

CONSUMER CODE FOR HOME BUILDERS

www.consumercode.co.uk

The Consumer Code Scheme

This document contains
The Code Requirements,
their Meaning and an
Introduction to The
Independent Dispute
Resolution Scheme



FOURTH EDITION / SEPTEMBER 2017

Contents

| | |
|---|---|
| Meaning of words | 3 |
| Introduction | 4 |
| Further information | 5 |
| Scope of the Code | 5 |
| The Consumer Code Requirements | 6 |
| 1 Adopting the Code | 6 |
| 2 Information: pre-contract | 6 |
| 3 Information: exchange of contract | 7 |
| 4 Information: during occupation | 8 |
| 5 Complaints and disputes | 8 |
| Introduction to the Consumer Code Independent Dispute Resolution Scheme | 9 |

Meaning of words

In this document, the following words have special meanings:

- **Agent** – a person, firm or company used by a Home Builder to deal with any matter on their behalf (for example, an estate agent or contractor).
- **Consumer Code Scheme or Code Scheme** – the set of Requirements adopted by Home Builders along with the Meaning of words, Introduction, Scope of the Code, and the Introduction to the Consumer Code Independent Dispute Resolution Scheme, all as set out in this document.
- **Consumer Code or Code** – a set of Requirements adopted by Home Builders.
- **Contract of Sale, Contract Exchange, Legal Completion** – the terms employed in England and Wales for the legal document used and the formal stages that occur during the sale of a property.

In Scotland these documents and stages are known respectively as **Missive** (or **Builder's Missive**), **Conclusion of Missive** and **Settlement**. In Northern Ireland they are known respectively as **Contract of Sale, Formation of Contract** and **Completion**. Where this document uses the terms for England and Wales, the terms for the other countries are implied.

- **Customer** – a person making enquiries about buying a Home but who has not Reserved a Home.
- **Home** – a property that a Home Builder registers with a Home Warranty Body to obtain Home Warranty cover, excluding those properties listed in the Scope on page 5.
- **Home Builder or you** – a builder or developer of a new or newly converted Home for sale to the public, and who is registered with a Home Warranty Body.
- **Home Buyer** – a Customer who goes on to Reserve or buy a Home, excluding those properties listed in the Scope on page 5. For Homes Reserved or bought jointly by two or more people, the Home Buyer's rights will be joint.
- **Home Warranty** – an insurance-backed warranty that a Home Warranty Body issues to protect Home Buyers.
- **Home Warranty Body** – any organisation that:
 - has agreed to support the Consumer Code for Home Builders Scheme;
 - maintains a register of builders and developers;
 - provides Home Warranty cover;
 - has undertaken to enforce the Code.

Details of participating Home Warranty Bodies are available from the Consumer Code web site: www.consumercode.co.uk

- **Independent Dispute Resolution Scheme** – an independent process set up to deal with disputes where a Home Buyer believes the Home Builder has failed to meet the Code's Requirements.
- **Reservation** – when a Home Buyer and a Home Builder jointly make a written statement of intent (subject to contract and whether or not a fee is paid) to buy and sell a Home. **Reserved** and **Reserve** carry the corresponding meaning.
- **Vulnerable Customer** – someone whose personal circumstances make them especially susceptible to detriment.

Introduction

- 1 The Consumer Code came into force on 1 April 2010. This edition applies to all Reservations signed on or after 1 April 2017. It sets mandatory Requirements that all Home Builders must meet in their marketing and selling of Homes and their after-sales customer service.
- 2 The purpose of the Code is to ensure that Home Buyers:
 - are treated fairly;
 - know what service levels to expect;
 - are given reliable information upon which to make their decisions; and
 - know how to access speedy, low-cost dispute-resolution arrangements if they are dissatisfied.
- 3 The Code applies to all Home Buyers and Homes as set out in the Scope on page 5.
- 4 The Home Warranty Bodies have agreed to require all their registered builders to adopt and comply with the Code as a registration condition. If a Home Builder is found to be in serious breach of the Code, Home Warranty Bodies can apply a range of sanctions. These include removal from the relevant Home Warranty Body's register and exclusion from all registers run by other Home Warranty Bodies that take part in the Code scheme.
- 5 Home Buyers who think they have a dispute because a Home Builder has failed to meet the Code Requirements, may refer their dispute to an Independent Dispute Resolution Scheme.
- 6 The Consumer Code Management Board will arrange for surveys to check how well the Code is working and measure consumer satisfaction. In carrying out the surveys, the relevant sections of the Data Protection Act will be complied with.
- 7 To encourage Home Builders to adopt the Code and to enable the Consumer Code's Management Board to check how well it is being applied, or whether it needs to be amended or updated, the following activities may be carried out:
 - Research.
 - Audits, which may include audits of Home Builders' systems and documents.
 - Mystery-shopping surveys.
 - Annual returns or reports from Home Builders.
 - Reviews and assessments of customer satisfaction feedback and complaints.
 - Training for Home Builders.
- 8 Nothing in this Code affects Home Buyers' existing legal rights.

Further information

You can get more information, including copies of the Code documents and advice on frequently asked questions and the results of audits, surveys and adjudications from the Consumer Code web site: www.consumercode.co.uk

You can contact the Consumer Code for Home Builders secretariat by emailing:
secretariat@consumercode.co.uk

Scope of the Code

Please bear in mind the following provisions and limitations:

- 1 This edition of the Code applies to all Home Buyers who have signed a Reservation agreement for a new or newly converted Home on or after the 1 April 2017 and that has been built by a Home Builder registered with one of the Home Warranty Bodies.
- 2 The Consumer Code Scheme covers complaints made in writing to the Home Builder by Home Buyers who have signed a Reservation agreement and believe the Home Builder has failed to meet the Code's Requirements. The Code Scheme applies to complaints made up to two years from the date on the Home Warranty Body's insurance certificate, which defines the start of the period of cover, about defects or damage caused by a breach of its technical requirements.
- 3 Second or subsequent Home Buyers benefit from the Code Requirements but only on after-sales matters they report within two years from the date of the Home Warranty Body's insurance certificate, as in 2 above.
- 4 The Code does not apply to:
 - second-hand properties (for example, homes taken by Home Builders in part exchange and re-sold;
 - properties acquired by registered social landlords for rent;
 - properties acquired by corporate bodies, partnerships and individuals buying more than one property on the same development for investment purposes;
 - properties built by self-builders for their own occupation;
 - Homes assigned or sub-sold by an investor to a third party before Legal Completion;
 - personal injury claims;
 - loss of property value or blight;
 - claims about the land conveyed and its registered title;
 - claims that exceed the Independent Dispute Resolution Scheme limits.
- 5 Matters better dealt with by other dispute resolution or ombudsman schemes should be referred to the relevant organisation. In such cases, these other schemes will take precedence over this Code and associated Independent Dispute Resolution Scheme.

The Consumer Code Requirements

1 Adopting the Code

1.1 Adopting the Code

Home Builders must comply with the Requirements of the Consumer Code and have regard to good practice guidance.

1.2 Making the Code available

The Consumer Code for Home Builders' Scheme logo must be prominently displayed in Home Builders' sales offices, those of appointed selling agents, and in sales brochures.

All Home Buyers who reserve a Home should be provided with a copy of the Code Scheme with the Reservation agreement.

1.3 Customer service: before legal completion

The Home Builder must have suitable systems and procedures to ensure it can reliably and accurately meet the commitments on service, procedures and information in the Code.

1.4 Appropriately trained customer service staff

The Home Builder must provide suitable training to all staff who deal with Home Buyers about their responsibilities to them and what the Code means for the company and its directors.

1.5 Sales and advertising

Sales and advertising material and activity must be clear and truthful.

2 Information – pre-contract

2.1 Pre-purchase information

Home Buyers must be given enough pre-purchase information to help them make suitably informed purchasing decisions.

In all cases this information must include:

- a written Reservation agreement;
- an explanation of the Home Warranty cover;
- a description of any management services and organisations to which the Home Buyer will be committed and an estimate of their cost;
- the nature and method of assessment of any event fees such as transfer fees or similar liabilities.

Also, if a Home is not yet completed, the information must include:

- a brochure or plan illustrating the general layout, appearance and plot position of the Home;
- a list of the Home's contents;
- the standards to which the Home is being built.

2.2 Contact information

Home Buyers must be told how their questions will be dealt with and who to contact during the sale, purchase and completion of the Home.

2.3 Warranty cover

Home Buyers must be given accurate and reliable information about the insurance-backed warranty provided on the Home.

2.4 Health and safety for visitors to developments under construction

Home Buyers must be informed about the health-and-safety precautions they should take when visiting a development under construction.

2.5 Pre-contract information

Home Builders must advise Home Buyers to appoint a professional legal adviser to carry out the legal formalities of buying the Home and to represent their interests.

2.6 Reservation

Home Buyers must be given a Reservation agreement that sets out clearly the Reservation's terms, including, but not limited to:

- the amount of the Reservation fee;
- what is being sold;
- the purchase price;
- how and when the Reservation agreement will end;
- how long the price remains valid;
- the nature and estimated cost and of any management services the Home Buyer must pay for;
- the nature and method of assessment of any event fees such as transfer fees or similar liabilities.

The Reservation fee must be reimbursed if the Reservation agreement is cancelled. The Home Buyer must be told of any deductions that may be made

While the Reservation agreement is in force, the Home Builder must not enter into a new Reservation agreement or sale agreement with another customer on the same Home.

3 Information – exchange of contracts

3.1 The contract

Contract-of-sale terms and conditions must:

- be clear and fair;
- comply with all relevant legislation;
- clearly state the contract termination rights.

3.2 Timing of construction, completion and handover

The Home Buyer must be given reliable and realistic information about when construction of the Home may be finished, the date of Legal Completion, and the date for handover of the Home.

3.3 Contract termination rights

The Home Buyer must be told about their right to terminate the contract.

3.4 Contract deposits and pre-payments

The Home Builder must clearly explain how Home Buyers' contract deposits are protected and how any other pre-payments are dealt with.

4 Information – during occupation

4.1 After-sales service

The Home Builder must provide the Home Buyer with an accessible after-sale service, and explain what the service includes, who to contact, and what guarantees and warranties apply to the Home.

4.2 Health and safety for Home Buyers on developments under construction

Home Buyers must be told about the health-and-safety precautions they should take when living on a development where building work continues.

5 Complaints and disputes

5.1 Complaints handling

The Home Builder must have a system and procedures for receiving, handling, and resolving Home Buyers' service calls and complaints.

The Home Builder must let the Home Buyer know of this, and of the dispute resolution arrangements operated as part of this Code, in writing.

5.2 Co-operation with professional advisers

The Home Builder must co-operate with appropriately qualified professional advisers appointed by the Home Buyer to resolve disputes.

Introduction to the Consumer Code Independent Dispute Resolution Scheme

A dispute may arise where a Home Buyer believes the Home Builder has failed to meet the Code's Requirements but it falls outside the Home Warranty Body's resolution scheme for defects or damage. If so, the dispute may be resolved by the Home Buyer applying to the Consumer Code's Independent Dispute Resolution Scheme. This means a trained Adjudicator will review written submissions from both parties and issue a decision based on his or her conclusions. The Adjudicator will decide whether or not a Home Buyer has a legitimate dispute and has suffered financial loss because their Home Builder has breached the Consumer Code's Requirements.

The following is a summary of this process. More detailed information will be given with each application for adjudication.

Complaint and response

- 1 A Home Buyer must first complain to their Home Builder and give the Home Builder the opportunity to investigate and put things right.
- 2 If the Home Buyer is not satisfied with the Home Builder's response, the Home Buyer should contact the Home Warranty Body that issued the warranty on their Home.

Action by Home Warranty Body

- 3 The Home Warranty Body will, if appropriate:
 - 3.1 deal with the complaint under its Home Warranty policy; or
 - 3.2 if the complaint falls outside its own dispute resolution scheme for defects or damage, offer the Home Buyer the opportunity to refer the complaint to the Independent Dispute Resolution Scheme. The Home Buyer can refer their complaint to the Independent Dispute Resolution Scheme only after 56 calendar days have passed since first raising it with the Home Builder and no later than 12 months after the Home Builder's final response.

The Independent Dispute Resolution Scheme Adjudication process

- 4 If a Home Buyer decides to refer a complaint to the Independent Dispute Resolution Scheme, the following adjudication process happens:
 - 4.1 The Home Buyer must complete an application form and send it to the Independent Dispute Resolution Scheme with their statement of evidence and a case registration fee of £100 plus VAT⁽¹⁾. The Home Buyer's statement must contain all the information relevant to the complaint and identify the Consumer Code Requirement(s) they allege has/have been breached. The Home Buyer must also provide copies of receipts or other evidence of expenditure if making a financial claim.
 - 4.2 The Independent Dispute Resolution Scheme will ask the Home Builder to respond to the Home Buyer's statement. At this stage the Home Builder may resolve the complaint without a formal adjudication – this is called 'early settlement' and costs the Home Builder a reduced case fee of £100 plus VAT⁽¹⁾.

(1) Case fees are subject to annual review.

- 4.3 If early settlement does not happen, the Home Builder must submit their response to the Home Buyer's statement along with a payment of £300 plus VAT⁽¹⁾. The Home Buyer will be given a copy of the Home Builder's response and asked to respond if they wish. At this stage, the Home Buyer may not make any further new complaints about this adjudication.
- 4.4 The Adjudicator will consider both submissions and decide whether or not the Home Buyer has suffered financial loss as a result of the Home Builder's alleged failure to comply with the Consumer Code. Both parties will be expected to have acted reasonably and to have controlled their costs.
- 4.5 The Adjudicator will make a decision and send it to both parties. The decision may be a performance award (where the Home Builder has to do something) or a financial award (where the Home Builder has to pay the Home Buyer money) or a combination of the two. The maximum value of the combined award available under this adjudication scheme is £15,000 including VAT.
- 4.6 The Adjudicator may make a discretionary award for inconvenience, up to a maximum of £500. They will do so if, in their sole consideration and opinion, the Home Buyer has been caused more than minor inconvenience as a result of the complaint and/or how the Home Builder handled it. The Home Buyer may not receive an award for inconvenience alone if the Adjudicator does not find a breach of the Code. The Home Buyer may not receive an award for emotional upset and stress as awards will be judged as a matter of fact and on the resulting financial loss. The £15,000 maximum award includes any award for inconvenience.
- 4.7 The Adjudicator will also decide whether or not the Home Builder must reimburse the Home Buyer their case registration fee. This will be in addition to the award referred to in 4.6.
- 4.8 The Adjudicator's decision cannot be appealed; it can only be accepted or rejected by the Home Buyer.

Awards: acceptance, refusal and liability

- 5 Under the rules of registration, the Home Warranty Bodies require each registered builder to honour any award made against them under the Independent Dispute Resolution Scheme. If the Home Buyer accepts the award, the courts will usually recognise this as evidence that the Home Buyer's claim was valid.
- 6 If the Adjudicator makes a financial award and the Home Buyer unconditionally accepts it in writing, the Adjudicator must give the Home Builder written notification of this. The Home Builder must pay the award to the Home Buyer within 20 working days of the date of the Adjudicator's written notification.
- 7 If a Home Buyer refuses to accept the award, any subsequent legal action is likely to take account of the adjudication decision.
- 8 A Home Builder remains liable for an award, even if they are removed from a Home Warranty Body's register.
- 9 The Consumer Code's Independent Dispute Resolution Scheme is independent of the Home Warranty Bodies. Adjudication decisions made under the Consumer Code's Independent Dispute Resolution Scheme are not insured under the Home Warranty Bodies' Home Warranty schemes.

(1) Case fees are subject to annual review.

CONSUMER CODE FOR HOME BUILDERS

www.consumercode.co.uk



Consumer Code Secretariat - care of:

secretariat@consumercode.co.uk