

## Summary of Changes to the Code and Home Builder good practice Guidance with effect from 1 April 2017

During 2016, the Consumer Code went through a review process to ensure it continues to evolve with the industry and changing consumer needs and as a result of the experience from adjudication cases, compliance surveys and audits.

The result is a fourth edition of the Code Scheme and the Home Builder good practice Guidance (“the Guidance”) which affects the interpretation and which will come into effect for Reservations signed on or after 1st April 2017.

### Summary of changes

Code Section	Change to Code or Guidance	Comment
Meaning of words	Code	<p>The definition of ‘<b>the Code</b>’, and ‘<b>The Code Scheme</b>’, have been clarified and differentiated.</p> <p>‘<b>The Code</b>’ is now clearly only the set of the 19 numbered ‘Requirements’.</p> <p>‘<b>The Code Scheme</b>’ is now separately defined as ‘the set of Code Requirements (“the Code”) along with the ‘Meaning of Words’, Introduction and Scope of the Code, and Introduction to the Consumer Code Independent Dispute Resolution Scheme.</p> <p>There is a new definition for a ‘<b>Customer</b>’ who is a person making enquiries about buying a Home but who has not Reserved a Home.</p> <p>The definition of a ‘<b>Home Buyer</b>’ has been amended to add clarification as “a Customer who goes on to Reserve or buy a Home”.</p> <p>A Customer only becomes a ‘Home Buyer’ when they enter into a formal Reservation agreement.</p> <p>Claims under the Code Scheme can only be made by ‘Home Buyers’.</p> <p>In order to meet the requirements of the Chartered Trading Standards Institute’s (CTSI) Consumer Codes Approval Scheme, there is a new definition of ‘<b>Vulnerable Customer</b>’ who is someone whose personal circumstances make them especially</p>

		<p>susceptible to detriment.</p> <p>In various sections of the Guidance, it is now stated that ‘the evident needs of Vulnerable Customers should be considered at all times’.</p> <p>An example could be that someone who has severe visual impairment may be unable to read or see documents or plans clearly, and the evidence of that vulnerability may be a guide stick, guide dog, or special optical device. Another example might be an elderly customer who has difficulty understanding documents or exhibits memory problems and needs support, for example, from a younger family member to help them through the buying process.</p> <p>The dispute resolution scheme has now been clarified as the ‘<b>Independent Dispute Resolution Scheme</b>’.</p>
<b>Introduction</b>	Code	Clarification has been provided on what checks the Code’s Management Board may take on how the Code is being applied.
<b>Scope of the Code</b>	Code	<p>Sections 2 and 3 have been amended to provide clarification on the complaints the Code Scheme applies to.</p> <p>Section 4 has been amended in relation to the Code not applying to investors and in particular, the definition of individual investors has been clarified. The Code Scheme does not apply to individuals buying ‘<b>more than one property on the same development for investment purposes</b>’.</p>
<b>1.2 Making the Code available</b>	Both	<p>Knowledge of the presence of the Code Scheme, as demonstrated by recent mystery shopping surveys, is inadequate. It is also recognised that Requirements to provide Customers with copies of the Code if asked, can be achieved by making them available on-line at the Code’s website, which is more environmentally friendly.</p> <p>To seek to improve the application of the Code Scheme taking account of both these issues, the Code now requires that the <b>Code Scheme Logo is prominently displayed in both Home Builders’ and Agents’ sales offices and in sales brochures.</b></p> <p>The Code Scheme logo must precisely follow the design shown in the logo guidelines on the Code website. <b>The requirement to display the Code and give a copy to Customers who ask for it has been removed</b> as the Code can be viewed at the website address incorporated in the Code logo.</p> <p>Home Buyers must be provided with the <b>Code</b></p>

		<p><b>Scheme</b> documents with the Reservation agreement, but this can be done by electronic means.</p> <p>The '<b>Home Builder Guidance</b>' is a separate document. It does not have to be provided to the Home Buyer, although it can be accessed via the Code website.</p>
1.3 Customer Service	Guidance	It has been clarified that this section applies to issues raised <b>before legal completion</b> . Matters after legal completion are dealt with under Section 4.1 of the Code.
1.4 Appropriately trained staff	Guidance	To help comply with the Code Requirement, within the Guidance there is now reference to the Code's online training package.
1.5 Sales and advertising	Guidance	In compliance with CTSI requirements, there is now an exclusion of high pressure selling techniques.
2.1 Pre-purchase information	Both	<p>Following complaints about '<b>event fees</b>' such as deferred management charges and fees on resale or transfer of leases (particularly in the retirement homes sector), which have been the subject of a current Law Commission investigation and report, there is now a Requirement that any such 'event fees' are declared at Reservation stage.</p> <p>The Requirement to provide a brochure or plan showing 'the layout' has been qualified to now show '<b>a general layout</b>'. This is following decisions made on complaints to the Independent Dispute Resolution Scheme.</p> <p>'<b>The Code Scheme</b>' documents <b>must</b> be provided to the Home Buyer with the Reservation agreement. The Code Scheme must be provided to the Home Buyers' legal representative with the draft Contract of Sale documents. This may be provided either in paper or electronic form in both cases.</p>
2.2 Contact information	Guidance	It has been clarified that after legal completion, the after-sales service Requirements are dealt with under 4.1 of the Code.
2.4 Health and safety for visitors to developments under construction	Guidance	It has been clarified that access to areas under construction may be properly barred or restricted.
2.5 Pre-contract information	Guidance	It has been clarified that Builders <b>may</b> offer incentives and/or refer Home Buyers, for example, to a panel of solicitors, but, <b>should not</b> restrict their choice of Legal representative. In addition, this preclusion <b>now includes</b> not restricting the financial advisor or mortgage intermediary that the Home Buyer may wish to use.
2.6 Reservation	Both	The Requirements to be included in the Reservation

		<p>agreement have been amended to include:</p> <ul style="list-style-type: none"> <li>the nature and method of assessment of any event fees such as transfer fees or similar liabilities.</li> </ul> <p>The Guidance clarifies the information should include the specific date until when the purchase price remains valid and that a copy of the Code Scheme has been supplied in hard or electronic form.</p> <p>Guidance is added that the Reservation agreement, including any appendices or schedules attached to it, should be evidenced by both the Home Builder and Home Buyer in recognition of them having been seen, received and agreed.</p> <p>A high number of adjudications have been found against Home Builders because they were unable to prove that the Home and its specification was as agreed and explained to the Home Buyer at the point of Reservation and subsequent Contract.</p> <p>Guidance regarding the retention of monies from Reservation fees on the cancellation of a Reservation has been simplified. In the Reservation agreement a Home Builder is now required to state the likely 'range' of monetary deduction which may be made on cancellation.</p> <p>The Home Builder may retain an amount that represents the reasonable costs that they have genuinely incurred in processing and holding the Reservation. The Home Builder determines the amounts entirely in their own judgement within the 'range' indicated in the Reservation agreement.</p> <p>The Home Builder however must have regard to the fact that a Home Buyer may challenge any deduction made through the Code's Independent Dispute Resolution Scheme if they consider it excessive. The Home Builder may need to demonstrate to an Adjudicator to the contrary.</p>
<b>3.1 The Contract</b>	Both	Reference to specific legislation has been removed and a more general Requirement to comply with all relevant legislation.
<b>3.2 Timing of construction, completion and handover</b>	Guidance	There are frequent issues arising regarding the 'completeness' of the Home at handover. The Guidance has been extended to suggest that the Home Builder should explain to the Home Buyer that there may be minor items outstanding within the Home and its curtilage, and explain what arrangements they will make for completing them.

		Similarly, in respect of works serving the property, but not being a part of the Home, such as roads etc. many complaints may be alleviated by appropriate communication with the Home Buyer.
<b>4.1</b> After-sales service	Guidance	It has been clarified that this Requirement relates to issues after legal completion. The Home Builder should also make it clear that they are responsible for remedying relevant defects arising under the Home Warranty two-year defect period
<b>4.2</b> Health and safety for Home Buyers on developments under construction	Guidance	The reference to specific legislation has been removed and Home Builders should now give the Home Buyer the health-and-safety file for the Home in compliance with the relevant regulations.
<b>Introduction to the Independent Dispute Resolution Scheme</b>		<p>The section that provides an introduction to the Code's Independent Dispute Resolution Scheme has been clarified in several places. The principal amendments are:</p> <ul style="list-style-type: none"> <li>• <b>Timescales for a Home Buyer to bring a complaint:</b> These have been changed to bring them in line with standards generally applied across other schemes. A claim cannot be brought before 56 calendar days have passed since first raising it with the Home Builder and no later than 12 months after the Home Builders' final response.</li> <li>• <b>Award for 'Inconvenience'.</b> The maximum award for 'inconvenience' has increased to £500 from £250. However, Home Buyers can now no longer make 'inconvenience' claims and such awards can only be made by the Adjudicator at their own discretion and consideration, where there has been 'more than minor inconvenience' and where a breach of the Code has been identified. Further, 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 caused.</li> <li>• <b>Allegation of Code breach.</b> Home Buyers making a claim will have to identify the Code Requirement alleged to have been breached when making an application for dispute resolution. This is to avoid generalised complaints which may have little or no specific relevance to the Code.</li> </ul>