

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

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

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

Summary of changes

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

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

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

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

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



The Consumer Code for Home Builders – Update on Code Compliance

Since its launch in 2010, The Consumer Code for Home Builders has been providing protection and rights to purchasers of new homes, ensuring that all new home buyers are treated fairly and are fully informed about their purchase before and after they sign the contract.

It also provides a speedy, low cost dispute resolution scheme to deal with complaints. The Code contains requirements that all home builders who are registered with the UK's main new home warranty providers; NHBC, Premier Guarantee and LABC Warranty must comply with as part of their formal registration process and applies to any homes built after 1st April 2010.

The Consumer Code has an on-going commitment to undertake market research to bench mark and monitor the extent to which home builders are complying with the rules of the Consumer Code since its launch in 2010.

Surveys and audits are undertaken incorporating mystery shopping of sites and estate agents, telephone interviews and, audits of builders' contracts of sale. These methods provide an insight in to how the various requirements of the Code are being met including:

- Awareness of the Code
- How information is sourced
- Attitudes towards the Code
- Information needs of home buyers

Wave 4 of the annual market research took place in September 2013. The sample of house builders used reflected the percentage of houses they built. Estate agents were split by local, independent and national chains.

Positively, there has been a marked increase in the visibility of the Code for front end sales directly with home builders and estate agents. Copies of the Code continue to be displayed within site offices and there has been a 33% increase in the number of home builders promoting the Code and directing potential home buyers to their websites for further information on the Code/Requirements. There is also a 36% increase in the number of sales people who could fully discuss the Code.

As the Code becomes firmly embedded in the processes followed by home builders, there was a significant increase in sales representatives discussing how complaints are handled and how complaints/disputes are resolved (increased by 40% and 58% respectively), which are key areas of the Code's requirements. 12% of respondents were also advised to seek legal advice when asked.

Estate agents are also more aware of, and able to discuss, structural warranties and after-sales services with potential home buyers. There is a 34% increase in references made to the Consumer Code itself.

There is an underlying need to keep promoting the importance to referring to the Code within sales literature and ensuring top of mind awareness with sales teams and especially estate agents.

Information for consumers at the point of supply is key to home buyers awareness of the Code. The Consumer Code will be developing compliance checks to ensure that information is appropriately provided.

The Code has also developed a consumer leaflet to support home buyers which can be downloaded from www.conusmercodeforhomebuilders.com

Compliance Monitoring

This report is based on evidence from monitoring research conducted to date, as well as publically available information (such as that found on The Code's website). The monitoring research comprises:

- 2 major national customer satisfaction surveys;
- Mystery shopping of builders' site-based sales offices and estate agents to check for compliance with The Code;
- Auditing of contracts of sale to check that contract meet the requirements of The Code;
- Collation of complaints and adjudication statistics; and
- Lawyer research.

A Summary of Key Findings from Compliance Monitoring

Generally larger builders (building more than 300 units per year) are better at complying with The Code. Likewise national chains of estate agents are more likely to comply than smaller local chains or independents.

There has been considerable builder buy-in due to The Code being an industry-led initiative. A comprehensive programme of training for all builders accompanied the launch of The Code in 2010 supported by an effective communication strategy. These factors have resulted in a legacy of moderately high builder compliance.

Home Builders perform well in the following:

- Providing a copy of the Code to homebuyers; a minimum of 56% of homebuyers say they have received a copy of The Code.
- Awareness and knowledge of The Code; three quarters of sales staff are aware of The Code, and 62% are able to discuss it.
- After sales service; 81% of homeowners were satisfied with the service provide by the builder after moving in. This is the highest result since the survey began in 2005.

However, there is room for improvement, particularly as some of the latest results (from 2012) have shown a slight drop back in compliance levels. Builder awareness is reasonably high but 25% of sales staff, who should know about The Code, were found to not have the required knowledge.

With regards to the auditing of Contracts, the overall score for contracts compliance is relatively low at 53%. However, this masks a large variation in results ranging from 91% down to 6%.

Compliance among estate agents, who often act as the builder's agent in marketing and selling new homes, is low. Significant findings from estate agent research are:

- Estate agents typically do not recognise their responsibilities regarding The Code.
- Estate agents who know about it have a positive attitude towards The Code, and see it as a selling point.

Informal feedback indicates that typically there is no contract formalising the relationship between builders and estate agents. The Code is working with the National Association of Estate Agents (NAEA) to develop this further.

Lawyers are a critical link in the chain of compliance and protection, touching the process at several points.

- Builders' solicitors draft the contract of sale
- Homebuyers' lawyers check contracts on behalf of their clients
- Homebuyers' lawyers should advise their clients of IDRS if they are considering litigation.

A considerable share of the protection afforded by the Consumer Code derives from requirements related to the contract of sale between the builder and the home buyer. As a result, and to support the aim to broaden the reach of the Code, in May 2013, a research project was undertaken to benchmark lawyers' awareness of the Code and its operation as only 50% of contracts are currently substantially compliant with the Code.

Legal professionals acting on behalf of homebuyers provide an important link in the chain of protection. A major focus of the Code is to significantly improve the awareness of the Code requirements in the Legal Profession.

The Consumer Code for Home Builders is working with the Law Society to provide more information on what the Code is, how it operates and clearer guidance on how to implement.

Details of the Code and copies of the documentation can be accessed via the website:
www.consumercodeforhomebuilders.com