

Adjudication Case 1– January 2018 – 117170089

Complaint

The Home Buyer submits that the Home Builder did not provide him with sufficient information in relation to his solar panels. Specifically, the Home Buyer submits that he was not advised by the Home Builder that he needed to register for a FIT (Feed In Tariff). Upon discovering that he needed to have registered for a FIT, the Home Buyer attempted to register his solar panels; however, he was informed that the legislation had now changed and the registration period had ended. Therefore, the Home Buyer was unable to register for a FIT for his solar panels. The Home Buyer also submits that the Home Builder has not dealt with his complaints about this issue. The Home Buyer submits that the Home Builder has breached sections 2.1 and 4.1 of the Code.

Defence

The Home Builder submits that it did not advise the Home Buyer that it had registered his solar panels for a FIT. It submits that shortly after completion, it sent the customer all the documentation for his solar panels. This included the application form to register for a FIT. Therefore, the obligation fell to the Home Buyer to register his solar panels for a FIT. The Home Builder submits that the parties' respective legal representatives have been dealing with this complaint issue (as shown in the documents provided). The Home Builder does not accept any liability to the Home Buyer.

Findings

The adjudicator found that section 2.1 of the Code does not place any obligation on the Home Builder to provide the Home Buyer with information on any and all government programmes (such as the FIT scheme) to maximise their utility savings (or how and when to register for these). In any event, in the interest of completeness, no substantive evidence had been provided by the Home Buyer that objectively proved the Home Builder had agreed to register a FIT on behalf of the Home Buyer. Furthermore, the adjudicator was unable to conclude that the Home Builder had breached section 4.1 of the Code under the circumstances. The adjudicator was mindful that the Home Builder's website has a contact system for after-sales customer care services. They also noted that the Home Builder has a customer charter which outlines its customer care service commitments. In addition, based on the evidence provided at the time of adjudication (such as the correspondence between the parties themselves and their legal representatives), the adjudicator was satisfied that the Home Builder did engage with the Home Buyer in relation to the complaint and took appropriate complaint handling/after-sales actions under the circumstances.

Decision

The claim was unable to succeed.

Complaint

The Home Buyer's claim concerned a delay in the completion of the Property.

The Home Buyer sought an apology, an explanation and compensation in the sum of £6,663.52.

Defence

The Home Builder denied liability.

Findings

There was no evidence to show that the sales and advertising material given by the Home Builder were not clear or truthful, or that statements made were not clear or truthful at the time they were made.

Both parties agreed that the dates given on the Reservation Agreements were approximate dates. In addition, the sale of the property was also completed before the long stop date stated in the sales contract, therefore the Home Builder had not breached its obligations under the Code.

Decision

The claim did not succeed.

Complaint

The Home Buyers submitted that there were various delays in the completion of their Property and the Home Builder had to keep contacting them to advise of amended completion dates. The initial completion date was in September 2015 but the Property was finally completed in April 2016. The Home Buyers submitted that they incurred expenses as a result of this issue. Specifically, the Home Buyers stated that they had already ordered furniture for the Property which they needed to pay to store and that they decided to stay in the local Hilton hotel until the Property was completed (as this seemed the most flexible option). The Home Buyers submitted that the Home Builder had breached section 3.2 of the Code and they therefore claimed £15000.00 in compensation.

Defence

The Home Builder accepted that there were delays in the completion of the Property and it stated that it had continuously apologised for this issue. The Home Builder submitted that these delays were for reasons outside its control but it did its best to expedite the completion of the Property. It confirmed the Home Buyers' submission that it kept them informed about the delays and provided amended completion dates as issues progressed. However, the Home Builder did not accept the Home Buyers' claim for redress. It submitted that the claimed compensation was unreasonable and the Home Buyers have not sought to mitigate their losses.

Findings

Based on all the evidence provided, the adjudicator was unable to objectively conclude that the Home Builder had breached section 3.2 of the Code.

Neither party disputed there were various delays in the completion of the Property. However, it was clear from the parties' respective submissions that the Home Builder did constantly provide amended completion updates to the Home Buyers as and when new information was available. Accordingly, under the circumstances, the adjudicator was unable to conclude that the Home Builder's actions overall amounted to a breach of section 3.2 of the Code. By way of further explanation, the adjudicator highlighted that section 3.2 of the Code does not impose a requirement on the Home Builder to strictly adhere to a set completion date but to keep the Home Buyer updated of realistic completion dates based on the information available at the time. Accordingly, based on the evidence provided, the adjudicator was unable to conclude that the Home Builder had breached section 3.2 of the Code.

Decision

The Home Buyers' claim did not succeed.

Complaint

The Claimant said that the sales and marketing information had described her Home as having a carport, but when she took possession, she discovered that it had an open roof and really it was a pergola. She claimed that there was a mis-selling and therefore a breach of sections 1.5 of the Code and 2.1 of the Code. She had not been shown the site plan until she requested this on 8 May 2016 and she had not been informed by the company's agent that the roof would be open because when she visited the site on 30 April 2016, neither of the agents was available.

Defence

The Defendant said among other matters that the construction of the carports on the development all had open roofs and that the Home Buyer had seen the site plan which showed this at the time of the reservation agreement and it had been explained to her when she visited the site on 30 April 2017. She had been sent an email on 10 May explaining that this explanation had been given and the correspondence stated in terms that the car port was like a pergola. Exchange of contracts had nonetheless taken place some 15 days later.

Findings

The adjudicator found that there had been a breach of section 1.5 and 2.1 of the Code because the description "carport" would ordinarily convey a structure with a roof. Even if the customer had seen the site plan, it would not have been clear that the structure (which plainly had a timber roof) had no covering between the rafters. The misleading impression initially given had been corrected by the time of exchange of contracts. However, at the latest on 10 May 2016 when the email was sent..

Decision

The claim succeeded in part. The Home Buyer was awarded compensation of £100.00 for inconvenience caused by the initial breaches of the Code. The Home Buyer's registration fee was also reimbursed.

Complaint

The Claimants complained that the Builder had wrongly told them at the reservation stage that the affordable housing on the estate would contribute to the service charge and their service charge would be 1.3% of the total and the cost spread between 88 homes. In fact the contract and transfer stated that they had to bear 1.8% and the cost was spread between 53 homes.

Defence

It was denied that the Home Buyers had been told this, although they had got hold of a matrix which showed that the managing agents proposed to impose a service charge on all homes. The Builder was prevented from doing this by reason of the terms of the section 106 Agreement to which the Buyers solicitors had access on their portal and to which they had been referred. Accordingly, the contract showed that the Home Buyers would bear a cost of 1.8% of the service charge. Moreover, the amount of the service charge in the first year was less than the estimate in the reservation agreement, so the Home Buyers were not misled.

Findings

The adjudicator found that there were breaches of sections 1.5 and 2.1 of the Code because it was more likely than not that the Home Buyers were told that all houses would bear a proportion of the service charge, whereas this was not correct. It was relevant information as it meant that the Home Buyers would be paying a larger proportion of the total and the occupiers of the affordable housing would benefit from the services paid for by other residents. This was misleading, was not irrelevant and, as this incorrect information was given, it may have led to a misapprehension instead of a suitably informed purchasing decision. There was no breach of section 2.6, however, because the reservation agreement stated that the sums shown as services (for which there was a breakdown) were an estimate. There was no breach of clause 3.1 of the Code because the proportion of the service charge (1.8%) was correctly stated and the section 106 agreement was made available to the Buyers' solicitors or, even if it was not, the Buyers' solicitors were on notice and could have asked for this.

Decision

The claim succeeded in part. As the Buyers had, through their solicitor, agreed to the proportion of service charge set out in the contract and transfer, and as any alteration in the service charge would adversely affect third parties because there would be an overall shortfall, it was not appropriate to direct any reduction in the service charge. Moreover, the claim for compensation was for moving house, which would in the circumstances, have been compensation for distress and not financial loss because the Buyers wanted to move due to a "toxic atmosphere" on the estate. Furthermore, as the service charge in the first year was less than that estimated, there was no evidence of any ongoing financial loss. The adjudicator awarded £350.00 for inconvenience, however and reimbursed the registration fee.

Complaint

The Claimant complained of breaches of 1.1, 1.2 and 5.1 of the Code that the house was extremely cold and installed an additional gas fire. She said she had not been provided with a copy of the Code. She also complained to the Home Builder and asked for thermal imaging. The Builder persistently delayed in responding to her complaint and had to be reminded throughout the process until resolution of the problem occurred some 9 months later.

Defence

There were no breaches of the Code, which had been put in place and followed. The Home Buyer had bought her fire before complaining and could not recover compensation for that. She had been given a copy of the Code with her reservation agreement and prominence was given to this as required by the Code. All the works necessary to give warmth to the Buyer's home had been carried out.

Findings

The adjudicator found that the Home Buyer had been given a copy of the Code on reservation and it was on its website and in its sales office. There was no breach of section 1.2 of the Code. The Builder had not initially recognised the customer's request for payment for thermal imaging as a complaint which it needed to handle under its complaints policy. It did not follow its complaints policy and had not provided a timetable for investigation and taking action on the customer's complaint. In particular, there was a lack of clarity as to when thermal imaging would be carried out, whether this would occur, what it would entail and when it would happen; a lack of action between the meeting of 3 April 2016 when certain steps were agreed and 10 May 2017 when the Home Buyer complained again; and from 26 May 2017 when certain actions were agreed until September 2017, there was a failure to give advice about the timetable for works and a failure to carry these out promptly. Overall, this was a failure to implement the Home Buyer's complaints procedure and was a breach of section 5.1 of the Code and section 1.1 was also breached.

Decision

The claim succeeded in part. The adjudicator awarded compensation of £575 (£500 for inconvenience and £75 for increased heating bills) and directed an apology and reimbursement of the registration fee.

Complaint

The Home Buyer stated that the Home Builder did not advise them of the requirement for obscure glazing to one of the bedrooms. They stated that the first time they were made aware of this requirement was when the Home Builder informed them in August 2017, which was after the completion of the sale. The Home Buyer alleges that there have been breaches of sections 2.1, 2.6 and 3.1 of the Code.

The Home Buyer sought £15,000 in compensation, an apology, an explanation and 'rectification' of the windows that needed to be obscured.

Defence

The Home Builder submits that the Home Buyer's claim be dismissed. They state that the Home Buyer was made aware of the requirement for obscure glass to the upper pane of the rear windows. This was a revised planning requirement following complaints from local residents. The Home Builder states that they have made offers to partially frost the windows to ensure compliance with the planning obligations and that the Home Buyer has refused to grant them permission to do so.

Findings

The adjudicator found that the Home Builder did not breach section 2.1 of the Code as the Home Buyer was provided with sufficient pre-purchase information. Additionally, there was a clause within the Contract that provided details as to the requirement for obscure glass. It was found that the Home Builder did not breach section 2.6 of the Code as sufficient information was provided in the Reservation agreement, which includes details of a general nature rather than specific details.

The Home Builder was also found to have not breached section 3.1 of the Code as the Home Buyer discussed the terms and conditions of the Contract with their conveyancer. Also the Home Buyer stated that they were not querying the wording or terms of the Contract which is what section 3.1 refers to.

Therefore, the adjudicator found that the Home Builder did not breach sections 2.1, 2.6 or 3.1 of the Code.

Decision

The claim made by the Home Buyer did not succeed. The Home Builder was not found to have breached a requirement under the Consumer Code for Home Builders. The Home Buyer was not able to justify the redress claimed and so no award has been made by the adjudicator. Additionally, the Home Buyer's registration fee has not been reimbursed.

Complaint

The Home Buyer submitted that the Home Builder committed acts of racism, fraud, harassment and discrimination during the reservation and purchase process of the Property. The Home Buyer also submitted that the Home Builder breached the Code. Specifically, the Home Buyer asserted that the Home Builder breached sections 1.1, 1.2, 1.3, 1.5, 2.1, 2.6, 3.3, 4.1 and 4.2 of the Code. The Home Buyer therefore sought a payment of £15000.00 from the Home Builder.

Defence

The Home Builder refuted all accusations made by the Home Buyer. The Home Builder stated that it did not accept any liability to provide the Home Buyer with a payment in the sum of £15000.00. The Home Builder submitted that it provided detailed responses to each of the Home Buyer's claims.

Findings

The Adjudicator drew attention to the fact that complaints relating to racism, fraud, harassment and discrimination are entirely outside the remit of this scheme and could not be examined. Accordingly, the Adjudicator's decision was restricted to the remit of the scheme. Therefore, the alleged breaches of sections 1.1, 1.2, 1.3, 1.5, 2.1, 2.6, 3.3, 4.1 and 4.2 of the Code were examined in turn. Following a full review, the Adjudicator noted one oversight on the part of the Home Builder in relation to section 1.2 of the Code. Therefore, it was found to be fair and reasonable for the Home Builder to provide the Home Buyer with compensation in the sum of £50.00 for the inconvenience experienced. No further breaches of the Code were established.

Decision

The Home Buyer's claim succeeded in part. The Home Builder was directed to provide the Home Buyer with compensation in the sum of £50.00.

Complaint

The Home Buyer submits that the Code has not been implemented in various ways by the Home Builder and support of this contention, she argues that the Home Builder did not give certain sales information or pre-contractual information which was accurate and has not provided a copy of the Code or an after-sales service that would be reflective of implementation by the Home Builder of the Code. This has meant that she was not provided with information about how to make contact when issues arose and snagging works have not been dealt with. A “ramp” outside her house has not been removed, with the consequence that she does not receive off-road parking for two cars as promised. The Home Buyer also complains about incorrect information regarding the ownership of the access road, liability for maintenance of communal spaces, inadequate information about services and warranties, failure to carry out a repair to the boundary fence, non-provision of street lighting and the poor condition of asphalt in the estate road.

Defence

The Home Builder submits that the application is out of time in accordance with the Code. It contends that clause 3.2 of the 3rd Edition of the Code states "They must bring the claim within three months of the date after the Home Builders final response to the original complaint or within three months of the original complaint whichever is the later". Furthermore, Home Buyer has not provided evidence to establish that she had raised all the issues with the Home Builder before pursuing the claim, firstly via the LABC warranty and secondly under the Scheme. The ramp removal and estate lighting are amongst these items. The Home Builder was not made aware by LABC of the nature of the Home Buyer's claim and could not therefore have made any meaningful contact with her. This means that the claim for dispute resolution should not be pursued.

Findings

The adjudicator has found that the Home Builders have breached requirements under the Consumer Code for Home Builders. The adjudicator has directed that the Home Builder say pay compensation of £490.00 and apologise to the Home Buyer for its failure adequately to implement the requirements of the Code. Furthermore, the adjudicator has requested that the Home Buyer's registration fee of £120.00 be reimbursed.

Decision

The Home Buyer's claim succeeded in part

Complaint

The Home Buyers submitted that the Home Builder had breached section 3.1 of the Code. Specifically, the Home Buyers asserted that the Home Builder constructed the roof of the Property with a parapet. The Home Buyers submitted that they were not advised of this and that it was unsightly in appearance. They indicated that they would not have proceeded with the purchase of the Property had they known about the parapet. The Home Buyers therefore sought an apology, an explanation, for the Home Builder to remove the parapet with a roof redesign and a payment in the sum of £15000.00.

Defence

The Home Builder did not accept any liability to the Home Buyers. The Home Builder accepted that the roof of the Property was constructed with a parapet and that this was not specifically highlighted to the Home Buyers. The Home Builder acknowledged that the guidance for section 3.1 states *"After Contract Exchange, if there is a change to the design, construction or materials to be used in the Home that would significantly and substantially alter its size, appearance or value, you should formally consult the Home Buyer and get their agreement"*. However, the Home Builder submitted that the parapet did not significantly and substantially alter the Property's size, appearance or value. Therefore, it did not need to consult the Home Buyers and obtain their agreement for this issue. Furthermore, the Home Builder submitted that the Home Buyers only raised this issue 4 months after they had been living in the Property. Thus, the Home Builder asserted that the parapet was not a significant and substantial alteration to the Property. In any event, the Home Builder submitted that its sales literature makes it clear that landscaping and configurations may vary from plot to plot and the particulars should be treated as general guidance only. Accordingly, the Home Builder did not accept the Home Buyers' claims for redress.

Findings

The Adjudicator acknowledged that neither party disputed that the Home Builder constructed the roof of the Property with a parapet and that this decision was not highlighted to the Home Buyers. However, taking into account all the evidence available, the adjudicator was not objectively satisfied that the existence of a parapet significantly and substantially altered the size of the Property, its appearance or value. As such, the adjudicator was not satisfied that the Home Builder has breached section 3.1 of the Code by not formally consulting the Home Buyers to obtain their agreement to this change.

Decision

The Home Buyers' claims did not succeed.

Complaint

The Home Buyer submitted that the Home Builder breached sections 1.2, 1.4, 1.5, 2.1 and 2.6 of the Consumer Code for Home Builders. In particular, the Home Buyer submitted that the Home Builder did not alert her to the existence of a layby in front of the Property. The Home Buyer therefore made a claim for the Home Builder to move the layby located at the front of the Property. The Home Buyer also highlighted additional issues such as the fact that a bus service hadn't been implemented in the neighborhood and that she has had to move on young men sitting in cars who were drunk or taking drugs.

Defence

The Home Builder did not accept any liability to the Home Buyer. The Home Builder submitted that its advertising material states that it is only intended to provide a general idea of the properties. However, it indicated that the materials provided to the Home Buyer were accurate and indicated the existence of a layby in front of the Home Buyer's property. The Home Builder did not accept that it had breached any section of the Code and therefore did not accept the Home Buyer's claim that it should move the layby located in front of her Property.

Findings

The Adjudicator concluded that minor breaches of the Code on the part of the Home Builder had been established (sections 1.2, 2.1 and 2.6). However, the Home Buyer had only made a singular claim, for the Home Builder to move the layby located outside her Property. Under the circumstances, the adjudicator could only conclude that the level and nature of breaches established did not warrant the redress claimed. In making this finding, the Adjudicator took into account proportionality and the reasonable loss incurred from the types of breach established. Therefore, the Adjudicator had no other option but to conclude that the Home Buyer's claim was unable to succeed on this occasion.

Decision

The Home Buyer's claim did not succeed.

Complaint

The Home Buyer states that the Home Builder provided them with incorrect details as to the plot boundary and that the Home Builder did not own the land at the front of the Property. The Home Builder was provided, by HM Land Registry, with the title of good leasehold instead of absolute leasehold to the land at the front of the Property. The Home Buyer alleges that there have been breaches of sections 2.1, 2.6, 3.1 and 5.1 of the Code.

The Home Buyer sought £15,000 in compensation, an apology, an explanation and full access to the Home Buyer's file and information that the Home Builder has.

Defence

The Home Builder admits that they made a mistake as to the plot boundary of the Property, but deny that they have breached any section of the Code.

In the Defence the Home Builder offered the Home Buyer £500.00 of compensation for inconvenience and they also offered to reimburse the application fee of £120.00.

Findings

The adjudicator found that the Home Builder did breach sections 2.1, 2.6 and 5.1 of the Code and found that the Home Builder did not breach section 3.1 of the Code.

It was decided that the Home Builder breached section 2.1 of the Code as the pre-purchase information was not able to be relied upon by the Home Buyer and was found to be incorrect.

Section 2.6 of the Code was found to have been breached by the Home Builder as it was decided that no Reservation agreement was provided to the Home Buyer.

It was decided that the Home Builder breached section 5.1 of the Code as the Home Builder was found to not have followed the Guidance. This is because the Home Builder did not deal with the Home Buyer's complaint in a reasonable time and they did not update the Home Buyer in a timely manner as to their complaint.

It was found that the Home Builder did not breach section 3.1 of the Code as the Lease (Contract) was deemed to be clear and fair.

Decision

The claim made by the Home Buyer succeeded in part. The Home Builder was found to have breached the Consumer Code for Home Builders. The Home Buyer was awarded £500.00 compensation for inconvenience, an apology, a written explanation as to what had occurred and reimbursement of the £120.00 registration fee.

Complaint

The Home Buyers complained that the leaded windows were damaged by white spots and pitting. They said that the Home Builder had agreed to replace the windows as part of the process of investigating their complaint and then reneged on this. There had been an application to the warranty body which had found that there was oxidation which was normal but also pitting which was not. However, as this did not affect the functionality of the windows, NHBC had not been able to help and had suggested resort to the Consumer Code. The Home Buyers claimed that the Home Builder had not carried out a complaints process and had not cooperated with its appointed experts.

Defence

The complaint was out of time and the redress claimed exceeded the £15,000 limit. There was no breach of the Code because the Reservation Agreement had explained how to start a complaint and stated that the Code was in place and the NHBC report had stated that no further action was necessary. The Home Builder had not said that it would replace the windows.

Findings

The adjudicator found that the claim was in time and there was no evidence that the claim exceeded the £15,000 value. Section 5.1 of the Code related not just to the existence of a system and procedure for complaint resolution but also to its implementation. No evidence had been put forward of a formal procedure and this had had the consequence that the Home Buyers had believed that the Builder had agreed to replace the window. The adjudicator found that the Home Buyers had probably been told that this would occur and then the Home Builder had changed its mind on further investigation. No transparent system and procedure had been put in place and this was a breach of the Code. Section 5.2 required the Builder to cooperate with experts appointed by the Home Buyers. It was clear from the Guidance that this included third parties enlisted to help and so included the NHBC. The NHBC had investigated including relying on an expert report submitted to NHBC by the Builders (but not put forward in the adjudication). It found damage. The Home Builder had previously written to the Home Buyers stating that it would repair damage. The Builder had not considered, in the light of the NHBC report whether it would take action in relation to the windows. Bearing in mind the purposes of the Code, this equated to a failure to cooperate. The adjudicator found a breach of sections 5.1 and 5.2.

Decision

The claim succeeded in part. The findings made by the adjudicator related to procedural failures and it was for the Home Builder to decide whether its policies, procedures and quality assurance required replacement of the windows. Accordingly replacement could not be directed and nor could compensation for the cost of this be given. The Home Buyers had shown that they had suffered inconvenience, however and therefore compensation of £200 was awarded and the reimbursement of the registration fee.

Complaint

The Home Buyer submits that he was told at the reservation stage that the completion date would be 31 March 2016. On 22 March 2016 the Home Buyer was notified that the completion date would be at the end of April 2016. This was only nine days' notice and the Home Buyer contends that the lack of notice was a breach of section 3.2 of the Code which states that the Home Buyer should be given reliable and realistic information about when construction of the Home would be finished and as to the date of completion and handover. On 22 March 2016, the Home Buyer was also told that the completion date would only be fixed when he exchanged contracts. On 29 March 2016, the sales manager of the Home Builder confirmed in writing that the completion date would definitely not extend beyond the end of April 2016. Until 20 April 2016, the Home Buyer was assured that the completion date would be before the end of April

Defence

The Home Builder denies breaches of the Code. It submits that at reservation, the due exchange date was specified on the reservation form as 29 January 2016. This was extended several times by the Home Builder, caused primarily by delay by the Home Buyer. He raised countless enquiries, and requested further incentives resulting in a revised purchase price being issued. There were also issues with his mortgage offer. Exchange therefore did not happen until 140 days after reservation. The Home Buyer was in breach of the terms of the reservation agreement and the House Builder was entitled to cancel the reservation and remarket the property. The House Builder did not do so in order to assist the Home Buyer. Contracts were eventually exchanged on 22 April 2016 (4 months after the reservation form deadline) and legal completion occurred on 24 June 2016. The anticipated build/completion date was estimated as March 2016. However, it was not possible to complete the Home by March, due to various reasons which delayed the build and which were outside the control of the House Builder: For example: The House Builder had performance issues with one its brickwork contractors, which led to termination of that contract and resulting legal action; The white goods due to be installed in the Property's apartment block were stolen from the site; The lift installation contractors exceeded time-scales in the build programme; and There were delays on behalf of British Telecom regarding the site's connections. The Home Builder also refers to clauses 1.5, 1.6, 3.1, 4.1 and 5.1 of the contract, the terms of which make it explicit that that completion dates are only ever estimates, and that such estimates are subject to change. The Home Builder argues that the contract goes on to provide that the Home Buyer should not make any legal commitments in reliance of the estimates given.

Findings

The adjudicator found that the Home Builders have breached a section 3.2 of the Consumer Code for Home Builders. The adjudicator directed the following:

For the Home Builder to apologise to the Home Buyer for its breach of section 3.2 of the Code; Pay compensation for inconvenience in the sum of £275.00; and Reimburse the Home Buyer's registration fee of £120.00.

Complaint

The Home Buyer's claim is that Property, in particular the second bedroom, is significantly smaller than was detailed in the development brochure.

The Home Buyer sought £5,018.88 to reflect missing floor space and a percentage reduction in the purchase price paid for the Property, and £500.00 compensation for inconvenience. The Home Buyer also requested a refund of the case registration fee.

Defence

The Home Builder denied liability.

Findings

There was no evidence to show that the Home Builder has breached Section 3.1 of the Code or Guide as no substantive evidence confirming what the dimensions for the Property should have been was submitted in evidence. However, in the absence of any evidence showing that the Home Builder provided detailed plans and specifications to the Home Buyer, the Home Builder did not show that it provided the Home Buyer with enough pre-purchase information to help them make a suitably informed purchasing decision in accordance with section 2.1 of the Code.

Decision

The claim succeeded in part. Under the Code, the Scheme cannot apply to loss of property value so the claim for £5,018.88 was unable to succeed. However, the Home Buyer was entitled to the £500.00 requested for inconvenience. The Home Builder was also directed to reimburse the Home Buyer the sum of £120.00 to cover the cost of the case registration fee.

Complaint

The Home Buyer submitted that the Home Builder breached sections 1.5 and 2.1 of the Consumer Code for Home Builders. Specifically, the Home Buyer submitted that in the summer of 2017 he discovered that, due to a planning error, half of his bedroom was legally owned by his next door neighbour.

Defence

The Home Builder did not accept that it has breached the Code. The Home Builder accepted that due to a planning error, which was missed by all the solicitors dealing with the Property, bedroom 1 of the Property extended over the shared driveway. This error was present in the plans as provided to the Home Buyer. The Home Builder submitted that this was a genuine error and it did not know about this until the matter was brought to its attention. Nonetheless, the Home Builder submitted that it had engaged with the Home Buyer and taken the appropriate steps to resolve this matter. However, this issue may take some time to rectify with the Land Registry.

Findings

Based on the evidence available at the time of adjudication, the adjudicator was unable to objectively conclude that the Home Builder had breached section 1.5 of the Code. It was not disputed by the Home Builder that there was a planning error that was missed by all the solicitors dealing with the Property. However, there was no substantive evidence that proved the Home Builder was ever deceptive or unclear (intentionally or otherwise) about this issue in its sales and marketing material and/or activity. The adjudicator was only able to deduce from the evidence that the planning error was genuine and that it was always clear from the materials (e.g. site plans) provided; however, it was simply missed by the professionals dealing with the Property.

Furthermore, the adjudicator was unable to conclude that the Home Builder's failure to highlight an unidentified planning error that was not known at the pre-purchase stage amounted to a failure to provide enough pre-purchase information to help the Home Buyer make a suitably informed purchasing decision (section 2.1). Based on the submissions available, the adjudicator was only able to conclude that the Home Builder provided pre-purchase information to the best of its knowledge in good faith.

Decision

The Home Buyer's claim did not succeed.

Complaint

The Home Buyers submitted that the Home Builder had breached sections 1.4, 1.5, 2.1 and 5.2 of the Code. Specifically, the Home Buyers stated they were not advised that there were plans for a bus stop to be placed outside their Property. The Home Buyers asserted that this decreased the value of their Property. The Home Buyers therefore claimed an apology, an explanation, for the Home Builder to move the bus stop or provide compensation in the amount of £15000.00 (for devaluing the Property/moving costs).

Defence

The Home Builder accepted that it failed to comply with its own complaints procedure (by failing to respond in full to the Home Buyers' complaint) and apologised for this. However, it did not accept any further liability to the Home Buyers. Specifically, the Home Builder submitted that the Home Buyers' claim for compensation for loss of value of their Property is not within the remit of this scheme. Furthermore, and in any event, there was no evidence that the Home Buyers had incurred any actual loss as a result of a bus stop being placed outside their Property. The Home Builder submitted that the placement of a bus stop outside the Home Buyers' Property did not specifically breach any element of the Code and it cannot lawfully change the placement of the bus stop. It did nonetheless engage with the local authority on the Home Buyers' behalf to see if the bus stop could be moved.

Findings

Based on a full review of all the evidence provided, the adjudicator concluded that a breach of the Code on the part of the Home Builder had been established (as accepted by the Home Builder). However, the adjudicator was not satisfied that the nature and extent of the established breach warranted the full redress claimed by the Home Buyers. Taking into account nature and extend of the Home Builder's breach of the Code, the adjudicator found it fair and reasonable that the Home Builder provided the Home Buyers with a written apology.

Decision

The Home Buyers' claim succeeded in part and the Home Builder was directed to provide the Home Buyers with a written apology.

Complaint

The Claimant complained that the Builder had listed 73 items that required to be undertaken and further items were to be addressed. The Buyer had been told that he would need to leave his home, with considerable disruption to his family, to enable work to be undertaken and that various other losses would also be suffered. The Home Builder has refused to pay financial compensation. As the Home Buyer would incur considerable loss, the Home Buyer contended that this was a breach of section 5.1 of the Code.

Defence

No defence was submitted.

Findings

The adjudicator found that although it had not been stated in terms that the Home Builder had agreed to carry out the works, this was a reasonable inference from the information submitted. Whether the Home Builder had refused financial compensation or whether the Home Builder had refused to do anything at all, however, there was no evidence that section 5.1 of the Code had been broken. Section 5.1 requires the Home Builder to have procedures in place: it does not require the Home Builder to arrive at any particular outcome and the operation of a complaints procedure can result in the Builder deciding to do nothing. There was no evidence that the Home Builder did not have or did not apply its complaints procedure.

Decision

The claim did not succeed. On the basis of the submissions and evidence put forward by the Home Buyer, even if the Home Builder should for other reasons be required to pay compensation to the Home Buyer (as to which no finding was made), the adjudicator was unable to reach a conclusion that section 5.1 of the Code had been broken.

Complaint

The Home Buyer submitted that the Home Builder breached section 2.6 of the Consumer Code for Home Builders. The Home Buyer also submitted that the Home Builder breached “Item 3. Purchase Price”. In particular, the Home Buyer highlighted issues with the reservation process, purchase price negotiations and noise caused by people using the refuse room. The Home Buyer therefore claimed that the the Home Builder should “limit times for using refuse room”, “half the service charge”, “in future buildings suggest the guest suite be over the refuse room. Or better still house the bins outside” (sic) and pay the Home Buyer £11800.00.

Defence

The Home Builder did not accept that it had breached the Code. The Home Builder submitted that it had properly adhered to the requirements of section 2.6 of the Code and this was illustrated by the Reservation Agreement which it had provided in evidence. The Home Builder submitted that the Home Buyer’s purchase price negotiation issues are not within the remit of the Code but it nonetheless stated that the position was made clear during the negotiations. With regards to the noise issue, the Home Builder submitted that it investigated this issue promptly and took appropriate action to assist the Home Buyer. Specifically, it adjusted the refuse room doors and confirmed that the Home Buyer’s property was soundproofed beyond required standards.

Findings

Based on the evidence available at the time of adjudication, the adjudicator was unable to objectively conclude that the Home Builder had breached section 2.6 of the Code (or any other section of the Code). The adjudicator noted that the Home Builder had provided the Home Buyer with a Reservation Agreement that aptly set out the terms of the reservation. Furthermore, the Reservation Agreement was not cancelled; therefore, no reimbursement of the reservation fee was necessary and it did not appear that the Home Builder entered into any new Reservation/Sale Agreement with another customer on the same home whilst the Reservation Agreement was in force.

The adjudicator drew attention to the fact that there is no section in the Code with the heading “Item 3. Purchase Price”. The adjudicator reminded the parties that their remit under the scheme was entirely limited to examining whether the Home Builder had adhered to the requirements of the Code. The adjudicator confirmed that they were unable to conduct an examination into the contractual negotiations between the parties and make decisions on matters which were not within the specified remit of the scheme.

Furthermore, the adjudicator confirmed they were unable to objectively conclude that the Home Buyer’s neighbors generating noise by using the development’s facilities amounted to a breach of the Code on the part of the Home Builder. Nonetheless, it was acknowledged that the Home Builder had addressed this issue in order to aid the Home Buyer (by adjusting the refuse room door and confirming that the soundproofing in the Home Buyer’s property exceeded regulation requirements). Consequently, based on a full review of all the evidence

provided, the adjudicator was not satisfied that any breaches of the Code had been objectively substantiated on this occasion.

Complaint

The Home Buyer's claim is that the Home Builder failed to notify her of a change to the location of the boiler in the Property.

The Home Buyer sought compensation in the total of £8,770.00 comprising of £8,400.00 compensation; £250.00 for inconvenience caused; and £120.00 as a reimbursement of the case registration fee.

Defence

The Home Builder denied liability.

Findings

The Home Builder failed to give the Home Buyer sufficient and reliable information about the position of the boiler prior to purchase. There was also no evidence to show that the Home Builder notified the Home Buyer of updated plans for the boiler location either before or after contract exchange. The Home Builder breached sections 2.1 and 3.1 of the Code.

Decision

The claim succeeded in part. The Home Buyer failed to provide any evidence to substantiate her claim for compensation in the sum of £8,400.00. However, the Home Buyer was entitled to the £250.00 requested for inconvenience. The Home Builder was also directed to reimburse the Home Buyer the sum of £120.00 to cover the cost of the case registration fee.

Complaint

The Claimant complained that the Builder had failed to supply a complaint reservation agreement and had wrongfully confirmed that the reservation fee of £5000 was non-refundable. Completion was delayed for 6 months and was causing the Home Buyer financial loss so he withdrew from the transaction. The Home Builder did not repay the reservation fee. The Home Builder was in breach of the Code in respect of the reservation fee (section 2.6) and in failing to give a reliable completion date (section 3.2).

Defence

There was no jurisdiction to decide this case because (1) there was no reservation agreement but a contractual agreement for a non-refundable deposit; and (2) the Home Buyer had not signed the reservation agreement. If there was a reservation agreement the Home Builder was entitled to deduct the cost of implementing the Home Buyer's choices for the building finishes which exceeded £5,000. Moreover, there was no fixed completion date and the date had been delayed by the Buyer's choices and additional drainage requirements imposed by the Council.

Findings

There was a reservation agreement. The Home Builder's agent confirmed the payment of a reservation fee and there was no evidence of a contract for a non-refundable deposit. On a proper interpretation of the Code including its purposes, paragraph 1 of the introduction to the Code included a situation where the Home Buyer had not signed the reservation agreement because the Home Builder had failed to require him to do so in breach of the Code. The Buyer was entitled to repayment of the amount of the reservation fee and the Home Builder had not identified legitimate deductions. The Home Buyer was thus entitled to repayment in full. As for the delay to completion, although there had been some factors which may have contributed to delay, the fact that the delay was 6 months meant that the Home Builder had not realistically estimated the completion date. Accordingly, there were breaches of section 2.6 and 3.2 of the Code.

Decision

The claim succeeded. The Buyer was entitled to payment of £5000 and reimbursement of the registration fee of £120.

Complaint

The Home Buyer submitted that the Home Builder breached sections 2.1 and 3.1 of the Consumer Code for Home Builders. Specifically, the Home Buyer submitted that his neighbour started work on an extension to their garage and he asserted that this affects the value of his Property. The Home Buyer submitted that the Home Builder did not advise him of his neighbour's extension plans. The Home Buyer therefore claimed for the Home Builder to provide him with compensation in the amount of £15000.00 for devaluing his Property.

Defence

The Home Builder did not accept that it had breached any section of the Code and disputed any liability to the Home Buyer. The Home Builder submitted that, in any event, the Home Buyer's claim is for £15,000.00 for loss of property value, and such claims (for loss of property value), are expressly excluded from this scheme. The Home Builder did not accept that the Code requires it to provide a home buyer with all the extension plans of their neighbours.

Findings

The adjudicator was unable to find any specific requirement (as detailed in the guidance documents) under section 2.1 of the Code which obligated the Home Builder to provide the Home Buyer with all the extension plans of his neighbours at the pre-purchase stage. The adjudicator concluded that such an obligation far exceeded the requirements of the Code under the circumstances. Therefore, the adjudicator did not find that failure to provide this information amounted to a breach of the Code in this instance.

Furthermore, based on the submissions provided, the adjudicator was not satisfied that there was any substantive evidence that the Home Builder had breached section 3.1 of the Code. The adjudicator was not satisfied that the Home Builder's failure to advise the Home Buyer of his neighbour's extension plans amounted to a breach of section 3.1 of the Code. Specifically, upon review of the Code guidance, the adjudicator find no requirement under section 3.1 for a Home Builder to advise a home buyer of all the extension plans of their neighbours.

Additionally, the adjudicator noted that the Home Buyer had specifically claimed compensation for loss of property value. The adjudicator drew attention to the fact that any compensation claims for loss of property value are excluded by this scheme and cannot be awarded.

Decision

The Home Buyer's claim was unable to succeed.

Complaint

The Claimant complained that the Builder had failed to complete the Home by the date of completion because so much work was outstanding. This included reconfiguring the bathroom, an investigation of the windows, replacement of a door and other matters set out in the application. She argued that the Home Builder had taken a very long time to carry out the remaining works and these were still incomplete. She argued that this demonstrated a lack of after-sales and complaints service. She said that she had lost very many days off work to allow access to workman and had suffered a significant financial loss.

Defence

The Builder argued that this complaint was really about snagging which fell outside the application of the Code. It pointed out that the contract between the parties stated that the Home Buyer was not entitled to hold up legal completion due to minor defects

Findings

The adjudicator found that the Home Buyer had not proved breaches of the Code. Section 3.2 concerned legal completion. The Home Buyer complained that the items which had not been done were not minor defects. The adjudicator found that although there were some larger items, such as the reconfiguration of the bathroom, the replacement of a door and concern about the fit of the windows, these were in the nature of minor defects. Section 4.2 concerned the provision of after-sales service. The Home Buyer complained that work had not been undertaken quickly and she had repeatedly had to chase up for matters to be progressed. The adjudicator found that there were a large number of texts and emails passing between the parties which showed that work was being undertaken. The application to CCHBIDRS was made only 4 months after legal completion and even if there were delays in replies to certain emails, the inference could not be drawn that an after-sales service was not provided.

Decision

The claim did not succeed.

Complaint

The Home Buyer's claim is that he had no option but to pull out of the sale of the Property due to significant changes in design and severe delays by the Home Builder with paperwork. However, the Home Builder had not refunded his Reservation fee.

The Home Buyer sought compensation in the total of £1,258.00 for a refund of the Reservation fee and some out-of-pocket expenses. The Home Buyer also requested an apology and an unspecified amount of compensation for stress.

Defence

The Home Builder did not submit a Defence.

Findings

The Home Buyer cancelled the Reservation Agreement as he was entitled to do under the Code. No evidence had been submitted to show that the Home Builder incurred any reasonable expenses for processing and holding the Reservation and is entitled to withhold any part of the Reservation Fee. There was no evidence to show that the Home Builder explained how contract deposits are protected and how any other pre-payments are dealt with.

Decision

The claim succeeded in part. The adjudicator directed that the Home Builder (1) refund the £500.00 reservation fee; (2) pay the Home Buyer compensation in the sum of £250.00 for inconvenience; (3) provide the customer with a written apology; and (4) reimburse the Home Buyer the sum of £120.00 to cover the cost of the case registration fee.

Complaint

The Home Buyer's claim is that the wardrobe in the master bedroom was fitted in the wrong location and without sliding doors; a microwave and washing machine which were not supplied as indicated; a wall hung toilet and concealed cistern which were not provided; the shower was smaller in size than that specified; and ceramic tiles were installed instead of the porcelain tiles specified.

The Home Buyer sought compensation in the sum total of £9,496.64.

Defence

The Home Builder denied liability.

Findings

The Home Builder failed to notify the Home Buyer of changes to sanitaryware, shower and the location of the wardrobe. The brochure also did not clearly state that a washing machine and microwave would not be provided. However, the brochure clearly stated that sliding door wardrobes would be fitted to selected units only. In addition, there was no clear information of what the tiles provided were made of.

Decision

The claim succeeded in part. Although the adjudicator found that the Home Builder had been breached its obligations under the Code in relation to the wardrobe, microwave, washing machine, sanitaryware and shower, the Home Buyer has not provided sufficient evidence to substantiate the sums claimed. The adjudicator directed that the Home Builder (1) pay the Home Buyer compensation in the sum of £250.00 for inconvenience (2) reimburse the Home Buyer the sum of £120.00 to cover the cost of the case registration fee.

Complaint

The Home Buyer submitted that she had a problem with the way her garage electrics had been routed. The Home Buyer therefore alleged that the Home Builder had breached sections 1.1 and 5.1 of the Code. The Home Buyer claimed an apology, for the Home Builder to “install electrical supply directly from my garage to my property” and pay the Home Buyer £120.00.

Defence

The Home Builder did not accept that it had breached any section of the Code and disputed any liability to the Home Buyer. The Home Builder submitted that section 1.1 of the Code is a general obligation to comply with the Code, which it believes it has done. Section 5.1 sets out requirements with regards to complaints handling and the Home Builder submitted that it has a system and procedure for handling complaints as is apparent from the evidence provided. The Home Builder submitted that it informed the Home Buyer about its complaints procedure and dealt with her complaint within a reasonable time, given that the options available had to be fully considered and legal advice taken.

Findings

Based on the evidence provided, the adjudicator was satisfied that the Home Builder did have a procedure in place for receiving and handling Home Buyers’ calls and complaints. It was noted that this procedure was detailed in the submitted document titled “Granville Developments – Snagging & Complaints Procedure”. Furthermore, taking into account the evidence of the communicative exchanges between the parties, it appeared the Home Buyer duly made use of this procedure. Consequently, in light of the submissions provided, the adjudicator was unable to objectively conclude that the Home Builder had breached section 5.1 of the Code under the circumstances.

Furthermore, based on the submissions provided, the adjudicator found no substantive evidence that objectively proved the Home Builder had failed to comply with the requirements of the Code. It was noted that the Home Buyer had raised a complaint about her dissatisfaction with the routing of her garage electrics. However, the adjudicator was not satisfied that the Home Buyer had objectively demonstrated that this amounted to a failure on the part of the Home Builder to comply with section 1.1 of the Code.

Decision

The Home Buyer’s claim was unable to succeed.

Complaint

The Claimants' principal complaint was about the delay between reservation and completion. They said among other matters that they had been given repeatedly inconsistent and inaccurate information about the expected completion dates and that the Respondent had had no proper system for dealing with their complaint.

Defence

The Builder filed only documents by way of a defence with no narrative or explanation save those which could be deduced from the documentation. The adjudicator treated the Builder's response in general as a denial, although the failure to respond was in certain instances noted.

Findings

The adjudicator found that the Home Builder had given inconsistent information about the completion date with the consequence that there was a very long delay between the date first given (September 2017) and the completion (May 2018). There had also been failures to respond to the Buyers' complaint which gave rise to the inference that it had no proper procedures. It also was not clear that an explanation of the procedures had been given.

Decision

The claim succeeded in part. The Buyers were awarded £500 for inconvenience but were not awarded compensation equating to furniture storage costs because they had moved into a family home to save rent which they said they would not otherwise have done. As the papers suggested that the rent would have been more than storage charges, they had not shown that they had suffered a loss. The legal costs related to rescission of a contract. The Builder was also directed to make an apology and refund the registration fee.

Complaint

The Home Buyer submitted that the Property's workmanship was of poor quality and she therefore felt it was unfinished at the time of legal completion. She submitted that she contacted the Home Builder on 26 November 2017 and it attended the Property to rectify the issues. However, she was unable to move in until January 2018. Therefore, the Home Buyer asserted that the Home Builder had breached section 3.2 of the Consumer Code for Home Builders ("the Code"). The Home Buyer therefore made a claim for the Home Builder to take some unspecified practical action and to pay her £1040.81. The Home Buyer also requested some compensation for emotional distress at the Adjudicator's discretion.

Defence

The Home Builder did not submit a defence.

Findings

Based on all the evidence provided, the adjudicator was unable to objectively conclude that the Home Buyer deeming the Property to be unfinished at the time of legal completion (as a result of snagging issues with poor workmanship) amounted to a breach of the Code. To the contrary, the Code guidance indicated that a property being unfinished at the time of legal completion was not an unexpected occurrence. Furthermore, section 3.2 of the Code does not state that it is an automatic breach of the Code if a Home Buyer is not satisfied with the property's workmanship at the time of legal completion. It was noted that the sum claimed by the Home Buyer represented the cost of her mortgage (£890.81) and her council tax (£150.00) for the period she was unable to move into her property. The Home Buyer indicated that she should be entitled to these sums as she had to pay these costs but was unable to move in to the property as the issues she highlighted with the Property were being rectified by the Home Builder. However, the adjudicator did not find any section of the Code (section 3.2 or otherwise) that obligated a Home Builder to compensate a Home Buyer for their mortgage and council tax payments for any time periods where snag rectification work was ongoing. As such, the adjudicator was unable to conclude that the Home Builder's refusal to compensate the Home Buyer for these claimed sums amounted to a breach of the Code.

Decision

The Home Buyer's claim did not succeed.

Complaint

The Buyers complained that they were told there was car parking spaces for two cars when they were shown the Home and the plans they were shown also reflected this. The Home provided car parking space of 4.69 m between a wall and a fence and was not large enough for two cars without extreme inconvenience and lack of safety. The Home Buyers say they complained orally and when a letter was sent complaining of parking in shared areas they complained in writing. Their complaint was not responded to until 4 months later.

Defence

The Home Buyers were not told that there was space for two cars: space for only one was shown on the plan. In any event there is no fixed size for a car parking space. The Buyers did not follow the complaint procedure and their solicitor was instructed to reply to the Buyers' written complaint but failed to do so.

Findings

The adjudicator found that the Home Buyers had been promised 2 car parking spaces in the marketing activity and the pre-contractual information. As the solicitor's letter said that only one car parking space was intended, this was misleading and failed to give appropriate information. Failure to reply to a letter of complaint for 4 months was not consistent with the Builder's complaints procedure. As the complaints procedure was not being implemented in the Buyer's case it follows that it was not in place. The adjudicator found breaches of sections 1.5, 2.01 and 5.1 of the Code.

Decision

The claim succeeded in part. The Builder was directed to

- Apologise for breach of the Code;
- Take practical action to put right the failure to provide 2 parking spaces by using its best endeavours to achieve an extension of the Home Buyers' parking area. In the absence of other agreement between the parties, this shall be achieved as described in paragraph s. below, to provide a minimum width of 2.4 metres per car parking space, measured at 90 degrees from the wall of the garage at 4.60 metres from the front (the fence at the north, north-east end) of the parking space.
- Pay compensation for inconvenience of £350.00.
- Reimburse the Home Buyers' registration fee of £120.00.

Complaint

The Home Buyer claimed that there were various delays with the completion of the Property. The Home Buyer submitted that the Property was completed 9 months later than initially projected. He indicated that he had to incur additional costs (such as accommodation/storage costs) as a result of this issue. Furthermore, the Home Buyer also raised a complaint regarding the Home Builder's complaints handling. Accordingly, the Home Buyer submitted that the Home Builder had breached sections 3.2 and 5.1 of the Code. The Home Buyer therefore sought an apology and compensation in the sum of £6000.00.

Defence

The Home Builder did not accept that it should be liable to provide the redress claimed by the Home Buyer. It accepted that there were delays to the original projected completion date of the Property. However, the Home Builder submitted that it kept the Home Buyer appropriately updated regarding the delays and the build progress. The Home Builder also disputed that it had breached section 5.1 of the Code. It submitted that its Consumer Code for Home Builders form (as signed by the Home Buyer) clearly detailed its set complaints handling processes.

Findings

Based on all the evidence available, the adjudicator concluded that the completion delays for the Property did not amount to a breach of the Code as asserted. To the contrary, it was noted that the Code guidance indicated that property completion delays are not an unexpected occurrence. Furthermore, it was noted that the Home Builder provided updates to the Home Buyer regarding the completion of the Property and also promised to keep him updated as information became available. Consequently, under the circumstances, the adjudicator was unable to conclude that the Home Builder's actions amounted to a breach of section 3.2 of the Code. Furthermore, the adjudicator was mindful that the Home Builder had provided a copy of its Consumer Code for Home Builders document that had been signed by the Home Buyer and dated 3 November 2016. It noted that this document expressly detailed the Home Builder's system and procedures for handling Home Buyer complaints and also explained its dispute resolution arrangements. Accordingly, based on the evidence provided, the adjudicator was only able to conclude that the Home Builder did have a system and procedure in place for handling Home Buyer complaints and had advised the Home Buyer of its dispute resolution arrangements as required. Consequently, based on a full review of all the evidence provided, the adjudicator was unable to conclude that any breaches of the Code had been objectively established. Accordingly, in the absence of any breaches of the Code on the part of the Home Builder, the Home Buyer's claims were unable to succeed.

Decision

The Home Buyer's claim did not succeed.

Complaint

The Home Buyer's claim concerned the quality of the mortar used to construct the property and the quality of workmanship. The Home Buyer also raised complaints about the Home Builder's after sales service and complaint handling.

The Home Buyer requested an apology, an explanation and compensation in the sum of £15,000.00.

Defence

The Home Builder denied liability.

Findings

Complaints about faulty items, poor design, quality of workmanship and/or snagging issues fall outside the scope of adjudications under CCHBIDRS. The Home Buyer's complaints about the mortar and poor workmanship could therefore not be considered. However, the Home Builder had not provided any evidence to show that it provided an accessible after-sales service and had a system/procedures for handling calls and complaints. Therefore this aspect of the Home Buyer's claim succeeded.

Decision

The claim succeeded in part. The Home Buyer's requests for an apology, an explanation and compensation in the sum of £15,000.00 related directly to the Home Buyer's complaints about the quality of the material used and the quality of workmanship, and could therefore not be considered. However, as the Home Builder has breached its obligations under sections 4.1 and 5.1 the Code, the Home Builder was directed to reimburse the Home Buyer the sum of £120.00 to cover the cost of the case registration fee.

Complaint

The Buyers complained that they had initially been shown a plan which indicated that the Home would have fitted wardrobes. They were not given detailed information to contradict this prior to agreeing the price. They discovered that other houses in the development had such wardrobes and they complained in writing and claimed the cost of the wardrobes that they had fitted.

Defence

The Buyers were not given a promise of fitted wardrobes and the brochure for their Home made clear that no wardrobes would be supplied. The Buyers knew that there were no wardrobes by the time that they exchanged contracts.

Findings

The adjudicator found that the Home Builder had given a plan which was misleading and, on balance, had not provided the Buyers with the brochure for plot 6 correcting the false impression that the Home would have fitted wardrobes. This was a breach of sections 1.5 and 2.1 of the Code.

Decision

The claim succeeded in part. As the Buyers had established a breach they were entitled to an apology and compensation for inconvenience, which in this case was limited to £60. The Home Buyers were not entitled to the cost of the wardrobes because they knew that these had not been fitted prior to exchange but nonetheless continued to exchange and complete on the same day soon after seeing the completed Home.

Complaint

The Home Buyers highlighted snagging issues with the Property and also asserted that the Home Builder had breached sections 1.1, 1.2, 1.4, 2.1, 2.3, 2.6, 3.3, 4.1, 4.2, 5.1 and 5.2 of the Consumer Code for Home Builders (“the Code”).

Defence

The Home Builder did not accept that it was liable to provide the redress claimed by the Home Buyers. The Home Builder did not specifically respond to the Home Buyers’ Code breach allegations but addressed the snagging issues that they had raised

Findings

Based on all the evidence available, the adjudicator concluded that the Home Builder had failed to adhere to the requirements of the Code (specifically, sections 1.1, 1.2, 1.4, 2.1, 2.3, 2.6, 3.3, 4.1, 4.2 and 5.1 of the Code). The adjudicator highlighted that complaints relating to snagging issues are expressly excluded from the scheme and could not be examined. The adjudicator considered the Home Buyers’ claim for compensation for inconvenience in the sum of £10,000.00. Whilst the adjudicator accepted that the Home Buyers had inherently experienced inconvenience as a result of the Home Builder’s breaches of the Code, it was highlighted that compensation for inconvenience is limited to £500.00 under the scheme. Accordingly, under the circumstances, the adjudicator found it fair and reasonable to award the Home Buyers with the full £500.00 compensation sum allowable for inconvenience. Furthermore, the adjudicator found it fair and reasonable that the Home Builder compensate the Home Buyers for their adjudication fee.

Decision

The Home Buyers’ claims succeeded in part.

Complaint

The Claimant complained that the development brochure had shown that those flats in the apartment block that had balconies would also have a roof over the balcony. When the Home was handed over, no rooves had been built over the balconies on the top floor. Initially when he complained about this, the Home Builder had said that this had not been in the plans but subsequently, the Home Builder agreed to supply rooves to the top floor balconies. At the time of the application, this had been promised for completion in May, but by 24 June 2018, the Home Buyer had heard nothing from the Home Builder. He therefore made his application. An unsatisfactory sheet metal roof was then installed in early July 2018. The Home Buyer says that this should have resembled the roof over the door to the apartment blocks but did not.

Defence

The Defendant does not admit that there was a breach of the Code. It is agreed that the images in the development brochure were an artists impression and showed rooves over the top floor balconies, but it also contained on page 54 a statement saying that the images were subject to change. The Home Builder states that the approved plan made no proposal for balcony rooves. Nonetheless, it had made arrangements after the Home Buyer's complaint to install rooves to the top floor balconies that had been completed in July 2018.

Findings

The adjudicator found that the impression created by the development brochure was that the top floor apartment balconies would have rooves. The fact that the approved plan did not make provision for this showed that it was not the Home Builder's intention to construct these at the time of the reservation agreement. The impression given by the brochure was not corrected in the pre-reservation and pre-contractual information and therefore this was not a fair representation of the appearance of the Home or of the accommodation to be provided. The reservation agreement, which made reference to the brochure, was inaccurate. There were therefore breaches of sections 2.1 and 2.6 of the Code. The Home Builder had remedied this however, and the rooves that had been built over the top floor balconies resembled the images in the brochure. It would reasonably be expected that there would be small points of departure from the image, so the Home Buyer could not insist that the roof of the balcony should look like that over the doors. The adjudicator could not make findings in relation to allegations of defects in construction. During the period when there was no balcony, there had been a small measure of inconvenience for which £150 would be awarded.

Decision

The claim succeeded in part. The adjudicator directed that the Home Builder should:

Apologise to the Home Buyer for breaches of sections 2.1 and 2.6 of the Code; Pay compensation for inconvenience of £150.00; and Reimburse the consumer's registration fee of £120.00.

Complaint

The Home Buyer submitted that his complaint was about the Home Builder's unsatisfactory installation of bi-folding doors at his Property. The Home Buyer did not assert that the Home Builder had breached any section of the Code. The Home Buyer sought an apology, an explanation, a genuine bi-fold door fitted by the supplier and compensation for inconvenience in the sum of £200.00.

Defence

The Home Builder did not accept that it had breached any section of the Code. The Home Builder submitted that the issue relating to the bi-folding doors had already been the subject of an NHBC Resolution Report and the NHBC's decision had already been issued on this matter. Accordingly, the Home Builder did not accept that it should be liable to provide the redress claimed by the Home Buyer.

Findings

The adjudicator noted that the Home Buyer's complaint regarding the bi-folding doors at the Property had been the subject of an NHBC Resolution Report where a decision had already been issued. The adjudicator confirmed that their jurisdiction under the scheme is entirely limited to determining whether the Home Builder has complied with the Code (the Consumer Code for Home Builders). The adjudicator further confirmed that their role is not to review, amend or enforce the findings of the NHBC. The adjudicator acknowledged that this matter may have been distressing for the Home Buyer. However, under the circumstances, the adjudicator was only able to conclude that the subject-matter of this complaint (a complaint about the installation of bi-folding doors by the Home Builder, unrelated to any alleged breach of the Code) was not an issue that fell under the scope of this particular scheme. Under the circumstances, in the absence of any asserted breach of the Code on the part of the Home Builder (or any event that the adjudicator could reasonably interpret as being a breach of the Code), the adjudicator was left with no other option but to conclude that no breach of the Code had been established by the Home Buyer. Accordingly, in the absence of any breaches of the Code on the part of the Home Builder, the adjudicator had to conclude that the Home Buyer's claims were unable to succeed.

Decision

The Home Buyer's claim was unable to succeed.

Complaint

The Claimant complained that the Builder had failed to respond to an email dated 23 November 2017 (and a reminder of 27 February 2018) raising questions about the presence of expansion joints and whether sub-floor plastic piping had been “metal strapped” to the concrete underfloor.

Defence

No defence was filed.

Findings

The adjudicator found that the Builder had failed to respond to the requests within a reasonable time (seven months) despite having promised to do so. It was therefore improbable that its complaints procedure was being implemented and improbable that its staff had been properly trained. Also the attention of the Buyer had not been drawn to the dispute resolution scheme. There were breaches of sections 1.4, 4.1 and 5.1 of the Code.

Decision

The claim succeeded. The adjudicator directed that the Builder shall:

- Provide an explanation relating to the two issues raised initially in emails dated 23 November 2017 and raised again on 27 February 2018, namely as to:
 - o Whether the Home Buyer’s house has, or should have, vertical expansion joints in the stone built walls; and
 - o Whether the plastic pipes that run horizontally from the soil vent pipes have been “metal strapped” to the underside of the block and beam concrete flooring when these were repositioned in early 2017; and
- Reimburse the Home Buyer’s registration fee of £120.00.

Complaint

The Home Buyer's complaint was that it was unfair for the Home Builder to withdraw a purchase incentive of floor coverings. The Home Buyer asserted that the Home Builder breached sections 3.1 and 3.2 of the Code. The Home Buyer therefore made a claim for the Home Builder to "re-evaluate attitude towards incentives and: i) understand their importance to home buyers' financial planning and financial commitments ii) stop applying undue pressure on prospective purchasers to use their recommended panel of solicitors & financial advisors". The Home Buyer also claimed compensation in the sum of £5668.50.

Defence

The Home Builder did not accept that it had breached any section of the Code. The Home Builder submitted that from the outset it was made clear to the Home Buyer (in the reservation document, the welcome letter and the covering letter from its solicitors) that the incentive of the floor coverings was strictly performance-based and would be withdrawn if exchange of contracts did not take place within 28 days from receipt of the documentation from its solicitors. The exchange of contracts did not take place within the prescribed 28 day period. Accordingly, the Home Buyer was informed that the incentive had been withdrawn; however, the Home Buyer opted to proceed with the purchase of the Property. With regards to the alleged breach of section 3.2 of the Code, the Home Builder submitted that anticipated completion dates were duly provided to the Home Buyer but it explained that these could not be guaranteed. The Home Builder asserted that this is not a breach of the Code. Accordingly, the Home Builder did not accept that it should be liable to provide the redress claimed by the Home Buyer.

Findings

Based on all the evidence available, the adjudicator concluded that the Home Builder had expressly made clear to the Home Buyer that the floor covering purchase incentive would be withdrawn if the contracts were not exchanged within 28 days of receipt of the documentation from its solicitor. In particular, it was noted that this express condition was highlighted to the Home Buyer in bold text in the correspondence from the Home Builder's solicitor. It was not in dispute that exchange of contracts did not occur within the prescribed 28 day period. Furthermore, based on the submissions provided, the adjudicator was satisfied that the withdrawal of the incentive was conveyed to the Home Buyer and he still opted to proceed with the purchase of the Property. Accordingly, based on the evidence available, the adjudicator was only able to conclude that the terms relating to the floor covering purchase incentive were clear and fair under the circumstances. The adjudicator was unable to objectively conclude that the Home Builder's actions in respect to this matter amounted to a breach of section 3.1. The adjudicator also noted that the Code guidance on section 3.2 indicates that a degree of uncertainty regarding property completion times is to be expected. Based on the evidence provided (notably, the communications between the parties), the adjudicator noted that the Home Builder explained the anticipated completion dates were not guaranteed and that matters beyond its control made the construction time difficult to predict. In any event, it was also noted that construction was initially due to be completed in May 2018

and completion subsequently took place on 4 May 2018. Consequently, under the circumstances, the adjudicator was unable to objectively conclude that the Home Builder's actions amounted to a breach of section 3.2 of the Code. Accordingly, in the absence of any breaches of the Code on the part of the Home Builder, the adjudicator had no other option but to conclude that the Home Buyer's claims were unable to succeed.

Decision

The Home Buyer's claims were unable to succeed.

Complaint

The Home Buyer stated that the roof of the garage on the neighbouring property overhung the Home's boundary, which had resulted in a reduction to the useable width of the passage to the side of the Home leading to the garden. The Home Buyer alleged that this had not been made clear to him before or at reservation or exchange of contracts and that the Home Builders had breached section 2.1 of the Code accordingly. The Home Buyer also alleged property blight.

The Home Buyer sought for the Home Builders to adjust the roof of the garage of the neighbouring property in order to remove the overhang and restore the useable width of the side passage.

Defence

The Home Builders denied liability, on the basis that the Home Buyer had seen the conveyancing plan and engineering plans at the reservation stage, and these were explained to him. Further, the Home Builders stated that the Home Buyer visited the plot and thus would have been aware of the issue.

Findings

The adjudicator found that the Overhang was significant, that the Home Buyer could not have been aware of this at the reservation and pre-contract stages, and that the Home Builders therefore breached section 2.1 of the Code by failing to assist the Home Buyer in making 'suitably informed purchasing decisions'.

Decision

The claim succeeded in part. Notwithstanding that the Overhang significantly intruded into the Home Buyer's side passage, the property next door was already in the ownership of a Third Party and thus the desired remedy could not be ordered. The adjudicator directed the Home Builders to pay the Home Buyer £150.00 for the inconvenience caused. The Home Buyer's registration fee was also reimbursed.

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- The Home Buyer alleges that the Home Builder breached in breach of section 2.1 of the Consumer Code for Home Builders.
- The adjudicator has found the Home Builder to have breached section 2.1 of the Code.
- The remedies claimed by the Home Buyer were an apology and compensation of £15,000.00.
- £250.00 was awarded by the adjudicator.
- The other remedy awarded by the adjudicator was that the Home Builder apologise to the Home Buyer.
- The Home Buyer's registration fee was reimbursed.
- Case summary

Complaint

The Home Buyer stated that the Reservation Agreement indicated an estimated annual service charge of £1,288.00. Post completion the Home Buyer was invoiced an actual service charge of £2,055.00 (£1,465.00 general service charge plus £590.00 building insurance). The Home Buyer alleged that the Home Builder had not acted fairly, it had provided inaccurate and unreliable information, which had misled and financially disadvantaged the Home Buyer. The Home Buyer sought an apology and compensation of £15,000.00.

Defence

The Home Builder denied liability, on the basis that it had provided estimates of the service charges, it had made the Home Buyer aware that he would have to contribute to the building's insurance and the Home Buyer's conveyancing solicitors had not sought additional information on the service charge or the insurance costs. The Home Builder maintained that the Home Buyer's alleged losses were not related to a breach of the Code and could not be awarded under the scheme.

Findings

The adjudicator found that the information should have been fair and reliable. However, it was not. This was because the total figure for the actual service charge invoiced was £2,055.00, which diverged from the estimate given of £1,288.00. A difference of more than 60%. Irrespective of how the elements constituting the estimated service charge were made up what mattered to the Home Buyer, and which he was entitled to rely on, was the global estimate. Overall, there was a breach of section 2.1 of the Code by the Home Builder.

Decision

The claim succeeded in part. The adjudicator directed the Home Builder to apologise and to pay the Home Buyer £250.00 for the inconvenience caused. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer submits that an area of around 40M2 of grass from his front garden was removed by the Home Builder - after the completion date, when the Home Builder was carrying out underground drainage works relating to another house. And that, during the re-laying of the new lawn, the ground was not adequately prepared by the Home Builder - leading to a very unlevel lawn. Further that, the garden area is now difficult to mow, and unsafe to walk onto.

The Home Buyer has raised the issue with the Home Builder and it was referred to the Home Builder's contract's manager. The Home Buyer states that after a site visit, the contracts manager agreed that the condition of the lawn was unsatisfactory, and that the lawn would be replaced. The Home Buyer has chased up the issue on various occasions, and the Home Builder has missed at least two dates to carry out the remedial works.

Defence

The Home Builder has not submitted any Response in accordance with clause 4.4. of the IDRS Rules 2017, and thus, has not provided any rebuttal, or evidence to counter the above claims by the Home Buyer.

In separate correspondence to the CEDR the Home Builder has stated: "...we are not in dispute with the home buyer and have agreed to rectify the front garden issues The Homeowner has stated he is unable to accept the works at this time and therefore we have put the works on hold".

Findings

The Home Buyer's principal claim (for economic recompense due to damage to his garden caused post-completion by the Home Builder), falls outside the scope of the Code and accordingly I am unable to make any determination on the Home Builders liability on this issue.

The Home Buyer has proven however, that the Home Builder has breached a separate obligation - at Section 5.1 of the Code - in that it did not deal with his complaint within a reasonable time. The adjudicator found that due to the admission by the Home Builder that the completion of the rectified defects took longer than anticipated, that the Home Builder breached section 1.3 of the Code.

Decision

The claim succeeds in part. The majority of the Home Buyer's claim (to remove the existing grass, return the ground to the original levelled condition and re-lay the lawn to an adequate finish & economic compensation) relates to damage which falls outside the remit of the Code. Therefore, the Home Buyers claim for £1,000.00 cannot succeed on that basis. However, the Home Buyer has proven that the Home Builder has breached a separate obligation, in that it did not deal with his complaint within a reasonable time.

Complaint

The Home Buyers alleged that the Home Builder delayed in not having sufficient bricks and in continuing to build by using bricks of a different colour, and then demolishing that part already built to build with bricks of an agreed colour. The Home Buyers also alleged that the Home Builder altered the plan by building the Home to a reversed plan (the opposite hand) thereby depriving them of a bathroom window. The Home Buyers complained and accepted the Home Builder's offer of a right to cancel. The Home Buyers complained of a higher rate of mortgage by reason of delay, inconvenience and the loss of opportunity to acquire an alternative property. The Home Buyers also complained of a delay in returning their deposit.

Defence

The Home Builders denied liability, on the basis that the Home Buyers had not particularised their loss. The Home Builder admitted some delay but claimed that the unavailability of bricks was outside its control. The Home Builder also admitted building to the opposite hand but asserted that this was a minor modification to which the Home Buyers could not reasonably object. The Home Builder also pointed to its offer to the Home Buyers either to take £1,000 or to cancel their contract. Any losses following on cancellation were therefore incurred by the Home Buyers' choice to cancel and not by any breach of the Code by the Home Builder.

Findings

The adjudicator found that the unavailability of bricks was outside the Home Builder's control and so could not found a breach of the Code. However, the failure to advise the Home Buyers of the issue with the bricks and to seek their agreement was a breach of the Code as was building the Home to the opposite hand to that shown on the plan at the time of the reservation agreement. It was found that the deposit had been paid to the Home Buyers' solicitors without undue delay and so this was not a breach of the Code as the Home Builder was not responsible for any delay by the solicitors in forwarding sums received.

Decision

The claim succeeded in part. The adjudicator did not award financial compensation, partly because the Home Buyers had not particularised their claim but also because they had cancelled their contract and so any losses flowed from that decision and not from any breach of the code by the Home Builder. However, the Home Builder was ordered to apologise in writing and to reimburse the Home Buyers their registration fee.

Complaint

The Home Buyer states that the Home Builder provided them with inferior quality sink and taps to the downstairs cloakroom. Additionally, the Home Buyer states that the Home Builder failed to provide a yard gully under their outside tap as per the home site specification. For these reasons the Home Buyer asserts the Home Builder breached section 2.1 of the Code.

The Home Buyer requests the Home Builder to pay for remedial work to the downstairs cloakroom, fit a yard gully beneath the outside tap, refund the cost of the application fee and pay compensation.

Defence

The Home Builder submits that it has already defended the Home Buyer's claim in relation to the downstairs cloakroom and therefore it does not believe any further defence is required in this instance. The Home Builder asserts that it has the right to make minor amendments to its specification and that the Home Buyer signed the pre-reservation checklist that details that right. Also in the Defence the Home Builder states that the yard gully was not required by building regulations.

Findings

The adjudicator decided that this Claim differed from that made previously.

In relation to the downstairs cloakroom, it was decided that the Home Buyer did not provide sufficient information to substantiate their claim. In particular the specification provided to the Home Buyer at the pre-reservation stage had not been provided. The home site specification was found to have been provided to the Home Buyer after purchase of the Property.

In relation to the yard gully the adjudicator accepted the statement made by the Home Builder that installation of a yard gully was not a requirement under building regulations. Additionally, the Home Buyer did not provide any information to demonstrate that during the pre-Reservation, Reservation and pre-contract periods he was advised that a yard gully would be provided.

Therefore, the adjudicator found that the Home Builder did not breach section 2.1 of the Code.

Decision

The claim made by the Home Buyer failed to succeed.

Complaint

The Home Buyer submitted that there were material differences of significant features of the Property including the omission of two specified Velux rooflights, and that the Home Builder intentionally deleted the significant features; also that the Home Builder had retained possession of their keys for an unreasonable length of time.

Defence

As the Property was already at the point of completion at the Reservation date of 05/08/15, therefore, at the point of reservation, the property was watertight (as evidenced by the NHBC Inspection Schedule) and the Velux Lights would not have been in situ at the time of reservation. As a consequence, as the Home Buyer would have seen the property without Roof Lights at the time of reservation and was accordingly aware that the Property would not have rooflights. The Home Buyer was aware that the property did not have Velux lights installed at the time of installation.

Findings

The adjudicator found that due to the admission by the Home Builder that the completion of the rectified defects took longer than anticipated, that the Home Builder breached section 1.3 of the Code.

Further that the Home Builders sales brochures and plans were not accurate as they did show at least 2 rooflights, and it was reasonable for the Home Buyer to expect 2 rooflights to be installed and that this omission by the Home Builder constituted a breach of Section 2.1 & 3.1 of the Code.

Further that although the Home Buyer may have felt 'unsettled' by the length of time the Home Builder retained their keys, there is nothing to indicate that the retention of the Home Buyers keys by the Home Builder was not by agreement with the Home Buyer and as such the Home Buyer failed to prove that this was a breach of section 3.2 of the Code.

Decision

The claim succeeded in part. The adjudicator awarded the Home Builder the sum claimed for reinstallation of rooflights but did not award the sum claimed for replacement of locks.

The adjudicator further directed the Home Builders to pay the Home Buyer £250.00 for the inconvenience caused. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer had been required to cancel a Reservation Agreement because the sale of his existing residence had not been achieved. The Home Builder had not returned either the Reservation fee of £1,000 nor a further deposit of £3,000 paid when the Home Buyer asked additionally for a conservatory. The Home Buyer sought the return of £4,000.

Defence

The Home Builder said that other extras valued at £3,075 had been requested and provided, also that the cancellation had caused hinderance to the sale of the new house.

Findings

The adjudicator found that the Home Builder had breached section 2.6 of the Code as alleged by the Home Buyer by not returning the Reservation fees. Any extras were a matter to be dealt with at the time of payment of the balance for the property. There was no evidence of any deductible reasonable costs incurred and arising from the cancellation which were not recovered by the Home Builder.

Decision

The claim succeeded and the adjudicator directed the Home Builder to return £4,000 to the Home Buyer. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer submits that on 20 March 2018, he was asked to send a reservation fee of £5000.00 by the Home Builder's estate agents in respect of the purchase of the Home in the sum of £790,000.00. He said that a payment was duly made direct to the Home Builder's account and was cleared on 21 March 2018. The home buyer was then sent a reservation agreement by email from the estate agents. The reservation form stated "the reservation fee is non-refundable in any event (other than as a result of a default by the Seller)". On about 3 May 2018 the Home Buyer decided to withdraw from the purchase of the property. He requested return of the deposit. On 9 May 2018, he received an email from a director of the Home Builder indicating that a statement of deductions would need to be prepared. On 16 May 2018, he received an email from the same director detailing a list of deductions to be made from the reservation fee. These exceeded the amount of the reservation fee and were not reasonable administrative costs.

Defence

The Home Builder submits that the funds paid by the Home Buyer were not a reservation fee but a deposit on the property. The money was paid directly to Henwill Homes' account. The Home Builder argues that the reason for the deposit of £5000.00 was because he requested a cessation of work on the property to enable change of various different areas of the house and garden. Tradesmen had to return to the property to complete works after the Home Buyer withdrew from the purchase. The costs were itemised and deducted from the deposit. No reservation fee was ever taken.

Findings

The adjudicator has found that the Home Builders have breached requirements under the Consumer Code for Home Builders. The adjudicator The Home Builder has breached a requirement under the Consumer Code for Home Builders.

The adjudicator has directed that the Home Builder shall pay the sum of £5,050.00 to the Home Buyer; and the Home Builder shall reimburse the Home Buyer with his registration fee in the sum of £120.00.

Complaint

The Home Buyer stated that the Home Builders had represented to her that the Property had a double garage and its own driveway, and that the social housing was reserved for disabled individuals. She further stated that the Property was 2% smaller than the specification by her partner's measurements, and that the Home Builders had not offered her purchase incentives which had been offered to others on the development and that this treatment was discriminatory. She further alleged stress as a result of the matters complained of.

The Home Buyer sought £15,000 in compensation from the Home Builders.

Defence

The Home Builders denied liability, on the basis that the Home Buyer had seen relevant plans which clearly showed that the driveway was shared with the neighbouring plot and the detached double garage was actually two singles in one garage block. Further, the Home Builders contended that issues connected to the garage, driveway and internal area amounted to loss of value which was outside the scope of the Scheme. They also stated that it was for purchasers to negotiate incentives.

Findings

The adjudicator found that the documents were inconsistent, describing a double garage but showing a shared driveway and single garage within a double garage block on the schematics, and that the Home Builders therefore breached sections 1.5 and 2.1 of the Code in that the sales materials were not clear, they had thereby failed to assist the Home Buyer in making 'suitably informed purchasing decisions'. These two findings led naturally to a breach of section 2.6 in that the reservation documentation did not show 'what was being sold'. There were no written representations as to the social housing mix and this aspect of the claim was rejected, along with any alleged inconsistency in the internal area and the Home Builders' failure to offer purchase incentives.

Decision

The claim succeeded in part. Notwithstanding the breaches complained of, these did not justify the compensation sought. The adjudicator directed the Home Builders to pay the Home Buyer £100.00 for the inconvenience caused. The Home Buyer's registration fee was also reimbursed.

Complaint

The Claimant complained that the Builder had not informed her that she would have a drainage hole on her drive which also served the neighbour's property and for the upkeep of which she would be responsible. She claimed breaches of sections 2 and 3 of the Code.

Defence

The Builder asserted that the applicant was not the Home Buyer under the Code. Subject to that, it was contended that there was no breach because the Home Buyer had been shown a plan illustrating the yard drain on her property. There was no breach of sections 2 or 3.

Findings

The adjudicator found that the Home Buyer was entitled to proceed with her claim and referred to rule 5.5.5. The adjudicator found that the Home Buyer had been shown a plan showing a yard drain prior to the reservation agreement. The Home Buyer had complied with section 2.1 of the Code and, while this plan had not been passed on to solicitors for the Buyer, the Code did not require this. There had been no requisitions on this topic. The Home Builder had provided sufficient information and the Home Buyer had not established a breach of section 3 of the Code.

Decision

The claim did not succeed.

Complaint

The Claimant complained that the Home Builder had failed to explain to her until 2 weeks before completion that the pathway to the rear of her detached Home would be shared with her neighbour. She said that the plans she saw did not bear cross-hatching to show that the access was shared. She sought £10,000 representing the difference between the cost of a detached home and a semi-detached home on the same development, which she said was consistent with the loss of value, £1000 for stress and an apology.

Defence

The Home Buyer had been shown Conveyance plan revision G showing cross-hatching along the rear path, representing that the access was shared. The same plan had been sent to her solicitor, so that both were on notice that the rear access pathway was shared. The Home Buyer had completed in that knowledge.

Findings

The position in relation to the plans was unclear. Of the plans submitted to the adjudicator, that appearing to be attached to the reservation agreement and the transfer could not be seen to bear cross-hatching although other plans submitted by the Home Builder did appear to bear cross-hatching. There had been no response by the Builder to the Home Buyer's contention that the two sales agents did not appear to know that the access was shared and that she had not been told this by either of them. The adjudicator found that it was probable that the Home Buyer had not been told of the shared access prior to contract. The fact that access to the rear between the two houses would be shared was a matter which should have been communicated, especially in relation to a detached house because it was a matter likely to affect her purchasing decisions. The Home Buyer had established a breach of section 2.1 of the Code and, because the position was not clear from the contract, also section 3.1 of the Code.

Decision

The claim succeeded in part. As the Home Buyer's claim in relation to the shared access was one for loss of value, her claim for £10,000 could not be awarded under the Code. She also could not be awarded compensation for stress as this is expressly excluded by the Scheme Rules. The adjudicator found inconvenience, however, and awarded compensation for £500, an apology and reimbursement of the registration fee.

Complaint

The Home Buyer states that they are still waiting for defects to be rectified after living in the Property for almost 2.5 years. They state that the level of customer service received is poor. Additionally, the Home Buyer states that the front door and internal doors that have been installed by the Home Builder are not as per the specification detailed in the marketing brochure.

For these reasons the Home Buyer asserts the Home Builder breached sections 1.3, 1.5, 2.1 and 5.1 of the Code.

The Home Buyer requests an apology, implementation of a procedure by the Home Builder for resolving complaints, installation of new front door lock (or payment of £6,000.00), replacement of 18 internal doors (or payment of £3,000), refund of the cost of the registration fee, and payment of £250 compensation for inconvenience

Defence

The Home Builder submits that it already has a procedure in place for dealing with defects. The Home Builder admits that there was dissatisfaction with the customer care service and so they terminated their contract with the company providing it. The Home builder acknowledges that a front door lock is not as specified in the marketing brochure. In its Defence the Home Builder states that within the marketing brochure there is a disclaimer that allows for changes to the items listed to be made, and also that the current installed door complies with Secure by Design (“SBD”). In relation to the internal doors, the Home Builder again relies upon the disclaimer in the marketing brochure and states that the installed doors are oak coloured, solid, with a foil veneer.

Findings

Section 1.3 of the Code was found by the adjudicator to not have been breached by the Home Builder as it related to customer care before legal completion, however the Home Buyer’s issues occurred after legal completion.

It was decided that the Home Builder breached section 5.1 of the Code as the Home Buyer was not provided with timescales for the resolution of defects.

It was decided that the Home Builder breached sections 1.5 and 2.1 of the Code in relation to the front door, as security was deemed to be a major consideration that affected the Home Buyer making an informed decision. The marketing brochure was clear in the type of locking mechanism was to be provided to the front door.

The adjudicator found that the Home Builder did not breach sections 1.5 and 2.1 of the Code in relation to the internal doors.

Decision

The claim made by the Home Buyer partly succeeded.

Complaint

The Claimant complained that the Builder did not supply a reservation agreement, did not repay the reservation fee of £1000 when she withdrew from the transaction. Also she did not know how to contact the company and there was no known complaints procedure.

Defence

Although the customer said that she withdrew from the transaction in consequence of the searches, this was not justified. The Builder had taken the property off the market and had instructed solicitors. This was an administrative expense of more than £1000 and the Builder was entitled to keep the reservation fee.

Findings

The adjudicator found that there was no signed written reservation agreement and the reservation fee had been wrongly withheld. It was irrelevant whether the Buyer had correctly interpreted the searches. The Home Builder had not notified the Home Buyer of likely deductions and had not, in any event, proved that any expenditure had been made. There was no evidence that there was a complaints procedure or that this had been implemented. There were breaches of sections 2.1, 2.6 and 5.1 of the Code.

Decision

The claim succeeded in part. The Buyer was entitled to an apology, repayment of the reservation fee and £100 for inconvenience. The registration fee was also repayable. No direction was given in respect of a reservation agreement in respect of other customers of the Builder because this was outside the scope of the Code.

Complaint

The Claimant complained that the Builder had failed to provide the promised width of car parking space (5 metres). As the plan given did not match the reality of construction, the Home Buyers said that they had not been given suitable information. The two parking spaces, which were interposed with those of their neighbour, should have given sufficient width for 4 parking spaces, but did not afford sufficient width for the fourth space used by their neighbours. It was argued that there was a breach of section 2.1 of the Code. In consequence, the party wall of the car port could be taken down in order to allow parking. This was not an ideal outcome because the Home Buyers would prefer the car port to be rebuilt. The Home Builder had offered alternatives including removal of the wall and the Home Buyers and their neighbours had agreed that the party wall between the pillars could be removed. The Home Builder had also agreed to pay £1,000 to each party in compensation for loss of value.

The Home Buyers claimed £5000 for loss of value because of the altered appearance of the car port and 5475 for loss of use of the car parking space calculated at £6 per day. The Home Buyers also claimed money spent on investigating their rights in relation to the wall and as to the ownership of the wall.

Defence

The Builder said that it had offered to replace or remove the wall some time ago and had agreed £1000 in compensation and to pay the legal fees, to make good and to pay for changes to the land Registry entries. The offer had not been accepted however because the Home Buyers claimed additional payments for loss of value and loss of use of the car parking space.

Findings

The adjudicator found that there had been a breach of section 2.1 of the Code and directed that the Home Builder should remove the car port wall, move a drainpipe and make good. The adjudicator also directed that the Home Builder should arrange and pay for Land Registry charges so that these reflected the correct position after the works had been done. Compensation for loss of use, in the absence of any actual losses incurred by the Home Buyers and compensation for loss of value fell outside the scheme and had not been proved.

These sums could not be recovered. As the adjudicator found that no overall agreement had been reached and the Home Buyers wanted a direction in respect of the practical action requested, the financial compensation of £1000 could not be taken as agreed and so the adjudicator could only award the amount for inconvenience permitted by the scheme, namely £500.

Decision

The Home Builder was directed to:

Take practical action to: Remove the party wall, but not the supporting pillars, of the car port; Move the position of the drainpipe; and Make good following the works, including creating level ground where the wall was located; Arrange and pay for such changes at HM Land Registry as shall be necessary to show the true state of the car parking spaces following completion of the action taken. Reimburse the sum of £1,335.60 to the Home Buyers. Pay compensation of £500.00 to the Home Buyers.

Complaint

The Home Buyer states that the Home Builder has reduced the width of his driveway by placing a fence next to the boundary wall. The Home Buyer advises that the fence belongs to a neighbouring property and that the fence is not as per the drawings he obtained from the council's website. The Home Buyer states that he has to park to one side of his driveway to be able to get out of his car, and that he has to move off the driveway to let passengers in and out. The Home Buyer states that the Home Builder failed to respond to his complaint in writing and that he has not been able to get a clear answer regarding the fence placement. For these reasons the Home Buyer asserts the Home Builder breached sections 1.3, 1.5, 2.1 and 5.1 of the Code. The Home Buyer has requested that the Home Builder rectify the boundary, by removing the fence and the posts and relocating them no further in than the wall. Alternatively the Home Buyer requests compensation of up to £15,000.00 for loss of land and for not building what was planned.

Defence

The Home Builder submits that due to both the steep drop between the Property and neighbouring plot 5, along with the nature of the kings post foundations, it was not possible to mount a close boarded fence on top of the wall. The Home Builder states that the fence was required to be placed in front of the boundary wall to protect against the risk of falling. The Home Builder does not consider that the construction of the fence is detrimental to the Home Buyer as it states the width of the driveway has been narrowed by less than 9cm. The Home Builder states that it has fully complied with the requirements of the Code.

Findings

Section 1.3 and section 5.1 of the Code was found by the adjudicator to have been breached by the Home Builder as even though the Home Builder had a complaints procedure in place it was not deemed to be reliable and the Home Buyer had to chase for an update on a number of occasions. It was decided that the Home Builder did not breach section 1.5 of the Code as the Home Buyer did not provide sufficient information to show that the sales brochure was untruthful. The adjudicator was satisfied that the brochure aimed to provide an indication of the look of the properties included in the development.

It was decided that the Home Builder breached section 2.1 of the Code as the Home Builder failed to advise the Home Buyer of the change to the driveway boundary which meant that the Home Buyer was unable to make an informed purchasing decision. The driveway boundary was not as per the engineering drawings referenced in the reservation agreement.

Decision

The claim made by the Home Buyer partly succeeded.

Complaint

The Home Buyer submits that the drainage in his garden is insufficient, leading to pooling of water in even moderate rain. This has made his garden muddy and unusable. He emphasised his concern with the garden pre-sale, and was assured by the Home Builder that he would not have issues of this nature. The Home Builder has displayed poor customer service and communication. The Home Builder has not assessed the situation or resolved it in person with the Home Buyer. He submits that the Home Builder breached sections 2.1 and 4.1 of the Consumer Code for Home Builders (“the Code”).

Defence

The Home Builder has chosen not to submit a Response. Under Rule 5.6.2 of the CCHBIDRS Rules “If the Home Builder does not respond to the Home Buyer’s claim, the Adjudicator may base their Decision only on the information the Home Buyer provides.”

While the Home Builder has not submitted a response, in communications directly with the Home Buyer it has stated that it has inspected the Home Buyer’s garden and has determined that drainage in the garden is adequate. The Home Builder has also acknowledged that if there was a problem with drainage in the Home Buyer’s garden, it would be obligated to remedy that problem.

Findings

The adjudicator found that the Home Builder has breached a requirement under the Consumer Code for Home Builders. The adjudicator directed the Home Builder to fix the drainage in the Home Buyer’s garden, and must then lay new turf in the garden, returning the garden to its condition at the time of purchase of the Property. The Home Builder must also reimburse the Home Buyer’s registration fee in the amount of £120.00.

Complaint

The Home Buyer argues that the Home Builder breached Section 1.1 of the Code. Section 1.1 of the Code states that “Home Builders must comply with the requirements of the Code and have regard to the good practice guidance. The Home Buyer submits that the Home Builder provided false information about the build quality of its houses during the sales process. He complained to the Home Builder, which failed to respond even though he followed up on six occasions over a period of four months. He submits that the Home Builder breached sections 1.1, 1.3, 1.4, 1.5, and 5.1 of the Consumer Code for Home Builders (“the Code”).

Defence

The Home Builder submits that the Home Buyer has failed to provide sufficient evidence that it breached any of the cited sections of the Code. The Home Builder argues that “At the time the Property was sold the Home Builder’s procedure was that any customer who experienced an issue with their property was encouraged (in the first instance) email [sic] and notify [sic] customer care team. The Home Builder has emails on file from the Home Buyers which demonstrates that the Home Buyers were aware of this procedure.”

Findings

The adjudicator found that the claim succeeded in part. The adjudicator found that the Home Builder has breached a requirement under the Consumer Code for Home Builders. The adjudicator directs that the Home Builder pay the Home Buyer the total sum of £620.00.

Complaint

The Property was marketed with the benefit of a 10-year Local Authority Building Control (LABC) Warranty.

The Home Builder had been having problems getting warranties issued for other properties and failed to disclose this.

The Home Builder denied the Home Buyers the benefit of its Solicitor retaining sufficient monies (£15,000.00) for the non-provision of a warranty.

The Home Builder has forced the Home Buyers to agree to repairs of alleged defects.

There is a breach of contract in respect of a parking space in that a Deed of Variation has not been completed in respect of the transfer of a parking space.

Defence

The construction was regularly inspected by LABC and Building Control and documented.

The final inspections of some of the houses, including the home, were not carried out by LABC on completion of construction, notwithstanding numerous requests to do so, until after occupation. In the case of the home, the home buyers made a claim on the LABC insurance before it was issued by them and hence the continuing delay in its issue.

As with most newly constructed houses some items of snagging and repair have been experienced since occupation and these have been dealt with promptly to the satisfaction of purchasers, with the exception of the home buyers.

The home buyers bought with the full knowledge that the LABC final inspection had not taken place and therefore the LABC Insurance Certificate had not been issued, as was the case with several other sales and we accepted a contractual obligation to obtain the necessary Certificate. It is only the home buyer's home where a Certificate has not been issued because of the actions by the home buyers and not any 'hidden agenda' on the Home Builders part. No withholding monies were requested as part of the sale and none were denied.

Findings

The Home Builder failed to give the above details to the Home Buyers. This and the lack of provision of a warranty have clearly prejudiced the Home Buyers and caused them to enter a labyrinthine and tortuous process and incur an inordinate amount of stress and time, on matters which may have fallen under the ambit of a warranty scheme.

Decision

The claim succeeds in part. The Home Builder shall apologise in writing for breaches of the Consumer Code for Home Builders.

The Home Builder should issue a new warranty from the Local Authority Building Control (LABC), this being a 'Completed Housing Warranty', which will provide cover for 10 years from completion of the build of the property. An indemnity is also required to be provided by the Home Builder - to provide the same cover as a LABC Completed Housing Warranty - for any defects that have arisen since purchase of the property.

The Home Builder shall pay to the Home Buyers the amount of £500.00 for inconvenience.

The Home Builder shall reimburse to the Home Buyer their registration fee of £120.00.

Complaint

The Home Buyer submits that the Home Builder has mis-sold and misrepresented information in relation to the garden finishes of their home. Particularly, he states that there was no agreement to the specification relating to concrete post plinth / gravel board at the bottom of their garden. The remedy the Home Buyer requests, is for his garden to be the same specification as his immediate neighbours. Specifically, raising the concrete post / gravel boards.

Defence

The Home Builder responded to the case advising that they consider they were fully compliant with section 2.1 of the Code as plans shown to the Home Buyer 'illustrated the general layout, appearance and plot position of the home, inclusive of the gradient of the garden and the height of the fence. The Home Builder further states that evidence 'shows that the gardens of the neighboring properties are neither in line with nor on the same gradient as the Applicants property. This is further highlighted in the extract from the Plot Drainage Sheet. The Home Builder goes on to state 'The gradient of the garden was made clear to the Applicant at all material times. There is no requirement for the garden to be 'levelled off' and no misrepresentation has been made in this regard.'

Home Buyer's response to Home Builders defence

'We had to make decisions on all internal finishes but at no stage were shown any plans or drawings.' The Home Buyer goes on to note that 'I can confirm we have had visibility of the map detailing boundaries (page 24). We have never been shown elevation details regarding close boarded fencing on (page 26). We have also never seen drainage details.

Findings

The adjudicator found that the claim succeeds and directed that the Home Builder replace concrete plinths & gravel board and posts, and reinstall to a greater height, to ensure that its replacement is at the same line and level with that of their neighbours. Further, the adjudicator found that the Home Builder should replace any turf disturbed by the above remedial works and re-level garden to remove any downwards slope.

Also, to pay to the Home Buyer the amount of £250.00 for inconvenience and reimburse the registration fee of £120.00.

Complaint

The Home Buyer stated that the area of the Property had been mis-stated in the sales particulars and that she had discovered this fact on commissioning an EPC and valuation prior to sale of the Property. She had placed the sale of the Property on hold pending resolution of the dispute with the Home Builders, alleging that the Home Builders had breached sections 1.3 and 1.5 of the Code.

The Home Buyer sought compensation from the Home Builders up to £15,000.

Defence

The Home Builders did not expressly deny liability, but stated that the difference in area was limited to that stated in the EPC of only 16 sq ft on the basis that it had not seen the survey which underpinned the valuation. The Home Builders denied, even were a breach found, that the Home Buyer had suffered any loss.

Findings

The adjudicator found that there was a difference in the area of the Property and, given the EPC and valuation measurements were less than that in the Home Builders sales information, found that the Home Builders had breached section 1.5 accordingly. The adjudicator further found that the Home Builders' systems and processes were not suitable reliably and accurately to meet the requirements of the Code and that the Home Builders therefore breached section 1.3 of the Code.

Decision

The claim succeeded in part.

Notwithstanding that the Home Buyer showed a difference between the advertised area of the Property and its measured area, she had not shown that she had suffered a loss or detriment thereby. The adjudicator directed that there be no award. Nonetheless, as the Home Buyer had established a breach by the Home Builder, her registration fee fell to be reimbursed.

Complaint

The Home Buyer stated that the Home Builder did not inform her that the rear garden of the property had two steep gradients. The Home Buyer received a 2013 plan with measurements and gradients after she had complained. She believed that all the information should have been provided from the outset, and she was critical of the Home Builder's customer service. The Home Buyer stated that she had been unable to use and enjoy the garden as it was not fit for purpose also it was extremely dangerous when wet. The Home Buyer sought compensation of £13,207.65.

Defence

The Home Builder denied liability, on the basis that the garden had gently sloping contours which were not exceptional and did not prevent the garden from being used and enjoyed. Due to the unexceptional nature of the contours of the garden, this feature did not need to be mentioned in the brochure for the property. The gradient was apparent on the planning documentation plan and the Home Buyer inspected the property before completion. The Home Builder asserts that the Home Buyer's claim for compensation was not quantified and was disproportionate. As a goodwill gesture, the Home Builder offered £3,000.00 for the Home Buyer's disappointment with the garden, but the offer was refused.

Findings

It was a requirement of Code 1.5 that sales and advertising material should be clear and truthful. The Home Buyer had not pointed to any statement either in the sales information or advertising that was unclear or untruthful. Rather, the claim was on the basis that information on site levels was missing from that provided to the Home Buyer but it should have been provided by the Home Builder from the outset. It was a requirement of Code 2.1 that the Home Buyer should have been provided with appropriate information about the home to help her make informed decisions about the purchase before making a binding commitment. No evidence had been provided by the Home Buyer that information on site levels must be provided by regulation or was normally supplied as part of the advertising material. The garden slope illustrated in photographs appeared unremarkable.

The adjudicator found the Home Buyer had not provided sufficient evidence to establish that the Home Builder's sales and advertising material was misleading or withheld information to the extent that it was not clear and not truthful. Appropriate information had been provided to the Home Buyer to help her make informed decisions about the purchase before she made a binding commitment. Not only was the garden gradient apparent from the planning documentation plan provided to the Home Buyer's conveyancer, but also the Home Buyer visited the property a number of times, saw the rear garden before completing the purchase and was aware of the gradient. There had been no material change to the property between inspection and completion, yet the Home Buyer had decided to proceed with the purchase. Overall, there was no breach of sections 1.5 and 2.1 of the Code by the Home Builder.

Decision

The claim did not succeed.

Complaint

The Home Buyer recorded a number of complaints, principally mis-selling due to room dimension shortage, lack of attention by the Home Builders to required remedial works and health and safety issues. The Home Buyer claimed £14,099.99.

Defence

The Home Builders denied having breached the Code and in respect of the principal complaints submitted that the room dimensions were within a reasonable tolerance, remedial works were attended to within a reasonable time or were being prevented by the Home Buyer's refusal to permit access unless alternative accommodation costs were reimbursed and that the particular matters raised as to health and safety did not relate to obligations under the Code.

Findings

The adjudicator agreed with the position advanced by the Home Builders except for delays in providing user manuals and attending to remedial works which the adjudicator found to be breaches of sections 4.1 and 5.1 of the Code.

Decision

The claim succeeded in part and the adjudicator directed the Home Builder to apologise and pay £250.00 in compensation to the Home Buyer. The Home Buyer's registration fee was also reimbursed.

Complaint

The Claimant complained that the Builder had failed to provide the promised width of car parking space and therefore his second car parking space was unusable. The Home Buyers said that they had not been given suitable information because they did not have two full car parking spaces. It was argued that there was a breach of section 2.1 of the Code. In consequence, the party wall of the car port could be taken down in order to allow parking. The Home Builder had offered alternatives including removal of the car port wall and the Home Buyers and their neighbours had agreed that the party wall between the pillars could be removed. The Home Builder had also agreed to pay £1,000 to each party in compensation for loss of value. The Home Buyers claimed £5000 for loss of value because of the altered appearance of the car port and 5475 for loss of use of the car parking space calculated at £6 per day. The Home Buyers also claimed money spent on investigating their rights in relation to the wall and as to the ownership of the wall.

Defence

The Builder said that it had offered to replace or remove the wall some time ago and had agreed £1000 in compensation to make good and to pay for changes to the land Registry entries. The offer had not been accepted however because the Home Buyers claimed additional payments for loss of value and loss of use of the car parking space.

Findings

The adjudicator found that there had been a breach of section 2.1 of the Code and the Home Builder was directed to apologise. The adjudicator also directed that the Home Builder should remove the car port wall, move a drainpipe and make good. The adjudicator further directed that the Home Builder should arrange and pay for Land Registry changes so that these reflected the correct position after the works had been done. Compensation for loss of use, in the absence of any actual losses incurred by the Home Buyers and compensation for loss of value fell outside the scheme and had not been proved. These sums could not be recovered. As the adjudicator found that no overall agreement had been reached and the Home Buyers wanted a direction in respect of the practical action requested, the financial compensation of £1000 could not be taken as agreed and so the adjudicator could only award the amount for inconvenience permitted by the scheme, namely £500. As this was less than the amount offered by the Home Builder, the Home Buyer was not entitled to reimbursement of the registration fee.

Decision

The Home Builder was directed to:

Take practical action to: Remove the party wall, but not the supporting pillars, of the car port; Move the position of the drainpipe; and Make good following the works, including creating level ground where the wall was located; Arrange and pay for such changes at HM Land Registry as shall be necessary to show the true state of the car parking spaces following completion of the action taken. Pay compensation of £500.00 to the Home Buyers.

Complaint

The Home Buyer stated that the Home Builders had not disclosed issues with the Bi-Fold Doors at the Property, particularly in respect of cleaning, and that this was common to a number of other residents. This was a breach of section 2.1 of the Code as was made apparent by his Reply. He further stated that the solutions proposed by the Home Builder failed to come up to the standard of after-sales care provided for.

The Home Buyer sought practical remedial action from the Home Builders.

Defence

The Home Builders denied liability, on the basis that the issues complained of did not constitute breaches of the Code and that the allegations in respect of design flaws / changes in design and purported H&S breaches were outside the scope of the Scheme.

Findings

The adjudicator found that there had been no deliberate policy of concealing the issue with the Bi-Fold Doors from the Home Buyer and that the after-sales care provided met the standards set out in the guidance to the Code. There were no breaches accordingly.

Decision

The claim did not succeed and no remedies were awarded.

Complaint

The Claimant was unable to continue with the reservation and cancelled the fee. The company, which had not supplied a copy of the Code, the reservation agreement or given an explanation about what would happen to the money, kept the reservation fee of £1000.00 and said that it was policy not to return this. It did not reply to correspondence.

Defence

No defence was submitted, but the Respondent made an offer of £900, stating that there had been negotiations with the neighbour about removing a tree and a deduction of £100 could be made.

Findings

The adjudicator found that the Home Builder had not supplied the relevant documents and information (including a copy of the reservation agreement and the Code) and had stated that it was policy not to return the reservation fee. This was contrary to the Code. There had been no indication that money would be retained from the deposit and there was no supporting evidence that anything had happened in relation to the tree. There had been a failure to respond to correspondence and calls and no evidence of implementation of the Code or of a complaints policy. The adjudicator found breaches of sections 1.1, 1.2, 2.1, 2.5, 2.6, 3.4 and 5.1.

Decision

The claim succeeded. In addition to recovery of the reservation fee and reimbursement of the registration, it was quite clear that the Buyers had suffered significant inconvenience in consequence of non-implementation of the Code and had had to wait for more than a year for money that should have been paid in a matter of days. Rule 2.6 permitted the adjudicator to award compensation for inconvenience and failure to implement the Code and the adjudicator awarded £180.

Complaint

The Home Buyer considers that he relied on a brochure in entering into the contract, where the brochure described kitchen goods as being of a certain brand. The Home Buyer states that in fact, the fridge freezer, dishwasher and washing machine were not of the brand, and were inefficient and unacceptable. He raised issues with the Home Builder which provided a poor service in resolving his problems with these items. In the end, he bought two items from a store and one from the Home Builder, although the latter is badly fitting.

Defence

The Home Builder's position is that the Home Buyer accepted the kitchen items on completion that it made every effort to ensure the brochure was correct but cannot otherwise be liable to the Home Buyer. The Home Builder responded to the case advising that they viewed the Property on two occasions before making an offer, which was accepted on or about 21 November 2017. On completion on 26 January 2017, the Home Builder provided relevant information regarding after sales services and relevant certificates and manuals and other information. The brochure was produced before the Property was completed and only showed indicative floorplans and layout. The Home Builder considers that every effort was made to ensure information was correct but the brochure was only a guide. Additionally, the after sales teams have dealt with queries promptly and politely. The Home Builder has offered to provide replacement items as a goodwill gesture. Of note, the Home Builder asserts that the washing machine was fitted to the Home Buyer's satisfaction as expressed at the time.

Home Buyer's response to Home Builders defence

The Home Buyer responded advising that given that the handover form does not mention white goods, the customer disputed that the signed handover form suggests provision of satisfactory white goods. The Home Buyer stresses that the brochure is inaccurate in its description of the property's appliances and this should be made clear to prospective purchasers to ensure an honest and transparent purchase process. Furthermore, in regards to the offer their white goods were more expensive than that standard retail pricing and so it did not make any economic sense to accept their goodwill gesture, particularly as functioning good quality white goods should have been provided in the first instance.

Findings

The adjudicator found that the claim succeeds in part. The adjudicator found that the Home Builder breached a requirement under the Code. The adjudicator found that the Home Builder shall pay the Home Buyer the sum of £1,896.30 against the cost of the new units purchased. Also, that the Home Builder shall pay the Home Buyer the sum of £100.00 by way of compensation for inconvenience caused to the Home Buyer. Furthermore, that the Home Builder shall either fit a slimmer door for the washing-machine (if one such is available) or modify the plumbing to allow the siting of the unit to be flush with the other units. Finally the adjudicator found that the Home Builder shall apologise to the Home Buyer in writing for failing to supply white goods consistent with the description in the brochure.

Complaint

The Home Buyer's claim is that the Home Builder has delayed in completing snagging items and has still failed to complete some items and ignored his complaints. The Home Buyer submits that the resolution of snagging has been delayed, incomplete and unprofessional. When completing the purchase, he was told to liaise on snagging with the site manager. He followed this process, though the site manager did not keep a proper list of snags. He produced a snagging list on 23 November 2017 to which the Home Builder did not respond. He sent this list on a monthly basis to the Home Builder. The Home Buyer alleges breaches of paragraphs 1.4, 2.2, 4.1, 4.2 and 5.1 of the Code.

Defence

The Home Builder submits that it has attended to the vast majority of the snagging items in a timely fashion. The remainders are generally minor. They consider that the Home Buyer is unreasonable in expecting an immediate repair to every snag he finds regardless of seriousness. A reasonable number of items are not the Home Builder's responsibility. The Home Builder disputes the individual allegations of snags made by the Home Buyer and point to repairs as either having been carried out or in the course of resolution. The drainage issues were only raised in August 2018. With regard to maintenance, the Home Builder has been constrained by the planning approval in force. The Home Builder has been in attendance on numerous occasions. There are no irregularities with the maintenance company which will be handed to the residents in due course. There are no outstanding matters with the NHBC.

Findings

The adjudicator found that the claim succeeds in part. The adjudicator directed that the Home Builder shall pay the sum of £200.00 to the Home Buyer; and inform the Home Buyer in writing of its complaints procedure. Furthermore, the adjudicator found that the Home Builder shall advise the Home Buyer in writing of the likely timescale for resolving his current complaints (noting that this is not an order confirming that all the Home Buyer's current complaints are valid ones).

Complaint

The Home Buyer submits that the welcome letter received from the Home Builder contained misleading information that was contradictory to NHBC policy with respect to after-sales service and defect remediation. This has resulted in the reporting of scratching to glazing occurring outside NHBC policy. Replacing the scratched glazing panes will cost £633.60. The Home Builder has failed to remedy the problem, and NHBC have been unable to help. The Home Builder's after-sales service has been inconsistent, poor and slow. The Home Builder did not make available to the Home Buyer details of after-sales service or contact information for aftersales service. The Home Buyer submits that the Home Builder breached sections 1.1, 1.3, and 4.1 of the Consumer Code for Home Builders ("the Code").

Defence

The Home Builder submits that it believes the scratches on the glazing were caused post-handover, and between September, when the Home Buyer supplied his first snagging list, and November, when the second snagging list was provided. The Home Buyer's first snagging list was received on 23 September 2017 but contained no mention of issues regarding glazing. The second snagging list was received in November 2017 and includes references to scratches on the glazing. Contact details for the Home Builder were provided on the welcome letter, but the letter has been copied by the Home Buyer in a way that omits those details. During handover, which occurred after working hours due to late receipt of payment, the Home Buyer was provided with all relevant documentation, including the NHBC "Guide to Your New Home" and "Buildmark" booklets.

The Home Buyer was asked to read through them carefully. The Home Builder could have been contacted over the weekend using the channels the Home Buyer had previously used throughout the construction process. The Home Buyer had been in regular contact with the Home Builder throughout the construction process, so was aware of how to contact the Home Builder for after-sales service, and did so in order to supply snagging lists. The Home Buyer admitted in May 2018 that he had not read the NHBC documentation included in his welcome pack. The Home Builder pays extra to have glass units covered in a plastic film to protect them during construction, which is removed in the week of handover with all glazing professionally cleaned. The Home Builder has received no other complaints regarding scratched glazing on the site.

The Home Buyer comments on the Home Builder's Defence that the scratches would have required contact with a hard, sharp object and can only have been caused in the construction/cleaning process prior to handover. The first snagging list did not refer to scratches because he had been led to believe that he was under no time pressure to present a complete and final inventory in his first snagging list. He denies copying the welcome letter in a way that omitted contact details for the Home Builder.

Findings

The adjudicator found the Home Builder has breached a requirement under the Consumer Code for Home Builders. The reasons given by the Home Buyer are sufficient to justify that the Home Builder apologise and that the Reservation fee be returned to him. Therefore, the adjudicator directed the Home Builder to apologise to the Home Buyer for the incomplete information provided in the welcome letter regarding dealing with non-urgent problems with the Property and must reimburse his registration fee in the amount of £120.00

Complaint

The Home Buyers submit that the Home Builder took from the Home Buyers a £2,500.00 reservation fee. The Home Buyers claim that there were defects in the title to the property which required them to withdraw from the reservation, but the Home Builder has declined, through its failure to respond, to repay the reservation fee. The Home Buyers allege breaches of sections 2.1, 2.6 and 2.4 of the Code.

Defence

The Home Builder did not submit a copy of the defence

Findings

The adjudicator found that there appeared to be breaches of the Code, specifically sections 2.1, 2.6 and 3.4. The adjudicator found that the Home Builder would need to pay the Home Buyer the sum of £2,500.00 as reimbursement of the reservation fee; pay the Home Buyer the sum of £250.00 for inconvenience and reimburse the registration fee of £120.00. This consisted the adjudicator to find that the claim succeed in part.

Complaint

There were repeated unrealistic deadlines for completion of the works (which at the date of the Home Buyers completing their Claim application form (22 September 2018) the Property still remained unfinished and still to be signed off by Building Control.

Further that there were changes made to the original layout of the Property without prior notice.

And that there were significant delays in communication from the Home Builders.

Defence

None submitted.

Findings

The Home Buyers were not 'given reliable and realistic information about when the construction of the Home may be finished' and this is a breach of section 3.2 of the Code.

Decision

The Home Builder should pay the Home Buyers their expenses reasonably incurred as a result of not complying with the Code, in the sum of £1,934.40 for extended additional travel costs, £250.00 for inconvenience. The total to be paid by the Home Builder to the Home Buyers is £2,304.40.

Complaint

When they were considering buying the Property, the Home Builders Sales Team highlighted that various degrees of planting would be installed on the other side of the Home Buyers' rear property fence. And, that this would act as a visual barrier to the planned industrial units as well as providing security.

However, subsequently the persons responsible for the industrial units submitted an amendment to their planning application (which was accepted), to remove the planting.

That the planting was shown in the plans and brochures – that were first shown to the Home Buyers; however, these plans were amended to omit the planting, in the paperwork sent to the Home Buyer's solicitor at contract agreement stage.

And that, the Home Builder was aware of this amended planting design in December 2016, but they were still using the planting as a selling point in 2017.

Defence

The Home Builder confirms that the amended plans were sent to the Home Buyers' solicitors prior to exchange of contracts, these plans were signed by the Home Buyers and this was the basis the Home Buyers exchanged and completed their purchase.

Findings

Notwithstanding that, as can be seen from the above table, the Home Builder was dilatory in providing the amended plans to the Home Buyer, from a legal perspective, due to the fact that the amended plans were apparently shown to the Home Buyers at reservation stage and that the Home Buyers signed the amended plan in the contract for sale, in my view, the Home Builders sales and advertising material and activity was clear and truthful and as such there is no breach of this part of the Code by the Home Builder.

Decision

The Home Builder did not breach the requirements under the Consumer Code for Home Builders.

The reasons given by the Home Buyers are insufficient to justify the redress sought by the Home Buyers.

Complaint

The Claimant complained that the Builder was in breach of the Code in failing to give her the correct plan and failing to answer her questions in sufficient time for her to be able to exchange contracts on the three dates that had been set for exchange of contracts. Additionally she said that she had been given incorrect information about the position of windows on the home and told that the planning department would not agree to certain windows when this was untrue. She also claimed that there was a breach of the reservation agreement and that she had not been permitted to choose her own conveyancer. Following the expiry of the reservation agreement on 30 April 2018 she says that the Builder was in breach of the Code in not allowing exchange and not fairly applying its complaints procedure

Defence

The Home Builder agrees that it showed the Home Buyer an incorrect plan at reservation and on another occasion but it had clarified the situation on 27 February 2018 and it had answered her questions. It had asked the Home Buyer to sign an “as built” plan and she had refused to do so and therefore exchange of contracts could not take place. Also, although it responded that it was not prepared to reconsider its decision on the boundary shape only at 16.06 on 30 April, the reason that exchange did not take place was because the Home Buyer’s conveyancer was engaged with another exchange. Its systems and complaints procedures were nonetheless applied and it did not need to agree to exchange contracts after the reservation period had expired and did not do so because the relationship between the parties had broken down. It said that its advertising materials had stated that constructions were subject to variation and were illustrative only and it did not intend to supply windows on the rear elevation. As a concession for the Home Buyer it had investigated the possibility of a window on that elevation but then the Home Buyer had complained about the lack of size. It denied that there had been a breach of the Code in relation to the appointment of a conveyancing representative.

Findings

The adjudicator found that there were breaches of sections 1.3, 2.1, and 2.6 of the Code in respect of the provision of incorrect information in the plan. This was also a failure to assist the Home Buyer to exchange contracts which was a breach of the reservation agreement. These breaches were not however responsible for the failure to exchange which occurred because the Home Buyer did not communicate that she was willing to exchange even if the Builder’s answer was that it would provide no further assistance regarding the kink in the boundary and because her conveyancer was busy on another matter. In respect of a £500 incentive to consult a single named conveyancer, even taking into account the Guidance, this was a breach of section 2.5 but there was no reason to conclude that the conveyancer was not impartial.

Decision

The claim succeeded in part. In view of breaches found the Home Buyer was awarded compensation for inconvenience and reimbursement of the registration fee. The Buyer's claim for rent paid awaiting exchange and the right to purchase a different plot on the development did not succeed.

Complaint

The Home Buyer explains that he purchased his home by reference to the Home Builder's development plan and paid a reservation fee in December 2016. Completion and occupation took place on 15 September 2017. He says that he was totally reliant upon marketing literature and information received from the Home Builder and their agents, Charters. He complains that the information that he was given suggested that the areas would be paved but wooden decking was provided instead. He raised his concerns with Charters immediately after taking occupation, and also with two representatives of the Home Builder. Nothing was done to address his concerns even though the patio became slippery in the winter and was, in his opinion, dangerous.

Defence

The Home Builder points out that the Home Buyer acquired the land on 31 January 2017, on which the Home was then built in accordance with the Build-Out agreement. This set out the obligations of the Home Builder. The Home Builder submits that it was entitled to make variations to the specification and the marketing materials also made reference to this. The contract referred specifically to decking. The Home Buyer had various opportunities to complain about the inclusion of decking including on inspection of the show home, photographs of the formed garden and at the time of the demonstration visit on 15 September 2017. Had the Home Buyer considered that this was not in accordance with the contract, he could have stated this, but did not raise any issue until 17 November 2017 when he complained that the decking was slippery and asked if there had been other complaints about this. The company states that it has properly considered the Home Buyer's complaints and argues that the Home Buyer is not entitled to the remedies he seeks.

Findings

The adjudicator has found that the Home Builders have breached requirements under the Consumer Code for Home Builders.

The adjudicator found that the Home Builder has been in breach of sections 1.2, 1.3, 1.5, 2.1, 3.1 and 5.1 of the Code. The adjudicator has directed that the Home Builder shall supply anti-slip strips to the Home Buyer's patio in accordance with the landscape plan that specifies Douglas fir decking; pay compensation for inconvenience in the sum of £250.00 and reimburse the Home Buyer's registration fee of £120.00.

Complaint

The Claimant complained that the Builder had failed to complete the roof surfacing. He was promised exclusive use of the roof terrace outside flat 34 up to the fire escape roof. He was told that this would be tiled stone and that there would be partitioning to mark his area. He later agreed to the use of resin with small stones on the roof surface. The roof has been painted with rubberised paint which is defective in hot weather and no partitions have been put in place. Other residents are now claiming to be entitled to use the roof terrace. He sought practical action in relation to the roof surface and the partitioning.

Defence

None

Findings

The adjudicator found that the Home Builder had failed to give fair and reliable information about the roof surface and the partitioning in breach of section 2.1 but there is no evidence that it had not intended to supply this, so there was no breach of section 1.5. The Home Buyer had been given no information about after-sales care or complaints and had to go to considerable effort to trace the site supervisor. There was a breach of sections 4.1 and 5.1 of the Code.

Decision

The claim succeeded in part. The adjudicator did not direct practical action because it was clear that other residents claimed to have a right to use the roof terrace and the practical action sought could exclude them and affect service charges. The adjudicator did not have access to the various leases and also did not have jurisdiction to determine whether other residents had a right of access to the roof terrace or not. The Home Buyer had been significantly inconvenienced by the breaches, however, including being left in a state of uncertainty about the rights affecting the roof area which could have been resolved had there been an after-sales service. Also, as the supervisor had accepted that the work to the roof should be done, this was snagging which was outside the scope of the Code. .

Complaint

The Home Buyer submitted that the Home Builders did not have an accessible after sale service in breach of section 4.1 of the Code in respect of issues with (1) a creaking floor in the kitchen; (2a) creaking cupboards in the kitchen; (2b) the integrated freezer door creaking; (3) leaking guttering; (4) the Home Builders' failure to address a mouse infestation and consequential losses; and (5) uneven and creaking floors upstairs in the Property.

The Home Buyer also that the Home Builders had breached section 5.1 in respect of each of the above.

In addition to remedial steps in each respect, the Home Buyer sought compensation of £2,000, much of which was in respect of consequential losses from the mouse infestation.

Defence

The Home Builders' Defence was limited to an e-mail in which they denied liability for (1), (2a) (4) and (5) and admitted liability on (2b) and (3) but stated that these matters were being progressed. The e-mail was accompanied by an NHBC report dated 5 October in respect of (1), (2a), (2b) and (3).

Findings

The adjudicator found that the Home Builders' after sale service was accessible in each case and that there was no breach of section 4.1. Further, the Home Buyer had proved breaches in respect of (2b), (3) and (5) but not in respect of (1), (2a) and (3) as the action taken by the Home Builders was timely and reasonably sufficient even if it did not meet the Home Buyer's expectations.

Decision

The claim succeeded in part. Notwithstanding the breaches complained of, these did not justify the compensation sought. The adjudicator directed the Home Builders to take specific actions in respect of (2b) and (3) by 31 January 2019 and to investigate and propose a solution by 28 February 2019 in respect of (5) as well as pay the Home Buyer £300.00 for the inconvenience caused. The Home Buyer's registration fee was also reimbursed.

Complaint

The Claimant complained that the Builder had failed to construct the access road in accordance with the plan that he had been shown. He said that he was told that something would be done about this and he then agreed to move into the completed Home. In fact, the arrangements that have been made by the Home Builder with other residents do not restore the access road in accordance with the plan and may lead to more parking in places where no parking should be. He said that he had not been consulted about the proposals to settle a dispute between the Builder and other residents regarding the shape of the road.

Defence

The Home Builder noted that the alteration of the shape of the road did not restrict access to the Home. It said that it was entitled to make changes to the access road without the consent of the Buyer and also to come to separate arrangements with other residents without consulting the Home Buyer. It was also not liable for “parking abuse”.

Findings

The adjudicator found that the claim did not succeed. It is probable that the relatively minor variation from the plan was a mistake made when the access road was constructed and there was no breach of section 1.5. As for sections 2.1 and 3.1 of the Code, the obligations of the Home Builder related to information and changes affecting the Home, not to other aspects of the estate. It was not suggested that the error had prevented or restricted access to the Home and the Buyer’s suggestion that the agreement reached with other residents would impede his access was not proven. The Home Buyer could not succeed in a claim for breach of section 5.1 the Code because he was not involved in a settlement with other residents. He was not inconvenienced by the change and therefore he was not a party who needed to be consulted.

Decision

The claim did not succeed.

Complaint

The Home Buyer states that they have had stress and anxiety since they purchased the Property. They state that the level of customer service received is poor and they state that the Property has been built incorrectly and incompletely. For these reasons the Home Buyer asserts the Home Builder breached sections 1.3, 1.4, 1.5, 2.1, 2.2, 2.4, 2.6, 3.1, 3.3, 4.1, 4.2, 5.1 and 5.2 of the Code.

The Home Buyer requests an apology, an explanation, for the Home Builder to take some practical action and pay compensation of £15,000.00.

Defence

The Home Builder failed to submit a Defence to the claims made.

Findings

It was decided that the Home Builder breached sections 1.3, 1.5, 2.1, 4.1, 5.1 and 5.2 of the Code, due to failing to have a complaints handling procedure or suitable systems and procedures in place to reliably meet the commitments on service, for providing advertising and marketing material which was misleading, for not providing sufficient pre-purchase information to comply with the Code, for failing to communicate the after sales service and for failing to cooperate fully with NHBC.

The adjudicator found that the Home Builder did not breach sections 1.4, 2.2, 2.4, 2.6, 3.1, 3.3, and 4.2 mainly due to the information provided not being sufficient to prove the Home Buyer's case on the balance of probabilities.

Decision

The claim made by the Home Buyer partly succeeded.

The Adjudicator directed that the Home Builder provides an apology, provides an explanation, reimburses the Home Buyer for the cost of the installation of handrails to the external stairs of £566.40, pays £150.00 in compensation, and reimburses the £120.00 registration fee to the Home Buyer

Complaint

The Home Buyer submitted that there were many remaining faults with the house on settlement day, although nearly all have now been fixed. The remaining issue was with the wet room in the Property. She first became aware of problems with the wet room during the snagging visit. Two of the concerns she notified to her solicitor were the walls not being tanked before tiling and the gradient of the floor. The Home Builder's solicitor agreed regarding tanking and stated that the gradient was already correct. Relying on these statements the Home Buyer completed purchase of the Property. The Home Builder had nonetheless not undertaken the promised work on the wet room, although it was required to fix the gradient by the NHBC. The Home Buyer stated that the Home Builder failed to cooperate or properly communicate regarding the wet room, and refused to accept that unsuitable materials were used in the wet room, as the plasterboard used was alleged to be unsuitable for a wet room and the grout was water resistant not waterproof.

Defence

The Home Builder submitted that it had apologised to the Home Buyer for failing to meet her expectations, and had agreed to fix the gradient on the floor, fit UPVC door facings, replace the threshold, and finish tiling to the ceiling around the rest of the area in the wet room. It stated that while the Home Buyer may have had additional expectations about the wet room in the Property, these were not expectations that the Home Builder was required to meet. The Home Builder stated that it had complied fully with the Code

Findings

The adjudicator found that the Home Builder breached Sections 1.1 and 2.1 of the Code by failing to fulfil statements made by its solicitor on which the Home Buyer relied when deciding to purchase the Property.

Decision

The claim succeeded in part. The Home Builder was required to complete the wet room in the Property in accordance with the statements made by its solicitor and to pay compensation of £200.00 for the inconvenience caused. The Home Buyer's registration fee was also reimbursed.