

The Consumer Code for Home Builders Independent Dispute Resolution Scheme

Annual Report: 2021



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The Consumer Code for Home Builders Independent Dispute Resolution Scheme (IDRS)

The Consumer Code for Home Builders (the Code) is an industry-led code of conduct for builders, which was developed to make the home buying process fairer and more transparent for purchasers. The Code, which came into effect in April 2010, applies to all home builders registered with the UK's main new home warranty providers; NHBC, Premier Guarantee, LABC Warranty and Checkmate, and consists of 19 requirements and principles that home builders must meet in their marketing and selling of homes and their after-sales customer service. The Code is now in its fourth edition, which came into force in June 2019.

Under the Code, home builders are required to have a system for dealing with complaints. However, if a home buyer is not happy with their response, they should contact the home warranty provider within three months of the date of the home builder's final response to the original complaint. The home warranty body will either deal with the complaint under the terms of the warranty or provide the home buyer with an application form and a set of the Independent Dispute Resolution Scheme (IDRS) rules so that the complaint can be referred to independent adjudication.

IDRS is provided independently by Centre for Effective Dispute Resolution (CEDR) for resolving disputes between Home Builders and Home Buyers covered by the Code. The scheme can consider a dispute arising from anything a Home Builder does or does not do that the Home Buyer thinks is a breach of the Code and which may have caused the Home Buyer disadvantage or financial loss. A Home Buyer can make a claim for up to £15,000, including any consequential damages and VAT. This also includes any amount for inconvenience, which is limited to £500 per claim.

An independent, experienced Adjudicator will make a Decision on disputes by considering the written evidence received by the parties. The Adjudicator's Decision will become binding on a Home Builder if the Home Buyer tells the administrator that they accept the Decision. If a Home Buyer rejects the Decision or does not tell the administrator that they have accepted the Decision within six weeks, the Decision will not take effect and will not be binding on either party.

Further details of the adjudication process can be found within the Scheme Rules section of this report.

Facts and figures

Caseload

This report covers the period 1 January 2021 to 31 December 2021. During this period, a total of 307 cases were referred to IDRS, an increase of 24% on the amount of cases (248) referred to the scheme in 2020.

Since the Scheme began functioning in 2010, case numbers have steadily increased year on year, with a slight reduction noted in 2017. The Scheme has seen another substantial increase in case numbers in 2021, which has been the year in which the highest ever amount of cases were referred to the Scheme, surpassing 300 cases for the first time. As noted in previous reports, this is a trend that is evident across other industries, where consumer awareness of ADR has grown year on year. It is also of potential significance that the effects of the Covid-19 pandemic, notably the national lockdowns during 2020 and 2021, may have led to an increase in the volumes of cases being referred to the Scheme.

In the context of the increasing numbers of disputes brought to the Scheme, it is interesting to note that 153,339 new homes were registered in 2021, which was a 25% increase on 2020. This increase almost exactly mirrors the increase in the number of cases dealt with by IDRS. It is important to note that just 0.2% of new homes are subject to a dispute brought to IDRS, showing that an extremely small proportion of disputes arise in the new homes sector.

The cases referred to the Scheme in this reporting period can be broken down as follows:

| | 2021 | 2020 | 2019 | 2018 | 2017 |
|---|----------|----------|----------|----------|----------|
| Number of cases found fully in favour of the Home Buyer | 82 (27%) | 81 (33%) | 36 (20%) | 7 (6%) | 5 (6%) |
| Number of cases found partly in favour of the Home Buyer (ie. where not all of the Home Buyer's claims were proved or they were awarded less than they claimed) | 58 (19%) | 34 (14%) | 45 (25%) | 65 (60%) | 47 (52%) |
| Number of cases found fully in favour of the Home Builder | 98 (32%) | 78 (31%) | 62 (35%) | 23 (23%) | 25 (28%) |

| | | | | | |
|---|----------|----------|----------|--------|--------|
| Number of cases settled | 39 (13%) | 30 (12%) | 27 (15%) | 5 (5%) | 5 (6%) |
| Number of cases withdrawn from the Scheme or deemed invalid | 30 (9%) | 25 (10%) | 8 (5%) | 6 (6%) | 7 (8%) |
| TOTAL CASES | 307 | 248 | 178 | 106 | 89 |

Case outcomes

2021 has continued to see a clear majority of Home Buyers being successful in their claims against Home Builders, a trend that has been noted for many years. Of the 307 cases dealt with by the Scheme in 2021, Home Buyers achieved a positive outcome (ie. a decision either fully or partly in their favour, or a settlement reached by agreement with the Home Builder) in 179 of them (representing 58% of cases). This is the same proportion as the 58% of Home Buyers who obtained a positive outcome in 2020. This confirms that the majority of Home Buyers consistently achieve a positive result from their engagement with the Scheme.

When considering the 238 cases that went all the way to a final decision from an Adjudicator in 2021, Adjudicators found in favour of the Home Buyer (either fully or partly) in 59% of decisions. This is almost the same proportion as the 60% of decisions found in Home Buyers' favour in 2020.

Furthermore, 82 of the 238 decisions (representing 34.5% of decisions) made by Adjudicators in 2021 succeeded in full for the Home Buyer – meaning the Adjudicator gave the Home Buyer everything they asked for. Whilst this is a decrease from the 42% of decisions found fully in favour of the Home Buyer in 2020, this remains a very high proportion, and is the second highest full success rate for Home Buyers since the Scheme began.

Settlements

Rule 4.4 of the Scheme Rules allows the Home Buyer and the Home Builder to reach a settlement by mutual agreement before an Adjudicator is appointed to make a decision. Where a settlement is reached, the Home Builder pays a reduced administration fee to the Scheme.

In 2021, 39 cases (representing 13% of all cases dealt with) were settled between the parties prior to the appointment of an Adjudicator. This is a slight increase from the 12% of cases that were settled in 2020, representing a continuing strong trend towards settling more cases than in previous years. Until and including 2018, the amount of settlements per year was always in single figures. The amount of settlements reached in 2021 is encouraging, as it shows that parties are consistently more willing to compromise and reach an agreement that both can be satisfied with, thus avoiding the need to go through the full adjudication process.

Withdrawn and invalid cases

A total of 30 cases were withdrawn or were deemed to be invalid (ie. outside the scope of what the Scheme can deal with) in 2021, representing 9% of all applications to the Scheme. This proportion represents a slight decrease from 2020, when 10% of all applications to the Scheme were withdrawn or were deemed invalid.

Of the 30 cases that did not proceed to adjudication:

- Fourteen were withdrawn because the subject matter of the dispute referred to the Scheme was outside the scope of the Code;
- Seven were withdrawn at the Home Buyer's request before they had completed the adjudication process;
- Five were withdrawn as the Home Buyer had not made an initial complaint to the Home Builder before applying to the Scheme;
- Two were withdrawn because the disputes had been subject to previous cases brought to the Scheme involving the same Home Buyer and the same property (which is prohibited by Scheme Rule 2.8);
- One was withdrawn as the Home Buyer had applied to the Scheme more than three months after the date of the Home Builder's final response to the original complaint (which is prohibited by Scheme Rule 3.1);
- One was withdrawn because the Home Buyer claimed a total sum of money exceeding £15,000 (which is prohibited by Scheme Rule 2.6).

Alleged and identified breaches of the Code

Where a Home Buyer alleges in their application to the Scheme that a particular part of the Consumer Code for Home Builders has been breached, the most commonly alleged sections are 5.1 (ie. procedures for handling calls and complaints), 4.1 (ie. an accessible after-sales service), 2.1 (ie. pre-purchase information) and 1.5 (ie. clear and truthful sales and advertising material). These have consistently been the most commonly alleged breaches of the Code since the Scheme began operating.

The proportion of disputes about Home Builders' failure to reimburse a registration fee (under Code Section 2.6) reduced significantly in 2021, making up only 7% of disputes when compared with 14% of disputes in both 2020 and 2019.

Of the 140 decisions in which an adjudicator found the Home Builder to have breached the Code during 2021, the most common sections of the Code found to have been breached were:

- 5.1: a total of 38 decisions (27%) identified a breach of the Home Builder's duty to provide appropriate procedures for handling calls and complaints;
- 4.1: a total of 21 decisions (15%) identified a breach of the Home Builder's duty to provide an accessible after-sales service;
- 2.1: a total of 20 decisions (14%) identified a breach of the Home Builder's duty to provide the Home Buyer with enough pre-purchase information to help them make a suitably informed purchasing decision;
- 1.5: a total of 14 decisions (10%) identified a breach of the Home Builder's duty to ensure that sales and advertising material is clear and truthful.

Money claims

In 2021, the Home Buyers who applied to the Scheme claimed a total combined sum of £1,804,332.32. This sum is an increase of 25% on the total amount claimed by Home Buyers in 2020, and is the highest total sum of money claimed within a calendar year since the Scheme began operating. This increase is of course an expected reflection of the very similar increase of 24% in the total amount of cases dealt with by the Scheme in 2021 when compared with the previous year.

The average sum claimed by Home Buyers in 2021 was £6158.13. This is a decrease of 26% on the average of £8310.75 claimed in 2020, indicating that although the total sum claimed has increased, the sum claimed per case has become more modest.

| | TOTAL SUM CLAIMED | TOTAL SUM AWARDED |
|------|-------------------|-------------------|
| 2021 | £1,804,332.32 | £144,614.42 |
| 2020 | £1,446,070.49 | £105,051.46 |
| 2019 | £1,066,715.23 | £79,963.37 |
| 2018 | £694,540.02 | £64,984.63 |
| 2017 | £555,893.98 | £77,043.06 |

The total amount awarded to Home Buyers by Adjudicators in 2021 was £144,614.42. This increase of 37% in the total amount awarded when compared with the previous year can be attributed to the increase of 25% in the total sum claimed by Home Buyers. However, it is important to highlight that only 8% of the total sum claimed by Home Buyers was actually awarded by Adjudicators in 2021, which is only a small increase on the 7.3% noted in 2020. This continues to show that Home Buyers are claiming financial sums far in excess of what they are likely to obtain by using the Scheme.

Many Home Buyers claim the maximum amount of compensation available under the Scheme Rules, on the premise that if a figure is not claimed for then it cannot be awarded. However, the Independent Adjudicator's role is to give an objective assessment of the value of a Home Buyer's claim based on the evidence that has been provided. Therefore, it is inevitable that every year the amount awarded by Adjudicators is significantly lower than the amount claimed by Home Buyers.

The average amount of compensation awarded by Adjudicators in cases where the Home Buyer's claim was successful was £1238.44, which is an increase from the 2020 average of £913.49. It is interesting to note that while the average sum claimed by Home Buyers in 2021 decreased by 26%, the average amount awarded increased by 36%. This may indicate that Home Buyers are making more realistic and considered claims for monetary compensation.

There were 19 decisions made by Adjudicators in 2021 in which the Home Buyer was awarded more than £1000. This is a lower proportion (14%) of decisions than those in which Home Buyers were awarded more than £1000 in 2020 (18%). Of the 19 higher-

value awards in 2021, three awards were for the maximum financial limit of £15,000, while three other awards were for sums exceeding £10,000. This is a higher proportion of higher-value awards than in 2020, when only three awards were for £10,000 or more. At the other end of the scale, 55 decisions awarded the Home Buyer £250.00 or less. This is a higher proportion of low-value awards (39%) than in the previous year (28%), continuing the trend in recent years of Home Buyers receiving a higher number of low-value financial awards through the Scheme.

Accepted or Rejected

Any decision made by an adjudicator through the Scheme will only be binding on the parties if the Home Buyer chooses to accept it within six weeks of its publication. Where a Home Buyer chooses to reject a decision, or where a Home Buyer fails to respond within six weeks of the decision being made, the decision has no effect whatsoever on either party. Decisions are not open to review or appeal under any circumstances.

Below is a breakdown of the cases that have been accepted, rejected and not responded to by Home Buyers:

| | 2021 | 2020 | 2019 | 2018 | 2017 |
|-------------------|------|------|------|------|------|
| Decision accepted | 103 | 92 | 65 | 61 | 42 |
| Decision rejected | 69 | 61 | 39 | 21 | 27 |
| No response | 66 | 40 | 39 | 13 | 8 |

In 2021, 43% of decisions were accepted by Home Buyers, which is a slight decrease from the 48% of decisions accepted in 2020, but is comparable to the 45% of decisions accepted in 2019. The decrease in the proportion of accepted decisions may be due to the increased proportion of low-value awards in 2021. As is the case every year, the majority of Home Buyers whose claims are successful accept the Adjudicator's decision, while those who are unsuccessful either reject the decision or provide no response to it.

42 decisions were made in 2021 where the Adjudicator found the Home Buyer's claim to be successful, but the Home Buyer did not accept the decision and therefore lost out on the redress awarded by the Adjudicator. As noted in previous years, this most often occurs where the redress awarded by the Adjudicator has been a very small fraction of that sought by the Home Buyer. As illustration, in 22 of these cases the Home Buyers chose not to accept a decision in which they were awarded £500.00 or less while they had claimed over £10,000.00.

There were no instances in 2021 in which a Home Buyer rejected a decision in which they were awarded compensation of more than £1000.00, in contrast to 2020 where this happened once. The highest value award that a Home Buyer rejected in 2021 was for £680.00.

There were five decisions in 2021 which were accepted by the Home Buyer where the Adjudicator had found their claims to be entirely unsuccessful. This happened in two cases in 2020, four cases in 2019 and one case in 2018.

Service statistics

Of the 238 cases from 2021 that went to adjudication, 214 of them (representing a total of 90%) were completed within 8 weeks of the date on which the Home Buyer's application was received. This is a substantial increase from the 73% of decisions completed within eight weeks in 2020.

As noted in previous reports, the Scheme's ability to complete cases within 8 weeks has been impacted by the introduction in October 2018 of a process by which the appointed Adjudicator issues a Proposed Decision, invites the parties' comments on it, and then issues a Final Decision. This process has added an average of three weeks to the case process. It is therefore highly encouraging that the Scheme has successfully increased the amount of cases completed within 8 weeks.

It is important to note that, of the 24 cases from 2021 which took more than eight weeks to complete, 22 of them were finalised within one further week after the expiry of the eight-week timescale, with the two remaining cases all being resolved within an additional two weeks thereafter, due to the Adjudicator granting one or both of the parties an extension of time to make submissions or provide evidence.

It must also be highlighted that none of the cases dealt with during 2021 exceeded the statutory timeframe of 90 calendar days mandated by the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 for all consumer dispute resolution schemes in the UK.

Case Studies

Summary versions of every case that has been dealt with by the Scheme and which have gone all the way to an Adjudicator's decision can be found at the following link:
<https://consumercode.co.uk/home-buyers/how-are-complaints-dealt-with/adjudication-case-summaries/>

Scheme Rules

The latest version of the Scheme Rules (11 November 2021 edition) can be accessed here: <https://www.cedr.com/wp-content/uploads/2021/11/CCHB-IDRS-Scheme-Rules-Nov-2021.pdf>