

Consumer Code consultation

The Consumer Code for Home Builders (the Code) came into force in April 2010. Its purpose was to provide an industry led code of conduct for builders to make the process of buying new homes fairer and more transparent for home buyers.

In September 2015, the Management Board of the Code announced that it would be undergoing a consultation on the overall scope, operation and impact of the Code.

The Code

In 2005, Kate Barker conducted a review of the home building industry for the Government. One of the main recommendations from that review was the introduction of an Office of Fair Trading (OFT) compliant consumer code.

The major industry trade bodies subsequently joined together with the Council of Mortgage Lenders, the NHBC and other warranty providers to develop a code of practice for the housebuilding industry. As a result, the Code was born and applied to all private home buyer reservations from 1 April 2010. Although compliance with the Code was initially voluntary, the main home warranty providers require all registered builders to adopt and comply with the Code as a registration condition.

The Code (now in its third edition) includes 19 requirements and principles as well as general guidance for home builders. Its main focuses are ensuring home buyers are provided with necessary information before purchase and that home builders provide an adequate after-sales service. In addition to setting out these requirements, the Code introduced a new independent dispute resolution scheme for dealing with home buyers' complaints.

The review

The Management Board of the Code cite several reasons for their review of the Code. They claim that there is some evidence of a reduction in awareness levels of the Code. There has also been a year-on-year increase in the number of cases being referred to the Code's

Independent Dispute Resolution Scheme, the majority of which were successful either in part or in full.

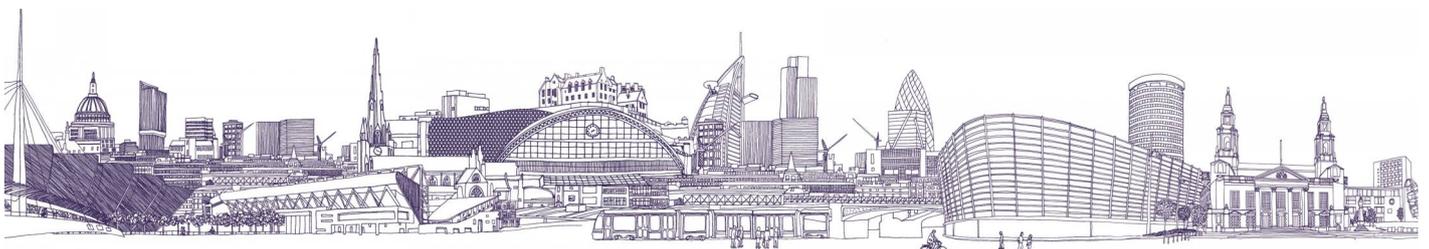
The Management Board of the Code are also looking to obtain the Code's certification to the Chartered Trading Standards Institute's (CTSI) Consumer Codes Approval Scheme (CCAS). The CTSI have recommended various amendments to the Code before approval will be granted.

25 responses in all were received from stakeholders during the consultation period in September and October 2015 including industry membership organisations.

Further consultation will be sought on the proposed changes from 1 March 2016, with the consultation process expected to end on 30 April 2016. The changes will then be announced in June/July 2016 with a view to implementation in February 2017.

The following changes are all anticipated:

1. There are likely to be some general changes to the Code to bring it in line with new legislation (such as the Consumer Protection Regulations 2008 and the Consumer Rights Act 2015) with a particular emphasis on the protection of vulnerable consumers.
2. There are likely to be changes to ensure awareness and understanding of the Code by customers and sales staff as the Management Board's surveys showed that awareness of the Code across sales staff was materially inadequate.
3. There are likely to be further restrictions imposed on home builders attempting to limit the home buyer's choice of financial advisers and legal representatives.
4. There are also likely to be some material changes to the current Dispute Resolution Scheme as it does not entirely conform with the Alternative Dispute Resolution Directive (the ADR Directive) that came into force on 9 July 2015. In particular:



Consumer Code consultation

- 4.1 The timescale for bringing a claim is likely to be increased to at least 12 months from the date the home builder advises the home buyer that they are unable to resolve the matter (compared with the current 3 months from the later of the initial complaint or the home builder's final response).
- 4.2 The current referral fee of £120 will almost inevitably be reduced if not removed altogether as the ADR Directive states that use of the scheme should be free of charge for the home buyer or subject only to a nominal fee.

Observations

The net effect of these changes is that the number of referrals to this dispute resolution scheme will almost inevitably increase rather than decrease.

In particular, if the referral fee is either dropped entirely or reduced to a nominal figure, we fear that this will simply serve to encourage spurious claims.

Although the Management Board of the Code believe that the claim success rate of 56% (which will include partial successes) seems high, our view is that this is a relatively low percentage and should not be a cause for concern. A significant reduction in this fee will, we believe, reduce that percentage to an unacceptably low figure.

Equally, our view is that there should not be too much cause for concern with the increase in referrals to the IDRS scheme. That increase is no doubt more to do with the increase in the number of houses being built and home buyers' increased awareness of the scheme, than a decline in standards.

Despite the inevitable increase these changes will have on the number of cases being referred to the IDRS scheme, and the encouragement of spurious claims, there are seemingly no plans afoot to remove or limit the customer's right to ignore the decision or to address the inconsistency we have seen in the quality of the adjudicators' decisions.

If you would like to discuss any of the issues raised in this update, please contact:



Simon Ingham
Partner
Housebuilder Disputes
dt: +44 (0) 113 218 2486
m: +44 (0) 7979 648 924
Simon.Ingham@gateleyplc.com