

# Consumer Code for Home Builders

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This document contains the mandatory Consumer Code requirements that Home Builders are required to follow



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## 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 behalf of a Home Builder (for example, an estate agent or contractor).
- **Consumer Code** or **Code** – a set of requirements to be adopted by Home Builders.
- **Contract of Sale, Contract Exchange, Legal Completion** – the legal document and the formal stages used during the sale of a property.

In Scotland these stages are known as **Builder's Missive, Exchange of Missive, Conclusion of Missive** and **Date of Entry** and must be read as such throughout the document.

- **Dispute Resolution Scheme** – an independent process set up to deal with disputes under the Code that do not fall within the Home Warranty Body's Home Warranty cover.
- **Home** – a property registered by a Home Builder with a Home Warranty Body to obtain Home Warranty cover, excluding those listed in the Scope on Page 5.
- **Home Builder** or **You** – a builder or developer of new or newly converted Homes for sale to the public, and who is registered with a Home Warranty Body.
- **Home Buyer** – a person who Reserves or buys a Home, excluding those noted in the Scope on page 5. For Homes Reserved or bought jointly by two or more people, the rights of the Home Buyer will be joint.
- **Home Warranty** – an insurance-backed warranty for the protection of Home Buyers.
- **Home Warranty Body** – any organisation that:
  - maintains a register of builders and developers;
  - provides Home Warranty cover;
  - has agreed to support the Consumer Code for Home Builders Scheme;
  - has undertaken to enforce the Code.

Details of participating Home Warranty Bodies are available from the Consumer Code web site: [www.consumercodeforhomebuilders.com](http://www.consumercodeforhomebuilders.com)

- **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** carries the corresponding meaning.

### Introduction

- 1 The Consumer Code comes into force on the 1<sup>st</sup> April 2010. 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;
  - 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 condition of their registration. Where a Home Builder is found to be in serious breach of the Code, Home Warranty Bodies can apply a range of sanctions, including removal from the Home Warranty Body's register and exclusion from all registers run by other Home Warranty Bodies that participate in the Code scheme.
- 5 Home Buyers who think they have a dispute because a Home Builder has failed to meet the requirements of the Code may refer their dispute to the independent Dispute Resolution Scheme. See Appendix A for details.
- 6 Surveys will be carried out 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 establish how well the Consumer Code is being applied, or whether it needs to be amended or updated, there may also be:
  - random audits;
  - mystery shopping surveys;
  - 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

Further information, including the code documents and the scheme Rules, can be obtained from the Consumer Code web site: **[www.consumercodeforhomebuilders.com](http://www.consumercodeforhomebuilders.com)**.

## Scope

When reading this document, please bear in mind the following provisions and limitations:

- 1 The Code applies to all Home Buyers who Reserve to buy a new or newly converted Home on or after the 1st April 2010 and which has been built by a Home Builder under the insurance protection of one of the Home Warranty Bodies.
- 2 The Code requirements apply from the 1st April 2010.
- 3 The Code is only for complaints arising and made in writing to the Home Builder within two years from the start date of the Home Warranty cover.
- 4 Second or subsequent Home Buyers benefit from the Code Requirements but only in respect of after-sales matters that are reported within two years from the start date of the Home Warranty cover.
- 5 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;
  - properties acquired by corporate bodies and partnerships and others for investment purposes;
  - properties built by self builders for their own occupation;
  - properties built under architects' certificates.
- 6 The Code and the associated Dispute Resolution Scheme do not apply to:
  - personal injury claims;
  - loss of property value or blight;
  - claims relating to the land conveyed and its registered title;
  - claims where the amount of redress claimed exceeds the limits of the Dispute Resolution Scheme.
- 7 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 Dispute Resolution Scheme.

## The Consumer Code for Home Builders – Code requirements

### 1 Adopting the Code

#### 1.1 Adopting the Code

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

#### 1.2 Making the Code available

The Home Builder must display the Code and give, without charge, a copy to customers who ask for it and to all Home Buyers who reserve a Home.

The Home Builder should also inform their customers that further guidance is available and how they can get this.

#### 1.3 Customer Service

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.

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

- a brochure or plan reliably showing the 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 terms of the Reservation, 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 estimated cost and nature of any management services the Home Buyer must pay for.

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 contract

### 3.1 The contract

Contract of sale terms and conditions must:

- be clear and fair;
- comply with the Unfair Terms in Consumer Contracts Regulations 1999;
- 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-sales 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.

## Appendix A

### **Consumer Code independent Dispute Resolution Scheme**

Disputes are resolved using an adjudication process. During this process, a trained adjudicator reviews written submissions from both parties and issues an award based on his or her conclusions. They will decide whether or not a Home Buyer has a legitimate dispute and has suffered financial loss as a result of their Home Builder failing to comply with the Consumer Code requirements.

The following is a summary of this process. More detailed information will be given with each application for adjudication and is also available from the Consumer Code web site.

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.
3. The Home Warranty Body will:
  - 3.1 deal with the complaint under the terms of their Home Warranty policy; or
  - 3.2 where the complaint falls outside the Home Warranty Body's own disputes resolution scheme, offer the Home Owner the opportunity to refer their complaint to the independent Disputes Resolution Scheme provider. The Home Buyer must bring the claim within three months of the date of the Home Builders' final response to the original complaint, or within three months after the date of the original complaint, whichever is the later.
4. If a Home Buyer decides to refer a complaint to the independent Disputes Resolution Scheme provider, the following adjudication process happens:
  - 4.1 If the Home Buyer wishes to use this scheme, they must complete an application form and send it to the independent Disputes Resolution Scheme provider with their statement of evidence and a case registration fee of £100 plus VAT<sup>(1)</sup>. Their statement of evidence must contain all the information relevant to the complaint and copies of receipts or other evidence of expenditure.
  - 4.2 The independent Disputes Resolution Scheme provider will ask the Home Builder to respond to the Home Buyer's statement of evidence. The Home Builder may at this stage resolve the complaint without a formal adjudication going ahead – this is called 'early settlement' and will cost the Home Builder a reduced case fee of £100 plus VAT<sup>(1)</sup>.
  - 4.3 If 'early settlement' does not happen, the Home Builder must submit their response to the Home Buyer's statement of evidence together with a payment of £300 plus VAT<sup>(1)</sup>. The Home Buyer will be given a copy of the Home Builder's response for their information, and for them to respond to if they wish. At this stage, no further new complaints relating to this adjudication from the Home Buyer will be allowed.
  - 4.4 The adjudicator will consider both submissions and decide whether or not the Home Buyer has a legitimate dispute and has suffered financial loss as a result of the Home Builder's failure to comply with the Consumer Code. In any case, the Home Builder and the Home Buyer will be expected to have acted reasonably and to have controlled their costs.

<sup>(1)</sup> Case fees subject to annual review



- 4.5 The adjudicator will make a decision based on the information submitted and send it to both parties. The decision may be to issue a performance award (where the Home Builder has to do something), or a financial award (where the Home Builder has to pay money to the Home Buyer), or a combination of the two; the adjudicator may also decide to reject the claim. The maximum value of the combined award available under this adjudication scheme is £15,000 inclusive of VAT.
- 4.6 If the adjudicator makes an award, they may also make a discretionary award for inconvenience, up to a maximum of £250. The £15,000 maximum award would include any award for inconvenience. A Home Buyer cannot claim an award for inconvenience alone.
- 4.7 The adjudicator will use his discretion when considering whether to award compensation for any inconvenience a Home Buyer may have suffered as a result of how their complaint was handled by the Home Builder.
- 4.8 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 4.5 above.
- 4.9 The adjudicator's decision cannot be appealed; it can only be accepted or rejected by the Home Buyer.
5. Under the rules of registration, the Home Warranty Bodies will 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 of the validity of a Home Buyer's claim.
6. A Home Buyer may refuse to accept the award, but if they do so any subsequent legal action is likely to take account of the decisions reached in any previous adjudication.
7. A Home Builder remains liable for an award, even if they are removed from a Home Warranty Body's register.

**Please note:** This Consumer Code Dispute Resolution Scheme is independent of the Home Warranty Bodies. Adjudication decisions made under the Consumer Code independent Dispute Resolution Scheme are not insured under the Home Warranty Bodies' Home Warranty schemes.







**CONSUMER CODE for HOME BUILDERS SCHEME**

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