- 5.1 Adjudicators will be fair and unbiased throughout the Adjudication process and will make decisions that are based on the information received from the Parties, the Code and those laws, regulations, codes of practice, contracts and guidance documents that an adjudicator considers to be relevant. Adjudicators will act as quickly and efficiently as possible, considering complaints in a fair and reasonable way.
- 5.2 An adjudicator has the power to do any of the following:
  - 5.2.1 change any of the time limits set out in these Rules;
  - 5.2.2 request further comments and/or evidence from the Parties, and set time limits within which the Parties must provide such comments and/or evidence;

- 5.2.3 proceed with the Adjudication process if either of the Parties does not keep to these Rules, or any instruction or direction made under these Rules;
  - 5.2.4 consult any evidence not provided by either of the Parties, which the adjudicator considers to be necessary to make a decision. If this power is used, the Parties must be given an opportunity to provide comments on this evidence (NB. This power does not apply to evidence that the Parties ought reasonably to be aware of or have access to; the law, any legal or regulatory requirements; and, any other published industry guidance);
  - 5.2.5 take into account any evidence provided by either of the Parties that the adjudicator considers to be relevant to matters already raised in the complaint. If this power is used, the party that did not provide the evidence must be given an opportunity to comment on it;
  - 5.2.6 withdraw a complaint from the Service if, in their opinion, the entirety of the complaint falls outside the scope of the Service (this decision cannot be reviewed or appealed);
  - 5.2.7 close a complaint as resolved if the Parties settle their complaint before the Proposed Decision is made;
  - 5.2.8 determine whether or not the Code Member has fulfilled a settlement, in the event that a dispute arises between the Parties regarding its fulfilment;
  - 5.2.9 determine whether or not the Code Member has complied with the Final Decision, in the event that a dispute arises between the Parties regarding compliance.
- 5.3 Neither of the Parties can challenge an adjudicator's use or non-use of the powers set out at Rule 5.2.
- 5.4 If the Adjudicator finds that the Home Buyer's complaint succeeds in full or in part, they can direct the Code Member to:
- 5.4.1 provide the Home Buyer with a written apology (NB. the Adjudicator cannot direct an apology from a specific individual or team);
  - 5.4.2 provide the Home Buyer with one or more of the Code Member's available products and/or services;

- 5.4.3 take an action that they consider the Code Member can reasonably carry out;
- 5.4.4 pay the Home Buyer a sum of money that does not exceed 25% of the purchase price of the new home, subject to a maximum of £50,000.00 (including VAT (if any)) (this sum includes any claims for compensation, refunds, credits and/or waivers);
- 5.4.5 pay the Home Buyer a sum of money that does not exceed £1,000.00 (including VAT) for any distress and/or inconvenience that the Home Buyer has suffered as a result of the matters complained of;
- 5.4.6 be referred to the Disciplinary and Sanctions Panel of the Code.

NB.

- The remedies directed by the Adjudicator must only affect and/or apply to the Home Buyer.
- The Adjudicator will not be able to direct the Code Member to take an action in breach of applicable laws and/or regulations.
- The Adjudicator will not be able to direct the Code Member to take an action that affects its commercial practices and/or commercial decisions.
- The maximum amount that can be awarded under Rule 5.4.4 includes any and all sums awarded under Rules 5.4.4 and 5.4.5.
- The Adjudicator's powers under Rules 5.4.2 to 5.4.5 (inclusive) are subject to an overall cumulative monetary limit of 25% of the purchase price of the new home, capped at £50,000.00 (inclusive of VAT (if any)), across all cases involving the same parties and the same new home. For clarity, this overall cumulative monetary limit on the Adjudicator's powers to direct remedies includes all sums awarded as compensation, refunds, credits and/or waivers, as well as the costs incurred by the Code Member in providing any products or services directed, and in carrying out any action directed, such as repair works.

5.5 The Adjudicator may award less than has been previously offered to the Home Buyer by the Code Member. In exceptional circumstances, the Adjudicator may award more than has been requested by the Home Buyer.

5.6 If the Adjudicator finds that the Home Buyer's complaint does not succeed, they will not direct the Code Member to take any of the actions set out at Rule 5.4.

## **6. Costs**

6.1 The use of the Service is free of charge to the Home Buyer. The Code Member is therefore responsible for paying CEDR its fees. By using the Service, the Code Member agrees not to take legal action against the Home Buyer to recover fees paid to CEDR.

6.2 Neither of the Parties needs to use legal representation, although either can do so if they wish.

6.3 The Parties must pay their own costs of using the Service.

6.4 If either of the Parties incurs costs through the use of legal representation and/or using the Service, the Parties agree not to claim the costs of doing so from each other, whether through the Service or through legal action.

## **7. Confidentiality and data sharing**

7.1 Neither of the Parties will give details of the Adjudication, including the Proposed and Final Decisions, to any person or organisation not directly involved in the Adjudication, unless:

7.1.1 it is necessary in order to enforce the Final Decision;

7.1.2 it is necessary in order to seek advice on pursuing the complaint in an alternative forum;

7.1.3 it is necessary in order to seek redress from an alternative forum; or

7.1.4 CEDR gives its express written consent for such details to be shared.

7.2 By using the Service, the Parties agree that CEDR may gather, retain and publish statistics and other information in relation to complaints, whilst preserving the anonymity of the Parties.

7.3 The United Kingdom General Data Protection Regulation (UK GDPR) applies to the Service.

7.4 By using the Service, the Home Buyer gives their consent for any relevant personal data held by the Code Member to be shared with CEDR and the Adjudicator for the purposes of the Adjudication process. The Parties also agree that Ark Insurance Group Limited shall be entitled to be informed as to the details of the Adjudication, including but not limited to the Proposed and Final Decisions.

## **8. Other rules**

8.1 CEDR will appoint a substitute adjudicator if the Adjudicator originally appointed is unable to deal with the complaint for any reason. CEDR will inform the Parties if such an appointment is made.

8.2 With the exception of amending the Final Decision following any minor error and/or providing clarification on a specific point in the Final Decision, neither CEDR nor an adjudicator will enter into correspondence with the Parties relating to the Final Decision.

8.3 If either of the Parties has a complaint about the quality of service provided by CEDR, the complaint should be made through the published complaints procedure, copies of which are available on the CEDR website (NB. 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).

8.4 If either of the Parties sends physical documents and/or evidence to CEDR, digital copies will be made and the physical documents and/or evidence will be immediately and securely destroyed, unless the party requests their return (this request must be made at the same time as the physical documents and/or evidence are sent to CEDR). CEDR does not keep any physical documents and/or evidence on its premises.

8.5 Any reference in these Rules to 'working days' excludes Saturdays, Sundays and public holidays (i.e. bank holidays) celebrated in England and Wales. Any reference in these Rules to a specified time of day refers to United Kingdom local time.

8.6 The Service, including these Rules, may be updated from time to time. The Rules in force on the date CEDR receives the Home Buyer's Application will apply to the complaint.

