

**CONSUMER  
CODE** FOR  
HOME BUILDERS

# Consumer Code Consultation on Proposed Changes

March 2016



The Consumer Code for Home Builders gives protection and rights to purchasers of new homes, ensuring that all new home buyers are treated fairly and are fully informed about their purchase before and after they sign the contract.

## 1. Introduction

The Consumer Code for Homebuilders is an industry led code of conduct for builders, which was developed to make the home buying process fairer and more transparent for purchasers.

The Code reinforces best practice among Home Builders to make sure the level of information and customer service provided by all Home Builders is consistently high. It builds on successful efforts already made by the industry to improve consumer satisfaction in recent years.

The Code came into effect on 1<sup>st</sup> April 2010 since when it has been providing protection and rights to purchasers of new homes, ensuring that all new Home Buyers are treated fairly and are fully informed about their purchase before and after they sign the contract.

As part of the Code's triennial review, and as a result of its application to the Chartered Trading Standards Institute's (CTSI) Consumer Codes Approval Scheme (CCAS), the Management Board sought the views of Home Builders, trade bodies and all other stakeholders on the overall scope, operation and impact of the Code, as detailed in its previous consultation, which closed on 31 October 2015.

Having considered the responses to the consultation, the Management Board is now seeking views on some specific changes to the Code and the guidance provided to home builders and, while maintaining its overall aims and objectives, are proposing changes in the following areas:

- The mandatory Consumer Code requirements that Home Builders are required to follow
- The non-mandatory good-practice guidance for Home Builders
- Appendix A – Consumer Code Independent Dispute Resolution Scheme

To assist with responses to this consultation on the proposed changes to the Code; the suggested amendments are presented alongside the current Code and guidance in the attached documentation. The specific proposed amendments are highlighted throughout the rest of this consultation document.

We look forward to seeing responses from all of those with an interest in the Code and to ensuring it remains relevant to the home building industry, consumers and other key stakeholders.

A handwritten signature in black ink that reads "Noel Hunter". The signature is written in a cursive, slightly slanted style.

**Noel Hunter OBE**

Chairman Consumer Code Management Board

## Section 1

### Proposed revisions to the Consumer Code requirements and the non-mandatory good practice guidance for Home Builders

This section outlines those parts of the Code and/or the non-mandatory good practice guidance that will be subject to change and seeks further views from our stakeholders before any changes are finally implemented.

For clarity and ease of reference, the relevant documents that will be affected have been highlighted in bold i.e. Code or guidance.

#### 1. Meaning of words

Contained within the **Code**, it provides for a meaning of words, which have special meanings.

It is proposed that the definition of a Home Buyer is amended to read:

- **“Home Buyer** – a **customer** who Reserves or buys a Home, excluding those properties listed in the Scope on page 5. For Homes Reserved or bought jointly by two or more people, the Home Buyer's rights will be joint”.

Further, given that to meet the requirements of CTSI's CCAS in terms of addressing the additional effort/help to be provided to vulnerable consumers, a new definition of vulnerable customer is to be added and has been modelled on the definition widely used by other consumer protection organisations and more specifically the Financial Conduct Authority:

- **“Vulnerable Customer** – a vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a Home Builder is not acting with appropriate levels of care”.

**Q 1.** Do you agree with these proposed changes to the definitions? If not, please explain why and what difficulties you foresee.

## 2. Making the Code Available

Section 1.2 of the Code requires Home Builders to display the Code and give, without charge, a copy to customers who ask for it and to all Home Buyers who reserve a home. The Home Builder should also inform their customers that further guidance is available and how they can get this.

In order to ensure that awareness of the Code is raised as early as possible amongst new Home Buyers in the buying process, it is proposed to amend the **guidance** to Home Builders to provide further clarity and to replace the existing text with the following:

*“The Code should be made freely available to all customers. This can be achieved by providing a hard copy to those who ask for one or by directing customers to the Code web site at [www.consumercodeforhomebuilders.com](http://www.consumercodeforhomebuilders.com)*

*A hard copy of the code should be given to all customers who reserve a Home at the time of Reservation. Acknowledgement of receipt should be recorded within the Reservation agreement.*

*The Code should be clearly displayed in sales offices, including those of appointed Agents. The Code should be incorporated into the vendor’s web site and sales literature.*

*You may download the Code requirements from the Code website to provide copies for customers or Home Buyers. You are not required to provide them with the guidance given to Home Builders; this is freely available for them to access on the Code web site if they so wish.*

*The evident needs of Vulnerable Customers should be considered at all times”.*

**Q 2.** Do you agree that these proposed changes makes it clearer for Home Builders as to what is required of them and their agents in making the Code

available and raising awareness of it? If not, please explain your answer and say what more you would want to see.



### 3. Customer service

Section 1.3 of the Code requires the Home Builder to have suitable systems and procedures to ensure it can reliably and accurately meet the commitments on service, procedures and information on the Code.

CTSI's CCAS requires the Code to address how Home Buyers will be treated when in their own homes, it is proposed to amend the existing **guidance** and give additional guidance to Home Builders so that it will read:

*“You should have formal processes in place to provide a reliable and consistent service to Home Buyers. You should treat them and their personal effects with respect and resolve relevant issues that may arise with them and their Home both before and during occupation.*

*The evident needs of Vulnerable Customers should be considered at all times”.*

**Q3.** Do you foresee any problems with the suggested amended guidance? If so, please explain your answer.



#### 4. Sales and Advertising

Section 1.5 of the Code requires all sales and advertising material to be clear, truthful and comply with the law.

The third edition of the guidance currently refers to specific legislation which has been repealed and which can of course change over the course of time.

It is proposed therefore that the existing **guidance** provided to Home Builders is deleted and replaced with the following:

*“Your sales and advertising material should be clear, truthful and comply with all relevant legislation”.*

In addition, in order to satisfy CTSI that the Code addresses issues of high-pressure selling, the **guidance** will also read:

*“Customers should not be subjected to high-pressure selling techniques. The evident needs of Vulnerable Customers should be considered at all times”.*

**Q4.** Do you foresee any difficulties in amending the guidance as proposed? If so, please explain.

#### 5. Pre-contract information

Section 2.1 of the Code requires Home Buyers to be given enough pre-purchase information to help them make suitably informed buying decisions. This includes a description of any management services and organisations to which the Home Buyer will be committed and an estimate of their costs.

The Law Commission is currently consulting on such matters, and to help Home Builders and their agents comply with the Consumer Protection Regulations, we propose to amend the **Code and guidance** to Home Builders in relation to management services and fees.

It is proposed that an additional requirement in the **Code** be added so that additional pre-purchase information must be given to the Home Buyer to help them make suitably informed purchasing decisions.

The proposal is that in all cases, this information must now include:

*“the nature and method of assessment of any transfer fees or similar liabilities”.*

In addition, the existing final bullet point within the **guidance**, which says that the information should be fair and reliable, in plain language and without jargon, will be amended to read:

- *“a reasonably reliable itemised breakdown of the principle items and their cost which are to be included in the management services and fees (Scotland: ‘factoring’) that the Home Buyer will be committed to paying. The information should also state in which circumstances and on which terms the charges and fees may alter”.*

And a new bullet point to be added:

- *“the nature and method of assessment of any transfer fees or similar liabilities”.*

Furthermore, under the **guidance** where it currently suggests the Home Buyer's legal representative is provided with a number of documents, including the proposed contract and legal title, it is proposed that an addition is made so that a Home Buyer's legal representative is provided with “a copy of the Code”, in the legal papers supplied to them.

**Q5a.** Do you agree that this helps the Home Buyer understand the fees that they may incur when purchasing the home and helps raise awareness of the Code with their legal representative? If not, please explain.



Section 2.5 of the Code requires Home Builders to advise Home Buyers to appoint a professional legal adviser to carry out the legal formalities of buying the Home and to represent their interests. The guidance already advises that Home Builders should not restrict the Home Buyer's choice of legal representative.

It is proposed to extend this requirement so that a Home Buyer's choice of financial advisor or mortgage intermediary is also not restricted. The **guidance** provided to Home Builders would therefore contain an additional paragraph to read:

*"You should advise Home Buyers to choose and appoint an independent professional legal adviser when they reserve a Home, to look after their interests in all aspects of the transaction.*

*You should not restrict the Home Buyers' choice of legal representative, financial advisor or mortgage intermediary".*

**Q5b.** Do you foresee any difficulties in amending the guidance as proposed? If so, please explain.

## **6. Reservation**

Section 2.6 of the Code requires Home Builders to give to Home Buyer's a Reservation agreement that sets out clearly the terms of the Reservation.

It is proposed that the **Code** is amended to make the nature of any transfer fees (or similar liabilities) more transparent at this point and as such, a new requirement will be added to the Code (which will be consistent with the

requirement under section 2.1) so that the Reservation agreement should also include:

*“the nature and method of assessment of any transfer fees or similar liabilities”.*

This will be reflected also in the **guidance** to Home Builders as indicated below.

Furthermore, a recent audit of Reservation agreements undertaken by the Code’s Management Board has shown there is a wide variety of interpretation of the guidance and which in turn has led to a number of disputes being raised through the Code’s Independent Dispute Resolution Scheme.

In order to assist and ensure compliance, it is proposed that the Code guidance be amended to read as follows (significant changes emboldened for ease):

*“You should provide enough information for the Home Buyer to fully and properly understand the Reservation agreement.*

*Among other matters, the Reservation agreement should clearly state:*

- *the amount of the Reservation fee;*
- *what is being sold – for example plot number, postal address (if available), garage or parking space;*
- *the purchase price;*
- *the deadline date when the Reservation agreement will end if contracts are not exchanged;*
- *the date until when the price remains valid;*
- *a reasonably reliable **itemised breakdown of the principle items and their costs which are to be included** in the management services and fees (Scotland: ‘factoring’) that the Home Buyer **will be committed to paying;***
- *that it is ‘subject to contract’;*
- *any dependent or conditional matters, for example part-exchange terms;*
- ***the nature and method of any transfer fees or similar liabilities;***
- ***that a copy of the Code has been supplied.***

*The Reservation agreement, **and any appendices or schedules attached that contain information required by the Code**, should be signed by you and the Home Buyer in recognition and acceptance of the stated terms.*

Once the Reservation agreement is signed, you should not sell or try to sell the Home to another buyer before the deadline date when the Reservation agreement will end, or before the date when the buyer cancels the Reservation agreement, whichever occurs first.

The Home Buyer has the right to cancel the Reservation agreement at any time during the Reservation period ending with the deadline stated for exchange of contracts. The Reservation deadline may be extended by agreement between you and the Home Buyer. You should confirm this agreement in writing.

You do not have the right to cancel a Reservation agreement. However, if the deadline date is not extended and the contract not exchanged, the Reservation agreement expires automatically.

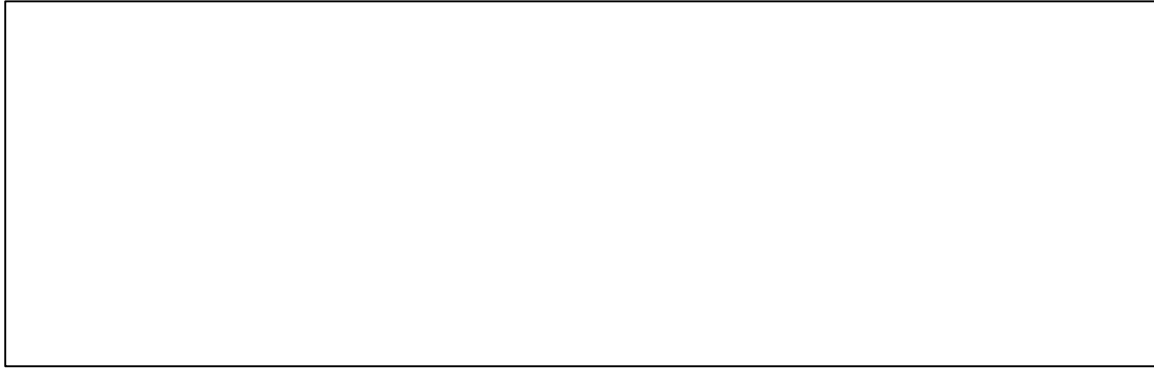
You must return the Reservation Fee to the Home Buyer without undue delay if the Reservation Agreement is cancelled. **You may retain an amount that represents the reasonable costs that you have genuinely incurred in processing and holding the Reservation, which you may need to provide evidence for if challenged. Within the Reservation Agreement, you must tell the Home Buyer what the range (in figures) of the possible cost retention may be. The Home Buyer may challenge through the Code's independent Dispute Resolution Scheme any deductions considered by them as being excessive.**

It may be that the terms of a Reservation agreement relating to incentives (for example, discounts, part exchange or similar) have to be altered due to a change in mortgage scheme proposals (for example, from a straight mortgage to 'New Buy'). If so, the Home Builder and Home Buyer should cancel the existing Reservation agreement and enter into a new agreement without any deduction from the Reservation fee.

Clause 3.4 below gives further guidance on handling and protecting deposits, refunds and pre-payments.

Arrangements with prospective Home Buyers that provide a right of first refusal on a Home (for example, early-bird or pre-reservation waiting lists) are not recognised as Reservation agreements and are not covered by the Code".

**Q6.** Do you foresee any difficulties in amending the Code and guidance as proposed? If so, please explain.



## 7. The Contract

Section 3.1 of the Code sets out the requirements for contract sale terms and conditions and in the third edition, references specific legislation that the Home Builder needs to comply with and which has since been repealed.

To be consistent with section 1.5 of the Code, it is proposed that any reference to specific legislation is removed and the requirement in the **Code** be amended so that as well Contract of sale terms and conditions being clear and fair and stating the contract termination rights, they must also:

*“comply with all relevant legislation”;*

It is further proposed that the **guidance** provided to Home Builders removes the reference to specific legislation and in the opening paragraph it simply reads:

*“You should ensure that the contract terms are clear and fair and comply with all relevant legislation. In particular:.....”*

**Q7.** Do you foresee any difficulties in amending the Code and the guidance as proposed? If so, please explain.



## 8. After Sales Service

Section 4.1 of the Code requires the Home Builder to provide the Home Buyer with an accessible after-sale service, and explain what the service includes, who to contact and what guarantees and warranties apply to the home.

Given CTSI's requirement to consider how Home Buyer's are treated in their own home, it is proposed that the **guidance** provided to Home Builders is amended and an additional bullet point added which reads the Home Builder should:

- *“treat them [the Home Buyer] and their personal effects with respect and resolve relevant issues that may arise with them and their home after occupation”.*

In addition, it is proposed that the guidance also advises:

*“The evident needs of Vulnerable Customers should be considered at all times”.*

**Q8.** Do you foresee any difficulties in amending the guidance as proposed? If so, please explain.

## 9. Health and Safety

Section 4.2 of the Code requires Home Buyers to be told about the health and safety precautions they should take when living on a development where building work continues.

The guidance to Home Builders currently references specific legislation and for consistency, it is proposed that this is amended and references instead relevant legislation. The proposed wording of the **guidance** would therefore read:

*“You should inform Home Buyers who move into a Home on a development that is still under construction about the health-and-safety precautions they should take.*

*You should give the Home Buyer the health-and-safety file for the Home and comply with the relevant regulations”.*

**Q9.** Do you foresee any difficulties in amending the guidance as proposed? If so, please explain.

## Section 2

### Proposed revisions to Appendix A The Consumer Code Independent Dispute Resolution Scheme

Appendix A of the Code outlines the process for the Code's Independent Dispute Resolution Scheme (IDRS).

Section 3.2 details when a Home Buyer may bring their claim through the IDRS. Presently, they must do so within three months of the date after the Home Builder's final response to the original complaint, or within three months after the date of the original complaint, whichever is the later.

To bring the Code in line with the timeframes set out in the Alternative Dispute Resolution (ADR) Directive, it is proposed that this is amended to read:

*"The Home Buyer can only refer their complaint to the independent Dispute Resolution Scheme after 56 days have elapsed since first raising it with the Home Builder and no later than 12 months after the Home Builder's final response".*

**Q10a.** Do you foresee any difficulties in the proposed amended wording in relation to the timeframes? If so, please explain.

Section 4.6 of the adjudication process (under Appendix A of the Code) sets out that the adjudicator may make a discretionary award for any inconvenience the Home Buyer may have suffered as a result of how the Home Builder has handled their complaint. This is currently £250 and has remained this amount since inception of the Code in 2010. However, evidence now suggests this amount is significantly lower than that applied in other dispute resolution schemes (which on average is £1,000).

Currently, this discretionary award is applied by the adjudicators under the IDRS and in the majority, but not all, cases where the claim against the Home Builder is found entirely or partially at fault. Taking this into account, and the current best practice amongst other alternative dispute resolution schemes, it is proposed that the limit for inconvenience caused to the Home Buyer be increased to a maximum of £500.

As such, it is proposed that section 4.6 of the IDRS process as set out in Appendix A should read:

*“The adjudicator may make a discretionary award up to a maximum of £500 for any inconvenience a Home Buyer may have suffered as a result of how the Home Builder handled their complaint. The £15,000 maximum award would include any award for inconvenience”.*

**Q10b.** Given the current best practice across other dispute resolution schemes, do you consider the proposed maximum financial limit of £500 for inconvenience caused appropriate? If not, please explain your answer.

Under the rules of registration, the Home Warranty Bodies require each registered Home Builder to honour any award made against them under the Dispute Resolution Scheme.

However, there is evidence of increased instances whereby a Home Builder has failed to comply with the adjudicator's ruling and the Home Buyer has been put to further inconvenience in securing judgement. While the Home Warranty Body deals with such matters through their registration, and such instances are rare, it is felt that to act as a credible deterrent to prevent Home Buyers suffering further loss, an interest charge on any late payment should be awarded. This is in line with other dispute resolution services and the civil courts.



It is therefore proposed that under Awards, the IDRS be amended to read:

*“If the Adjudicator decides that the Home Builder must make a payment to the Home Buyer, then the payment must be made within four weeks of the Home Buyer notifying their unconditional acceptance of the decision. If payment is not made within this time, interest will be payable at a rate of 3% (three per cent) above the Bank of England base lending rate, calculated on a daily basis”.*

**Q10c.** Do you consider, for the rare instances that it will apply, that an interest charge on the late payment of an adjudicator’s award is appropriate in acting as a credible deterrent and preventing the Home Buyer being put to further inconvenience? If not, what alternate method would you propose? Please explain.

### Section 3. Summary of questions

To assist with the completion of this second phase of the consultation, please find a summary of the questions being posed:

**Q 1.** Do you agree with [the] proposed changes to the definitions? If not, please explain why and what difficulties you foresee

**Q 2.** Do you agree that [the] proposed changes makes it clearer for Home Builders as to what is required of them and their agents in making the Code available and raising awareness of it? If not, please explain your answer and say what more you would want to see.

**Q3.** Do you foresee any problems with the suggested amended guidance [regarding vulnerable customers and that due respect should be given to customers and their property when dealing with them in their home]? If so, please explain your answer.

**Q4.** Do you foresee any difficulties in amending the guidance [in relation to customers not being subjected to high pressure selling techniques along with a reference to vulnerable consumers] as proposed? If so, please explain.

**Q5a.** Do you agree that this [requiring the nature and method of assessment of any transfer fees and similar liabilities, as well a reasonably reliable itemised breakdown] helps the Home Buyer understand the fees that they may incur when purchasing the home and helps raise awareness of the Code with their legal representative [by providing them with a copy]? If not, please explain.

**Q5b.** Do you foresee any difficulties in amending the guidance [in relation to not restricting a Home Buyer's choice of financial adviser or mortgage intermediary] as proposed? If so, please explain.

**Q6.** Do you foresee any difficulties in amending the Code and guidance as proposed [in relation to the nature and method of assessing transfer fees and similar liabilities and on the amounts that can reasonably be deducted from a Reservation fee]? If so, please explain.

**Q7.** Do you foresee any difficulties in amending the Code and the guidance as proposed [by way of removing reference to specific outdated legislation]? If so, please explain.

**Q8.** Do you foresee any difficulties in amending the guidance as proposed [in relation to treating customers and their personal effects with respect when working in their home]? If so, please explain.

**Q9.** Do you foresee any difficulties in amending the guidance as proposed [by the removal of any reference to specific legislation]? If so, please explain.

**Q10a.** Do you foresee any difficulties in the proposed amended wording in relation to the timeframes [in which to bring a complaint]? If so, please explain.

**Q10b.** Given the benchmarking across other dispute resolution schemes, do you consider the proposed maximum financial limit of £500 for inconvenience caused appropriate? If not, please explain your answer.

**Q10c.** Do you consider, for the rare instances that it will apply, that an interest charge on the late payment of an adjudicator's award is appropriate in acting as a credible deterrent and preventing the Home Buyer being put to further inconvenience? If not, what alternate method would you propose? Please explain.

## Section 4. How to respond

You can respond to this consultation either by email at:

[consumercodesecretariat@gmail.com](mailto:consumercodesecretariat@gmail.com) or by post addressed to: Secretariat, Consumer Code for Home Builders, 35 St. Paul's Square, Birmingham B3 1QX.

If you have any questions about the consultation, please email them to Carol Brady at [consumercodesecretariat@gmail.com](mailto:consumercodesecretariat@gmail.com).

When they respond, representative groups are asked to give a summary of the people and organisations they represent and where relevant, who else they have consulted in reaching their conclusions.

Where we receive no response, we will take stakeholders' views to be positive and assume silence is an acceptance of any proposed revisions to the Code or that no strong viewpoints are held.

## Section 5. Proposed consultation timetable:

Consultation on proposed changes to Consumer Code and non mandatory good practice guidance	1 March 2016
<b>Closure of consultation</b>	<b>30 April 2016</b>
Code Management Board to consider responses and finalise changes	May 2016
Announcement of changes	June 2016
Publication of changes on Code website and notification to all registered home builders	July 2016
Implementation of changes to the Code.	<b>February 2017</b>