

# Independent Adjudication Service Ark Insurance Group

## Summary of Service Rules

This Summary has been created to provide a quick reference guide for users of the Service. It summarises the key rules in respect of the process and the scope of the Service, giving a simple overview of the core principles.

However, whilst this Summary is based upon the Service Rules, it is intended to act as guidance only. It is the Service Rules that apply to cases. In the event of a conflict of information between the Service Rules and this Summary, the Service Rules will prevail.

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#### 1. Introduction

- The Service provides an independent way of resolving disputes between Buyers and Developers in relation to the Ark New Home Buyers Consumer Code (the Code). This is done by way of an adjudication process.
- To use the Service, the Buyer must follow the procedures set out in the Code and be referred to CEDR by Ark Insurance Group Limited.

## 2. What the Service covers

- The Service can be used to resolve complaints where the Buyer says that the Developer has not complied with the requirements of the Code.
- The Service cannot consider complaints, or parts of complaints, which fall into one or more of the following categories:
  - applications made by someone who is not a 'Buyer';
  - applications made against a company that is not a 'Developer';
  - where the Buyer has not complained to the Developer at all, or where the timescales and procedures set out in the Code have not been met;
  - complaints received more than six months from the date the Buyer received the referral notice from Ark Insurance Group Limited;
  - complaints about something the Service does not cover;
  - applications where the total sum claimed is more than 25% of the purchase price of the new home (at a maximum of £50,000.00);
  - complaints that are more appropriately dealt with by a court, regulatory body, or other formal process;
  - complaints that CEDR thinks are frivolous and/or vexatious;
  - complaints that are the subject of either:
    - an existing, on-going application; or
    - a previous valid application that reached resolution;
  - complaints that have been, or are, the subject of court proceedings or an alternative independent procedure for the determination of disputes;
  - complaints about the fairness of the Developer's general commercial practices and/or commercial decisions;
  - complaints about:
    - damage to property that is not a snagging issue;
    - fraud or other criminal matters;
    - data protection;
    - personal injury;
    - discrimination;
  - complaints that have been agreed by the Parties to be settled;
  - where the details of the complaint in the application differ from the details that were provided by the Buyer when following the procedures of the Code;

- applications where the Buyer has not requested any valid remedies;
- complaints that would seriously impair the effective operation of CEDR.

### 3. Applying to use the Service

- The Buyer must send CEDR a completed application form and should provide a copy of their referral notice from Ark Insurance Group Limited alongside.
- In their application, the Buyer can request:
  - an apology;
  - a product or service;
  - some practical action to be taken by the Developer;
  - a payment of money, up to 25% of the purchase price of the new home (at a maximum of £50,000.00);
  - a payment of no more than £1,000.00 for any distress and/or inconvenience (which counts towards the overall limit above);
  - the Developer is referred to the Disciplinary and Sanctions Panel of the Code.
- Their application should give details of:
  - the service provided by the Developer that the complaint is about;
  - the background to the complaint;
  - the precise issues that are in dispute;
  - the steps already taken to attempt to reach a resolution with the Developer;
  - the reasons for requesting the remedy or remedies asked for; and
  - the reasons for the amount of any money requested, including any amount requested for distress and/or inconvenience.

### 4. The Adjudication process

#### ➤ The Application

- CEDR will make an initial assessment within 15 working days as to whether or not an application meets the requirements of the Service.
- Once accepted, the Developer has 15 working days to take one of the following actions:
  - tell CEDR that one or more remedies, or an aspect of those remedies, requested cannot be directed by an adjudicator (initiating a “Remedy Review”); or
  - settle the complaint; or
  - object to the complaint being considered as its outside the scope of the Service; or

- submit its response to the complaint.

#### ➤ **Remedy Review**

- To make a Remedy Review request, the Developer must contact CEDR and explain why one or more remedies cannot be directed by an adjudicator.
- An adjudicator will decide whether or not they agree that that one or more remedies cannot be directed.
- If an adjudicator does not agree that one or more remedies requested cannot be directed by an adjudicator, the complaint will continue.
- If an adjudicator agrees that one or more remedies cannot be directed by an adjudicator, CEDR will tell the Buyer. The Buyer will be given 10 working days to change their requested remedies if they wish to.

#### ➤ **Settlements**

- If the Developer agrees to give the Buyer all the remedies requested, the Developer must tell CEDR – this is a “Settlement in Full”.
- When CEDR receives notification that a Settlement in Full has been reached, CEDR will close the complaint. The Developer must provide the Buyer with all these remedies within 20 working days.
- If the Buyer believes that the settlement offered by the Developer is not a Settlement in Full, the Buyer must tell CEDR within 20 working days of the closure of the complaint. CEDR will then consider whether or not a Settlement in Full has been offered. If CEDR thinks that a Settlement in Full has been offered, the complaint will remain closed. If CEDR thinks that the settlement offered is not a Settlement in Full, the timeframe will be restarted for the Developer to respond.
- If the Developer reaches any other resolution with the Buyer this is a “Negotiated Settlement”. When CEDR receives evidence of the Negotiated Settlement, CEDR will close the complaint. The Developer must provide the Buyer with all the agreed remedies within 20 working days.
- If the Buyer feels that the Developer has not fulfilled the Settlement in Full or Negotiated Settlement, they must tell CEDR. CEDR will then consider whether or not the settlement has been fulfilled. If CEDR thinks that the settlement has been fulfilled, the complaint will remain closed. If CEDR thinks that the settlement has not been fulfilled, it will re-open the complaint and give the Developer five working days to either:
  - show that the remedies have been given; or

- to object to the complaint being considered; or
- to submit a response to the complaint
- If the Developer provides evidence showing that the settlement has been fulfilled, the complaint will be closed.

➤ **Objections**

- The Developer can object to the complaint being within the scope of the Service.
- An adjudicator will decide whether or not they agree that the Developer has shown that part or all of the complaint falls outside the scope of the Service.
- If an adjudicator does not agree that the Developer has shown that any part of the complaint falls outside the scope of the Service, the objection will be rejected and the complaint will remain active.
- If an adjudicator agrees that the Developer 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 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. An adjudicator will then consider this and make a final decision if the complaint can continue or not.
- The decision to withdraw the complaint from the Service is final and cannot be reviewed or appealed.

➤ **The Response**

- When CEDR receives the Response, a copy of it will be sent to the Buyer.
- If the Developer does not submit a Response, the adjudicator will have the power to make a decision considering only the information provided by the Buyer.
- The Buyer has five working days from the date on which the Response is sent to them to provide any comments. The Buyer does not have to provide comments. If the Buyer does provide comments, those comments can only relate to points raised in the Response and must not introduce any new matters.
- CEDR will then appoint the adjudicator to decide the outcome of the complaint.

➤ **The Proposed and Final Decisions**

- The adjudicator will produce a “Proposed Decision”. The Proposed Decision will generally be issued within 30 working days of the application being accepted.
- The Parties have 10 working days to provide any comments on the Proposed Decision. The Parties do not have to provide comments on the Proposed Decision. If 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 comments on the Proposed Decision will be forwarded to the adjudicator. 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 from when the comment stage has ended.
- The Final Decision will be sent to the Parties simultaneously.
- The Buyer then has 30 working days to tell CEDR whether they accept the Final Decision in full or reject it. Final Decisions cannot be accepted in part.
- If the Buyer tells CEDR that they accept the Final Decision in full, the Final Decision will become binding on the Parties.
- If the Buyer tells CEDR that they reject the Final Decision or do not accept the Final Decision in full, the Final Decision will not be binding on either of the Parties.
- The adjudicator’s Final Decision cannot be reviewed or appealed.

#### ➤ **Compliance with the Final Decision**

- If the accepted Final Decision directs the Developer to take any of the actions, the Developer must take these actions.
- If the Buyer feels that the Developer has not complied with the Final Decision, the Buyer must tell CEDR. The Buyer must detail which of the remedies have not been provided. CEDR will then consider whether or not the Final Decision has been complied with. If CEDR thinks that the Final Decision has been complied with, the complaint will be closed. If CEDR thinks that the Final Decision has not been complied with, CEDR will contact the Developer to request that it complies within 10 working days.

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

- An adjudicator has the power to do any of the following:
  - change any of the process time limits;
  - request further comments and/or evidence from the Parties;
  - proceed with the Adjudication if the Parties do not keep to the Rules;
  - consult any relevant evidence not provided by either of the Parties;
  - take into account any evidence provided by either of the Parties that they consider relevant;

- withdraw a complaint if the entirety of the complaint falls outside the scope of the Service;
  - close a complaint if the Parties settle it before the Final Decision is made;
  - decide whether or not the Developer has fulfilled a settlement;
  - decide whether or not the Developer has complied with the Final Decision.
- If the adjudicator finds that the Buyer's complaint succeeds in full or in part, they can direct the Developer to:
    - provide an apology;
    - provide an available product or service;
    - take an action that they consider the Developer can reasonably carry out;
    - pay the Buyer a sum of money that's not more than 25% of the purchase price of the new home (up to a maximum of £50,000.00);
    - pay the Buyer a sum of money up to £1,000.00 for any distress and/or inconvenience (which counts towards the overall limit above);
    - be referred to the Disciplinary and Sanctions Panel of the Code.

