

Adjudication Case 1– January 2019 – 117180085

Complaint

The Claimant complained that the Home Builder had removed a strip of land from the plan that he was first shown so that when he took possession he found that his side wall was against the boundary instead of away from it. He had not been informed of this.

Defence

The Home Builder acknowledged that there had been a change in the plan because of a complication with another boundary.

Findings

The adjudicator found that the pre-contractual information given to the Home Buyer had not been reliable because there had been a change to the line of his property about which he had not been informed. This may mean that the land registry plan is also incorrect. This led to inconvenience because he now hears the neighbour's side gate banging which would not have been the case if it had not been attached to the wall and he did not have access to the side of his house except by going into his neighbour's garden. Although he claimed for loss of value of the Home by reason of the omission of the strip of land, loss of value was not a matter that fell within the scope of the Scheme rules, but compensation could be given for inconvenience.

Decision

The claim succeeded in part. The Home Builder was directed to:

- Pay compensation of £500.00 to the Home Buyer;
- Pay to the Home Buyer the expenses necessary to make changes to the title plan registered at HM Land Registry; and
- Reimburse the Home Buyer with his registration fee of £120.00.

Complaint

Home Buyer submits that the Home Builders have breached sections 1.5 (Sales and advertising), 2.1 (Pre-purchase information) and 5.1 (Complaints handling) of the Code in respect of access to the garage which forms part of the Property (the 'Garage'). The Home Buyer submits that the Home Builders have breached 10.2.6 of the current technical standards / 9.2(a) of the 2014 technical standard, which requires that 'drives should be designed to permit a motor car reasonable access to and from a garage or car parking area'. The Home Buyer submits that they are unable to park their vehicle in the Garage because the arrangement of communal parking spaces and boundary fencing makes this physically impossible.

The Home Buyer sought practical action from the Home Builders to allow access to the Garage or £15,000 in compensation in the alternative.

Defence

The Home Builders denied the Claim was brought in time and denied liability on the basis that the plans shown at reservation were and remain accurate; that the Home Builders' complaints system is Code-compliant; and that there were no changes to the Property's design between reservation and legal completion. The Home Builders submit that no claim for diminution in value can be entertained because of a valuation for a mortgage obtained by the Home Buyer. The Home Builders further deny any claim for inconvenience based on the use of the Garage by the Home Buyer for a significant period without complaint.

Findings

The adjudicator found that the reservation document stated that no information had been provided to the Home Buyer and that the purchase was without a mortgage. On that basis there was no breach of section 1.5 and a clear breach of section 2.1. Nonetheless, the transfer documents and the rights of third parties under transfers made on substantially the same terms prevented any practical resolution without acting inconsistently with good estate management, disproportionate effort or conferring an unwarranted additional benefit. Similarly, the compensation claimed was out of scope of the Scheme as it was for diminution in value. There was no breach of section 5.1 for that reason.

Decision

The claim succeeded in part. Notwithstanding the breaches complained of, the remedy sought could not be awarded and neither could the Home Buyer be compensated within the scope of the Scheme. The adjudicator directed the Home Builders to pay the Home Buyer £100.00 for the inconvenience. The Home Buyer's registration fee was also reimbursed.

Complaint

The Claimant complained that the Builder had indicated in its pre-contractual information that the Home would oak veneer doors and ceiling heights of 2.68 m on the ground floor and 2.55 m upstairs. At no point during the sale or build process was the Home Buyer informed that these specifications had changed. The Home was found to have been built with cheap white veneer doors and ceiling heights of 2.4 m throughout. He also complained that his complaint had not been addressed by the Home Builder. The Home Buyer claimed compensation of £14,141.38, which was calculated by comparing the price per square foot between the Home and a house-type with higher ceilings.

Defence

The Home Builder submitted that the Home was not mis-sold. It accepted that the original brochure identified incorrectly that the house-type purchased by the Buyer would have oak veneer doors and increased ceiling heights. The document known as the '3 page spec' that was identified at the time of purchase stated that properties up to 1800 square feet would have white 6 panel doors. Only properties over 1800 square feet would have oak veneer doors. The Home had 1616 square feet. And the brochure was amended. Other steps were also taken:

Some reservation agreements record that the differences between the brochure and the specification was explained; A suite of drawings were exhibited to all customers as part of the pre-reservation process and the content explained. This showed the floor to ceiling heights. The customer would have been shown this information. The drawing reference TF-1616d(13)05F, which was exhibited to all purchasers, shows the elevations/sections that identify the floor to ceiling heights. This provided for Ground Floor => 2372mm; First Floor = 2381mm. Examples of these were shown on all the pre reservation checklists. The customer in Plot 2 would have gone through and signed confirming they had seen all information on spec and drawings as the Home Builder says that it would not rely on a 'brochure' for such detail.

The Home Builder denied that the Home Buyer identified a specification issue prior to completion.

Findings

The adjudicator found that the Home Builder had incorrectly stated the height of the ceilings and the oak veneer doors. Although the Home Builder said that the error had been communicated to the Home Buyer, the evidence did not support that any such communication had been effectively made in his case, though it may have been given to other purchasers. The Home Builder was in breach of sections 1.5, 2.1 and 3.1 of the Code. The Home Builder also failed to provide appropriate service in relation to the Home Buyer's complaint and was therefore in breach of section 5.1 of the Code.

Decision

The claim succeeded in part. The Home Buyer was not entitled to compensation for loss of value, which was not in any event proved, but was entitled to the cost of replacing the doors. An adjustment by way of reduction of 1/3rd was made because the Home Builder would have been entitled to have refused to make a change to the white doors if the Home Buyer had been notified of the change, because the alteration was minor. Alteration of the ceiling heights was not proportionate but the Buyer was entitled to compensation for inconvenience, in this case of £250.00.

Complaint

The Home Buyer submits that the Home Builders failed to adopt the Code and failed to provide sufficient information pre-exchange, which are sections 1.1 (Adopting the Code) and 2.1 (Pre-purchase information) of the Code respectively, in respect of information regarding a crack affecting the Property. The Home Buyers submits that the Home Builders failed to provide a surveyor's report in respect of the crack, such that they were unable to proceed to exchange of contracts and withdrew from the purchase. They Home Buyer did so outside the 28 day period for exchange.

The Home Buyer sought reimbursement of their reservation fee, legal fees and other sunk costs from the Home Builders as well as an apology and an explanation.

Defence

The Home Builders denied the Claim in its entirety, contending that the Home Buyer had not specified the sections it was alleged to have breached. The Home Builders further submitted that the information requested was provided in a timely fashion and that it was the Home Buyer's solicitors who were at fault. The Home Builders further attempted to counter-claim from the Home Buyer.

Findings

The adjudicator found that the Home Builders had provided the relevant information to the Home Buyer's solicitors in a timely fashion. He nonetheless found that the reservation document did not comply with section 2.6 and that there was a different breach of section 2.1. On this basis, the adjudicator further found a breach of section 1.1. There was a further finding that, as neither party had treated the reservation agreement as terminated when the 28 day period expired, the agreement continued to have effect such that the Home Buyers were entitled to withdraw without penalty on 28 September 2018.

Decision

The claim succeeded in part. Notwithstanding the breaches complained of, the majority of the remedy sought either did not flow from the breaches complained of, was outside the reasonable contemplation of the parties or would have been incurred in any event. The adjudicator directed the Home Builders to reimburse the Home Buyer's reservation fee of £1000.00. The Home Buyer's registration fee was also reimbursed. As the relationship between the parties had ceased, he declined to order either an apology or an explanation.

Complaint

The Claimant complains that the Home Builder has conveyed a strip of land behind his fence that contains a number of unwanted trees and rubbish. It is at a different height from his garden and has a retaining wall that may contain asbestos. The trees are overgrown and are spoiling enjoyment of his house and garden. The dispute has been going on for two years and nothing has been done.

Defence

The Home Builder agrees that it has made "a blunder" and is willing to reduce the height of the trees behind the fence and make a gate into the area between the fence and the wall so that the Home Buyer has access but the Home Buyer is responsible for the maintenance of this strip of land. .

Findings

The adjudicator found that the liability for the land and trees had not been disclosed to the Home Buyer and had been misrepresented. There were a number of breaches of the Code

Decision

The claim succeeded in part. The redress provided was to try to rectify the error but the Home Buyer had not proved that he was entitled to the compensation claimed, which did not fall within the scope of the scheme and about which little evidence had been given. Also much of the claim was for inconvenience and distress.

The Home Builder was directed to

- apologise for its failure to disclose to the Home Buyer their liability for the strip of land behind the garden fence and for the length of time taken without resolution of this dispute;
- explain its understanding of the legal position in relation to the Home Buyer's responsibility for the retained/retaining wall;
- clear the land behind the fence of rubbish;
- remove the trees from that strip of land in their entirety (save that the Home Builder is not required to grind out the stumps);
- create access for the Home Builder to the strip of land by way of a gate in their fence;
- pay compensation of £500.00 for inconvenience; and
- reimburse the Home Buyer with their registration fee of £120.00.

Complaint

The Home Buyer stated that the Home Builder had breached sections 4.1 and 5.1 of the Code. The property was purchased on 28 October 2016. Within about 10 days, the ease of opening and closing the front door was raised as a snagging item. The Home Buyer maintained that communications, dialogue and inspections were handled, “unprofessionally”, by the Home Builder who took 2 years to agree a, “fair and honest course of action”. The Home Buyer sought an apology, an explanation and payment of £2,000.00.

Defence

The Home Builder denied liability. An after sales service had been provided. The Home Builder followed its complaints process, but the Home Buyer was dissatisfied with the response and sought to reopen the complaint via an alternative route rather than escalate it to step 2 under the Home Builder’s complaint process. The Home Builder maintained that the Home Buyer’s alleged losses could not be awarded under the scheme.

Findings

The adjudicator found that it was clear from the timeline and trail of emails that the accessibility of the after sales service provided by the Home Builder was inadequate and fell below a standard that could be reasonably expected. It was more likely than not that the Home Builder did not let this particular Home Buyer know of the dispute resolution arrangements operated, he lacked information and guidance on escalating the matter from stage 1 to stage 2. Overall, there was a breach of sections 4.1 and 5.1 of the Code by the Home Builder.

Decision

The claim succeeded in part. The adjudicator directed the Home Builder to apologise and to pay the Home Buyer £50.00 for the inconvenience caused. The Home Buyer’s registration fee was also reimbursed.

Complaint

The Claimant complained that the Builder had failed to disclose the presence of a disused mineshaft within 20m of the property he intended to buy. He says that this should have been disclosed at the advertising and marketing stage and should have been disclosed promptly in the pre-contractual stage. In fact his solicitor found out about it in searches and the Builder did not reply to questions.

Defence

No defence was filed but the Home Builder said that the reservation fee would be returned.

Findings

The adjudicator found that there was no breach of section 1.5 of the Code because the Home Builder had carried out extensive remedial work to the mineshaft that had been approved and there is no reason to consider that it affected the safety of the Home or the environment. The Home Builder should have given information promptly to the Home Buyer's solicitor, however, and it did not, including failing to reply to questions. The Home Builder was also obliged to repay the reservation fee promptly and did not. These formed breaches of sections 2.1 and 2.6 of the Code.

Decision

Apologise for breaches of the Code; Unless this has already been done, refund the Home Buyer's reservation fee of £500.00; Pay compensation of £500.00; and Reimburse the Home Buyer's registration fee of £120.00.

Complaint

The Home Buyer asserted that the Home Builder had breached Sections 1.1, 1.2, 1.3, 1.4, 1.5, 2.1, 2.2, 3.2, 4.1, 5.1 and 5.2 of the Consumer Code for Home Builders in respect of the provision of inaccurate pre purchase information, a failure to address the issues, poor communication, not complying with the promises made, not answering telephone calls or emails, not providing a complaints handling procedure and not issuing handover documents.

The Home Buyer also submitted that some of the work was not in accordance with the contract (LED mirrors, a shaving point, bark down the side of the house, tiled skirting, radiator, location / size of the boiler, neatly landscaped communal gardens, incorrectly sited manholes, a party fence, an outhouse, retaining walls and levelling sand for the garden) and contained snagging (a broken gas hob, defective radiator, a damaged ceiling, debris in the loft, damaged patio, damaged window sill, work to overhanging trees.)

Defence

The Home Builder submitted that many of the issues raised by the Home Buyer were not the Home Builder's fault or responsibility. However, in some instances, the Home Builder did accept that further actions were required on its behalf. The Home Builder agreed to pay for the LED mirrors and a shaving point, to resolve the bark down the side of the house, to pay the cost of repairing the radiator and to resolve the damaged patio.

Findings

The adjudicator found that the Home Buyer tried multiple times to get the Home Builder to resolve the issues but that the Home Builder failed to provide 'an accessible after-sales service' or provide details of 'who to contact.' This was a breach of section 4.1 of the Code.

The adjudicator found that the Home Builder did not provide the Home Buyer with a copy of the Code. This was a breach of section 1.2 of the Code.

The adjudicator found that the Home Builder failed to 'have suitable systems and procedures to ensure it can reliably and accurately meet the commitments on service, procedures and information in the Code.' This was a breach of section 1.3 of the Code.

The adjudicator found that the Home Builder did not comply with the requirements of the Code and have regard to the good practice guidance. This was a breach of section 1.1 of the Code.

The adjudicator found that the Home Builder's sales and advertising material and activity was not clear and truthful and that the layout, appearance and plot position of the Home and list of the Home's contents were not satisfactorily provided in relation to the LED Mirror, the

shaving point, the landscaping bark, the heated towel rail, the boiler, the landscaping, the fence, the sloping garden, the manholes and the outhouse. This was a breach of sections 1.5 and 2.1 of the Code.

The adjudicator found that the Home Builder did not have suitable systems and procedures for receiving, handling and resolving the Home Buyer's complaints. This is a breach of section 5.1 of the Code.

Decision

The claim succeeded in part. The adjudicator determined that the Home Builder had breached sections 1.1, 1.2, 1.3, 1.5, 2.1, 4.1 and 5.1 of the code. The adjudicator determined that:

- a. The Home Builder should pay a rebate to the Home Buyer of £150.00 for LED mirrors and shaving point not provided.
- b. The Home Builder should make all reasonable endeavours to place bark down the side of the house.
- c. The Home Builder should make all reasonable endeavours to replace the radiator in the WC with a towel rail.
- d. The Home Builder should make all reasonable endeavours to build a custom boiler cover that will take up less room than the existing one, cover the boiler and associated pipework and allow the breakfast bar to function as designed. That the Home Builder should pay the Home Buyer £102.55 to cover the temporary boiler cover that was purchased to cover a boiler.
- e. That the Home Builder should make all reasonable endeavours to remove the fence posts alongside the front path and make good any damage to the ground resulting from their installation.
- f. That the Home Builder should make all reasonable endeavours to re-route the drainage and move the manholes to a less prominent position by the fence. That the Home Builder should pay the Home Buyer £79.70 to cover the cost of the recessed manhole covers purchased.
- g. That the Home Builder should make all reasonable endeavours to re-install the fence between the Home Buyer's property and the neighbouring property.
- h. That the Home Builder should make all reasonable endeavours to complete the retaining structure to the rear garden, and lay level, correctly prepared sand to the required depth in preparation for the Home Buyer to lay Astro turf.
- i. That the Home Builder should make all reasonable endeavours to construct the stone out house shown on the pre-purchase plan.

j. That because the Home Builder had breached sections 1.1, 1.2, 1.3, 1.5, 2.1, 4.1 and 5.1 of the Code, the Home Buyer suffered significant inconvenience as a result. The sum of £250.00 was awarded in compensation to the Home Buyer, as claimed.

k. That the total cost of the remedial works to be undertaken by the Builder should be capped at £14,417.75 (taking the maximum award of £15,000 under the Code and deducting the £150.00 for LED mirrors and shaving point, £102.55 to cover the temporary boiler cover, £79.70 to cover the cost of the recessed manhole covers, and the £250 awarded for inconvenience).

l. That the Home Builder should apologise to the Home Buyer, as requested, following the inconvenience caused by the breaches in the Code.

m. That the request for the Home Builder to 'engage in adjudication to resolve outstanding issues that are outside of the scope of the code' is outside the adjudicator's powers so no such award was made.

n. That all other remedies sought by the Home Buyer related to the completion of snagging and defective work. As these fall outside the scope of the Code so no such award was made.

o. That the Home Buyer's claim had succeeded in part, and that it was fair and reasonable that the Home Builder reimbursed the Home Buyer's registration fee.

Complaint

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

Defence

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

Findings

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

Decision

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

Complaint

The Claimant complained that the Reservation Agreement did not comply with the Code as it arbitrarily retained £2,500.00 regardless of the actual costs incurred by the Home Builder in processing and holding the Reservation. He argued that because he did not proceed with the purchase, the Home Builder was required to refund the full £5,000.00 less any costs genuinely incurred by the Home Builder in processing and holding the reservation.

Defence

The Home Builder said that the Reservation Agreement had been drawn up by lawyers. The Home Builder was not able to re-sell the Home over the winter. It argued that the costs incurred as a consequence of the Reservation Agreement and subsequent withdrawal by the Home Buyer were: solicitors invoice - £786.00; attendance at several meetings at the Home – giving rise to in-house costs - £300.00. The list of works required by the Home Buyer for completion before exchange totalled £4,000.00. As the no exchange of contracts occurred within the 40 day agreed timeframe, utility bills of £1,000.00 were incurred and mortgage payments in excess of £40,000.00. The Home Builder has also had to pay the Council Tax and the cleaners and gardeners.

Findings

The adjudicator found that there was a breach of section 2.6 of the Code. The Reservation Agreement required a fee of £5000 which the Home Buyer paid. If there was a cancellation by the Buyer, the Agreement envisaged that deductions could be made for costs and expenses of dealing with the reservation, (which are deductions permitted by the Code) but also for proposed alterations to the property. These are not deductions permitted by the Code. There was a minimum retention of £2,500. The effect of the Agreement therefore, was that, a moment after signing it, the Purchaser became liable on cancellation to a deduction from the Reservation Fee of a sum of at least £2,500. It was improbable that immediately after signature, any “administrative costs expenses incurred thereby in dealing with the reservation” would have been incurred and therefore the deduction of £2,500.00 was not “an amount that represents the reasonable costs you have genuinely incurred in processing and holding the Reservation” as envisaged by the Code.

It followed that the Reservation Agreement was incapable of complying with the requirements of section 2.6 of the Code because it imposed a penalty for withdrawal that was not linked to the level of expenditure by the Builder. Additionally, whereas the Code and Guidance required the Reservation Agreement to make reference to the nature of the deductions that will be made by the Home Builder, no such costs were identified in the Reservation Agreement otherwise than as a generic description. Most of the claims for retention made by the Home Builder were not “reasonable costs you have genuinely incurred in processing and holding the reservation”, but a form of estimate of consequential loss. Reference was made in the Defence to meetings attended and time taken, for which an in-house cost of £300.00 was charged by the Home Builder. That might have been

permissible but there was no supporting evidence. The lawyer' s costs were proven, however, and the Home Builder would have been entitled to deduct these.

Decision

The claim succeeded in part. The adjudicator awarded the return of the reservation fee less lawyer's costs and directed reimbursement of the registration fee.

Complaint

The Home Buyer stated that the Home Builder had breached sections 2.1 and 5.1 of the Code. This was because, firstly, the Home Builder had not given her sufficient pre-purchase information about the adoption by a sewerage undertaker of drains and sewers serving the development. Three months after purchase the Home Buyer was asked to agree an amendment to form TP1. The amendment showed that the drains and sewers no longer needed to be at the standard required for adoption and were going to be maintained by an unregulated management company. Secondly, when the Home Buyer complained about the sewers and drains not being adopted, the Home Builder did not deal with the complaint. The Home Buyer sought an apology, compensation of £500.00, an explanation and written confirmation from the management company.

Defence

The Home Builder denied liability. It maintained that the pre-purchase information was accurate at the time it had been issued in that the sewers had not been adopted and any unadopted areas would be maintained by the management company. The Home Buyer's complaint could not be fully dealt with until the conclusion of the Home Builder's continuing discussions with the sewerage undertaker. The Home Builder maintained that the remedies sought by the Home Buyer requiring the action of the management company were outside the ambit of the scheme.

Findings

The adjudicator found that the pre-purchase information given by the Home Builder to the Home Buyer was enough to help her make an informed purchase decision. The information was fair and reliable because it indicated that the sewers and drains had not been adopted by a sewerage undertaker and there was no section 104 agreement in place (which would have permitted the adoption). Also, a management company had been created and the management services were described, which included the management and maintenance of any areas within the estate which were not intended or able to be adopted. Therefore, the Home Builder did not breach Code 2.1.

It was clear from the timeline of more than a year and the trail of emails, that the Home Builder had not dealt with the complaint of the Home Buyer within a reasonable time. Therefore, the Home Builder had not entirely discharged its obligation to deal with the complaint in a reasonable time and there was a breach of section 5.1 of the Code by the Home Builder.

Decision

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

Complaint

The Home Buyer alleged that the Home Builder has breached sections 1.2, 1.5, 3.1, 4.1 and 5.1. This was because the Home Builder had offered a paint upgrade package at an additional cost. The Home Buyer selected a specific colour and a finish. However, the Home Builder made an error because although the correct colour was painted the correct finish was not. The Home Buyer was dissatisfied and attempted to follow the Home Builder's complaints procedure but received "appalling" after sales service. The Home Buyer sought an apology and requested that either the Home Builder repaint their home with the correct paint finish or they pay the cost of the Home Buyer having this done themselves.

Defence

The Home Builder submitted that it had not breached its obligations under the Code to the Home Buyer. The loss complained of by the Home Buyer was a contractual matter rather than a breach of the Code and the adjudication was not the correct forum to raise matters which go to legal interpretation. The Home Builder maintained that even if there had been a breach of the Code in relation to the manner in which the complaint was dealt with, such breach did not cause the Home Buyer's loss.

Findings

The adjudicator found that whether the change to the paint finish was significant and substantial, as the Home Buyer believed, or whether it was a minor change as the Home Builder suggested, in either case the Guidance to section 3.1 of the Code made it clear that it was to be notified to the Home Buyer. However, the change had not been notified to the Home Buyer by the Home Builder. There was a breach of section 3.1 of the Code.

It was apparent from the timeline and correspondence that the accessibility of the after sales service provided by the Home Builder was inadequate and fell below a standard that could be reasonably expected. There was a breach of section 4.1 of the Code.

There were many months delay by the Home Builder in dealing with that part of the Home Buyer's complaint concerned with customer care, i.e. after sales service. The Home Builder had not provided a reasonable level of customer service and had not dealt with the complaint within a reasonable time. There was a breach of section 5.1 of the Code.

Decision

The claim succeeded. The adjudicator directed the Home Builder to apologise and reimburse to the Home Buyer £38.48 for the cost of a test tin of paint. Also, the Home Builder was to repaint the Home Buyer's home at a mutually agreed date not less than 60 days from the date of the decision unless an extension is agreed by both parties. Should the Home Builder not, or choose not to, repaint then the Home Builder shall pay the Home Buyer £7,300.00 (in addition to the said sum of £38.48). The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer stated that the dates given for completion were unrealistic and he eventually had to rescind the contract as the completion date was repeatedly extended. The Home Buyer complains that the Home Builder was unable to construct a house in the timeframe promised at the outset and point of sale. Nor was it able to build it within the contractual date or within long stop date of 27 October 2018. The Home Buyer complains that the Home Builder ignored correspondence and purported to try to hold the Home Buyer to a completion date to which the Home Buyer had not agreed. He says that there have been breaches of section 1.5, 2.1 and 3.2 of the Code. The Home Buyer said that he had been engaged with this project since the summer of 2017 and signed the reservation agreement on 6 October 2017. He and his partner have lived in a touring caravan whilst awaiting completion, believing that they would be in their new home no later than September 2018. Everything that they own is in storage. The Home Buyer complains that he has suffered losses as a consequence of his intended move to Yorkshire and seeks compensation of £7,595.50 plus £500.00 for inconvenience as well as an apology and practical action to improve the Home Builder's procedures.

Defence

The Home Builders did not respond

Findings

The adjudicator found that the completion dates that had been given to the Home Buyer within the marketing activity and pre-purchase information were not realistic and there were breaches of sections 1.5 and 2.1 of the Code. The Home Buyer had no idea whom to contact to provide reliable information and was in fact referred from one person to another and did not receive timely responses to his questions and concerns. The Home Builder had not complied with section 2.2 of the Code in that there was no clear point of contact. Moreover, the contract terms, alternatively the Builder's interpretation of them was not clear and fair in that, although the contract appeared to say that the Buyer could terminate the contract if Notice to Complete had not been given by the Builder by the backstop date, the Builder alleged that the contract meant that the Buyer could not terminate for another two months. If this was correct, the terms were misleading. The adjudicator found a breach of section 3.1 of the Code. There was also a breach of section 3.2 in that the information given as to the probable completion date was unreliable and inaccurate.

Decision

The claim succeeded. Much of the financial claim was for the costs of living in the caravan and storage costs. The adjudicator found, however, costs incurred in living in alternative accommodation pending the completion of the transaction did not fall within 5.7 of the Scheme rules and, moreover, had not been proved in this case because it would have been necessary to compare the costs of living in a caravan with those in either his old home in Worcestershire or his new. This information was not available. Moreover, I find that loss of interest was also not a matter falling within the Scheme. The adjudicator directed an apology but did not make directions as to the Builder's business practices. Compensation of £500 for inconvenience was awarded.

Complaint

The Home Buyer's claim is that he reserved the Property on or about 21 May 2017. The Property was the show home and it was sold "as seen" with the only reservation being that it would have the driveway reinstated within two weeks. In this state, it had railings in front of it but these were removed subsequent to the Reservation Agreement. He subsequently spoke to the Home Builder's representative on many occasions, and has corresponded with the Home Builder, but the Home Builder has refused to reinstate the railings. The Home Builder at first declined to respond to the original formal complaint. The Home Buyer complains of breaches of the Code under sections 2.1, 2.6 and 5.1.

The Home Buyer has stated that his formal complaint was sent on 15 April 2018, but the Home Builder has observed that this only said that a formal complaint would follow and that a formal complaint was not received.

Defence

The Home Builder submits that the railings were present at the time of viewing the property but stood outside it and were adjacent to the highway for the purpose of safety and for separating the show homes from the rest of the estate. The path, railings and strip were not part of the plot as sold. The railings extended outside all three show homes without gaps, making it reasonable that they would be removed. There were no railings to the front of any of the properties on the estate. The Home Builder has complied with section 2.1 of the Code. The Home Builder has further complied with section 2.6 of the Code, save that it is not obliged to provide an inventory, but did recommend to the Home Buyer that he should take photographs (which he did). With regard to section 5.1 of the Code, the Home Builder maintains that it has no record of the original complaint: the Home Buyer's email of 15 April 2018 said that a complaint would be lodged. It states that the email of 23 August 2018 was wrongly addressed. Further emails were received and were responded to. The Home Builder concedes that it could have dealt with the complaint more proactively.

Findings

The adjudicator found that the claim succeeds in part. The adjudicator directed that the Home Builder shall apologise for delaying in responding to the Home Buyer's email. The adjudicator found that Home Builder has breached a requirement under the Consumer Code for Home Builders as set out in section 5.1.

Complaint

The Home Buyer submits that: the rear garden dividing fencing is not installed in the correct position - being the boundary line as shown on the plans. And that the fencing and posts are owned by the neighbouring property and therefore the fence should not have been installed on the Home Buyer's land. Furthermore that the plans show the Home Buyer's neighbours as owning the fence and consequently the posts should be on the neighbours' side. In addition the Home Buyer claims that the Home Builders have not responded adequately, and in the appropriate timescales, to the Home Buyer's complaints on this matter.

Defence

The Home Builder submits that: the boundaries are marked by GPS satellite and cannot be incorrect, that the co-ordinates have been checked and have been found to be correct and that a site inspection of the fence position has been undertaken and the fence is 40mm out – but that the allowable tolerance is 100mm and therefore no adjustment or correction is needed. Further that in the extract from the Land Registry plans, the fence line (if scaled from the drawing) is 300mm thick and the installation is within this tolerance. Moreover, that the house building industry works to tolerances of up to 100mm which allows for on-site adjustment.

Findings

The adjudicator found that the claim does not succeed. The Home Builders have not breached a requirement under the Consumer Code for Home Builders.

Complaint

The Home Buyer submits that he bought the Property which had a line of trees and scrub to the rear of the Property. However, the Home Builder has built a fence to the rear of the Property which does not match the plan supplied to him: in fact, the fence is in front of the trees, so it has been erected short of the real boundary line. He has complained by himself and his solicitor many times but has not received a satisfactory response. The Home Builder in late February 2018 forwarded a new plan for the Property showing a revised boundary line following a zig-zag line instead of the original straight line. The Home Builder has conceded that the fence is in front of the trees, but that it is only prepared to remove the fence altogether, not to move it to the right location (i.e. so as to follow the boundary line running through the trees).

Defence

The Home Builder did not submit any response.

Findings

The adjudicator found that the claim does not succeed. The Home Builder has not breached a requirement under the Consumer Code for Home Builder.

Complaint

The Home Buyer alleged that the Home Builder has breached sections 2.1, 3.1 and 4.1 of the Code. This was because the Home Builder, without consulting the Home Buyer constructed a carport which was of inferior quality to the only carport example available for the Home Buyer to view prior to exchange. The Home Buyer was also concerned that the carport had not been checked for wind loading. The Home Buyer was dissatisfied and complained but the Home Builder's after sales service was, the Home Buyer stated, "practically non-existent". The Home Buyer sought some practical action from the Home Builder and payment of £1,760.00.

Defence

The Home Builder did not submit a response to the Home Buyer's claim.

Findings

The adjudicator found that the Home Buyer was provided with information about the Home's carport by being shown a carport which had already been constructed between other properties on the development. The Home Buyer believed that the carport to be constructed at their property would be similar, yet the carport which was actually constructed was of inferior construction. The Home Buyer's version of events was disputed or challenged in any way by the Home Builder. There was a breach of section 2.1 of the Code by the Home Builder.

The change to the carport's roof construction and materials were not notified to the Home Buyer and they did not agree to a change. There was a breach of section 3.1 of the Code by the Home Builder.

It was apparent from the timeline and correspondence that the accessibility of the after sales service provided by the Home Builder was inadequate and fell below a standard that could be reasonably expected. There was a breach of section 4.1 of the Code.

Decision

The claim succeeded. The adjudicator directed that the Home Builder was to clad the underside of the carport to obscure the trusses and construction and reduce wind loading ("the work"). The Home Builder shall carry out the work at a mutually agreed date not less than 60 days from the date of the decision unless an extension was agreed by both parties. Should the Home Builder not, or choose not to, carry out the work then the Home Builder shall pay the Home Buyer £1,760.00. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer alleged that the Home Builder has breached sections 1.2 and 1.5 of the Code. This Home Buyer believed he was not treated fairly because he claimed he had not received a copy of the Code and adequate price information about a £5,000.00 price difference between “mirror, like for like properties on phase 1 of the development”. In his Reply the Home Buyer accepted that he had received a copy of the Code. The Home Buyer sought an apology and payment of £5,000.00.

Defence

The Home Builder submitted that it had not breached its obligations under the Code to the Home Buyer. The Home Builder maintained that its sales and advertising material was clear and truthful, also a copy of the Code was provided to the Home Buyer. The Home Builder disputed the redress sought by the Home Buyer.

Findings

The adjudicator found that the parties agreed a copy of the Code had been provided to the Home Buyer at the time of reserving the property. Consequently, there was no breach of section 1.2 of the Code.

Both section 1.5 of the Code and the Guidance indicate that the Home Builder’s sales and advertising material should be clear and truthful. There was no evidence that the Home Buyer was provided with either incorrect or insufficient financial related information regarding the purchase or the purchase price. The Home Builder offered the property at a price which the Home Buyer agreed to and paid. The Code does not apply to loss of property value. The Home Builder is not restrained by the Code so that it cannot offer other properties, at other prices, to other buyers or is required to inform or adjust the price of the property purchased by the Home Buyer. There was no breach of section 1.5 of the Code by the Home Builder.

Decision

The claim did not succeed.

Complaint

The Home Buyer complained that the brochure and the marketing activity indicated that he would have a gable end window on his end of terrace property, for which he had paid £5,000.00 more than if he had bought a mid-terrace property. He claimed that, as this had not been provided, the value of his home was diminished.

Defence

The Home Builders denied liability, stating that the marketing activities and pre-purchase information were consistent with its intention that it would only provide a gable end window where the end of terrace home was at the right hand end of the terrace, but not on the left. It said this was apparent from the plans in the brochure.

Findings

The adjudicator found that the brochure and pre-purchase information did not make clear that the gable window would only be provided for the house at one end of the terrace but not the other. This was a breach of the Code and had led to inconvenience but the loss of value claimed by the Buyer was not proven and was outside the scope of the scheme.

Decision

The claim succeeded in part. The Buyer was awarded £350.00 for inconvenience and his registration fee was reimbursed.

Complaint

The Home Buyer submits that the Home Builder has breached Sections 1.1, 1.2, 1.3, 1.4, 1.5, 2.1, 2.5, 2.6, 3.1, 3.2, 3.4 and 5.1 of the Consumer Code for Home Builders including not comply with the requirements of the Code, not making the Code available or visible, not acknowledging the Code, not providing enough pre-purchase and pre-contract information, not reimbursing the reservation fee when the Reservation Agreement was cancelled, providing an unfair Registration Agreement and Contract, providing an inaccurate construction completion date and not having an adequate complaints procedure in place.

Defence

The Home Builder submitted no defence.

Findings

The adjudicator found that no copy of the Code was provided which was a breach of section 1.2 of the code.

The adjudicator found that the Home Builder's pre-purchase information did not include a list of the home's contents which was a breach of section 2.1 of the Code.

The adjudicator found that the Home Builder's failure to reimburse the Home Buyer's reservation fee once the Reservation Agreement was cancelled was a breach of section 2.6 of the Code.

The adjudicator found no reference to deposit protection in either Reservation Agreement or the Sale and Purchase Agreement which meant that this aspect of Sale and Purchase Agreement was unfair and that a breach of sections 3.1 and 3.4 of the Code had occurred. The adjudicator found that no copy of the complaints handling procedure or the dispute resolution arrangements operated as part of this Code was provided resulting in a breach of section 5.1 of the Code.

The adjudicator found that the Home Builder failed to comply with sections 1.2, 2.1, 2.6, 3.1, 3.4 and 5.1 of the Code and therefore the Home Builder consequentially also failed to comply with section 1.1 of the Code in that they did not "comply with the Requirements of the Consumer Code and have regard to good practice guidance."

Decision

The claim succeeded in part. The adjudicator determined that:

The Home Builder shall reimburse the Home Buyer's reservation deposit in the sum of £5,000; pay the sum of £100.00 in compensation to the Home Buyer to cover the inconvenience evidenced and reimburse scheme fee of £120.

Complaint

The Claimant complained that the Builder had failed to comply with the requirements of NHBC in carrying out its decisions and recommendations for work – both in terms of initial decisions and subsequent updated reports which indicated that the work identified in the first report had not been completed. The Buyer argued that this showed that there was no adequate system in place for resolving disputes and complaints and providing adequate

Defence

The Home Builder, on the other hand, submitted that either the works have been adequately undertaken or there is a reasonable excuse for not having completed the works and no breach of section 5.1 of the Code. In particular, the Home Builder said that it had tried to get the Home Buyer to agree to the arrangements for carrying out the work but the Home Buyer did not agree to allow the work to be done.

Findings

The adjudicator reminded the parties that she could not consider snagging matters, but she found that a failure to implement the decision reports of NHBC within a reasonable time indicated a failure to comply with section 5.1 of the Code. She found that there was a failure to implement within a reasonable time and, allow the Home Builder had put forward various dates for attendance, there was no adequate or clear strategy in place for carrying out the work, with the consequence that, although some items of snagging identified were completed, others remained undone.

Decision

The claim succeeded in part. The adjudicator directed that the Builder should: Take practical action to: ensure that certain unfulfilled requirements of one report of NHBC shall be completed in the timescale required by rule 4.18 of the Scheme Rules; and ensure that certain unfulfilled requirements of an additional NHBC report shall be completed in the timescale required by rule 4.18 of the Scheme Rules. Pay compensation for inconvenience of £500.00; and Reimburse the Home Buyer's registration fee of £120.00.

Complaint

The Home Buyer stated that the Home Builders breached sections 2.1 (Pre-purchase information) and 2.6 (Reservation) of the Code in respect of its failure to complete the Property to the plans shown at reservation by landscaping the garden behind a retaining wall along the south gable end and half-way down the east elevation. The levels to these parts of the Property were graded in instead.

The Home Buyer states that this is a significant change from the original plans.

The Home Buyer sought an apology and for the Home Builders to put in a retaining wall to meet the original plans, or pay £10,560.00 for the Home Buyer to do so.

Defence

The Home Builders denied liability, on the basis that the site conditions did not require the retaining wall and that the change was a minor one which was therefore excluded under the reservation agreement.

Findings

The adjudicator found that the removal of the retaining wall was significant and, contrary to the Home Builders' case, was not 'required' by reason of site conditions or for technical reasons and was therefore not excluded under the reservation agreement. The Home Builders therefore breached sections 2.1 and 2.6.

Decision

The claim succeeded in full. In view of the loss of the retaining wall and the slope created by the grading in, the adjudicator directed the Home Builders to take practical action to put in the retaining wall, landscape, re-turf and re-plant. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer submitted that the Home Builder breached sections 2.6 and 3.3 because during reservation the Home Builder showed the Home Buyer out of date drawings indicating the garden would be flat and fully useable. However, the current finish makes part of the garden unusable due to “large gradient deviations and slopes”. Also, the drainage to the front garden is not the same as that indicated on the drawings because a manhole is present where none is shown on the drawings. The Home Buyer was not informed of the issues by the Home Builder, if they had been then the Home Buyer would not have continued with the purchase or would have made a reduced offer for the property. The Home Buyer complained but the Home Builder’s attitude was of “total disinterest” and unwillingness to visit the property to review the Home Buyer’s concerns.

Defence

The Home Builder accepted that the Home Buyer was shown an incorrect version of the drawing of the property but maintained the Home Builder was entitled to make minor alteration to the slope of the rear garden as well as minor amendments to the position of the drains and manhole in the front garden. The Home Builder maintained that the Home Buyer was not entitled to compensation, which was equivalent to about 8% of the purchase price.

Findings

The adjudicator found that there had been a breach of section 2.6 of the Code which provided that the Home Buyer must be given a Reservation Agreement “that sets out clearly... what is being sold”. The out of date drawings given to the Home Buyer at the time of reservation did not clearly show what was being sold for two reasons. Firstly, the drawings indicated that the garden was to be flat with a 1/95 fall away from the property, however, the actual garden was laid with a fall towards the property and a slope along one side of the rear garden. Secondly, the drawings showed that there was no manhole present in the front garden, but a manhole was actually constructed. The adjudicator found that the change of slope in the garden was not a significant variation and would not lead to loss of enjoyment, functionality or value of the property. However, the manhole re-siting was in the control of the Home Builder and to position one in the middle of a garden without consultation or agreement with the Home Buyer was unacceptable behaviour which could not be regarded as a minor change.

The adjudicator found that there had been a breach of section 3.3 of the Code. The Code made it clear that the Home Buyer must be “told about their right to terminate the contract”. I am satisfied that the Home Builder discharged this obligation because the Contract for Sale set out to the Home Buyer, who were professionally advised, the rights of the Home Buyer to terminate the contract.

Decision

The claim succeeded. The adjudicator directed that £1,000.00 was a reasonable sum for the Home Builder to pay the Home Buyer which reflected the serious breach of the Code. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyers submitted that the property was handed over in an unsatisfactory and filthy condition, and they had to live with family for 22 days while the Home Builder addressed the main problems. They had to repeatedly follow up with the Home Builder to have works completed. There were problems with the boiler that were not fixed adequately quickly. At the time of completion, they noticed that some roof tiles were “kicking up”, while others were not fixed in place and were slipping down the roof. In addition, the roof vent above the bathroom window appeared wonky and oversized. They complained, but were told there was nothing wrong with the roof.

In September 2017, a third party builder expressed concern about the roof and they raised their concerns with the Home Builder again. They were told that by the contractor that they needed to take their complaint to the NHBC, but that the NHBC would not act until the 2 year builder warranty had expired. They contacted the NHBC, who declined to investigate as the problem arose within the 2 year warranty period, so was the responsibility of the Home Builder. At this point they employed a surveyor to undertake an independent assessment. The Home Builder would not cooperate satisfactorily with their surveyor. Scaffolding was left up at the property unused for weeks. The first repairs to the roof were completed in January 2018, but it looked no different and no information was provided on what had been done. The worksite was left a mess.

A new problem now existed with roof tiles banging together when there was wind. They complained to the Home Builder, resulting in a lengthy dispute between contractors, which caused further inconvenience. A second attempt was made to repair the roof in April 2018 by the same contractor, but no information was given on what work was done and the worksite was left a mess. The contractor was removed and further delays incurred while the Home Builder and the contractor disputed about payment. In July 2018 a new contractor examined the roof and then undertook repairs in September 2018. No information has been provided on the works that have been undertaken, and no-one from the Home Builder has visited the property to sign off on the works. There are still parts of the roof that are “kicking up”.

Defence

The Home Builder submitted that some superficial repairs remained to be completed upon purchase of the property, but these would not have prevented the property being occupied. Compensation of £400.00 was accepted as full and final settlement for handover issues and inconvenience resulting from them. There were problems with the boiler and the Home Buyers were told that they could appoint their own contractor and be reimbursed or relocate temporarily to a hotel and be reimbursed. The Home Buyers chose to relocate to a hotel. Plumbers attended the property on 8 May 2017, but they were not able to secure and install the necessary part until 10 May 2017. The customer received reimbursement of £485.80 for hotel expenses and food. The Home Builder acknowledges that work on the roof has taken longer than anticipated, but confirms that it was completed in September 2018. The Home

Builder acknowledges that poor performance by the initial contractor resulted in delays, but the repairs were completed after a new contractor was appointed. Delays were also incurred regarding scaffolding. The final report of works undertaken was mistakenly not issued to the Home Buyers, but this has now been done. The Home Builder has been willing to engage with any survey the Home Buyers wished to pursue.

Findings

The adjudicator found that the Home Builder breached section 4.1 of the Code by failing to provide requested information on the work that had been done on their roof by the initial contractor, as a reasonable means of ensuring that the problems had been rectified. The Home Builder breached Section 1.3 of the Code by failing to provide “reliable and consistent service”, manifested in extended delays in the repair of the roof, scaffolding being left at the property significantly longer than required, and the provision of inaccurate information to the Home Buyers regarding the Home Builder’s obligations under the Code. The Home Builder breached Section 5.2 of the Code by failing to cooperate with the Home Buyer’s surveyor.

Decision

The claim succeeded in part. The Home Builder was required to pay the Home Buyers a total amount of £2,960.00, and apologise to the Home Buyers for its failure to provide information on the repairs undertaken by the original contractor when requested to do so and for failing to cooperate with the Home Buyer’s surveyor.

Complaint

The Home Buyer submits that his parking space is narrow, with a steep cross fall that makes alighting the car extremely difficult, if not impossible, when his neighbour's car is parked in the space next to his. Dustbins cannot be taken from the rear of the house to the front of the house without the cars being moved. Parking in the parking space is his only option, as the deed to the Property prevents him parking on the road. The parking space does not meet building regulations. The value of the Property is significantly decreased by not having a usable parking space. He estimates that the depreciation is up to £12,250.00.

Defence

The Home Builder has chosen not to submit a Defence.

Findings

The adjudicator has found that in the absence of a defence, that the Home Builder has breached a requirement under the Consumer Code for Home Builders. The claim succeed in part and the adjudicator directed the Home Builder to apologise to the Home Buyer for failing to provide him with sufficient information about the size of the parking space allocated to the Property, must pay the Home Buyer compensation of £500.00 for inconvenience resulting from the Home Builder's breach of the Code, and must reimburse the Home Buyer's registration fee in the amount of £120.00.

Complaint

The Home Buyer asserted that the Home Builder had not complied with the requirements of the Code, that the Home Builder had not made the Code available or visible and that the Home Builder did not provide appropriate information for the Home Buyer to make an informed purchasing decision in relation to the district heating costs and the service charge which were allegedly underestimated when the reservation agreement was signed.

Defence

The Home Builder denied liability, on the basis that it had not breached the Consumer Code for Home Builders and asserted that it provided the Home Buyer with a comprehensive service charge budget estimate, estimated sums for the first year of the term of the lease, an explanatory provision in the Lease setting out the costs of the heating system, service charge and insurance and that a copy of the Consumer Code was supplied to the Home Buyer and signed for.

Findings

The adjudicator found that no specific estimate for the energy costs was included in the reservation agreement and in this respect the Home Builder breached section 2.6 of the Code. Even if the EPC certificate provided to the Home Buyer was taken to form part of the reservation agreement, the figures on it were significantly underestimated and therefore were not “reasonably reliable” as would be good practice under the Code’s “Builders Guidance.”

The adjudicator also found that the Home Builder did provide an estimate of the management services in the reservation agreement but that the figure was significantly underestimated and therefore was not “reasonably reliable” as would be good practice under the Code’s “Builders Guidance.”

A form (signed by the Home Buyer) stated that a copy of the Consumer Code for Home Builders was provided and that the Home Buyer was made aware of its purpose. Therefore the adjudicator did not find that section 1.2 of the code was breached.

As the adjudicator found that the Home Builder failed to comply with sections 2.1 and 2.6 of the Code, it was also found that the Home Builder consequentially also failed to comply with section 1.1 of the Code in that they did not “comply with the requirements of the Code and have regard to the good practice guidance.”

Decision

The claim succeeded in part. The adjudicator determined that the Home Builder should pay the Home Buyer the difference between the Home Builder’s EPC estimate for the heating / hot water and the likely actual costs incurred by the Home Buyer for a period of 2 years from the lease (£1,086.14).

The adjudicator determined that the Home Builder should pay the Home Buyer the difference between the Home Builder's management / service charge estimate and the actual costs incurred by the Home Buyer for a period of 2 years from the lease (£3,245.88). The adjudicator was satisfied that the Home Buyer suffered significant inconvenience as a result of the breaches of the Code and awarded the sum of £400.00 in compensation. As the Home Buyer's claim succeeded in part the adjudicator determined that it was fair and reasonable that the Home Builder reimbursed the Home Buyer's registration fee.

Complaint

The Home Buyer stated that the home had not been delivered as expected/promised by the Home Builder and that she has suffered stress and inconvenience in relation to the rectification of faults.

The Home Buyer also alleged that the level of customer service provided by the Home Builders was poor and that she had been misled in relation to the cost of the district heating system.

The Home Buyer sought £15,000.00 for the loss incurred including £4939.89 in relation to stress and inconvenience including having to take time off work.

Defence

The Home Builders denied liability, on the basis that the standard of finish that the Home Buyer alleged to have been promised had not been evidenced by the Home Buyer, that copies of relevant documentation had been given to the Home Buyer as required under the Code, that the customer service response had not been delayed, that no undertakings about the cost of the district heating system had been made and that claims for stress were not permitted under the Code scheme.

Findings

The adjudicator found that the Home buyer had not proven her claims with the exception that he found that it was more likely than not that a brochure had not been given to the Home buyer as required under the Code. The Home Buyer had been consistent about not receiving this document while the Home Builder's assertion that it had been was not found to be unequivocal. The Adjudicator also found that any claim in relation to stress placed the matter into the field of Personal Injury which was excluded from the Code Scheme. Although the Adjudicator found that Section 2.1. of the Code had been breached in respect of a failure to provide enough pre-purchase information to make a suitably informed purchasing decision the Home Buyer had not provided any evidence of financial loss. Accordingly no compensation award was possible but the Adjudicator did find that the Home Buyer had been inconvenienced as a result of this failure.

In response to the Draft Adjudication the Home Builder made no further comment. The Home Buyer however did make further comments and sought £500.00 for inconvenience and re-imburement of the Registration Fee. The Adjudicator considered the comments submitted by the Home Buyer but was unable to increase the sum awarded in compensation and stated that he had already directed that the Registration Fee should be returned to the Home Buyer.

Decision

The claim succeeded in part. In view of the inconvenience the Adjudicator directed the Home Builder to pay the Home Buyer £250.00 under Rule5.7.5 and to reimburse the Home Buyer's registration fee of £120.00.

Complaint

The Home Buyer claimed that the Home Builders breached sections 5 (Complaints Handling and /or Co-operation with professional advisers) and 1.5 (Sales and advertising) of the Code in respect of the levels and drainage in the Property's garden, and it is now uncommunicative in respect of remedying this and addressing rainwater overflowing and running from the guttering.

The Home Buyer sought an explanation and an apology, as well as £15,000 in compensation to allow him to carry out remedial works.

Defence

The Home Builders did not provide a defence although in their correspondence and in their submissions under the Proposed Decision process, they denied liability, on the basis that the garden and the roof verge / guttering had been completed to their standards and signed off by the NHBC.

Findings

The adjudicator found that there had been an inaccurate statement by the Home Builders' representative which induced the Home Buyer to have the garden turfed and that this had been nugatory given the actual state of the garden and the causes. The Home Builders therefore breached sections 1.5 of the Code in that the marketing activity was unclear.

The adjudicator also found that there was an issue with the roof verge / guttering which had been identified in snagging but not addressed in that process and the Home Builders had therefore breached sections 5.1 of the Code.

The adjudicator found that there was no evidence of failure to cooperate with a professional advisor and no breach of section 5.2. The adjudicator also found that the Home Builders had not breached section 5.1 of the Code in respect of the garden because offers of remedial work had been made but not accepted by the Home Buyer.

Decision

The claim succeeded. The adjudicator directed the Home Builders to carry out remedial work in respect of the roof verge / guttering and pay compensation of £500.00 to the Home Buyer, being the cost of the turfing. The adjudicator further directed the Home Builders to pay the Home Buyer £250.00 for the inconvenience caused. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyers submit that the parking space provision for the Property does not match what was described prior to sale of the Property. The limitations of the parking provided have meant that the Home Buyers have decided not to sell their main home and to rent out the Property, with consequent costs such as additional stamp duty. They also argue that the Property is less valuable with tandem parking than with the parking originally described. They state that completion was rushed, without adequate time for viewing the car park prior to completion. They submit that the Home Builder breached sections 2.1 and 3.2 of the Consumer Code for Home Builders (“the Code”).

Defence

The Home Builder submits that it cannot provide the Home Buyers with the remedies requested. The Property was priced and sold as having tandem parking spaces and this is what has been provided. The parking bays provided exceed the required minimum dimensions. The ability to view parking prior to completion was not guaranteed.

Findings

The adjudicator found that the Home Builder has breached a requirement under the Consumer Code for Home Builders. The adjudicator directed the Home Builder to pay the Home Buyer a total of £420.00

Complaint

The Home Buyer alleged that there were numerous breaches of the Code by the Home Builder. This was because the Home Builder advertised and confirmed that the property would be completed and the Home Buyer could move in before Christmas 2016. She was offered the 16 December 2016 and made arrangements to move on that date. No other dates were given to her and she was not notified of any delays to the building schedule other than a potential problem with a water utility company, which she resolved herself. The property was not ready by Christmas 2016. The Home Builder was unable to achieve completion until 2017 and consequently, amongst other things, the Home Buyer had to live in temporary accommodation, put her furniture into storage and her Christmas was ruined. Contrary to the Home Builder's sales brochure, secure basement parking and secure bicycle storage were not provided and her bicycle was stolen. The Home Buyer's complaints were ignored by the Home Builder who also did not provide her with Code compliant information. The Home Buyer sought an apology, some practical action and payment of £9,430.00.

Defence

The Home Builder maintained that it had not breached its obligations under the Code to the Home Buyer. It had apologised for the delay in the Home Buyer taking up occupation. Delay was caused not only by the water utility company connecting the water service but also by third parties over whom the Home Builder had no control in providing various certificates in relation to the property. An email was sent to the Home Buyer immediately the Home Builder was given, 'the new and post Christmas water connection date'. Secure parking, secure bicycle storage and relevant information were provided by the Home Builder.

Findings

The adjudicator found that the Home Builder had not complied with the Code on all aspects of the complaint other than those concerned with secure parking and bicycle storage. The failure largely stemmed from the Home Builder not being aware that it was a member of the Scheme.

It was apparent from the timeline and correspondence that after sales service provided by the Home Builder was inadequate and fell below a standard that could be reasonably expected. There was a breach of section 5.1 of the Code.

Decision

The claim succeeded. The adjudicator found that a reasonable sum for compensation was £50.00 for each breach of the Code. As there were 14 breaches, this made a total of £700.00. Due to the seriousness of the breach under section 3.2, additional compensation of £600.00 was awarded. The total amount awarded was £1,300.00. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer claimed that the Home Builders breached sections 2.1 (Pre-purchase information) and 1.5 (Sales and advertising) of the Code in respect of the yellowing of the gloss paintwork in that the relevant standards were not met, nor were alternatives offered whereby yellowing could be avoided, and that the sales staff were not aware of this issue nor was it contained in the marketing material.

The Home Buyer claimed for the re-painting of the affected areas in a non-yellowing gloss product.

Defence

The Home Builders did not provide a defence although in their correspondence and in their submissions under the Proposed Decision process, they denied liability, on the basis that the composition of the white gloss paint used has changed in order to meet EU directives.

Findings

The adjudicator found that the Home Builders were amending their marketing material in respect of the risk of yellowing and on that basis determined that the previous material had been unclear. The Home Builders therefore breached sections 1.5 of the Code in that the marketing activity was unclear.

The adjudicator also found that the white gloss paint in question met the relevant technical standards and therefore there was no breach of section 2.1 of the Code by the Home Builders.

Decision

The claim succeeded. The adjudicator directed the Home Builders to carry out remedial work in to re-paint the affected areas using a non-yellowing gloss paint. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer stated that she was misled regarding her view from the rear windows of the Property following the phase 2 development. The Home Buyer stated that the sales advisor of the Home Builder stated that the view from the rear windows would not be affected by the phase 2 development. This led to the Home Buyer being shocked that her view and privacy were affected following the construction of the phase 2 development. The Home Buyer stated that she would never have purchased the Property had she known that there would be no view or privacy, as well as no extra parking space. The Home Buyer stated that the Home Builder had breached section 1.5 of the Code.

The Home Buyer sought an apology, requested the Home Builder ensure that information from the sales office was more honest and transparent, and requested reimbursement of costs to the total value of £15,000.00.

Defence

The Home Builder denied liability and stated that it did not make any promises regarding the view from the Property. The Home Builder stated that the intended plans for Phase 2 were available on the public planning portal. The Home Builder asserted that the land intended for the Phase 2 development was of a consistent ground height to the Home Buyer's garden and it would not have been logical to lower the ground levels to reduce the build height of the phase 2 properties. The Home Builder stated that the Home Buyer's solicitor was issued a note which stated that any oral representations were unable to be relied upon unless confirmed in writing, and the Home Builder advised that no queries were raised by the Home Buyer.

Findings

The adjudicator found that the evidence provided offered differing accounts of the comments made regarding the view and noted that the brochure for the development made no reference to the views from the properties. The adjudicator considered that even with the planning searches the Home Buyer's solicitor may not have thought it necessary to advise the Home Buyer regarding the view, unless the Home Buyer had expressly spoken to the solicitor about this aspect of the Property. The adjudicator found that section 3.1 of the Code was also relevant in this dispute due to the Guidance relating to section 3.1 of the Code advising that a Home Builder request that spoken statements should be confirmed in writing to avoid disputes. The adjudicator was not satisfied that the Home Buyer purchased the Property based solely on the view, as the evidence implied that the Home Buyer did not consider it important to clarify and confirm the view with the Home Builder.

The Home Builder was found to have not breached section 1.5 nor 3.1 of the Code.

Decision

The claim did not succeed and the Home Buyer's claims were unable to proceed.

Complaint

The Home Buyer asserted that the Home Builder has breached Sections 1.5, 2.1 and 5.1 of the Consumer Code for Home Builders in respect that the Home Builder's sales and advertising material and activity was not clear and truthful, that the Home Builder did not provide enough pre-purchase information in relation to the insurance and service charges to help the Home Buyers to make a suitably informed purchasing decision and that the Home Builder did not handle the complaints as required by the Code.

Defence

The Home Builder denied liability, on the basis that the document referenced by the Home Buyer was not advertising material. It also asserts that it had a right, under the lease, to alter the basis of the service charge and insurance calculation and that the Home Builder does have a complaints procedure and has engaged in extensive correspondence with the Home Buyer.

Findings

The adjudicator found that the handbook was issued on completion and was a "handbook" and not sales and advertising material. As a consequence, the Home Builder was not in breach of section 1.5 of the Code.

The adjudicator found that the Home Builder's pre-purchase estimates of management services and insurance were based on dividing the total estimates by the number of properties in the development. The adjudicator was satisfied that the Home Builder failed to state in the pre-contract information that the charges could or would be re-calculated post contract based on the area of each property and as a consequence the Home Builder was in breach of section 2.1 of the Code.

The adjudicator found from the correspondence provided that the Home Builder failed to deal with the dispute within a "reasonable time" as is good-practice under the Code's guidance for Home Builders. Therefore section 5.1 of the code was breached.

Decision

The claim succeeded in part. The adjudicator determined that the service charge was re-calculated based on the floor area from July 2017 although both parties subsequently reached an agreement under which the Home Builder has agreed not to pursue the extra management or insurance costs claimed before September 2018 and the Home Buyer has agreed to pay the costs based on floor area after this date. The adjudicator considered this agreement to be equitable and made no further financial award against this breach but directed that the Home Builder apologise to the Home Buyer for breaching section 2.1 of the Code.

The adjudicator determined that the Home Builder had breached section 5.1 of the Code and directed that the Home Builder should apologise to the Home Buyer.

The adjudicator was satisfied that the Home Buyer suffered significant inconvenience as a result of the breaches of the Code and awarded the sum of £200.00 in compensation. As the Home Buyer's claim succeeded in part the adjudicator determined that it was fair and reasonable that the Home Builder reimbursed the Home Buyer's registration fee.

Complaint

The Home Buyer asserted that the Home Builder had breached Sections 4.1 and 5.1 of the Consumer Code for Home Builders for failing to install ground drainage to deal with the standing water in the garden and for having an unsatisfactory complaints handling procedure where the Home Builder has allegedly failed to deal with the complaint, even following escalation to the General Manager, with emails going unanswered and poor, inappropriate responses being received.

Defence

The Home Builder submitted no defence.

Findings

The adjudicator found that the Home Buyer tried multiple times to get the Home Builder to resolve the issue but that the Home Builder failed to provide an accessible after sales service. In this respect a breach of section 4.1 of the Code was found to have occurred. The adjudicator found that the Home Buyer tried multiple times to get the Home Builder to resolve the issue but that the Home Builder did not have satisfactory systems or procedures in place for receiving, handling or resolving the Home Buyer's service complaint. In this respect a breach of section 5.1 of the Code was found to have occurred.

Decision

The claim succeeded in part. The adjudicator determined that the Home Builder had breached sections 4.1 and 5.1 of the code, which relate to not having an accessible after sales service and complaints handling procedure. As the Home Buyer had rectified the defective work the adjudicator directed that the Home Builder should provide a written apology to the Home Buyer for breaching the code.

The adjudicator determined that the costs claimed for rectifying the defective garden drainage fall outside the Code.

The adjudicator was satisfied that the Home Buyer suffered significant inconvenience as a result of the breaches of the Code and awarded the sum of £300.00 in compensation.

As the Home Buyer's claim succeeded in part the adjudicator determined that it was fair and reasonable that the Home Builder reimbursed the Home Buyer's registration fee.

Complaint

The Home Buyer stated that the Home Builder failed to complete the works to the rear garden in a timely manner following completion of the Property. Secondly, the Home Buyer stated that the rear fence that was installed by the Home Builder was partly old and partly new. Additionally, the Home Buyer stated that he was not advised that his garden would not be level.

The Home Buyer requested the Home Builder take some action by either making his rear garden level or to provide a refund to enable the Home Buyer to rectify the situation. The Home Buyer also sought payment of £15,000.00 from the Home Builder.

The Home Buyer stated that the Home Builder breached sections 1.5, 2.1 and 3.1 of the Code.

Defence

The Home Builder denied liability. The Home Builder stated that the completion of the rear garden was delayed due to works of a third party developer, which it advised the Home Buyer of. The Home Builder stated that the levels plan detailing the levels of the garden was kept in the sales office at the development, and that it was standard practice that the sales executives discuss the plans with the customers and encourage the customers to inspect the plans.

The Home Builder also argued that it had inspected the rear garden fence and found it to be fit for purpose. For these reasons the Home Builder denied that it had breached any section of the Code.

Findings

The adjudicator found that the Home Buyer provided insufficient evidence to demonstrate that the sales activity of the Home Builder was untruthful, in regards to the garden levels and for that reason the Home Builder was found to have not breached section 1.5 of the Code. Additionally, the adjudicator found that the Home Buyer had not proven his case on the balance of probabilities in relation to section 2.1 of the Code.

The Contract was found to not contain any reference to garden levels and also the Home Buyer was found to have had opportunity to discuss the terms and conditions with his legal representative. These reasons contributed to the adjudicator finding that the Home Builder did not breach section 3.1 of the code. The adjudicator considered the issue regarding the fence to be outside of her remit under the Code.

Decision

The claim did not succeed. The reasons given by the customer were not sufficient to justify the claim, therefore the Home Buyer's claims were unable to proceed.

Complaint

The Home Buyer submitted that the Home Builder has breached section 2.1 of the Code. This was because the Home Builder had built two front bay windows to the property with flat roofs, but the original plans and reservation paperwork illustrated pitched, tiled roofs. The Home Buyer was, 'very disappointed', that the appearance of the front of the house was not in accordance with the, 'plan/pictures', and that the Home Builder refused to rectify the problem. The Home Buyer seeks an apology, some practical action or payment of £15,000.00 requesting that the Home Builder, 'change the flat roof to tiled roof on our two bay windows or pay the amount so that we can rectify this error'.

Defence

The Home Builder submitted that it had not breached its obligations under the Code to the Home Buyer. As the brochure, which contained a disclaimer, did not reliably show the property's appearance, the Home Builder provided a house pack with detailed drawings relating to the reserved home that illustrated the bay windows would have flat roofs. The Contract for Sale provided that verbal representations were not to be relied on by the Home Buyer. The Home Buyer had the opportunity to inspect the property, raise concerns, request remediation or withdraw from the purchase prior to completion but, 'freely chose', to complete. The Home Builder disputed that the Home Buyer was entitled to any financial redress or practical action from the Home Builder.

Findings

The adjudicator found that the Reservation Checklist, signed by the Home Buyer and the Home Builder, included a house pack containing a, 'Detailed Elevations', drawing that illustrated the bay windows would have flat roofs. The Home Buyer was given enough pre-purchase information to help them make a suitably informed purchasing decision. Therefore, there was no breach of section 2.1 of the Code by the Home Builder.

Decision

The claim did not succeed.

Complaint

The Home Buyer stated that she had been unable to obtain a mortgage due to the lender's valuation report stating that the Property is located in an industrial estate and not mortgageable. The Home Buyer stated that she had two weeks to provide her deposit and exchange contracts and stated that she does not consider this to be enough time to make an informed decision. The Home Buyer also stated that she had no idea that the windows would not be able to be opened and asserts she would not have bought the Property had she known. The Home Buyer stated that the Home Builder has breached the entire Code and in particular states that there has been a breach of sections 1.5 and 2.1 of the Code.

The Home Buyer sought her contract to be rescinded, and for the Home Builder to pay compensation of £15,000.00.

Defence

The Home Builder denied liability, on the basis that it stated the flats within the development are mortgageable and states that the marketing materials accurately reflect the development. The Home Builder stated that there is no contractual basis upon which the Home Buyer is entitled to rescind her Contract and the Home Builder denies it has breached any sections of the Code.

Findings

The adjudicator found that the Home Builder did not breach section 1.5 of the Code as the marketing material had the aim of giving a general impression of the development. The adjudicator found that the Home Builder had breached section 2.1 of the Code as it had failed to provide the Home Buyer with information regarding the permitted development at the pre-purchase stage.

Additionally, the adjudicator found that the Home Builder had breached section 2.6 of the Code as it failed to follow the Guidance regarding what should be included in a Reservation agreement. The Home Builder was found to have breached section 3.1 of the Code, as the Home Builder had not followed the Guidance when making changes to the Property's design, as well as section 3.3 of the Code as the Home Buyer was not fully advised of her termination rights.

The adjudicator considered that every financial institution had its own requirements and reasons when approving mortgages for customers, and she considered that determining whether a development was mortgageable was outside her remit under the Code.

Decision

The claim succeeded. The adjudicator awarded a written apology and decided that the Home Buyer was justified in terminating her contract and having her deposit and

Reservation fee returned in full. However, the adjudicator noted that this remedy was greater than £15,000.00 which is the maximum level of remedy that can be awarded as stipulated by section 5.8 of the Scheme rules. Therefore, the adjudicator directed the Home Builder pay £14,500.00 to the Home Buyer, as part of the deposit and Reservation fee that the Home Buyer has paid. This is the maximum amount that can be award under the Code taking into account the amount awarded for inconvenience. The adjudicator also awarded £500.00 for inconvenience.

Complaint

The Home Buyer stated that they were advised at a late stage of the purchase that there was a planning condition which affected the Property. This planning condition meant a number of the windows in the Property would not be able to be opened and instead a mechanical ventilation and heat recovery (“MVHR”) unit would be installed. The Home Buyer also stated that once they moved in on 29 June 2018, the snagging list was extensive and the Property looked like it had been rushed to meet the deadlines. The Home Buyer stated that the Home Builder breached sections 1.5, 2.1, 3.1, 3.3, 3.4, 4.1 and 5.1 of the Code.

The Home Buyer sought £15,000.00 for costs incurred, requested the Home Builder pay £500.00 towards the financial cost of lost days of working / annual leave, and requested the Home Builder reimburse £120.00 for the registration fee.

Defence

The Home Builder submitted that this claim should not be dealt with under the code, or any other dispute resolution as the Parties entered into a settlement agreement on 22 May 2018. The Home Builder stated that the Home Buyer was made aware of the planning condition and offered the chance to withdraw from the contract, but instead they chose to enter into the settlement agreement. The Home Builder denied that the failure to address defects is a breach of the Code.

Findings

The adjudicator found that she was unable to establish whether the marketing material and activity was clear and truthful. For this reason, it was found that the Home Builder did not breach section 1.5 of the Code.

The adjudicator found that the Home Builder breached section 2.1 of the Code as it failed to provide the planning condition information to the Home Buyer at pre-purchase. The adjudicator considered the contract to be clear, including regarding the Home Buyer’s termination rights. Therefore, for this reason the adjudicator found that the Home Builder did not breach sections 3.1 and 3.3 of the Code.

The evidence demonstrated that within the contract the Home Buyer was advised about the return of the deposit if a significant and substantial change was made to the Property. For this reason the Home Builder did not breach section 3.4 of the Code.

The Home Builder breached section 4.1 of the Code as it failed to provide the Home Buyer with the contact details of the after-sales service.

The Home Builder also breached section 5.1 of the Code as it failed to deal with complaints within an appropriate time.

Decision

The claim succeeded. Due to the presence of a settlement agreement already in existence regarding the planning condition, even though the adjudicator found there to be a breach of section 2.1 of the Code, no remedy was awarded in this instance. It was deemed that a remedy had already been included as part of the settlement agreement.

The adjudicator directed that the Home Builder provide the Home Buyer with full contact details for its after-sales service.

The adjudicator directed the Home Builder to pay £2,750.00 for the Home Buyer to source and install three items not provided under the contract that should have been.

Additionally, the adjudicator directed that the Home Builder provide the Home Buyer with a log of all the complaints outstanding and provide an action plan and timescales as to how and when each complaint would be rectified

Additionally, the Home Builder was directed to pay £400.00 for inconvenience and reimburse the Home Buyer the registration fee.

Complaint

The Home Buyer stated that the Builder failed to inform it prior to their purchase of the Home that the adjacent school had applied for planning permission to build a performing arts block on the other side of their boundary. This led to continuing noise and light pollution and construction dust. The Home Buyer complains that the Builder was or should have been aware of this and under section 2.1 should have passed on this information, which would reasonably have affected their purchasing decision. They also complain that the response to enquiries was misleading. Additionally, the Home Buyers complain of slow response to their complaint.

The Home Buyer sought £15,000.00 for the loss incurred, including the costs of constructing a shed, erecting a trellis, installing blinds, additional window cleaning and loss of value to their land.

Defence

The Home Builder contends that it was unaware of the application for planning permission and that it advised the Home Buyer to carry out searches. The contract contained terms stating that the Home Buyers had satisfied themselves as to the environment in which the Home was located. The Home Builder acknowledged that it had taken longer to deal with the complaint than was acceptable.

Findings

The adjudicator found that, in the light of the evidence submitted, it was probable that the Home Builder had been informed by the local Council of the planning application at the time, but it was likely that the significance of the grant of consent had not been realised. Section 2.1 was concerned with information “about” the Home that affected the purchasing decision. This would include the grant of permission for an adjacent development of which the Builder was aware. As the adjudicator found that the Builder was on notice of this development and had said in answer to preliminary enquiries that it was not aware of any relevant searches, this was also a breach of section 2.1. The Home Buyer had made many requests for resolution of the complaint raised, but no final response was given for many months despite reminders. There was, therefore, also a breach of section 5.1.

Decision

The claim succeeded. The adjudicator awarded compensation for blinds, trellis and window cleaning, but not for construction of a shed, which was not a reasonable way to block a view of the performing arts block and compensation would be “betterment”, and not for loss of value, which was outside the scope of the Scheme had not, in any event been proved. The Builder had suggested to the Home Buyer’s conveyancer that searches should be carried out, and these would have discovered the planning application, but were not undertaken. This was a contribution to the loss and accordingly the compensation was reduced by 50%. Compensation of £1,155.25 was awarded, including compensation for inconvenience.

Complaint

The Home Buyers complained that they had suffered loss due to a breach of section 3.2 of the Code, in that they were given a completion date that was repeatedly extended. They claimed compensation of £5,615.00 for increased costs incurred while awaiting completion, namely extended rental and storage costs and for stress.

Defence

The Home Builders denied liability, on the basis that the completion date is always uncertain and they had kept the Home Buyers informed due to delays in obtaining NHBC approval for the purpose of the warranty..

Findings

The adjudicator found that although the date given for completion may initially have been realistic and reliable, this began to be extended and did not keep up with the stages of construction for the Home. From July 2018, when it should have been possible to give the correct month for completion, the information given was not correct. Although the Builders blamed roofers, decorators and plasterers for the delay, no sufficient information was given and the conclusion to be drawn was that the information given about the completion date during a period from July to October 2018 was not reliable and realistic.

Decision

The claim succeeded. The Home Buyers were awarded £500 compensation for inconvenience and reimbursement of the registration fee. The Home Buyers had already decided to rent pending completion prior to the breach of the Code so that the adjudicator refused compensation for increased rental costs and storage costs because these were not caused by incorrect information but by the delay. The Code does not envisage compensation for delay.

Complaint

The Home Buyer stated that she was misled regarding her view from the rear windows of the Property following the phase 2 development. The Home Buyer stated that the sales advisor of the Home Builder told her that the view from the rear windows would not be affected by the phase 2 development. This led to the Home Buyer being shocked that her view and privacy were affected following the construction of the phase 2 development. The Home Buyer stated that she would never have purchased the Property had she known that there would be no view or privacy, as well as no extra parking space. The Home Buyer stated that the Home Builder had breached section 1.5 of the Code.

The Home Buyer sought an apology, requested the Home Builder ensured that information from the sales office was more honest and transparent, and requested reimbursement of costs to the total value of £15,000.00.

Defence

The Home Builder denied liability and stated that it did not make any promises regarding the view from the Property. The Home Builder stated that the intended plans for Phase 2 were available on the public planning portal. The Home Builder asserted that the land intended for the Phase 2 development was of a consistent ground height to the Home Buyer's garden and it would not have been logical to lower the ground levels to reduce the build height of the phase 2 properties. The Home Builder stated that the Home Buyer's solicitor was issued a note which stated that any oral representations were unable to be relied upon unless confirmed in writing, and the Home Builder advised that no queries were raised by the Home Buyer.

Findings

The adjudicator found that the evidence provided offered differing accounts of the comments made regarding the view and noted that the brochure for the development made no reference to the views from the properties. The adjudicator considered that even with the planning searches the Home Buyer's solicitor may not have thought it necessary to advise the Home Buyer regarding the view, unless the Home Buyer had expressly spoken to the solicitor about this aspect of the Property. The adjudicator found that section 3.1 of the Code was also relevant in this dispute due to the Guidance relating to section 3.1 of the Code advising that a Home Builder request that spoken statements should be confirmed in writing to avoid disputes.

The adjudicator was not satisfied that the Home Buyer purchased the Property based solely on the view, as the evidence implied that the Home Buyer did not consider it important to clarify and confirm the view with the Home Builder in writing even when requested. The adjudicator considered there was insufficient evidence to support the Home Buyer's claims as to untruthful marketing activity.

The Home Builder was found to have not breached section 1.5 of the Code.

Decision

The Home Buyer's claims were unable to proceed.

Complaint

The Home Buyer alleged that the Home Builder has breached sections 1.5 and 2.1 of the Code. This was because the Home Builder's brochure was untrue and misleading in stating that the measurements for the live-eat area were 5.05m x 4.00m. The as built measurements were about 80cm less, being 5.05m x 3.20m, but the Home Buyer had not been told about this. The Home Buyer was dissatisfied and complained.

Defence

The Home Builder submitted that there was a printing error in the brochure as the living area of the property was erroneously marked. The mistake was obvious as the floor plans, which were to the correct scale, showed the living area smaller than the breakfast kitchen area. The brochure was amended, reprinted and replaced. The property was built in accordance with the working drawings and the sales brochure did not form part of the contract.

Findings

The adjudicator found that section 1.5 of the Code and the Guidance indicate that the Home Builder's sales and advertising material should be clear and truthful. The sales brochure had a printing error in that labels were transposed. The Home Builder reprinted the brochure and attempted to replace them but had no record where they were distributed. One of the brochures with the error ended up with the Home Buyer who relied upon it as accurate. The Home Buyer was not told the brochure floor plan for the area was wrong. The Home Buyer's recollection of events was credible and was reflected in the contemporaneous correspondence. There was a breach of section 1.5 of the Code by the Home Builder.

The Guidance to section 2.1 of the Code indicates that the Home Buyer must be given appropriate, fair and reliable information about the home to help them make informed decisions about the purchase before they make a binding commitment to it. The Home Buyer was not given such information. There was a breach of section 2.1 of the Code by the Home Builder.

Decision

The claim succeeded.

The adjudicator directed the Home Builder to apologise and pay the Home Buyer £100.00.

The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer alleged that the Home Builder has breached section 2.1. This was because the Home Builder knew, but did not inform the Home Buyer, at the time the deposit was paid for the home that, due to the requirements of the local highways authority it was, 'inevitable', the garden would need to be reduced in size. Had the Home Buyer been told then the Home Buyer would have reconsidered the purchase of the home. The Home Buyer complained.

Defence

The Home Builder did not submit a defence but did submit final comments that it did not know what the local highways authority would require and the garden had not been reduced in size.

Findings

The adjudicator found that the Guidance to section 2.1 of the Code states that the Home Builder must give the Home Buyer appropriate information to help them make suitably informed purchasing decisions which must include a brochure or plan reliably showing the layout, appearance and plot position of the home. The Home Buyer's recollection of events was credible and consistent with the documents that the Home Builder did not provide the Home Buyer with Code compliant information, in particular information reliably indicating the size of the garden viz a viz the location of the rear fence. There was a breach of section 2.1 of the Code

Decision

The claim succeeded.

The adjudicator directed the Home Builder to pay the Home Buyer £581.00.

The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer said that when he agreed to purchase his house, the Home Builder's marketing material, including their Brochure, stated that the development would be beautiful and would have "stunning street scenes". There were no such stunning street scenes because, in particular, the landscaping had not been completed. The Brochure also said that the Home Buyer could expect high standards of design, specification and quality and exceptional attention to detail.

The Home Buyer has experienced a number of problems and denies that the build was of the promised quality. NHBC has agreed that there has been poor workmanship in relation to windows and doors. He says he has been left with a garden landscape with lines through it which is not in accordance with the advertising. The Brochure also goes on to say that the Home Builder provides dedicated customer service teams where customer service is their priority. The Home Buyer says that initially there was no customer service team in place in the Northwest. It says that the Home Builder failed to include the consumer code logo in its brochures and did not make the Home Buyer aware of the existence of the Code. It says that there has been no suitable staff training in relation to responsibilities under the Code and in over 250 pages of email trails he was never informed of the Code in relation to any of his complaints. He says that he was not given advice on whom to contact initially as there was no Northwest customer service section. Although, he says, the Home Builder has a complaints procedure, it did not inform the Home Buyer that there was one and has not provided a copy of it or followed it.

As for the loss that he has suffered, he says that the Home Builder failed to do the 21 day home check and refused to permit the Home Buyer to compile a snagging list. This resulted in the Home Buyer having to take time of work to deal with repeated matters. The Home Buyer has taken at least 29 days off work and some of these were wasted because, on at least three occasions, people did not turn up. This cost the Home Buyer hundreds of pounds over three years. On one occasion, the site manager asked the Home Buyer to give a five-star rating to both home surveys in exchange for store vouchers.

The Home Buyer is now having to get an independent company to reassess the drainage in the back garden because there are lines through the grass. He has lost many plants through waterlogging. The Home Buyer seeks an apology and practical action to provide landscaping to Stile Close as well as compensation of £2,300.00 comprising the cost of plants (£100.00); compensation for inconvenience (£500.00) and days off work (£1,700.00) plus the registration fee.

Defence

The Home Builder submits that the Home was sold as seen, on the basis that the fixtures and fittings were already installed at the Home.. When reserving the Home, the Home Buyer was provided with a copy of the Consumer Code for Home Builders and the Home Builder's Home Information File. The Home Builder points out that the 3rd Edition of the Code contains no requirements to display the Code logo in sales brochures. The Home Builder's

sales office displayed the Code. The Home Information File contained information regarding the Code in section 1. Moreover, in section 3, Buildmark details of the warranty cover were also provided. The Home Buyer was thus provided with information relating to the warranty cover and confirmation that the Home Builder operates the code. The Home Builder's sale agreement at clause 2 and its standard legal estate information also address both. The Home Builder therefore denies that it is in breach of section 1.4 of the Code. The Home Builder explains that the development of the site is not yet completed and has been an active building site ever since the Home Buyer purchased the Home and the landscaping will be completed. The legal scheme for the site provides for an annual management service charge payable by all residents that will fund the upkeep of the open space and landscaping.. The Home Builder denied a breach of sections 4.1 and 5.1 .5 of the Code.

Findings

The adjudicator found that the customer had been given a copy of the Code and that, bearing in mind the efforts that had been made by all the staff to attend to his snagging issues and other concerns, there was no evidence that the Code was not implemented nor that the staff had not been trained. There was no breach of sections 1.1 to 1.4 of the Code. As for section 1.5 of the Code. The adjudicator found a breach because the Home Builder did not have systems that enabled delivery of the promise to provide "stunning street scenes" within a reasonable time of purchase, the Brochure was misleading and not clear and truthful and in breach of section 1.5 of the Code. There was no breach in relation to the quality of the build because there was no evidence that the Builder did not intend to comply with this: the other issues were snagging. In relation to sections 4.1 and 5.1 of the Code, the adjudicator found that the Builder had not put in place suitable arrangements with its subcontractors that ensured that snagging was addressed, however, and this was a breach of section 4.1. There was a failure to manage the complaint and to reach a decision about it while snagging was ongoing and this, in the circumstances was a breach of section 5.1.

Decision

The claim succeeded. The Home Builder was directed to apologise in writing to the Home Buyer; Pay compensation in the sum of £500.00; and Reimburse the Home Buyer with his registration fee of £120.00.

Complaint

The Home Buyer alleged that the Home Builder has breached sections 2.1 and 2.6 of the Code. This was because the Home Builder did not provide signed plans for the layout and appearance of the home and did not comply with the agreed specification for the garden. The signed plans showed the garden would have two flat levels connected by steps, but after reservation the Home Builder, 'failed to adhere to what was actually being sold', to the Home Buyer as the garden was built upon one long slope with no steps. The Home Buyer was dissatisfied and complained.

Defence

The Home Builder asserted that no misrepresentations were made. It complied with the Code, its pre-contract representations and the contract which excludes reliance upon oral representations unless they are recorded in writing. The Home Builder maintained that the Home Buyer is estopped from relying upon precontractual representations and has waived a claim for damages for misrepresentation by proceeding to completion. Also, that the Home Buyer knew the garden was sloping as they had visited the property on several occasions before and after exchange, together with confirming in writing that they knew the garden was sloping and not stepped.

Findings

The adjudicator found that the Home Buyer was not given enough pre-purchase information to help them make suitably informed purchasing decisions. In particular the information did not include a brochure or plan reliably showing the layout of the home. There was a breach of section 2.1 of the Code.

The Home Buyer was not given a reservation agreement that set out clearly what was being sold. There was a breach of section 2.6 of the Code.

Decision

The claim succeeded.

The Home Builder having made a reasonable gesture of goodwill, the adjudicator directed that the Home Builder provide a written apology to the Home Buyer and pay £500.00 for inconvenience.

The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer alleged that the Home Builder has breached sections 5,1 and 5.2 of the Code. The Home Buyer believed there had been an incorrect distribution of land which had led to a dispute with her neighbour. There had been ongoing issues for about 18 months, the land dispute had not been not resolved and the Home Builder had not informed the Home Buyer of the outcome. The Home Buyer sought practical action and payment of £10,000.00.

Defence

The Home Builder submitted that the land has not been incorrectly distributed and it had not breached its obligations under the Code to the Home Buyer.

Findings

The adjudicator found that the documents showed the disputed area of land was in the ownership of the Home Buyer. Also, the Home Builder had confirmed that the disputed fence was not a boundary fence but a safety barrier due to the slope of the land. It was to be noted that the dispute between the Home Buyer and her neighbour was out of scope of this scheme. The Home Buyer had provided no information as to who her professional advisors were or set out the details of any co-operation with the Home Builder that were not proper, prompt or professional. There was no breach of the Code.

Decision

The claim did not succeed.

Complaint

The Home Buyer stated that they were advised at a late stage of the purchase that there was a planning condition which affected the Property. This planning condition meant a number of the windows in the Property would not be able to be opened and instead a mechanical ventilation and heat recovery (“MVHR”) unit would be installed. The Home Buyer also stated that once they moved in on 29 June 2018, the snagging list was extensive and the Property looked like it had been rushed to meet the deadlines. The Home Buyer stated that the Home Builder breached sections 1.5, 2.1, 3.1, 3.3, 3.4, 4.1 and 5.1 of the Code.

The Home Buyer sought £15,000.00 for costs incurred, requested the Home Builder pay £500.00 towards the financial cost of lost days of working / annual leave, and requested the Home Builder reimburse £120.00 for the registration fee.

Defence

The Home Builder submitted that this claim should not be dealt with under the code, or any other dispute resolution as the Parties entered into a settlement agreement on 22 May 2018. The Home Builder stated that the Home Buyer was made aware of the planning condition and offered the chance to withdraw from the contract, but instead they chose to enter into the settlement agreement. The Home Builder denied that the failure to address defects is a breach of the Code.

Findings

The adjudicator found that she was unable to establish whether the marketing material and activity was clear and truthful. For this reason, it was found that the Home Builder did not breach section 1.5 of the Code.

The adjudicator found that the Home Builder breached section 2.1 of the Code as it failed to provide the planning condition information to the Home Buyer at pre-purchase.

The adjudicator considered the contract to be clear, including regarding the Home Buyer’s termination rights. Therefore, for this reason the adjudicator found that the Home Builder did not breach sections 3.1 and 3.3 of the Code.

The evidence demonstrated that within the contract the Home Buyer was advised about the return of the deposit if a significant and substantial change was made to the Property. For this reason the Home Builder did not breach section 3.4 of the Code.

The Home Builder breached section 4.1 of the Code as it failed to provide the Home Buyer with the contact details of the after-sales service.

The Home Builder also breached section 5.1 of the Code as it failed to deal with complaints within an appropriate time.

Decision

The claim succeeded. Due to the presence of a settlement agreement already in existence regarding the planning condition, even though the adjudicator found there to be a breach of section 2.1 of the Code, no remedy was awarded in this instance. It was deemed that a remedy had already been included as part of the settlement agreement.

The adjudicator directed that the Home Builder provide the Home Buyer with full contact details for its after-sales service.

The adjudicator directed the Home Builder to pay £2,750.00 for the Home Buyer to source and install three items not provided under the contract that should have been.

Additionally, the adjudicator directed that the Home Builder provide the Home Buyer with a log of all the complaints outstanding and provide an action plan and timescales as to how and when each complaint would be rectified

Additionally, the Home Builder was directed to pay £400.00 for inconvenience and reimburse the Home Buyer the registration fee.

Complaint

The Home Buyer submits that the Home Builders have breached sections 1.5 (Sales and advertising) and 2.1 (Pre-purchase information) of the Code in respect of the information it provided to him at the pre-reservation and pre-contract stages. He submits that he was told that the local authority for the area in which the Property is situated, will not adopt or maintain public spaces on new developments. He submits that this information was incorrect and, had he been provided with correct information, he would not have purchased the Property.

He also submits that the Home Builders have not dealt with his complaint according to its own timetable.

The Home Buyer claimed an apology and an explanation, and for the Home Builders to enter into an agreement for the Local Authority to adopt the public spaces.

Defence

The Home Builders defended the claim in full and, as a preliminary issue, objected to the evidence provided by the Home Buyer from other residents of the Development.

Findings

The adjudicator found that the evidence supported the Home Buyer's contention that the Home Builders agents had made the Representations. The Home Builders therefore breached section 1.5 of the Code in that the marketing activity was unclear.

The adjudicator also found that the information provided was sufficient for informed pre-purchase decision making and that, while there had been delays, the complaint had been handled to an appropriate timescale overall. Therefore, there was no breach of sections 2.1 or 5.1 of the Code by the Home Builders.

Decision

The claim succeeded. The adjudicator directed the Home Builders to apologise to the Home Buyer. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyer stated that she had not been informed prior to completion of the purchase that a manhole cover was sited in her rear garden to provide access to drainage system for her own and some neighbouring properties. The Home Buyer submitted that this should be moved off of her property and claimed that the manhole cover should be removed from her property together with £15,000.00 in compensation on the grounds of diminution of value in her property and loss of amenity in respect of the garden, future maintenance costs, an enhanced burglary risk and stress. The Home Buyer also submitted that the property had not been constructed in accordance with the required quality standard.

Defence

The Home Builders denied liability, on the basis that they had no obligation under the Code to prove pre-purchase information in the form of plans or sales literature but that the Home Buyer had been put on notice via the transfer documents which contained a reference to the right of access to her property to the drainage system. The Home Builder also submitted that the Home Buyer knew of the manhole cover prior to purchase.

Findings

The adjudicator found that while there was no proof that the Home Buyer knew about the manhole prior to purchase through actually seeing it the Home Builder had put her on notice via her legal representatives. The Adjudicator found no evidence to support the submission that drainage plans/issues were matters that were required under Section 2.1. of the Code to be specifically discussed with the Home Buyer and no evidence of breach of Sections 2.6 or 3.1 of the Code.

The Adjudicator found that although the Home Buyer had complained that the existence of a manhole, and the associated third-party access rights, implied a future cost to her she had not provided any submissions to prove that.

The Adjudicator also found that there was no evidence that would support the submission that the property might be subject to an enhanced burglary risk should third-party access rights be exercised and that the claim of stress was one which could not attract compensation under this scheme. In any case the Adjudicator found that the claim of £15,000.00 was not assigned to specific elements but was rather a general sum sought for the issues complained of as a whole.

As no breaches of the Code were found by the Adjudicator the claim could not succeed.

Complaint

The Home Buyer submits that the Home Builders have breached sections 1.3 (Customer Service – before legal completion), 1.4 (Appropriately trained customer service staff), 1.5 (Sales and advertising), 4.1 (After-sales service), 4.2 (Health and safety for Home Buyers) and 5.1 (Complaints Handling) of the Code. These arise in respect of the information that was and was not provided prior to completion and the ability of customer service staff to deal with issues appropriately or at all.

There are specific issues raised regarding the exterior finish to the Property. The Home Buyer submits that the after-sale service is generally poor, that response to communications is patchy and highlights the specific effect of slow resolution of heating and plumbing issues downstairs.

The Home Buyer also submits that the Home Builders carry out poor health and safety practices at the Development.

The Home Buyer claims an apology and an explanation, details practical actions to be taken by the Home Builders and seeks compensation.

Defence

The Home Builders defended the claim in full and, as a preliminary issue, argued that the adjudication had been brought prematurely. Other matters had been delayed by the Home Buyer.

Findings

The adjudicator found that the issues in respect of the garden levels and garage were better dealt with under the NHBC scheme.

The adjudicator further found that the Home Builders' sales and marketing activity was not clear and that there was inaccurate referencing of documents such that breaches of sections 1.3 and 1.5 were made out. Similarly, the system and procedures for dealing with complaints were not adequate and the Home Builders therefore breached section 5.1 of the Code

On the balance of probabilities, the adjudicator found that the evidence was insufficient to show breaches of section 1.4 and 4.1. The complaint in respect of H&S practice related to the site generally rather than the Home Buyer and no breach was found in this respect.

Decision

The claim succeeded. The adjudicator directed the Home Builders to apologise and provide an explanation to the Home Buyer as well as take practical action. The Home Buyer's registration fee was also reimbursed and there was an award for inconvenience.

Complaint

The Home Buyers stated that they purchased a 5 bedroom house. A Customer Incentive, that was promised on the reservation checklist and in subsequent documentation, promised a double sink. The Home Buyers upgraded to a different worksurface and were told that the consequence would be that they would have to have two separate sinks. The Home Buyers agreed to this. Without their agreement and without any notice, they found that the sink installed was a 1 ½ size sink.

The Home Buyer sought £15,000.00 towards the cost of a full kitchen refit.

Defence

The Home Builders denied liability, on the basis that claims for loss relating to conveyed land and its registered title fall outside the scope of the scheme. they were entitled to make minor changes to the Home and the Home Buyer could not have refused to complete. They explained that the reason for the smaller sink was that the base unit in the home was 800mm and the change to a different worksurface did not permit this installation unless a larger base unit was supplied. The Home Builder also said that it could make the necessary changes at a cost to them of £4,600 although it argued that this was a disproportionate remedy

Findings

The adjudicator found that the submissions of the Home Builder indicated that, despite the information given to the Home Buyers by its sales staff, the Home Builder had not intended to provide a double sink if the different work surface was chosen. Accordingly, the adjudicator found that there were also breaches of sections 1.5 and 2.1 of the Code.

The adjudicator found that the change to the appearance of the Home was significant and substantial in this case because it involved the removal of a Customer Incentive, which had been indicated by the Home Builder in order to induce the sale and the Home Buyers had indicated specifically that they required and this had been agreed. The adjudicator therefore found that there had been a breach of section 3.,1 of the Code.

Decision

The claim succeeded. The provision of a complete kitchen refit was, however, a disproportionate remedy and the Home Builder was directed to undertake the changes that it had said it could provide. Although the Home Buyers said that they had lost confidence in the Home Builder to complete this and it would result in time taken off work, for which they wanted compensation, the adjudicator found that there was no reason to believe that the Home Builder would not carry out the work competently and the Scheme rules do not permit the adjudicator to award compensation for loss of earnings because the Home Buyers wish to supervise the carrying out of the work.

The Home Builder was also directed to pay compensation of £350.00 for inconvenience.

Complaint

The Home Buyer submits that the Home Builders have breached section 4.1 (After-sales service) of the Code in respect of its failure to carry out a home demonstration prior to completion and its failures to contact and / or meet with the Home Buyer after completion as stated in the Charter and other customer service documents produced by the Home Builders.

They further submit it has breached section 5.1 (Complaints Handling) of the Code in respect of its failure to abide by its own timescales regarding complaints handling.

The Home Buyer claims practical action in the form of disciplinary or advisory action against the Home Builders' employees who failed to observe its customer service provisions, and compensation of £3,250 for inconvenience, anxiety and stress as well as time taken off work for appointments to address issues with the Property.

Defence

The Home Builders submit that it has fully complied with the requirements of the Code at all times and, as such, the Home Buyer is not entitled to a remedy.

Findings

The adjudicator found that the Home Builders had failed to meet the standards it laid down in the documentation provided to the Home Buyer, and by a good margin in both respects. The Home Builders therefore breached sections 4.1 and 5.1 of the Code in that it missed specific after-sale appointments it set out for itself, and complaints were not handled in an appropriate time.

Decision

The claim succeeded. The adjudicator awarded the Home Buyer £100 for inconvenience and the registration fee was also reimbursed.

Complaint

The Home Buyer stated that he was not informed that his garden would be on an incline and that the Home Builder's refused to address this issue. The Home Buyer claimed that the Sections 1.5. 4.1 and 5.1 of the Code had been breached. The Home Buyer submits a video of a different plot to the one complained of and some photographs of the relevant plot.

Defence

The Home Builders denied liability, on the basis that it had provided the garden levels contained in drawings referred to in the Customer Information Checklist. The Home Builder states that the Home Buyer has not disputed this and says that when he viewed the house the levels had not yet been set. The Home Builder submits a copy of the Reservation Document together with an untitled drawing.

Home Buyer's response to Home Builders defence

The Home Buyer submits that the evidence provided by the Home Builder provides no significant detail which would have made no sense to him. He does not recall the Home Builder outlining any incline levels in the drawing and does not recall an incline being mentioned. The Home Buyer maintains that he has been treated unfairly as extra assistance was provided to a neighbour and denied to him.

Findings

The adjudicator found that there was no proof of a breach of the Code and that the Home Buyer had not provided any evidence in support of his claim for compensation. As no breaches of the Code were found by the Adjudicator the claim could not succeed.

Complaint

The Home Buyer submitted that the Home Builder had breached Sections 1.1, 1.5, 2.1, 3.1 and 3.3 of the Consumer Code for Home Builders for describing the property as having a single detached garage with independent drainage on the approved plans used to sell the property to the buyer but constructing a twin garage structure with shared drainage which is not compliant with local authority approved planning or NHBC building regulations, for deviating from garage plans presented at the time of reservation and contract exchange, for not informing the Home Buyer about changes to the garage or giving them an opportunity to terminate the home purchase contract, and misleading the home owner.

Defence

The Home Builder submitted that it had not breached the Consumer Code for Home Builders and asserted that it had complied with the Code, that it had complied with the Contract, that no actionable misrepresentation had been relied upon, that by proceeding to completion the Home Buyers were too late to claim rescission and were estopped from relying upon any alleged misrepresentation. The Home Builder also asserted that it had complied with its own Customer Complaints Procedure and that the Home Buyer had suffered no loss (either financial or otherwise).

Findings

The adjudicator found that the sales and advertising material was not clear and truthful in respect of the garage plan and that a breach of section 1.5 of the Code had occurred.

The adjudicator found that the Home Buyer was not given the correct pre-purchase garage plans required to enable them to make suitably informed purchasing decision and that a breach of section 2.1 of the Code had occurred.

The adjudicator found that the contract of sale terms and conditions were clear and fair but that the Home Builder simply failed to comply with them and did not construct the garage in accordance with planning permission or notify the Home Buyer of the change to a twin (joint) garage before completion and that a breach of section 3.1 of the Code had not occurred.

The adjudicator found that as the Home Builder failed to notify the Home Buyer of the change to the garage that a breach of section 3.3 of the Code had occurred.

The adjudicator found that the Home Builder failed to comply with section 1.1 of the Code in that they did not “comply with the Requirements of the Consumer Code and have regard to good practice guidance.”

Decision

The claim succeeded. The adjudicator determined that the Home Builder had breached sections 1.1, 1.5, 2.1 and 3.3 of the code. The adjudicator decided that:

any contract drawings showing a detached garage are to be amended by the Home Builder to show a twin (joined) garage and incorporated into the associated legal contracts. Such drawings include those forming part of the Contract for Sale and the Management Company Agreement.

no remedies were due in relation to defective work on the garage or the garage drainage as this should be covered by the NHBC warranty and is outside the scope of the Code.

the Home Builder should reimburse the Home Buyer for the cost of applying for retrospective planning permission for the garage. This includes the Home Builder providing the Home Buyer with the amended drawings required to submit retrospective planning permission for the garage or alternatively the Home Builder covering the cost of the Home Buyer producing such drawings.

the Home Builder should apologise in writing to the Home Buyer for not complying with planning permission and for changing the garage from being detached to a twin (joined) structure without notifying the Home Buyer prior to completion.

the Home Buyer suffered significant inconvenience as a result of the breaches of the Code and awarded the sum of £500.00 in compensation.

The Home Buyer had provided no build-up to the sum of £15,000.00 claimed and no evidence of loss. Therefore no payments were awarded against this part of the claim.

as the Home Buyer's claim had succeeded, the Home Builder should reimburse the Home Buyer's registration fee.

Complaint

The Home Buyer alleged that the Home Builder has breached sections 1.5, 3.1 and 5.1 of the Code. The Home Buyer believed that the property was not constructed to design specifications as illustrated in the sales brochure. The Home Buyer was dissatisfied and complained.

Defence

The Home Builder did not submit a defence.

Findings

The adjudicator found that the Home Buyer had not provided sufficient evidence to establish that the as built floor plan of the home was not clearly and truthfully described in the sales brochure of the Home Builder. Neither had the Home Buyer established that there had been a change to the size, appearance or value of the home.

Decision

The claim did not succeed.

Complaint

The Home Buyers' claim was that the Home Builder concealed that it was planning an upgrade to other similar houses on the development because it did not have interested buyers and therefore it was in breach of section 2.1 of the Consumer Code for Home Builders. They claimed that other buyers had received better value and if the Home Buyers had been told about this, they would have been able to obtain the same upgrades for their Home at a lower cost than that quoted by the Home Builder for the same upgrades post-purchase.

They also said that the change to the neighbouring property meant that the patio had been raised and double doors put in very close to their fence, so that the Home Buyers are now overlooked if they are using their own much smaller patio which is next to the adjoining fence. They sought: An apology; Practical action for the Home Builder to admit that it was in the wrong; and Compensation of £15,000.00.

Defence

The Home Builders denied liability, on the basis that it was not under an obligation under section 2.1 to tell the Buyers about proposed changes to other homes.

Findings

The adjudicator found that the Builder was not under an obligation generally to tell the Home Buyers about proposed changes to other homes. The information given to them was not incorrect and they had purchased what they had expected save in one regard. This was that the changes to the adjacent home meant that the neighbour's patio had been built up and access had been given by new double doors right next to the fence. This meant that the Home Buyers' own much smaller patio was significantly overlooked. This was a loss of privacy affecting the home and was therefore information "about" the Home that should have been given to the Home Buyers.

Failure to tell the Home Buyers about this was a breach of section 2.1 of the Code and the Home Buyers were entitled to redress. The Builders had quoted the Home Buyers for the cost of upgrades of various aspects of the Home and said that it was prepared to undertake this work provided that it was paid. The adjudicator found that the work relating to the patio should be carried out free of charge, so that the focus of the Home Buyers' patio could be moved away from the fence, so restoring some privacy. This did not extend to installing new double doors.

Decision

The claim succeeded The Builder was directed to: Supply and install free of charge the patio described in the quotation to the Home Buyers in the document not exceeding £14,650.00; Pay compensation to the Home Buyers for inconvenience in the sum of £350.00; Apologise to the Home Buyers for the breach that I have found of section 2.1 of the Code; and Reimburse the Home Buyers with their registration fee of £120.00.

Complaint

In 2016 the Home Buyer noticed that the laminate flooring at the threshold between the hallway and living room sank substantially when he walked on it. At the time, the Home Builder acknowledged that there was a problem and said that it may have been caused by the floor being newly laid and it may need time to settle. After one year, the Home Buyer completed the snagging list and recorded the flooring issue as still present. The Home Buyer was told that this, along with a number of others on the snagging list, would be sorted in due course. In approximately September 2018, after the Home Buyer's wife had sent an email to the Home Builder, the Project Manager attended the Home and explained how the issue would be resolved.

There were then difficulties in carrying out this work, which had to be repeated and is still unsatisfactory. The Home Builder failed to respond to requests and nothing was done.

Defence

The Home Builders denied liability. It says that it is more than happy to resolve the problem but, as the Buyer has refused access, there is little more that can be done. The Home Builder suggests that CEDR might direct the Home Buyer to allow the Home Builder access to the Home. It says that it would like to reach an amicable agreement to resolve the issue but it does not believe that a complete new laminate flooring is required and nor does it believe that it should be liable for third-party costs when the Home Builder is refused access. It says that it has sufficient of the laminate in stock to effect the repair.

As for the Home Buyer's complaint under section 5.1, it says that it is currently in the process of reviewing all the consumer code requirements having received information from the managing director of the Consumer Code for New Homes. It accepts that it did not have a formal complaints procedure at the relevant time and it apologises for not responding to the email requests for a copy of its procedure. It has now adopted the procedure recommended by the Consumer Code for New Homes.

Findings

The adjudicator found that the delays and failures to communicate and lack of information amounted to a breach of section 4.1 of the Code and a breach of section 5.1 was both shown in the evidence and admitted by the Home Builder. In order to resolve the problem to which the lack of proper procedures had given rise, the Home Builder should be directed to remedy the problem with the floor. It is not for the adjudicator to say how this should be done as this is a matter of snagging, which is outside the scope of the Code.

Decision

The claim succeeded. The adjudicator directed that the Home Builder shall: Apologise to the Home Buyer for breaches of sections 4.1 and 5.1 of the Code; Undertake, if permitted by the Home Buyer, an assessment of the floor by a suitably qualified or experienced person other than by the Project Manager that has carried out work on the floor hitherto, and shall carry out such works (if any) as are assessed by that person to be required; Pay compensation for

inconvenience in the sum of £500.00; and Reimburse the Home Buyer's registration fee of £120.00.

Complaint

The Home Buyer submitted that the Home Builders have breached section 1.5 (Sales and advertising) of the Code because it has not been clear in the process and because plans were not made available until 21 February 2019. He further submitted that the Home Builders have breached section 2.1 (Pre-purchase information) because he was not made aware of the contrasting tiles on the Property and the Garage and that this was a material omission.

The Home Buyer also submitted that the Home Builders have breached section 5.1 (Complaints Handling) of the Code because it did not ascertain or consider all the facts and made judgements based on its employees' opinions.

The Home Buyer claims an apology and either practical action to replace the tiles on the roof of the Property with those of the same material as the Garage and the neighbouring plot, or pay £7,000 in compensation which he states is the current reduction in price of an identical property on Haddington Park (the 'Development') which has contrasting roof tiles to those of its garage and next-door property.

Defence

The Home Builders defended the claim on the basis that loss of property value is outside the scope of the Code. It admitted that the Home Buyer was not shown a plan at reservation which showed the materials to be used. It submitted that, despite the Home Buyer taking issue with the different materials used when he became aware of them, he proceeded to completion including varying the completion date by deed, such that he waived his rights to withdraw from the contract.

On this basis, the Home Builders deny that the Home Buyer is not entitled to a remedy.

Findings

The adjudicator found that the Home Builders had, by their own admission, failed to provide adequate information in respect of the appearance of the Property and the materials used. The Home Builders therefore breached sections 2.1 of the Code.

The adjudicator found that the Home Builders' sales and marketing material were clear and truthful and that it had a system for handling complaints and that therefore had been no breaches of sections 1.5 and 5.1 of the Code.

Decision

The claim succeeded. The adjudicator ordered the Home Builders to apologise to the Home Buyer. The Home Buyer's registration fee was also reimbursed.

Complaint

The Home Buyers stated that they had been told that he would be able to have certain newly introduced fittings in his kitchen for the same price as had appeared on the price list he received when he reserved the Home. The Builder then indicated its intention to charge extra for the choices that he had made. The Home Buyers made a complaint and found themselves at odds with some of the sales staff. Before the time for expiry of the reservation agreement, the Builder cancelled the reservation. The Home Builder did not have in place procedures for managing the requirements of the Code and failed to enable the complaint to be dealt with.

Defence

The Home Builder says that it was entitled to provide an increased price list and it agreed that for items that had been on the previous price list there would be no increase. New prices applied to items newly introduced. The Home Buyers chose a cupboard type that was on the new list and therefore an increased charge was applicable. This was made known to the Home Buyers, who argued that they did not have to pay this increase. An incident occurred in the sales office and when a complaint was made, the reservation agreement was correctly terminated. On a request for an internal review, the Home Builder discovered that the conduct of the Home Buyers had been unacceptable and therefore the cancellation of the reservation was upheld. After that, the time allowed for exchange of contracts had expired and the Home Builder was not obliged to reinstate the arrangement.

Findings

There was a considerable lack of clarity about what the Home Buyers had been told, but it is probable that they were led to believe that the cupboards could be provided at the same price as had been on the old price list. As this was not the case, this was a breach of the Code and the Builder had failed to give suitable pre-purchase information. There was no adequate procedure for ensuring that Code requirements were met and the cancellation occurred before expiry of the reservation agreement. Although the Builder says that the Home Buyers were not in a position to exchange contract and the reservation had expired, the papers contained no evidence of this, save in relation to the subject matter of the dispute. The Builder was therefore in breach of a number of provisions of the Code

Decision

The claim succeeded. The Rules permit the Buyers to recover the costs of putting right breaches of the Code. The Buyers had suffered wasted expenditure as a result of the wrong – namely a £499.00 establishment fee for their Homebuyer mortgage and £630.42 for legal fees, including searches, etc. that have been wasted. This gave a total wasted expenditure of £1,129.42. Payment of compensation in this sum was directed as well as reimbursement of the registration fee.

Complaint

The Home Buyer considers that he relied on he relied on the brochure, plans and show home when entering into the contract for purchase of her home. The Home Buyer states that the radiators in the bathroom were not the agreed type. She also states that the bathroom window was initially omitted and then installed, incorrectly in an off-centre position. She raised issues with the Home Builder which provided a poor service in resolving these issues. The radiators have now been remedied but the Home Buyer still requires the bathroom to be relocated to a central position in the wall.

Defence

The Home Builder's position is that the Home Buyer it has fitted the bathroom window in the correct location. The brochures and Show Home were for indicative purposes only. The Home Builder considers that every effort was made to ensure information was correct but the brochure was only a guide. The Home Builder has provided plans for the Home Buyer's house type which show that the window is intended to be installed off-centre in the bathroom wall.

Home Buyer's response to Home Builders defence

The Home Buyer responded that the Home Builder initially omitted to fit a bathroom window at all in the property and that the Home Builder's response to her complaint was poor and inadequate. Following the Home Buyer's request that it be installed the work took over 4 months and the window was then installed in the incorrect location, not central on the wall as shown on the plans and blueprints and as seen in the show home. The Home Buyer claims that this failure is in breach of section 1.5 of the Code regarding sales and advertising and also in breach of sections 4.1 and 5.1 for inadequate complaints procedure.

Findings

The adjudicator found that the claim does not succeed. The adjudicator found that there was no breach by the Home Builder of the specified requirements under the Code.

Complaint

The Home Buyer explains that in 2017, following purchase, the kitchen wall-mounted cupboards at the Home came away from their fixings and landed on the kitchen floor, causing damage and breakages. Although repairs were made to the cupboards and to the kitchen floor, this was slow. He says that handling and resolving issues are the problem and in particular expenditure promised by the Home Builder has not been paid. This includes outstanding expenditure on crockery and use of the Home Buyer's personal vehicle to go to various stores as well as work undertaken to clean up following the reparations.

The Home Buyer complains that time has been spent by himself and his wife to deal with this. He also claims expenditure for professional cleaning services resulting both from this issue and from a problem with the lounge ceiling. The section of the Code breach he describes as "Occupation" and gives the reason for breach as failing to deal with his request for actual expenditure and compensation. The Home Buyer has produced a revised incident expenditure form, calculating of his claim at £6,318.99.

Defence

The Home Builder says that it has provided an after-sales and complaints service; it has arranged repairs and made some payments of compensation. The Home Builder accepts, however, that there are elements of the Home Buyer's civil claims that require further consideration and these are has been outstanding for a number of months. These have now been escalated to its in-house litigation team for review and response will be made within a reasonable timescale. The Home Builder has set out the financial payments that it is prepared to make to the Home Buyer as a gesture of goodwill, although it contends that most of these payments fall outside the scope of the CCHBIDRS scheme.

Findings

The obligations under section 4.1 of the Code are not only to give information about the after-sales service, but also to ensure that the service is provided. In respect of section 5.1 of the Code, the obligation on the Home Builder is not only to have a complaints handling system but also to deal with customer's complaints within a reasonable time. In relation to this, although information had been given as to whom to contact for after-sales assistance and there was a paper complaints system, these were not implemented. For example, it took 7 ½ months for the repairs to be made following the collapse of the cupboards and the Home Builder had not responded to the Home Buyer's correspondence within a reasonable time.

Decision

The claim succeeded. The Builder was directed to (a) apologise in writing for its breaches of sections 4.1 and 5.1 of the Code; (b) pay compensation of £1,535.59; and (c) reimburse the Home Buyer with his registration fee of £120.00.

Complaint

The Home Buyers submitted that the Home has not been built to the high standard that was promised in the marketing materials. In particular, the Home Buyers refer to the fascia and soffit boards and “wonky” brickwork in four archways, two of which they say have also been repaired and are held together with wiring. They said that the wonky brickwork is visible from more than 10 metres away. The Home Buyers also complain of other matters such as delays in carrying out work and obtaining materials when carrying out snagging works and they refer to a defect in the porch to which they drew the Home Builder’s attention after eight months and also to plumbing issues where rubble blocking a drain prevented use of their toilet and matters that have been the subject of references to NHBC. The Home Buyers complained of breaches of sections 1.5, 4.1 and 5.1 of the Code.

Defence

The Home Builder denied liability. They said that this was a complaint about poor workmanship which is not within the Code or Scheme. The Home Builder points out that it does not provide seamless soffits and fascia boards, whereas this is an expectation of the Home Buyers. It states that the Home Buyers have already raised an NHBC resolution on two occasions on this issue and although the Home Builder agreed that further works were required, the overall view was that the installation complied with NHBC standards. The Home Builder offered to do the works as set out within the resolution reports by the NHBC but were denied access by the Home Buyers. Instead, the Home Buyers chose to have the soffits and fascia boards replaced at their own cost without further consultation with the Home Builder. As for the NHBC resolution in relation to the window lintels and brickwork above the arches, these were both found to comply with the NHBC technical standards and no further works were required.

Findings

The adjudicator found that there was no breach of the Code. Although the brochure referred to the building of luxury homes and the Home Buyers said that their home was not as good as their neighbours or the show home, it did not follow that there was a breach of the Code. The claim made was a generality and applied to all the homes: snagging issues in one home did not make the marketing materials untrue or misleading. Although at the time of the complaint there were ongoing issues about the need to carry out snagging works, the Home Builder had indicated either that it intended to carry out works or it did not. The fact that the parties were not in agreement as to what should be done was not evidence of a breach of the Code and the Code does not extend to resolving snagging matters.

Decision

The claim did not succeed.