

Adjudication Case Summaries

This paper provides a brief summary of cases that have been referred to the independent adjudication process available under the Consumer Code for Home Builders scheme and are written by the adjudicator undertaking the decision.

Adjudication Case 1– January 2020 – 117190154

Complaint

The Home Buyer submitted that he was not given accurate information about the Property prior to purchase. The Property was not cleaned prior to move-in. There were many snagging problems. Contractors who worked on these problems made them worse. He experienced poor customer service.

Defence

The Home Builder submitted that there was confusion regarding certain pre-sale charges. This matter was resolved pre-completion and one charge was waived. The Property was cleaned prior to completion, although in a new property some dust residue can settle after cleaning. There was a paint mark on the carpet so the carpets were to be cleaned after the Home Buyer moved in. The Home Buyer purchased a carpet cleaner, the cost of which the Home Builder offered to reimburse.

There have been snagging issues and there have been delays in remedying these issues caused by the Home Buyer's employment timetable.

The Home Builder did not agree that the kitchen is generally a poor fit, although it acknowledged that there were specific issues. Four items in the Property were not in accordance with specification.

The Home Builder had offered to install these items or pay compensation, but the Home Buyer rejected this offer. Offers by the Home Builder to visit the Property were often declined by the Home Buyer. At times the Home Buyer requested supplies to allow him and his wife to undertake the work themselves, and these supplies were provided. While the Home Builder believed that the Home Buyer's expectations were high, it acknowledged that there were issues with the Property that needed to be addressed.

The Home Buyer had been offered compensation, but it was declined

Findings

The adjudicator found that that the Home Builder had breached its obligations under Section 3.1 of the Code by failing to provide items included in the Property's specification.

Decision

The claim succeeded. The adjudicator directed the Home Builder to pay the Home Buyer compensation of £783.00, including £250.00 for inconvenience.

Complaint

The Home Buyer's complaint was that the Home Builder did not install a heat recovery system, a dual fuel towel rail in the bathroom and a heater in the upstairs bedroom cupboard. Furthermore, the Home Buyer indicated that the Home Builder did not carry out tree/landscaping works at the Property and that the Property's completion was delayed. The Home Buyer therefore believed that the Home Builder may have breached sections sections 2.1, 3.1 and 3.2 of the Code.

Defence

The Home Builder did not accept that any breach of the Code had occurred. The Home Builder submitted that the Home Buyer was provided with enough pre-purchase information to help her make a suitable decision (in compliance with section 2.1 of the Code). The Home Builder also stated that the terms and conditions of the contract of sale were fair, complied with the Unfair Terms in Consumer Contracts Regulation 1999 and clearly stated the contract termination rights (in compliance with section 3.1 of the Code).

Furthermore, the Home Builder submitted that the Home Buyer was given reliable and realistic information about when construction of the Property may be finished, the legal date of completion and the date for handover of the Property (in compliance with section 3.2 of the Code).

Findings

Based on the evidence available, the adjudicator was unable to conclude that any actual breaches of the Code had been established. 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 claim was unable to succeed

Decision

The Home Buyer's claim did not succeed.

Complaint

The Home Buyer stated that he had an issue with rainwater pouring off the roof and guttering. He stated that he had considered that the Home Builder had breached its obligations under sections 2.1, 4.1 and 5.1 of the code.

Defence

The Home Builders denied liability, stating that it had complied with its obligations under the Code

Findings

The Home Buyer stated that the Home Builder failed to provide sufficient pre purchase information to enable him to make his purchase, he stated that he was not told that it was effectively normal for water to run down the walls.

The adjudicator reviewed the requirements of Section 2.1 and did not agree that the Home Buyer's interpretation of that Section was correct. The requirement under that Section of the Code was to provide Home Buyers with sufficient information to aid them with the purchase, The list of documents to be provided is clearly set out to include a written Reservation agreement; • an explanation of the Home Warranty cover; • a description of any management services and organisations to which the Home Buyer will be committed and an estimate of their cost; • the nature and method of assessment of any event fees such as transfer fees or similar liabilities. On that basis that element of the claim was unable to succeed.

The Home Buyer also stated that the Home Builder failed to provide an after-sales service and as a result that was a breach of Section 4.1 of the Code. Having reviewed the information provided, it was clear that the Home Builder did provide an after-sales service, however, the Home Buyer was not satisfied with the outcome. The adjudicator accepted that the outcome may or may not have be acceptable, however that did not evidence a breach of Section 4.1 of the Code. On that basis, the claim was unable to succeed.

The Home Buyer stated that the Home Builder also breached Section 5.1 of the code, however from the information provided it was clear that it had a complaints handling procedure in place, but he is unhappy about the outcome. The adjudicate decided that did not demonstrate a breach of the Code and on that basis the claim was unable to succeed.

Decision

The claim was unable to succeed.

Complaint

The Home Buyer stated that the Home Builder failed to provide two visit parking spaces. She considered that the Home Builder had breached Sections 1.5, 2.1 and 5.1 of the Code. As a result she claimed the sum of £5,000.00.

Defence

The Home Builder failed to provide a defence.

Findings

The adjudicator found that the Home Builder had failed to comply with Section 1.5 of the code, as it had provided the Home Buyer with a layout that clearly indicated that there would be two visitor spaces. Based on the correspondence provided it was clear those spaces were transferred to an adjacent property. That was a clear breach of Section 1.5 of the code which required the marketing material to be clear and truthful.

The complaint in relation to section 2.1 of the code was unable to succeed, as that section specifically related to the provision of information and not the accuracy.

The complaint in relation to section 5.1 was also unable to succeed, as the Home Buyer demonstrated that such a system was in place, however she was simply unhappy with the outcome.

Decision

In accordance with rule 2.6, the adjudicator awarded the sum of £500.00 (which is the maximum figure for inconvenience).

Complaint

The Home Buyer stated that the Home Builder was in breach of the Code by providing poor customer service and after sales service in relation to a dispute concerning the positioning of the Property's cooker extractor hood.

The Home Buyer sought the Home Builder to revise the layout of the Property's kitchen or replace the cooker extractor hood so that the height between the extractor and the ceiling is reduced.

Defence

The Home Builders' position is that no breach of the Code has occurred and whilst the hood was not in situ at the time of the reservation, the plans shown to the Home Buyer at the time of the reservation had the hob position marked and the Home Buyer would be aware that a hood would be positioned above the hob.

Furthermore, the Home Builder has adjusted the hood to decrease the distance between the hood and the ceiling, however it is unable to reduce this distance further as it would invalidate the manufacturer's warranty and compromise the hood performance

Findings

The Home Builder has not breached any clause of the Consumer Code for Home Builders

Decision

The claim does not succeed.

Complaint

The Home Buyer stated that the Home Builder was in breach of the Code by failing to ensure that the Property's plaster and plasterboard surfaces were prepared and made ready for decorating in accordance with the manufacturer's instructions; and then providing poor customer and after sales service.

The Home Buyer sought the Home Builder to provide an apology and pay compensation of £8,949.63 comprising of; £550.00 for professional fees; £7,259.63 for redecoration of affected walls; £640.00 for loss of time in dealing with the complaint and £500.00 for inconvenience and distress.

Defence

The Home Builders' position is that no breach of the Code has occurred and The Property's walls were corrected sized; however, they were not sealed as is the industry standard. Furthermore, the Home Builder did and continues to provide an after sales service to the Home Buyer.

Findings

The Home Builder has not breached any clause of the Consumer Code for Home Builders

Decision

The claim does not succeed

Complaint

The Home Buyer alleges breaches of sections 1.2, 2.1, 3.2, 4.1, 4.2 and 5.1 of the Consumer Code for Home Builders (“the Code”) concerning the condition of the Property and development at the time of moving in

The Home Buyer seeks payment of £11,655 and an apology. The financial remedies sought comprise £400 for laundry costs, £1,000 repayment of the reservation fee, £196 annual maintenance charge, £990 loss of earnings, £500 distress and inconvenience, £3,569 mortgage payments, £5,000 turfing & tree planting.

Defence

The Home Builder asserts that the claim does not relate to the code, that reasonable laundry costs will be paid, tree planting will be carried out in the next planting season. Turfing is not part of the agreement; the delay in activating streetlights was due to a third party and not its responsibility, and that the Home buyer was properly advised in relation to the other issues complained of and denies these claims.

Findings

The adjudicator finds that:

Issues concerning Tree planting and laundry costs do not fall under this scheme. There is insufficient evidence to show turfing was included in the agreement.

The Home Builder has failed to comply with sections 4.1, 4.2 and 5.1 of the Code. A payment for inconvenience is due together with an apology from the Home Builder.

The financial remedies sought by the Home Buyer for loss of earning, repayment of the reservation fee, annual maintenance charge and mortgage payments cannot be sustained

On 16th February 2020 the Home buyer advised receipt of a cheque for £250.00 and letter the Home Builder in what appears to be compliance with the Proposed Decision dated 23rd January 2020.

Decision

The claim succeeds.

The Home Builder is to pay the Home Buyer £250.00 for inconvenience and issue an apology.

Complaint

The Home Buyer submitted that the Property did not receive a promised Quality Control Final Inspection or the current problems would not be occurring. The Property was not built to NHBC standards. A resolution was agreed with the Home Builder but was not implemented. Instead, the Home Builder took actions that were acceptable to the NHBC, but which did not conform to NHBC standards. She complained to the Home Builder in the first week after purchase. The Home Builder was unwilling to help.

- The Home Buyer alleged that the Home Builder breached sections 1.5, 4.1 and 5.1 of the Consumer Code for Home Builders (“the Code”).
- The Home Builder was found not to have breached the Code.
- The Home Buyer requested that the Home Builder (i) provide a Quality Control Final Inspection certificate, (ii) provide technical drawings of the Property, and (iii) undertake previously agreed work or pay compensation of £15,000.00.
- No remedy was awarded.

Defence

The Home Builder submitted that it has fulfilled its obligations under the Code, and that the Home Buyer’s representative had been abusive to employees of the Home Builder.

Findings

The adjudicator found that the Home Builder had adhered to its obligations under the Code.

Decision

The claim did not succeed.

Complaint

The Home Buyer stated that the kitchen image and plan provided at the reservation was misleading and untruthful. The Home Buyer considered that the Home Builder had breached Sections 1.4 and 1.5 of the Code as a result of the issue and that had he of known of the issue he would not have paid the upgrade fee of £11,143.00. As a result the Home Buyer claimed a full refund of the upgrade fee.

Defence

The Home Builder's position was that the drawings were a computer-generated image for indicative purposes only and were used to demonstrate the layout only. It explained that the drawings were produced by its kitchen manufacturer for all of its property types and as a result did not show actual wall and ceiling heights.

Findings

The adjudicator reviewed the drawing and noted that it clearly stated that "Graphics are for visual purposes only". The adjudicator decided that the visualisation showed a kitchen layout with standard wall units and that there is no ceiling shown on the visualisation, simply a wall or partition and that was a fairly standard way of showing a kitchen layout. In the circumstances, the adjudicator did not consider that the Home Builder had misrepresented what was provided.

The adjudicator noted that in accordance with Section 2.1 of the Code, the Home Builder was required to provide certain information to enable a Home Buyer to make a suitably informed decision when making the purchasing decision. The adjudicator noted that under Section 2.1 a Home Builder was required to provide information setting out the general layout, appearance and plot position of the home. The adjudicator also noted that there was no requirement to provide specific dimensions. The adjudicator noted that whilst the wording of Section 2.1 applied to the Home generally, the provision of information relating to the kitchen followed those principles.

The Home Buyer stated that when the sales team provided the drawing, they failed to highlight to him that the drawings may differ from the completed product and that they also failed to mention that the document was not intended to be scaled for specific dimensions. The Home Buyer considered this to be a breach of Section 1.4 of the Code.

The adjudicator noted that Section 1.4 required a Home Builder to provide suitable training to all staff who deal with Home Buyers about their responsibilities to them (the Home Buyers) and what the Code means for the company and its directors. The guidance went on to state that the Home Builder should train its staff to understand the Code's details, the company's key legal responsibilities and the staff's own responsibilities to Home Buyers.

The adjudicator noted what the Home Buyer had stated in his application was that he expected the Home Builder to have highlighted the fact that the drawing was different from

what he was going to receive. The adjudicator noted that the drawing did clearly indicate the “Graphics are for visual purposes only” and that the units were shown as standard height kitchen units. The adjudicator considered that the wording on the document was a sufficient disclaimer or warning to indicate that the drawing was not to be strictly relied upon.

The adjudicator also noted that no evidence was been supplied to suggest that the Home Builder’s sales team had provided a dimension to actively mislead the Home Buyer into believing that he was going to receive something different to that which was provided. On that basis, the adjudicator decided that the Home Buyer had provided insufficient evidence to demonstrate a breach of Section 1.4 of the Code occurred.

In respect to the alleged breach of Section 1.5, the adjudicator noted that Section 1.5 of the Code required the Sales and advertising material and activity to be clear and truthful. The document clearly indicated that the “Graphics are for visual purposes only” and there has been no evidence provided to say that the Home Builder’s sales team had misrepresented the size of the kitchen nor did the adjudicator consider that the document attempted to purposely mislead the Home Buyer. The adjudicator did not consider that the Home Buyer has supplied evidence to demonstrate that the Home Builder breached Section 1.5 of the Code.

Decision

The claim was unable to succeed.

Complaint

The Home Buyer stated that the Home Builder was in breach of the Code as the design drawings shown at the reservation stage did not accurately represent the drainage that has been constructed within the Plot and in doing so the Home Builder has breached Clauses 1.1, 1.5, 2.1, 2.6 and 3.1 of the Consumer Code for Home Builders.

The Home Buyer sought the Home Builder to provide an apology, remove the additional four manhole covers, provide an explanation as to why the additional manholes were situated on the Property and pay compensation of £8,758.70.

Defence

The Home Builders' position is that no breach of the Code has occurred. However, it does admit that there has been an increase in the number of manholes on the Property from the original drainage plans.

Findings

The Home Builder has breached Clause 2.1 and 3.1 of the Consumer Code for Home Builders.

Decision

The claim succeeds. Home Builder shall provide an apology, undertake the works to remove two additional manholes as scheduled in the Home Builder's proposal dated 19 September 2019.

Complaint

The Home Buyer claimed that the Home Builder has breached sections 2.1, 2.3, 2.4 and 2.6 of the Code. Specifically, the Home Buyer explained that she cancelled her reservation and purchase of the Property but the Home Builder has refused to refund the reservation fee.

Furthermore, the Home Buyer asserted that the Home Builder did not provide enough pre-purchase information for her to make an informed decision; it did not provide information relating to warranty cover; it did not provide any health and safety information when she visited the site and it did not provide her with a written reservation agreement.

The Home Buyer therefore claimed a refund of the £1000.00 reservation fee and compensation in the amount of £1620.70 for her storage and storage transport costs.

Defence

The Home Builder did not provide any defence.

Findings

Based on the evidence available, the adjudicator was not satisfied that the Home Builder had breached the requirements of sections 2.1, 2.3 or 2.4 of the Code.

However, the adjudicator concluded that a breach of section 2.6 had occurred in relation to the Home Buyer's reservation agreement fee.

Decision

The adjudicator concluded that the Home Builder should refund the Home Buyer for her £1000.00 reservation fee.

Complaint

The Home Buyer stated that she was not accurately informed about her ability to pick options for the Property, even when direct questions were asked. She was told that she had to pick options provided by the Home Builder and could not use an independent contractor.

After moving into the Property in February 2019, she found out that the floors in a neighbouring property had been done by an independent contractor. This was raised with the Home Builder verbally and she was assured that it would be looked into. When no response was received a complaint was submitted in writing. The Home Builder denied the claim. She had been told by the Home Builder's sales agent that she needed to use the Home Builder's options if the Property was to pass inspection.

The Home Buyer sought an apology, an explanation of why she was not given correct information, and compensation of £1,913.00.

Defence

The Home Builder submitted that the Home Buyer was taken through the Home Builder's standard sales process. The Home Builder's sales team had no recollection of encouraging the Home Buyer to purchase extras directly from the Home Builder. Use of an independent contractor would not have prevented the Property passing inspection and the Home Buyer was free to use her sales incentive as she wished. The Home Builder adhered to its complaint procedure when responding to the Home Buyer's complaint. No substantiation had been provided for the remedies claimed.

No settlement offer was made.

Findings

The adjudicator found that that the Home Builder breached Sections 1.5 and 2.1 of the Code by failing to be "clear" in both its published materials and its sales activity, but that the evidence did not support a finding that the Home Builder had not been "truthful".

Decision

The claim succeeded. The Home Builder was directed to apologise to the Home Buyer for failing to be clear regarding her ability to have an independent contractor provide the options for the Property.

Complaint

The Home Buyers stated that they had been told that there would be a retaining wall towards the back of the garden. They were not told that the wall would be constructed of unevenly coloured gabion baskets and there would be no access to the rear of their garden.

They claimed a number of breaches of the Code relating to the information provisions and the after-sales and complaints handling and wanted the Home Buyer to build steps to provide access, to undertake certain work promised in a letter of 22 November 2019 to tidy up the gabion baskets and replacement of the stones in some of the baskets because there was a displeasing visual effect.

Defence

The Home Builders denied liability, on the basis that information had been given about the back garden, there was no reason why a gabion basket structure should not be a retaining wall and access to the back of the garden had not been intended. The Home Builder remained willing to do the work promised on 22 November 2019.

Findings

The adjudicator found that the Home Builder had misled the Home Buyer. A retaining wall would not usually be understood by the consumer to comprise the use of gabion baskets and the Home Buyers had not been told that they would not have access to the back of the garden. The use of gabion baskets was unsightly because of uneven variations in the stone.

After care had been provided but the complaints handling process was not effective. However, the Buyers had not been promised that steps would be built.

In the Proposed Decision, the Home Builder had been required to carry out the works set out in the letter of November 2019 and improve the appearance of the stones in the gabion basket within a timetable to be explained to the Home Buyers. The Home Builder submitted that altering the stones was not possible.

In the Final Decision, therefore the adjudicator gave financial compensation to address the cost of disguising the differences in the stone colour and for inconvenience associated with researching and arranging this and directed that the work in the letter of 22 November 2019 should be carried out. .

Decision

The claim succeeded. The adjudicator found breaches of sections 1.5, 2.1, 3.1 and 5.1 of the Code and directed the Home Builder to undertake the remedial works promised in its letter of 22 November 2019; inform the Home Buyers within 7 days of the Home Buyers' acceptance of the Final Decision of the dates when this work will be carried out; and Pay compensation to the Home Buyers in the sum of £400.00.

Complaint

The Home Buyer claimed that he was mis-sold and misled in relation to the boundary and layout of his Property. Specifically, the Home Buyer asserts that the Home Builder led him to believe that his garden boundary was much larger than it actually is. The Home Buyer therefore claims that the Home Builder has breached sections 1.5, 2.1 and 5.1 of the Code. The Home Buyer sought £15,000.00 and an explanation.

Defence

The Home Builders denied liability on the basis that there was no actual evidence that proved the Home Buyer was mis-sold/misled in relation to the boundary and layout of the Property. The Home Builder explained that the evidence available actually proved the Property was sold exactly as detailed and documented.

Findings

The adjudicator acknowledged the Home Buyer's frustration in relation to the issues he had encountered. However, based on a full review of all the evidence provided, the adjudicator was unable to conclude that any material breaches of the Code have been established. Accordingly, in the absence of any material 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 claim did not succeed

Complaint

The Home Buyer asserted that numerous defects were not attended to in a timely manner and an issue regarding rainwater drainage was not addressed by the Home Builder. Remedial works needed to be carried out by others employed by the Home Buyer at a cost of £15,000.00 for which the Home Buyers asserts the Home Builder is responsible.

Defence

The Home Builder accepted that it would pay reasonable costs for remedial works to the rainwater drainage but that the information was not clear and the costs included additional works that are not the responsibility of the Home Builder.

Findings

The adjudicator found that the Home Builder has breached section 4.1 of the Consumer Code for not resolving the Home Buyer's complaints in a timely manner and awarded payment of reasonably identifiable costs for drainage remedial works in the sum of £4,854.11

Decision

The claim succeeds and the Home Builder is to pay £4,854.11 to the Home Buyer and issue an apology.

Complaint

The Home Buyer stated that the Home's boundary had been adjusted by the Home Builders without notice or agreement to do so, which had resulted in a significant reduction to the size of the garden area. The Home Buyer also alleged that the level of customer service provided by the Home Builders had been unsatisfactory, and that there was a delay to the construction of the Home.

The Home Buyer sought £12,129.47 for the losses incurred.

Defence

The Home Builders denied liability, on the basis that the size of the garden area was clearly shown on plans made available to the Home Buyer prior to Reservation. Additionally, the Home Buyer asserted through his legal representative that he was reluctant to exchange contracts until the dispute was settled. The Home Builder believed that there was no dispute as the property boundary was clearly identified and was unhappy that the Home Buyer continued to delay exchanging contracts.

The Home Builders had previously allowed the Home Buyer to occupy the property prior to contract exchange but subsequently decided to not complete the sale and required the Home Buyer to vacate the property.

Findings

The adjudicator found that the Home Builder had not breached any of the sections of the Code as claimed by the Home Buyer. The adjudicator found that on balance the Home Buyer had not provided sufficient evidence to support the claim.

Decision

The claim fails.

Complaint

The Home Buyer asserts that he was not properly informed of the proximity and size of adjacent properties to the rear of the property and that these are now constructed so as to cause privacy, sunlight and outlook issues.

Defence

The Home Builder denies that the Home Buyer was not properly advised and the contract of sale includes a layout drawings showing the proposed development to the rear of the property.

Findings

The adjudicator found that the Home Buyer has not been able to demonstrate that the issues complained of give rise to a breach of section 2.1 of the Consumer Code. The Contract of Sale included a plan drawing, signed by the Home Buyer, showing the extent of the proposed future development to the rear of the Property.

Decision

The claim does not succeed.

Complaint

The Home Buyer stated that she was misled the Property as being a “luxury” apartment in a “property hotspot”. She was led to believe that the Property would have good resale value. The Property is not in a “property hotspot”, but an industrial estate. Although she attended the launch event for the development she was unaware that the location was deemed an industrial estate. She was discouraged from starting her mortgage application until late in the process. The sales brochure was misleading and untruthful. She was held to her contract even though the Home Builder was aware of the financing issue caused by the Property’s location. She was pressured into putting down additional money so that a mortgage could be obtained. She incurred legal costs because the Code was not provided to her by the Home Builder.

The Home Buyer sought compensation of £15,000.00.

Defence

The Home Builder stated that the Home Buyer had not previously complained to the Home Builder about the matters included in the claim. It acknowledged that it did not provide the Home Buyer with a copy of the Code and apologised for this, but it denied that this failure caused any financial loss to the Home Buyer.

It denied that its sales and advertising material was untruthful or unclear. The reference to a “property hotspot” was to the area in which the Property is located, not to its specific location. The Property is not located on an industrial estate, but in a commercial area in a converted commercial building. The Home Buyer visited the Property’s location at the sales launch.

The sales material does not state that windows will open, but a decision to change to non-opening windows would fall within the power to make variations included in the reservation agreement.

The Property is luxurious and the building in which it is contained is as represented. Descriptions of landscaping in the sales material were accurate.

The Home Buyer has provided no evidence supporting her claims that she experienced difficulties getting a mortgage, and she ultimately secured a mortgage. She was not asked to pay any additional amounts, but a contribution was removed because she was not entitled to it. The Home Builder allowed repeated extensions to facilitate the Home Buyer securing a mortgage.

Findings

The adjudicator found that the Home Builder breached Section 1.2 of the Code by not providing a copy of the Code to the Home Buyer. However, the adjudicator found that the Home Buyer incurred no financial losses as a result of this breach of the Code.

Decision

The claim succeeded. The adjudicator directed the Home Builder to pay the Home Buyer £200.00 for the inconvenience caused.

Complaint

The Home Buyer stated that the contract of sale included for the provision of a washer-dryer as part of the upgraded appliances to be provided. The Home Builder provided only a washing machine and this is required to be replaced.

The Home Buyer sought provision of a washer-dryer in lieu of the washing machine provided

Defence

The Home Builder denied that the agreement included for the provision of a washer-dryer and refused to replace the washing machine with a washer-dryer.

Findings

The adjudicator found that the Home Builder has breached section 2.1 of the Consumer Code for not providing an adequately clear list of appliances to be provided in accordance with the contract of sale. However, this finding does not give rise to an entitlement to a replacement washer-dryer as it has not been shown that the agreement included for a washer-dryer to be provided.

Decision

The claim does not succeed.

Complaint

The Home Buyer claimed that the pre-purchase information provided relating to the future development of properties adjacent to the rear of the Property being purchased was insufficient and did not clearly show the height, elevation or extent of the future property development. The subsequent construction of the adjacent properties has resulted in a loss of privacy, loss of light and loss of outlook and the Home Buyer wishes to move house.

Defence

The Home Builder denied that the pre-purchase information was inadequate and that there is no record of further enquiries regarding the proposed future development during the purchase process.

Findings

The adjudicator found that the Home Builder has not breached section 2.1 of the Consumer Code and that the information provided was adequate to show the proposed future development.

Decision

The claim does not succeed.

Complaint

The Home Buyers stated that they completed on 16 November 2017 and were told that the driveway would not be completed until the New Year. They were advised in April 2018 that materials had been ordered and the driveway would be completed in May 2018, with additional communal items to follow.

On 16 May 2018 the original builder went into administration and all site workers were dismissed. The driveway was not completed. On 16 May 2018 the Home Builder took over management of the site, but no contact was made or timescales for completion provided. No work took place on site until 2019.

Residents meetings took place in May and August 2019. No contact details were publicly posted by the Home Builder despite being promised in the May 2019 residents meeting, and a phone number provided did not function. A timescale of December 2019 was provided for completion of tarmacking. The Home Builder does not answer emails or phone calls. On 21 January 2020 they were notified that work would commence on driveways, but no firm timescale was provided. They phoned the Home Builder on 3 February 2020 and were told that it would be completed by the end of February 2020.

Defence

The Home Builder submits that it took over construction of the site in May 2018 due to the previous builder entering administration. Work has been authorised for completion of the Home Buyers' driveway. Information has been provided regarding ongoing developments through two residents meetings in 2019. The Home Buyers were notified that their driveway would be completed by the end of April 2020, although this was then delayed due to the impact of COVID-19.

Findings

The adjudicator found that the Home Builder had breached Section 4.1 of the Code by failing to provide an accessible after-sale service, and Section 5.1 due to the delay in completing the Home Buyers' driveway.

Decision

The claim succeeded. The adjudicator directed that the Home Builder must pay the Home Buyers compensation of £500.00; must identify for the Home Buyers who to contact at the Home Builder for particular types of complaints and how they are to be contacted; must instruct the relevant employees that they are obligated to ensure that when a contact is received, an appropriate substantive response is provided; must complete tarmacking of the Home Buyers' driveway by 1 August 2020 or pay compensation to the Home Buyers of £1,656.00; and must apologise to the Home Buyers for the delays in completing their driveway and for the failures in communication.

Complaint

The Home Buyer submits the Home Builder provided incorrect pre-purchase information and failed to return both the deposit and furniture deposit paid when the Home Buyer was unable to complete the purchase and in doing so the Home Builder breached Clauses 2.1 and 2.6 of the Consumer Code for Home Builders.

The Home Buyer is seeking the Home Builder to to refund the deposits of £7,500.00 paid by the Home Buyer, refund the Home Buyer's legal costs of £2,808.70 and refund the Home Buyer's travel costs of £3,000.00.

Defence

The Home Builders submits it has not breached any section of the Code. The deposit fees paid by the Home Buyer were not refundable as the Home Buyer failed to complete the purchase within the required 28-day period which led to the cancellation of the purchase of the Property outside the cooling off period.

Accordingly, the Home Builder does not consider there has been any breach and it has complied with the Consumer Code for Home Builders.

Findings

The adjudicator found that the Home Builder has breached Clauses 2.1, 2.6 and 3.4 of the Consumer Code for Home Builders.

The reasons given by the Home Buyer are sufficient to justify the Home Builder to refund the Home Buyer's £3,000.00 deposit and £4,500.00 furniture deposit

Decision

The claim does succeed and the Home Builder shall refund the Home Buyer's deposit of £3,000.00 and the furniture deposit of £4,500.00.

Complaint

The Home Buyer stated that he was experiencing problems with water ingress into his garage, resulting from both water penetration of the brickwork and groundwater entry after rainfall.

The Home Builder had offered to apply [product] to the walls of garage and install a French drain around the garage. The makers of [product] acknowledge that it has an effectiveness of only 5 to 20 years and given the climate in the area he believes it will be 5 years. The French drain would change the landscaping of the garden, would affect the landscaping in his neighbours' garden and would require ongoing cooperation from his neighbours.

The Home Builder was only offering a 2 year warranty for the performance of [product]. If a problem arose after this period he would have to pay the cost of re-application of [product], as well as resolving whether it was the [product] that failed or another product that has already been applied to the garage. He believed that the application of [product] will be ineffective.

The Home Buyer sought for the Home Builder to resolve the problem with the garage using a permanent solution, with work performed by a specialist company.

Defence

The Home Builder stated that the Code does not cover the adequacy of remedies provided to home buyers. The Home Buyer has not provided evidence supporting that ongoing costs will be incurred.

The Home Builder has proposed a solution that it believes will resolve the Home Buyer's issue, but it has been declined by the Home Buyer. The Home Buyer has installed decking at the rear of the garage that might have exacerbated the problem. The Home Buyer has not made any specific allegation that any of the Home Builder's sales and advertising material was unclear or incorrect.

At the time of completion, 7 April 2017, the Home Builder was unaware of any issues with the garage. When a problem was raised, the Home Builder was proactive and professional in addressing it. The Home Buyer has not alleged a particular breach relating to the accessibility of the Home Builder's after-sales service. The Home Builder has appropriately followed its complaint procedure. No compensable loss has been established by the Home Buyer.

Findings

The adjudicator found that Home Builder had not breached the Code.

Decision

The claim did not succeed.

Complaint

The nature of this claim was primarily about the alleged Home Builder's failure to complete various matters of snagging and failure to complete the estate landscaping in the way that the Home Buyer expected.

The Home Buyer complained that the car parking area was unsafe and matters needed to be attended to in the driveway, garage floor, etc. Practical action was required in respect of the provision of plans, legal services and development management. In particular, the Home Buyer contends that:

- There has been no use of kerbing/barriers for the car park to the rear of the Home.
- The driveway does not conform to regulations and an undefined landscaping area is being utilised to circumvent regulations pertaining to driveways.
- The driveway is damaged with looseness & subsidence, a broken water meter surround, driveway edging faults and other items of snagging are incomplete, such as the garage floor and doorway lintel explanation issues.
- There are poor standards of landscaping, inadequate management & unjustifiable service charges.

Defence

The Home Builder did not submit a defence, but correspondence issued by the Home Buyer indicated that in many ways the Home Builder believed that it had discharged its responsibility.

Findings

The adjudicator explained that the Code cannot be used to address snagging, complaints of breach of contract or allegations of improper construction.

In respect of the after-care and complaints handling service, breaches were found, but these did not arise in relation to every issue that had been raised by the Buyer. In particular, the Buyer had raised issues with the Home Builder that had not been dealt with. This did not mean that the Home Builder had to carry out the work – the requirements of sections 4.1 and 5.1 of the Code merely required the Home Builder to communicate with the Home Buyer to make clear whether the work would be carried out or not.

Decision

The claim succeeded. The Home Builder was required to:

Apologise to the Home Buyer for the breaches of sections 4.1 and 5.1 of the Code.

- Pay compensation for inconvenience of £125.00.
- At a point within eight weeks from the removal of any applicable restrictions relating to the spread of COVID-19:

- i. Carry out a fair and complete inspection of the works referred to in the decision against the standard of workmanship that the Home Builder would reasonably expect to provide for a new home, except those relating to the garage floor, the matting, the car park and the requested verification of the safety of the gas installation;
- ii. Explain to the Home Buyer within two weeks thereafter whether it is willing to undertake the snagging work that has been inspected. If there is a refusal to undertake remedial work in relation to these items, the Home Builder shall provide the Home Buyer with written reasons for such refusal;
- iii. In respect of those matters which the Home Builder fairly finds fall short of the standards of completion and workmanship that it would reasonably expect in a new home, the Home Builder shall be required to undertake those works within the following six weeks from the date when the Home Buyer indicates in writing his agreement to those works.

Complaint

The Home Buyer stated that the Home Builder has been in breach of the Consumer Code for Home Builders in that a satisfactory after-sales service was not supplied and the Home Builder was in breach of contract, because, whereas the Home Builder promised a good quality home with excellent customer service, there have been approximately 100 defects in the Home, some of which have not been adequately repaired on the first occasion so that workmen have attended repeatedly, sometimes without resolution of the issues. The Home Builder has failed to coordinate or monitor this.

Customer care staff have repeatedly left at short notice. The Home Buyers have had to endure this for more than two years and have had to take action themselves in respect of the lack of drainage in their garden at a quoted cost of £10,950.00 plus VAT, and have had to tolerate a lack of en-suite bathroom for more than six months where the plumbing has not been completed and there is no grout on the floor or walls.

Defence

The Builder submitted that it has an appropriate system in place for complaints handling and this was both communicated directly to the Home Buyers and is available on-line. Many of the complaints listed by the Home Buyers were resolved more than twelve months ago and some had not yet arisen at the time of the application.

Findings

The adjudicator found that the Home Builder had not correctly attended to the snagging issues and had not monitored and ensure the problem so that work had to be redone, took a long time and not all of the work had been completed at the time of the defence, eighteen months after completion. This caused considerable inconvenience to the Home Buyers.

Complaints by the Home Buyers did not result in the provision of information as to when all the matters would have been dealt with. This was a breach of section 5.1 of the Code.

Although the Home Buyers raised complaints under sections 1.5 and 2.1 as well as 4.1, breaches of these sections had not been proved.

Decision

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

- Apologise to the Home Buyers in writing for its breach of section 5.1 of the Code.
- Pay compensation to the Home Buyers for inconvenience in the sum of £500.00.
- Take practical action as follows:
 - Within 7 days of the date when the Home Buyers signify that they accept the Final Decision in this adjudication, the Home Builder shall compile a list of all matters that it believes to be outstanding works.

- The Home Builder shall send a copy of the list to the Home Buyers inviting their comment on this list within 14 days, including adding items that they believe have not been satisfactorily resolved.
- The Home Builder shall then within 14 days of the Home Buyers' comments or within 28 days of the date when the list was sent to the Home Buyers (whichever is the earlier) state in relation to each item (1) whether it is willing to undertake this work; and (2) the timetable that will apply to it.
- Subject to any practices or policies of the Home Builder relating to the spread of COVID-19 which may affect the period in which such work shall be carried out, the Home Builder shall then complete the work in question within the period of the timetable. If the completion of work will be delayed due to the impact of COVID-19, the relevant practices or policies shall be explained to the Home Buyers.

Complaint

The Home Buyer submits the Home Builder was in breach of the Code by not adopting the Code; not providing enough pre-purchase information; not building the property with any regard to planning permissions or building regulations; not providing accurate and reliable information about the insurance-backed warranties; not notifying the Home Buyer about changes to the design of the Property and not co-operating with professional advisers.

The Home Buyer is seeking the Home Builder to to refund the deposits of £7,500.00 paid by the Home Buyer, refund the Home Buyer's legal costs of £2,808.70 and refund the Home Buyer's travel costs of £3,000.00.

Defence

The Home Builders submits it has not breached any section of the Code. Furthermore, any disputes concerning snagging issues or defects fall outside the scope of the adjudication.

Accordingly, the Home Builder does not consider there has been any breach and it has complied with the Consumer Code for Home Builders.

Findings

The adjudicator found that the Home Builder has breached Clauses 1.1 and 3.1 of the Consumer Code for Home Builders.

The reasons given by the Home Buyer are sufficient to justify the Home Builder to pay the Home Buyer compensation of £50.00.

Decision

The claim does succeed and the Home Builder shall provide an explanation concerning the lack of consultation regarding the design change and pay compensation of £50.00.

Complaint

The Home Buyer argued that she was assured, prior to the exchange of contracts, that the heating system fitted within the property was energy efficient, however, her electricity bills have been excessive upon moving into the property.

The Home Buyer argued that insufficient pre-purchase information was provided regarding the heating system within the property, which prevented her from making a suitably informed purchasing decision, and that the Home Builder had made untruthful statements regarding the energy efficiency of the property.

The Home Buyer had contended that an independent heating specialist was instructed to evaluate the property, and they had found that the cheapest, most inefficient, electric radiators had been fitted. The Home Buyer was therefore seeking the full costs of installing a suitably energy efficient heating system into the property.

Defence

The Home Builder denied liability on the basis that no untruthful information, or misleading information, had been provided regarding the heating system prior to the exchange of contracts, and that sufficient information, such as the EPC, had been made available to the Home Buyer prior to exchange.

The Home Builder further argued that, in any event, the Home Buyer had not provided any evidence to demonstrate that the heating system installed was wholly inefficient, as a copy of the independent heating specialist's report was not submitted into evidence, and the heating costs evidence by the Home Buyer correlated with the projected costs noted within the EPC which was provided prior to the exchange of contracts.

Findings

The adjudicator found that there was insufficient evidence to demonstrate that the Home Builder had provided unclear, or untruthful, advertising material regarding the heating system within the property and its energy efficiency, and the evidence and submissions provided demonstrated that sufficient pre-purchase information was provided.

There was no evidence to demonstrate that such untruthful information was provided to the Home Buyer verbally, or otherwise, and the Home Builder had supplied the Home Buyer with a copy of the EPC prior to the exchange of contracts which expressly detailed the energy efficient of the property; the main basis of the Home Buyer's claim.

The adjudicator also found that, as per the submissions provided by the Home Buyer, that she did have opportunities to view the property as a finished unit, with the heating system in contention installed. Therefore, it was determined that the Home Buyer was provided with

sufficient information, which specifically regarding the heating system within the property, which allowed her to make a suitably informed purchasing decision.

Decision

The claim did not succeed.

Complaint

The Home Buyer stated that unexpectedly, a few months after she had purchased the Home, the Home Builder planted two ten-foot trees in her front garden. It was obvious that these would not thrive and they did not.

The Home Buyer asked the Home Builder either to replace these or remove them and after several months of enquiring, the Home Builder agreed to its landscape contractor to attend and remove the trees and plant grass in the holes left. This has not happened and she claims that the Home Builder is in breach of sections 4.1 and 5.1 of the Code.

Defence

The Home Builders did not submit a defence.

Findings

The adjudicator found that the Buyer has been able to correspond with the Home Builder's customer care manager and has received an assurance as to the work that will be undertaken. While an after-sales process that is so slow as to be ineffective cannot be described as "accessible", in the absence of the emails passing between the parties, the adjudicator could not be satisfied that the customer has proved this to be the case.

However, the Home Builder had not applied any escalation procedure to the Home Buyer's complaint and no timetable for the work had been provided. This was a breach of section 5.1 of the Code.

Decision

The claim succeeded, but practical action has to take account of Covid-19.

The adjudicator directed, even though the work to be done is outside, that the Home Builder should:

- Apologise in writing to the Home Buyer for its breach of section 5.1 of the Code.
- Within one week of the date when any applicable restrictions relating to the spread of COVID-19 are removed, notify the Home Buyer of the date when the following practical action shall take place; and
- Within eight weeks of the date when any applicable restrictions relating to the spread of COVID-19 are removed, take practical action, namely, the removal of two trees from the Home Buyer's front lawn and making good, including the provision of grass.

Complaint

The Home Buyer stated that the fenced enclosure of the Property was too narrow by 0.6m and too short by 2.2m. He argued that the Home Builder breached Sections 2.1, 4.1 and 5.1 of the Code.

The Home Buyer requested that the Home Builder take an unspecified practical action or pay compensation of £15,000.00.

Defence

The Home Builder chose not to submit a Defence..

Findings

The adjudicator found that the Home Builder breached Section 2.1 of the Code by not placing the rear fence along the property line for the Property.

Decision

The claim succeeded.

The Adjudicator directed the Home Builder to relocate the rear fence of the Property so that it was along the property line, laying grass in the area newly located inside the fence.

Complaint

The Home Buyers stated that a telcoms junction box was located on the Property, but was not in the deeds. The box and the cables connecting to it limited their ability to extend the building, as well as preventing use of that area of the garden. Telecom engineers had been accessing the Property without the knowledge or permission of the Home Buyers.

The Home Buyers complained to the Home Builder but a resolution had been delayed for several months. The Home Builder was refusing to move the box. The Home Buyers argued that the Home Builder had breached Sections 2.1, 3.1, 4.1 and 5.1 of the Code.

The Home Buyer sought for the Home Builder to remove the telcoms junction box from the Property.

Defence

The Home Builder stated that it was willing to remove the junction box from the Property. However, current restrictions relating to COVID-19 prevented the work being performed immediately.

Findings

The adjudicator found that Home Builder had breached Section 2.1 of the Code by failing to inform them of the presence of the junction box on the Property.

Decision

The claim succeeded. The adjudicator directed the Home Builder to provide the Home Buyers with written confirmation from the telcoms company that removal of the box had been requested and would be arranged when restrictions arising from COVID-19 were lifted.

Complaint

The Home Buyer stated that he was misled about future plans to build further housing in the area. Landscaping did not resemble what was depicted in the brochures. The Property was not in an appropriate condition on hand-over. There were delays in remedial work being undertaken. Further work was required on the living room floor. Problems with the heating system had not been addressed. He had been treated unfavourably because of his responses to an NHBC survey and the Home Builder had not fully responded to a Subject Access Request. Half the rear garden was not fully usable due to an excessive slope. Fencing was of poor quality and had a gap underneath it.

The Home Builder had not properly remedied problems with water and dust ingress into the Property. The Home Buyer had security concerns due to the number of people who have had access to keys to the Property and to the Property itself. The Home Buyer argued that the Home Builder had breached Sections 1.5, 2.1, 3.1, 3.2, 4.1, 5.1 and 5.2 of the Code.

The Home Buyer requested that the Home Builder apologise for poor customer service, provide information missing from the Subject Access Report, resolve the slope in the back garden, undertake work to address water and dust ingress, and pay compensation of £15,000.00.

Defence

The Home Builder stated that the Home Buyer was informed about plans for future development prior to reservation. All images in promotional materials were for purposes of illustration and disclaimers were shown. Specific details were confirmed prior to exchange of contracts.

Defects or concerns about construction of the Property were covered by the Property's warranty and cannot be adjudicated upon in the Independent Dispute Resolution Scheme. Defects reported outside the warranty period cannot be addressed.

The customer's complaint was handled appropriately, and the customer has misunderstood the recipient of an email about which he has complained.

The Home Buyer's complaint about his Subject Access Request is not covered by the Code.

The Home Builder does not recommend that customers provide keys and advises that someone should be present in a property when work is performed. Issues raised by the Home Buyer have been addressed within a reasonable time.

Findings

The adjudicator found that the given the extent of planned future development, the Home Builder's statement that this further development would "double" the number of homes near

the Property was not “clear and truthful” and so constituted a breach of Section 1.5 of the Code, as well as Section 2.1 of the Code.

The Home Builder also reached Section 1.5 of the Code because the actual landscaping provided in the development did not match the general quality and general style of landscaping included in the Home Builder’s promotional materials.

The Home Builder breached Section 4.1 of the Code by basing its decision not to provide the Home Buyer with a feature on its dissatisfaction with the Home Buyer’s responses to the NHBC survey, rather than on a good faith determination that the Home Buyer had no right to that feature.

The Home Builder breached Section 5.1 of the Code by failing to install a missing window within a “reasonable time” and due to delays in undertaking work on the heating cylinder on the first floor of the Property.

Decision

The claim succeeded.

The Home Builder must apologise to the Home Buyer for failing to be “clear and truthful” with respect to future planned development near the Property; must apologise to the Home Buyer for the difference in general quality and general style of landscaping included in its promotional materials and actually provided; must apologise to the Home Buyer for inappropriately basing its decision not to provide downlights in the Property on its dissatisfaction with his responses to the NHBC survey; must resolve the Home Buyer’s complaint regarding the heating cylinder on the first floor of the Property; and must pay the Home Buyer compensation of £500.00.

Complaint

The Home Buyer alleges that the car parking spaces for the property have not been constructed in accordance with the plans and that the specification of materials used to construct parts of the Property have changed.

Defence

The Home Builder has not submitted a defence

Findings

The adjudicator found that the Home Buyer has not provided adequate evidence to demonstrate the claims made and that in respect of changes in specification the Home Buyer was advised of the changes before completing the purchase.

Decision

The claim does not succeed.

Complaint

The Home Buyers stated that they were told before moving in that the gradient of the garden would be 0.2 and were assured that they would hardly notice it. When they moved into the Property they were surprised at the steepness of the garden. The Home Builder agreed that work needed to be performed. Workers were sent to level the garden and also performed additional work. The drainage installed outside the shed was not functioning properly. The company agreed that the problem had not been resolved. No resolution was undertaken.

The Home Buyer sought for the problems in the garden to be rectified.

Defence

The Home Builder stated that before they moved into the Property the Home Buyers were shown documents indicating that the gradient of the garden would be 1 in 24, meaning a slight slope. The garden delivered to the Home Buyers adhered to this slope, but the Home Buyers were unhappy. As a gesture of goodwill work was undertaken to change the slope of the garden as well as additional work. This work was completed in July 2019 and the Home Buyers seemed happy.

The Home Buyers made contact in November 2019 over concern about part of the garden near the shed “sinking”. It was determined that the current situation in the garden most likely reflected the unprecedented recent rainfall. The Home Buyers were unhappy with this response, so the matter was referred to the ground workers but no alternative resolution could be provided. As waterlogging in the garden is not within 3 meters of the building it is in conformity with NHBC Guidelines.

Findings

The adjudicator found that the Home Builder had not breached Section 5.1 of the Code, as it had provided the Home Buyers with a good faith and reasonable response based on the currently available evidence.

Decision

The claim did not succeed.

Complaint

The Home Buyer stated that on 7 November 2018 the Home Builder undertook work on the spindles on her staircase, but the worker did not take appropriate care of her carpet. On 8 November 2018, the Home Builder sent tilers to work in her bathroom. She subsequently discovered that damage had resulted in the neighbouring room to snow globes, the bed and the carpet.

On 1 April 2019, without obtaining her written consent, the Home Builder sent workers into her rear garden to address a drainage issue. The workers acknowledged that they were not properly equipped to do the job and were not specialists. They left the garden in a dangerous state and her son was injured. The work was ultimately completed by another contractor in July 2019.

In August 2019, the Home Builder sent workers to address a drainage issue in her front garden and driveway. After work had been undertaken it was realised that the problem related to another property. The remedial work was sub-standard.

On 13 September 2019, the Home Builder sent painters to repaint the hall, stairs, landing, en-suite bathroom and kitchen. The painters completed the bathroom but the paint peeled when the shower was used. The Home Builder stated that it was looking into replacing the fan, but this was not done.

When the painters completed their work on 25 September 2019 there were many problems: walls not prepared properly for painting; sections of paint work missed; paint splattered on carpets, beds and walls. This was reported to the Home Builder, which acknowledged the problems.

On 4 October 2019, the company sent a worker to examine her carpets. He applied a solution that further damaged her carpets. She had been assured that if the solution did not resolve her problem then the carpets would be replaced.

The Home Buyer sought compensation of £15,000.00.

Defence

The Home Builder stated that the Home Buyer's claim amounted to more than £15,000.00 and so was not covered by the Scheme. Claims for alleged breach of trespass, personal injury and sub-standard remedial works do not fall under the Code. However, the allegation of trespass was denied, as verbal consent was given. The remedial works were undertaken by a sub-contractor that was instructed to protect the Home Buyer's possessions, although the Home Builder acknowledged that some photographs show not all items covered by dust sheets. The Home Buyer has provided no proof of actual expenditure relating to the carpets. The claims relating to the extractor fan and the Home Buyer's child's bedroom do not fall within the scope of the Code. No evidence of an incurred expense had been provided with

respect to the snow globes. Certain claims relating to remedial works in the rear garden had not been sufficiently explained or supported.

While it did not admit liability, the Home Builder was willing to pay £65.00 for gravel, £232.00 for the planter, £150.00 for the hose lock, £500.00 for inconvenience and £8,195.50 for carpets other than in the Home Buyer's child's bedroom once proof of expenditure had been produced.

Findings

The adjudicator found that the Home Builder breached Section 5.1 of the Code by failing to deal with the Home Buyer's complaint about damage to her carpets, hose pipe, planter, gravel, and Olaf wall mural within an appropriate time. The Home Builder also breached Section 5.1 of the Code by failing to reimburse within an appropriate time an expense it had promised to reimburse.

Decision

The claim succeeded. The Home Buyer was directed to pay total compensation of £10,827.00, including £500.00 for the inconvenience caused.

Complaint

The Home Buyer stated that she purchased new carpets for the Property totalling £2,555.00. She received carpets with stains. The Home Builder has retracted its acknowledgement of the issue. She argued that the Home Builder had breached Sections 1.1, 1.2, 1.3, 1.4, 1.5, 2.1, 2.2, 4.1, 5.1 and 5.2 of the Code.

In her comments on the Home Builder's Defence, the Home Buyer stated that she paid specific amounts for the carpets. The damage to the carpets in part arose from the protective film used by the Home Builder, although other damage appeared to have resulted from people entering the Property. The Home Builder's agent acknowledged on 10 December 2019 that there were visible markings on the carpet. She had been told by a professional carpet cleaner that stains would reappear eventually. She was not satisfied after the initial carpet cleaning, but acknowledged that she would need to wait for the carpets to dry. She reiterated that there is staining to the carpeting in areas other than those the Home Builder offered to replace. She was not properly informed about the Code by the Home Builder and did not receive documentation that the Home Builder stated she received.

The Home Buyer sought compensation of £3,055.00.

Defence

The Home Builder stated that new carpets were fitted in the Property as a standard option included in the purchase price of the Property. Carpets are standardly protected with film until the home demonstration a week before occupation. A final clean is provided. The Home Buyer expressed dissatisfaction with the carpets and a visit to the Property was undertaken. Although no stains were seen, as a gesture of goodwill a carpet cleaning was arranged. The cleaners removed white rubbing from the perimeter of the carpet and addressed some additional marks. The Home Buyer was satisfied when the work was completed. After the cleaning, the Home Buyer stated that she could still see stains. A further visit was arranged but no stains could be seen by the Home Builder's agents. As a customer satisfaction measure, the Home Buyer was offered replacement carpets for the stairs and landing, where protection marks had originally been seen. She was also notified that the new carpet might not exactly match the original carpet remaining in the rest of the Property. The Home Buyer chose not to proceed with the replacement.

The Home Builder had previously offered to replace the carpet on the stairs and landing.

Findings

The adjudicator found that there was evidence of staining to the carpets on the stairs and landing, but that the evidence of staining in other areas was insufficiently established. The Home Builder fulfilled its obligations under the Code through its offer to replace the carpet on the stairs and landing, which it had confirmed it was still willing to do.

Decision

The claim did not succeed.

Complaint

The Home Buyer alleged that the Home Builder withdrew from the sale agreement without communicating with him about any missed deadlines. The Home Builder had requested that the Home Buyer choose and pay for extras to the property but failed to communicate that a key deadline had been missed and then withdrew from the sale agreement.

Defence

The Home Builders denied liability. The Home Buyer had entered into a Reservation Agreement only and he had not exchanged contracts by the deadline specified in the Reservation Agreement. The Home Builder had attempted to assist the Home Buyer by specifying a completion date and requested confirmation of a 'worst-case' date for exchange of contract. When this was not forthcoming, the Home Builder withdrew from the Reservation Agreement. The finishing touches requested by the Home Buyer were non-refundable and had been fitted to the property.

Findings

The adjudicator found that the Reservation Agreement required the Home Buyer to exchange contracts within 35 days. This date had been missed due to issues in the part-exchange of the Home Buyer's existing property. The Home Builder had, in all practical terms, extended the Reservation Agreement for around seven months to enable the Home Buyer to exchange contracts on the same terms stated in the Reservation Agreement. The Home Builder declined to extend the Reservation Agreement further after being advised that exchange of contract was unlikely; the Reservation Agreement expired automatically at that point in accordance with the Code. There was no breach of the Code in respect of the Reservation Agreement.

The Home Builder had acted appropriately by requesting the Home Buyer select finishing touches to the property that he was intending to purchase and the documentation was clear that the deposit was non-refundable. The Home Builder had actually incurred the cost to fit the requested items and there was no basis for the Home Buyer's payment to be refunded. The Home Builder had refunded part of the Reservation Fee. The retained portion of the Reservation Fee reflected the Home Builder's costs relating to the Reservation in this case.

Decision

The claim did not succeed.

Complaint

The Home Buyer submitted that they paid an additional £3,500.00 to upgrade the kitchen worktop to granite. They noticed a crack in the worktop and complained to the Home Builder on 24 December 2019, within the 2 year warranty period. The Home Builder replied that the damage was cosmetic damage resulting from someone kneeling or sitting on the worktop and that it would not repair or replace the worktop. Where the crack is located, it is physical impossible for anyone to kneel or sit. The Home Builder refused to inspect the worktop, basing its conclusion only on photographs. A tradesman that came to the Property for another job inspected the worktop and concluded that damage may have occurred underneath during installation, with a fix being applied, but that it eventually became visible on top.

The Home Buyer sought for the replacement or repair of the kitchen worktop, or compensation of £4,252.00.

Defence

The Home Builder submitted that the Applicant's claim was inadmissible as the Applicant did not identify a section of the Code the Home Builder was alleged to have breached. The Applicant's claim related to the build quality of the worktop and so was not admissible under the Independent Dispute Resolution Scheme. No issues were reported by the Home Buyer until 22 months after completion. After review of photographs, the Home Builder and its installer believed that any damage had been caused by impact or pressure applied to the worktop. The Home Buyer had inadequately supported the financial claim being made.

Findings

The adjudicator found that the Home Builder breached Section 5.1 of the Code by refusing to physically inspect the worktop.

Decision

The claim succeeded. In the Proposed Decision the Home Builder was required to undertake a physical examination of the worktop and take the results of the inspection into account when responding to the Home Buyer's complaint. This inspection was undertaken prior to the Final Decision being issued, as was an inspection by a tradesperson selected by the Home Buyer. The Final Decision required that the Home Builder take into both reports, alongside any other relevant evidence, when responding to the Home Buyer's complaint.

Complaint

The Home Buyer submitted that he was due compensation in the amount of £1,305.26 to cover the cost of rectifying water ingress through the garage walls at the Property. The Home Buyer asserted that due to the porous construction of the garage, the sloping of the ground towards the garage and the insufficient drainage, the garage sustained water ingress, rendering it not fit for purpose.

Defence

The Home Builder submitted that the garage was of a porous construction as it was not intended to be a habitable room and was passed on for building control purposes as a single skin construction. The Home Builder averred standing water was commonplace due to high rainfall and that since completion, the Home Buyer increased the level of the ground the rear of the Property by adding paving flags, cobble stones and 'an impermeable sheet underneath the gravel' which would have compounded the drainage issue.

Findings

The adjudicator found that the Home Builder had not demonstrated that the information on the construction method for the garage was adequately communicated and was therefore in breach of Section 1.5 as there was no correction in the marketing activity of a reasonably held consumer expectation; namely that the construction of the garage was intended to provide a dry storage space. Additionally, it was found that there was a breach under 2.1 due to the omission of information relevant to a purchasing decision as it relates to the standards of construction of a garage that would otherwise reasonably be expected to be dry.

Finally, the adjudicator found that the Home Builder has not demonstrated what its procedure for complaints handling were, nor has it demonstrated that any practical steps to resolution were taken, following the initial inspection and was therefore in breach of section 5.1 of the Code.

Decision

The claim succeeded.

The adjudicator found that the reasons given by the Home Buyer are sufficient to justify compensation in the amount of £500.00, being a reasonable amount in the circumstances, and in consideration of the breaches under sections 1.5 and 2.1. Additionally, the adjudicator found that the Home Builder should apologise to the Home Buyer in relation to the breach of Section 5.1 of the Code.

Complaint

The Home Buyer stated that the Home Builder had failed to resolve satisfactorily several ongoing issues with the Property, including problems with the linoleum flooring, a leak in the roof, a missing gutter and a socket in the kitchen which was not in accordance with the Property plans.

The Home Buyer was unhappy about the way in which the Home Builder had dealt with these issues, as there were numerous miscommunications and delays.

Defence

The Home Builder denied liability. It noted that issues prior to December 2019 had been dealt with and settled in another application under the Scheme. It submitted that, in respect of the issues raised by the Home Buyer, it had been in regular contact with the Home Buyer to resolve them.

Findings

The adjudicator found that, in respect of matters occurring after December 2019 (which were the only matters covered by the reference), there was no breach of the Code.

The evidence showed that the Home Builder had been reasonably responsive to the Home Buyer's complaints and had taken steps to address the issues raised by the Home Buyer within an appropriate time, so the Home Builder had not breached section 5.1 of the Code.

In addition, the Home Buyer did not provide evidence that he had appointed professional advisors or that the Home Builder had not dealt with any such advisors appropriately, so it had not breached section 5.2 of the Code.

Decision

The claim did not succeed.

Complaint

The Home Buyer stated that the Property has had problems with its wooden flooring since the date of completion of the sale. The Home Builder had attempted to remedy this, but these attempts had been unsuccessful.

The Home Builder subsequently proposed a further solution but the Home Buyer was unhappy with this because it would change the appearance of the flooring. She considered that the Home Builder had treated her unfairly in the service that it had provided to deal with this issue, and in particular had proposed a different solution for her than it provided to other occupants of the apartment block.

The Home Buyer accordingly requested an order that the Home Builder re-lay the flooring and provide an additional warranty for these new works, or alternatively award financial compensation of £15,000 in order to allow her to hire a contractor to re-lay the flooring herself (including a sum for distress and inconvenience).

Defence

The Home Builder denied liability. It accepted that there had been some delay in dealing with the flooring issue but submitted that there were good reasons for this. It submitted that it had now proposed a solution which would be an acceptable remedy to the problem.

The Home Builder further noted that the Code does not cover the adequacy of the remedy that a home builder provides to a home buyer and does not require a home builder to offer the same remedy to all of its customers.

Findings

The adjudicator found that the Home Builder did have an after-sale service in place which allowed the Home Buyer to raise the flooring issue with the Home Builder, and the Home Builder's responses to the Home Buyer's correspondence demonstrate that this service was reasonably responsive. There was therefore no breach of section 4.1 of the Code.

However, despite attempts to repair the flooring, the Home Builder had not succeeded in dealing with the issue in a reasonable time (although the adjudicator did not consider that the Home Builder had acted unfairly or that the Code required the Home Builder to treat all customers in the same manner). The adjudicator found that the Home Builder was therefore in breach of section 5.1 of the Code. As a result, the Home Buyer had suffered distress and inconvenience for which the adjudicator awarded £200.

Although the Home Buyer rejected the solution proposed by the Home Builder, she had not shown that the solution would be inadequate. The adjudicator noted that the Code does not require the Home Builder to provide a solution that satisfies the Home Buyer, but rather to act in good faith in providing a reasonable solution, which the Home Builder had done. The

adjudicator therefore did not order the Home Builder to replace the flooring, nor to pay financial compensation to allow the Home Buyer to instruct a contractor to replace the flooring.

Decision

The claim succeeded in part. The adjudicator directed the Home Builder to pay the Home Buyer £200.00 for the inconvenience caused.

Complaint

The Home Buyer submitted that the Home Builder had represented, in its brochure and verbally during a pre-sale visit, that the property had "exceptional levels of sound insulation". Despite this, the Home Buyer stated that he had regularly experienced unacceptable levels of noise in the Property emanating from the apartments below, which he considers are due to the poor quality of workmanship relating to sound insulation installed by the Home Builder. Attempts by the Home Builder to remedy the problem had been unsuccessful.

The Home Buyer accordingly submitted that the Home Builder was in breach of section 1.5 of the Code which states that "Sales and advertising material and activity must be clear and truthful". He requested an explanation of this situation from the Home Builder, as well as an order that the Home Builder instruct a contractor to carry out remedial sound proofing works, or pay the Home Buyer to allow these to be carried out.

Defence

The Home Builder denied liability, submitting that acoustic tests showed that the sound insulation has always performed to a substantially higher standard than required by the building regulations. It stated that it had already carried out remedial works in accordance with expert recommendations costing over £40,000, and that the further works that the Home Buyer wished to carry out would be disproportionate. It also submitted that the requirement set out in the sale contract was for the Property to comply with the building regulations, not any higher standard set out in the sales brochure.

Findings

The adjudicator found that the applicable standard was that set out in the Home Builder's pre-sale representations and not the sales contract, because Code imposes a duty on the Home Builder that is additional to any obligation it has undertaken in the sales contract.

These pre-sale representations were that the Property had "exceptional levels of sound insulation", which the adjudicator found was not in fact the case. The adjudicator therefore found that the Home Builder was in breach of section 1.5 of the Code.

Decision

The claim succeeded in part.

The adjudicator directed the Home Builder to pay the sum of £14,280.00 to the Home Buyer in order to allow the Home Buyer to instruct a contractor to carry out the specified remedial works. The adjudicator did not direct the Home Builder to provide the further explanations requested by the Home Buyer.

Complaint

The Home Buyer stated that the bus stop nearest the Property has been placed incorrectly. She said that she was told prior to purchase that it would be located in a layby past the Property, but it is located in front of the Property. She also said that she was told that the Property would be in a dead end road with a single bus every hour going in one direction. The road has now been opened to two-way traffic, is very busy, and buses run in both directions every 10 minutes. She has suffered medical problems due to stress arising from the location of the bus stop.

The Home Buyer sought for the bus stop to be removed.

Defence

The Home Builder submitted that the bus stop is situated in a layby past the Property, as shown on plans produced by the Home Buyer. The video provided by the Home Buyer is misleading. No evidence has been provided that the Home Builder's sales material or sales activity was not clear and truthful. No evidence has been provided supporting the Home Buyer's statements about the promised status of the road, and the local council has confirmed that the current bus routes were always planned.

Email communications produced by the Home Buyer show the Home Builder responding appropriately to the enquiries of the Home Buyer. The Home Builder has no influence over the location of the bus stop. The Home Builder has an accessible after-sales service that was available to and used by the Home Buyer.

Findings

The adjudicator found that the Home Buyer has failed to produce evidence sufficient to support her claims that the Home Builder had breached the Code.

Decision

The claim did not succeed.

Complaint

The Home Buyer submitted that the fitted dishwasher has been damaged by an incorrectly fitted bracket, causing the dishwasher to crack. The fitted freezer door catches on the worktop. She was never provided with the company's complaints procedure. When she lodged a complaint with the company she received no response. She argues that the Home Builder has breached Section 4.1 of the Code.

The Home Buyer sought that the Home Builder fix or replace the dishwasher, and stop the freezer door catching on the worktop.

Defence

The Home Builder did not submit a Defence.

Findings

The adjudicator found that the Home Builder breached Section 4.1 of the Code by failing to respond to the Home Buyer's after-sale service request, and Section 5.1 of the Code by failing to "deal with" the Home Buyer's complaint within an "appropriate time".

Decision

The claim succeeded.

The adjudicator directed the Home Builder to fix or replace the dishwasher, ensuring that it is correctly installed, and to refit the freezer so that the freezer door does not catch on the worktop.

Complaint

The Home Buyers submitted that there were seven access points to inspection chambers in their garden. The Home Buyers submitted that this restricted the use and enjoyment of their garden.

The Home Buyers alleged that the Home Builder (at the reservation stage) did not show them that these access points would be present in their garden. The Home Buyers therefore believed that the Home Builder may have breached section 2.1 of the Consumer Code for Home Builders.

The Home Buyers therefore wanted the Home Builder to either relocate the access points to the inspection chambers away from their garden or provide them with more land to make up for this issue.

Defence

The Home Builder disputed the Home Buyers' assertions and did not accept that it had breached the Code. The Home Builder submitted that the Home Buyers were shown the plans as required by the Code and these indicated the presence of the inspection chamber access points.

The Home Builder submitted that the evidence available (namely, the reservation agreement signed and dated by the Home Buyers) was proof that the company had complied with the Code as required and had shown the plans to the Home Buyers.

Findings

The adjudicator found no substantive evidence that the information relating to the location/existence of the inspection chamber access points was a fundamental piece of pre-purchase information which critically influenced Home Buyers' decision to purchase the property.

In any event, the adjudicator noted they had been provided with a detailed reservation agreement checklist (encompassing the requirements of section 2.1), signed by the Home Buyers on 19 July 2018. Consequently, based on the available evidence, the adjudicator was only able to objectively conclude that the Home Builder complied with the requirements of section 2.1 (with labelled ticks to denote confirmation of the specific requirements under section 2.1).

In particular, the adjudicator noted that the signed reservation agreement checklist confirmed that the Home Buyers were provided with property plans as required by section 2.1. Consequently, in light of all the above, the adjudicator was not satisfied that the available

evidence reflected the Home Buyers' assertion that this issue amounted to a breach of section 2.1 of the Code.

In the interests of completeness, the adjudicator acknowledged the Home Buyers' submission that the Home Builders have always maintained that it had shown them the plans which detailed the inspection chamber access points. However, the Home Buyers asserted that the plans they were shown at the reservation stage did not detail the location of the access points.

Upon review of all the evidence available, the adjudicator was only able to locate copies of technical plans for the Property which appeared to include the location of the access points. However, there were no copies of any technical plans which omitted the location of the access points. Accordingly, based on the available evidence (namely, the only available copies of the technical plans and the signed reservation checklist), on balance, the adjudicator was left with no other choice but to conclude that the Home Buyers had not substantiated their assertions in relation to this issue.

Based on a full review of all the evidence available, the adjudicator concluded that the Home Builder had adequately complied with the requirements of section 2.1 of the Code as detailed in the builder guidance.

Decision

The claim was unable to succeed

Complaint

The Home Buyers submitted that the back garden did not match the information provided before purchase. The plans they were shown showed a slight incline across the garden and they were told by the Home Builder's agents that the incline would be slight and not overly noticeable and would not affect their use of the garden. They were also shown that the area in front of the back door would be full patio.

In reality the left side is far lower than the right side and the incline is uneven on both sides. The right hand side of the garden is totally unusable. There is a steep and dangerous slope leading to the steps, causing both a safety hazard and a flooding risk. The patio is small, with the remainder of the area turfed, preventing it being used as a patio.

They were told that their garden would be like that of their neighbours but with slightly more of an incline, but it is very different. The garden was much flatter before being turfed, suggesting that it has been used as a dumping ground for debris. The slopes within the garden are slippery, making it too unsafe to use. The Home Buyers argue that the Home Builder breached Section 2.1 of the Code.

The Home Buyers sought compensation of £15,000.00.

Defence

The Home Builder submitted that the Home Buyers' application in significant part related to the build quality of the garden and so was inadmissible. When the Property was reserved on 11 May 2019, the garden had already been substantially formed, with only landscaping left to complete.

Clause 13 of the contract required the Home Builders to confirm in writing if they were relying on any statements or representations, but no such confirmation was given.

The Home Buyers signed the Reservation Checklist, confirming that they saw document TWY024/105, which demonstrates the levels in the garden, including the falls from left to right and top to bottom. The garden has been constructed in accordance with the drawings. The patio was constructed in accordance with the drawings. The Home Buyers did not raise these issues prior to completion.

The contract permits the Home Builder to make both Major and Minor changes. The Home Builders have produced inadequate evidence to support their claim, and to support their proposed remedy.

Findings

The adjudicator found that the Home Buyers had failed to produce evidence sufficient to justify a conclusion that the Home Builder had breached the Code.

Decision

The claim did not succeed.

Complaint

The Home Buyer argued that the Home Builder had given misleading information about the communal areas and landscaping to the estate on which the Home was built. They say that plans were provided to their solicitor for the purpose of the TP1 which showed access steps in a different location from that in which these were finally built and on construction, the steps reduced their privacy and were unsatisfactory in appearance.

Also the landscaping was not of high quality as promised and the service charges were significantly higher than the estimate. The information about the Home was not therefore reliable. They claimed breaches of sections 1.5 and 2.1 of the Home.

Defence

The Home Builder denied liability. It said that the landscaping was of higher quality than that initially stated and the steps had had to be moved because of the location of a power cable. The Home Builder also said that the difference between the estimate maintenance cost and the actual cost was £1.16 per week.

Findings

The adjudicator found that the Home Buyers had not proved that the landscaping quality fell below that promised and it has to be remembered that landscaping matures with time.

There is no evidence that the Home Builder did not intend to construct the steps in the location shown on the plan and therefore there was no breach of section 1.5 of the Code.

There was, however, a change of intent during the process of construction, which was a minor change about which the Home Builder failed to inform the Home Buyers, even though this meant that the Home Buyers now had a view of the steps that they did not want and also there was a loss of privacy.

The need for change was because the Home Builder had failed to take note of the location of the power cable, which was a matter about which the Home Builder might reasonably have been expected to have known. Accordingly, the information initially given was unreliable, and therefore the adjudicator found that there was a breach of section 2.1 of the Code.

Decision

The claim succeeded.

The adjudicator awarded £500.00 compensation in relation to the inconvenience experienced by the Home Buyers.

Complaint

The Home Buyer submitted that on 10 February 2020 he raised a complaint about the existence of an overhang from his neighbour's garage into the garden of the Property, creating a potential hazard. Other elements of the garage are also within his property boundary. The company attended the Property on 6 March 2020 and a response was provided on 10 March 2020. On 17 March 2020 the Home Builder confirmed that it regarded the matter as closed. The presence of the overhang prevents him using his garden fully and access to his Property would be required if work was to be undertaken on the overhang. He argued that the Home Builder has breached sections 2.1, 2.6 and 5.1 of the Code.

The Home Buyer's comments on the Home Builder's Defence were that he did not view the 3D Modelling Software, which is also not mentioned in the reservation checklist. The construction of the overhang does not match what is presented in the 3D Modelling Software. The technical plans referenced by the Home Builder do not provide sufficient detail regarding the overhang. As constructed, the overhang is unsafe. The Home Builder has not made sufficient efforts to resolve the matter.

The Home Buyer sought an apology, that his neighbour's garage be moved from off his property, and compensation of £15,000.00.

Defence

The Home Builder submitted that the Home Buyer attended the company's sales office on 28 July 2019 and 31 July 2019. He is believed to have accessed the 3D Modelling Software, which displays the neighbouring property's garage extending into the garden of the Property.

Information on the overhang was also available to the Home Buyer in the documentation he was provided relating to the Property. The Home Builder is contractually entitled to maintain projections onto the Property and to access the Property in order to undertake any necessary maintenance to such projections.

The Home Builder has followed its complaint procedure.

Findings

The adjudicator found that the Home Buyer was more likely than not aware that there would be an overhang, but that the overhang differed from the one originally described by the Home Builder. However, the difference fell within the limits of the Code regarding alterations that can be made without notifying the Home Buyer. The Home Builder had not therefore breached the Code.

Decision

The claim did not succeed.

Complaint

The Home Buyer claimed that the Home Builder had breached Sections 2.1 and 3.2 of the Consumer Code for Home Builders for failing to provide information on the type of insulation used in the construction and for failing to provide a reliable completion date for the property, without a satisfactory explanation.

The Home Buyer sought £4,836.81 as compensation for “expenses, inconvenience and anguish” caused by a delay to the property completion date.

Defence

The Home Builder denied liability, on the basis that “is not required to provide specific information about the type of home insulation used in construction by the Consumer Code or the NHBC” and it kept the Home Buyer “sufficiently informed as to the progress of build and reasons for delay” and “has complied fully with the requirements of Section 3.2.”

The Home Builder had previously given a goodwill payment of £250.00 to the Home Buyer.

Findings

The adjudicator found that the Code does not require the Home Builder to provide the exact specification of the insulation but simply the standards to which the Home is being built and as such determined that a breach of section 2.1 of the Code had not occurred.

The adjudicator found that on the balance of probabilities, the approximate completion date provided by the Home Builder at reservation stage was reliable and realistic at that point in time and that by selling his property prior to exchange of contracts, the Home Buyer took the risk that he would have to find accommodation for a period of time prior to completion of his new property.

Furthermore, the adjudicator found that as delays to this date were identified, the Home Buyer was kept informed on a regular basis and that on the balance of probabilities it was likely that a significant proportion of these delays were outside the Home Builder’s reasonable control. As such it was determined that a breach of section 3.2 of the Code had not occurred.

Decision

The claim did not succeed.