

Adjudication Case Summaries – as at February 2013

This paper provides a brief summary of recent cases that have been referred to the independent adjudication process available under the Consumer Code for Home Builders scheme. The list will be added to as cases are decided upon by the Adjudicator.

Adjudication Case 1

Complaint

A complaint regarding the non-repayment of a reservation fee. The purchaser complained that:

- the builder had failed to provide sufficient information prior to signing the reservation agreement (concerning certain restrictions over the property). Consequently the purchaser cancelled the reservation agreement;
- the builder did not return the reservation fee and took no steps to resolve the dispute that ensued.

In the adjudication the purchaser asked for:

- An explanation from the builder;
- Compensation (£3,300) plus £250 for inconvenience.

Defence

The builder's response was that

- sufficient information had been provided and that they had incurred costs as a result of the cancellation;
- certain of the issues fell outside of the adjudication scheme and were not dealt with.

Finding

On the basis of the submissions the Adjudicator found that at the time the application was made the builder had:

- failed to return the reservation fee;
- not cooperated in resolving the dispute; and
- not provided an explanation for their failure to return the reservation fee (less any deductions) or their failure to resolve the dispute.

Decision

The builder was directed to:

- provide the purchaser with an explanation as to why the reservation fee was not reimbursed less any deductions, at the first opportunity;
- provide the homebuyer with a breakdown of all deductions to be made from the reservation fee;
- refund the reservation fee to the purchaser less the stipulated deductions;
- pay the homebuyer the sum of £400 (as a contribution to legal costs incurred in the attempted recovery of the reservation fee); and
- pay the purchaser £250 for inconvenience.

Adjudication Case 2

Complaint

A complaint regarding the purchase price of a property. The purchaser complained:

- that they were given misleading information about the cost of certain "extras" both prior to and during the course of the purchase of the property;
- that it was represented to them by the builder that the cost of the extras they selected would be deducted from the purchase price in the same way that a discount had been.

The purchaser asked for repayment of the amount of £4,700 (the agreed allowance for extras) and £250 for inconvenience.

Defence

The builder's defence was that:

- no misleading information was given at any time;
- both the reservation agreement and the contract stated that an allowance for extras would be included within the purchase price, not deducted from it;
- the completion statement showed that the purchasers were charged a sum of £800 in respect of the value of extras over and above the allowance.

Finding

On the basis of the submissions the Adjudicator found that:

- the wording of the contract made it clear that the allowance for extras would be included in the purchase price, not deducted from it;

Decision

The purchaser's claim did not succeed.

Adjudication Case 3

Complaint

A complaint regarding the measurements and specification of a property together with local residents' antisocial behaviour. The purchaser complained that

- there was a discrepancy between the measurement of the property and a show room (which they were told by the builder would be the same size);
- the fencing around the property had not been built to specification (in that it was not sufficiently durable);
- that there has been antisocial behaviour in the neighbourhood since the purchaser had moved in.

The purchaser asked for:

- a payment of £10,000 plus £250 for inconvenience; and
- practical action to be taken in respect of the anti-social behaviour (in the form of extra protective measures).

Defence

The builder's defence was that:

- the property had been built in accordance with the plans and specifications provided to, and approved by the purchaser. Also, that the fencing was in accordance with the planning approval.

- so far as the antisocial behaviour was concerned, the builder asserted that they were not liable for the activities of others.

Finding

On the submissions the Adjudicator found that:

- the Consumer Code for Home Builders does not cover antisocial behaviour;
- He was not satisfied that, before exchange of contracts, the purchaser had recorded the statements that he relied upon in the submission (those relating to the measurement of the property). Therefore no finding on that issue could be made; and
- the purchaser had signed a reservation checklist that provided details of the areas, layouts and facilities concerning the property and therefore had been provided with sufficient information to enable him to make a suitably informed purchasing decision.

Decision

The purchaser's claim did not succeed.

Adjudication Case 4

Complaint

A complaint regarding the provision of insufficient pre-purchase information.

- the purchaser complained that prior to entering into the contract to buy the property he asked the builder whether any affordable housing would be built on the site, and its whereabouts, because he did not wish to live close to such homes;
- he purchased the property on the basis of the information provided but after moving in discovered that some affordable homes were to be built in close proximity to his own;
- he claimed that had he been given sufficient information he would not have bought the property.

Defence

The builder's defence was that:

- the information was made available;
- there was no record of the purchaser's enquiry;
- there was no evidence that the purchaser relied on any representation when deciding whether to buy the property; and
- no decision on the mix of homes was made until some months after the sale to the purchaser.

Finding

On the basis of the submissions the Adjudicator found that:

- the purchaser was provided with a site plan and layout showing the location of the number of affordable homes. While that information was not replicated in the brochure the pre-purchase information was both correct and sufficient to enable the purchaser to make a suitably informed decision;
- there was nothing to suggest that the purchaser had been given any incorrect information, or that the purchaser had asked to be kept informed about changes to the location of the affordable homes.

Decision

The purchaser's claim did not succeed.

Adjudication Case 5

Complaint

A complaint regarding the non-repayment of a reservation fee.

- the home buyer initially agreed to purchase the home, completed a reservation form and paid a fee of £5,000 for the property to be reserved and taken off the market;
- they subsequently discovered that they would have to downsize too much and that the lack of a garage at the new property was a problem;
- they decided to withdraw from the purchase and advised the builder. However, despite asking for a refund of the reservation fee it was refused.

Defence

The builder's case was that it was made clear, both by their sales representative and on the reservation form, that the fee was non-refundable.

Findings

On the basis of the submissions the Adjudicator found that the builder was in breach of the specific requirements of the Consumer Code.

Decision

The purchaser's claim succeeded and that the reservation fee was refundable in full.

Adjudication Case 6

Complaint

A complaint regarding the non repayment of reservation fee.

- the homebuyer's case was that when the reservation agreement expired, the builder failed to reimburse the reservation fee of £10,000.
- the homebuyer claimed a refund of the fee and £250 for inconvenience along with the IDRS fee of £120.

Defence

The home builder's response was that the buyer was aware, "from a very early stage" that the fee was non-refundable.

Findings

On the basis of the submissions the Adjudicator found that the builder was in breach of the specific requirements of the Consumer Code.

Decision

The purchaser's claim succeeded and that the reservation fee was refundable in full together with reimbursement of the Adjudication case fee and £250 for inconvenience.

Adjudication Case 7

Complaint

A complaint that the layout of the property (a top floor flat) was negligently, or fraudulently, misrepresented.

- the home buyer claimed that when purchase enquiries were made, representations regarding the layout of the property were made. In particular the salesperson advised that the property benefitted from a large storage cupboard, shown as empty floor space on the plans, and in the

brochure on the builder's website. After legal completion and gaining access, he discovered that the storage space contained a water tank and cylinder, occupying 80% of the space;

- the home buyer asserted that he was induced to purchase the property on the basis of a negligent or fraudulent misrepresentation and would not have made the purchase but for those misrepresentations.

At adjudication, the home buyer claimed:

- £2,750 for diminution in value (due to the reduction of storage space);
- £250 costs of instructing a chartered surveyor to assess the diminution in value;
- £800 for alternative accommodation and additional travel costs; and
- £250 for inconvenience.

Defence

The builder denied making negligent or fraudulent misrepresentations stating that it had fulfilled its obligations under the Code by taking the home buyer through the reservation checklist, including the services layout plan (the last point being denied by the home buyer).

Finding

The adjudicator found that the claim succeeded in part. The builder had failed to provide sufficient information to enable a suitably informed purchase decision to be made.

Decision

The homebuyer was awarded £2,750 for diminution in value, his surveyor's costs and the Adjudication case fee. The other amounts were not awarded due to insufficient evidence.

Adjudication Case 8

Complaint

A complaint regarding breach of the reservation agreement.

- The home buyers signed a reservation agreement and paid a fee.
- While agreement was still in force the builder sold the property to another purchaser for a higher amount.

At adjudication, the home buyer claimed:

- £15,000 for additional costs incurred by the buyer,
- £250 for inconvenience.

Defence

The builder admitted that they should have waited until the expiry of the reservation agreement. However, they stated that a precondition of the sale was that a mortgage offer had to be in place. While an offer had been made it was revoked by the lender, accordingly the builder would not have proceeded with the sale, even if they had waited until the end of the reservation period. On that basis, the believed the buyer had not suffered any loss.

While accepting that the mortgage had been turned down, the home buyer asserted that it was speculation to suggest that they would not have obtained another offer by the end of the period covered by the reservation agreement.

Finding

The adjudicator found that the claim succeeded in part.

- the builder admitted a breach of the Code in relation to selling the property while covered by the first reservation agreement;

- there had been some other breaches of the code (such as, a failure to provide pre-purchase information, failure to inform the buyer how their questions would be dealt with, and a failure to provide a copy of the reservation agreement).
- the claim for £15,000 was too "remote" and could not be recovered;
- the buyer was awarded £55 for postage costs, £250 for inconvenience and reimbursement of the IDRS case fee of £120.

Decision

The purchaser's claim succeeded in part.

Adjudication Case 9

Complaint

A complaint that incentives available to the home buyer were negligently misrepresented on the home builder's website.

- the home buyer agreed to buy a property at the full purchase price;
- they stated that when they first set out their requirements the builder advised that properties under the Home Buy scheme had already been reserved but that it would be possible to switch the allocation to a more expensive property;
- their contention was that from the representations on the builder's website, they had understood that they could benefit from the Homebuy Direct Scheme and an offer to have their stamp duty paid. In relation to the Code, the claim was that the sales and advertising material was not clear and truthful and that as a result the homebuyer had incurred additional expense;
- the amount claimed was for stamp duty of £8,000 and £250 for inconvenience.

Defence

The builder denied the claims stating that the stamp duty was never available as an incentive alongside the Homebuy Direct Scheme and that the terms conditions of their offers were properly and correctly stated on their website.

Finding

The adjudicator decided that the home buyer's claim failed. They were informed prior to reservation that the stamp duty incentive was not available; accordingly it was open to them to withdraw or to seek advice from their solicitor.

Decision

The purchaser's claim did not succeed.

Adjudication Case 10

Complaint

A complaint that the homebuyer was deliberately misled into attempting to purchase a property such that a reservation fee of £1,000 was paid, along with professional fees £1,200.

- the homebuyer asserted that the builder misled him in relation to their knowledge of advanced plans for a major mixed-use development in a field adjacent to the property;
- direct questions were put to the builder but they claimed to have no knowledge of the development plans;
- subsequently it was discovered that the builder were fully aware of the plans and could have given the purchaser the information he requested;
- the homebuyer withdrew from the purchase and then negotiated the purchase of a different property on the site, in effect transferring the reservation fee to the second property;

- a dispute arose over the valuation of the second home and the buyer subsequently withdrew from the purchase;
- despite requests for a return of the reservation fee it was not reimbursed.

Defence

- the builder denied any contravention of the Code;
- when the buyer withdrew from the first sale the fee was withheld under the terms of the reservation agreement. However, as a gesture of goodwill they allowed it to be applied to the second property.

Finding

The adjudicator found that the claim succeeded in part.

- the claim of having been misled failed for various reasons. However, the reservation fee was repayable;
- the reservation agreement was contrary to express provisions in the Code and because the builder had not specified what expense they had incurred, no deduction was possible;
- the claim for professional fees and the payment for inconvenience failed.

Decision

The reservation fee was refundable in full.

Adjudication Case 11

Complaint

A complaint that the builder altered the specification of the property without notifying the home buyer.

- the home buyer claimed that he bought the property based on the plans and specification provided in the brochure and as per the show home;
- subsequently the buyer found the specification had been changed without notification.

Defence

- the builder asserted that they had built the property in accordance with the plans and specifications as approved by the local authority which the buyer was deemed to have inspected;
- the builder complied with the terms of contract and any changes that were made were reasonable, given that the specification stated that it was for guidance only;
- the builder had also released the buyer from the contract and returned half the deposit despite not being obliged to do so.

Finding

The adjudicator found that any alleged breach of the Code had not been proven. The buyer had entered into the contract accepting that he had inspected the plans and specifications as approved by the local authority and no evidence was provided to support the claim that the builder had failed to comply with that specification.

Decision

The purchaser's claim did not succeed.

Adjudication Case 12

Complaint

The home buyer complained that the builder misrepresented the property and was in breach of the Code.

- the homebuyer claimed that the price for the home (mid terrace of three) was inconsistent with the adjacent properties (semi-detached) and that they had paid £18,000 too much;
- the builder failed to provide a copy of the Code until they moved into the home;
- they were not given accurate information on the property, having been walked around a semi-detached home, and then shown a brochure with a semi-detached house, yet the property turned out to be mid-terrace;
- the builder failed to advise the homeowner to instruct a solicitor resulting in them being manipulated into buying an inaccurately described house and paying more for a lesser home;
- the builder had failed to advise of the right to terminate, despite the buyer expressing their concerns.

Defence

The builders advised that:

- the transaction was separate from other sales on the site and that the prices paid by other buyers were not relevant;
- the buyer was provided with a brochure and plan showing the layout, appearance and plot position;
- the site plan and the brochure correctly showed the property as mid-terrace and, when viewed by the home buyer, it was built to eaves height so they ought to have understood that it was a mid-terrace property;
- it was asserted that the problems with the property were not raised until a year after occupation and that the Code does not cover loss in value.

Finding

The adjudicator:

- found that the site plan clearly showed the property as mid-terrace and there was no breach of the Code;
- was satisfied that the homebuyer had been advised to instruct solicitors (nominated by the builder) and had done so;
- was further satisfied that the termination rights were also clearly stated in the reservation form.

On those findings and because the Code does not cover the price at which a property is sold, no breach of the Code had been proven.

Decision

The purchaser's claim did not succeed.

Adjudication Case 13

Complaint

The home buyer complained that:

- the builder had performed several actual and technical breaches of the Consumer Code;
- the home buyer was misled about future development adjacent to their property, being told that the land was not going to be developed and that it would be turned into a play area;

- the original development has not been completed, including cycle paths and emergency vehicle access and the play area;
- the builder did not provide a copy of the Consumer Code;
- the Reservation Agreement stated that the Reservation fee was non-refundable;
- the contract of sale made no provision for termination rights;
- the builder reneged on an agreement to buy the property back.

As a result, the home buyer had had a valuation of their home which showed a substantial reduction. They claimed £15,000 in lost value and £250 compensation.

Defence

The builders advised that:

- all information provided to the home buyer was accurate and deny completely any suggestion that they had told the home buyer that the adjacent land would not be built upon. They had evidence that planning had been applied for the previous year;
- they were able to demonstrate that a copy of the code was provided at Reservation;
- the contract of sale clearly explained the termination rights;
- whilst the Reservation Agreement itself did state that fees would not be refundable, a check list signed by the home buyer indicated that the Reservation Fee would be returned and scheduled the possible deductions.

Finding

The adjudicator found that the builder was able to provide sufficient documentary evidence to show that the Consumer Code had been complied with. Loss of value of a home is not covered by the Consumer Code.

Decision

The purchaser's claim did not succeed.

Adjudication Case 14

Complaint

The home buyer complained that:

- the builder following the signing of a contract of sale, had offered to return all monies and cancel the transaction. It was alleged that the builder called the integrity of the buyer into question and allegedly engaged in criminal activity including forgery of legal documents;
- the builder had later demanded that the home buyer sign new documentation to change the details of the sale transaction and threatened legal action if this was not done;
- the buyer agreed under duress to change the transaction details, but found the outcome to be unsatisfactory.

As a result of the above, the buyer demanded £15,000 in consequential loss of value, an apology, an explanation and £250 compensation.

Defence

The builders advised that:

- these issues arose out of a genuine mistake on their part in that the plan with the contract of sale showed the wrong boundary and did not match the plans shown to the purchaser at Reservation. The error was clear in that the erroneous land was most of the next door neighbour's plot;

- they had no choice but to change the relevant documentation, which was done prior to contract completion. In compensation they paid a substantial sum and undertook some extra works to the property.

Finding

The adjudicator's view in this complex case was that most of the issues (matters relating to land and its value) fell outside the Consumer Code. He also refused to be drawn into the debate about suggestions of alleged criminal activity in the conveyancing of the home.

He could find no evidence that the information provided to the buyer were inaccurate or unreliable. The error on the plans was amended and compensation paid.

Decision

The home buyer's claim did not succeed.

Adjudication Case 16

Complaint

The home buyer complained:

- that the property she bought was overpriced when compared to other similar properties on the development;
- the builder has broken several sections of the code, including:
 - lack of accurate information;
 - misleading the homebuyer into thinking she was buying a semi-detached property when in fact it was terraced;
 - not providing a copy of the Consumer Code;
 - not advising of her rights to terminate the contract.

As a result of the above, the home buyer required pay a sum of £15,000, provide an apology and explanation, pay compensation for loss of value to the tune of £18,000, and pay £250 compensation.

Defence

The builders advised that:

- each property is sold independently and what others pay for their properties is not relevant;
- the Consumer Code was on display in the sales office and a copy was given the homebuyer on completion of the reservation process;
- the sales documentation showed the property as being mid terraced and the home buyer was taken to view her home when construction was at eaves level – clearly demonstrating its relationship as a mid terraced property;
- the purchase price was clear at the time of reservation and included a discount. The Reservation document contained reference to the rights to terminate the contract under the Code;
- the home buyer did not lodge a claim until after a year of occupation.

Finding

The adjudicator's view in this case was that the builder had provided sufficient information for the home buyer to make a considered decision to purchase and that there was nothing misleading or in breach of the Consumer Code. In addition, the Adjudicator considered that the builder had acted full in accordance with the other Code's requirements in all respects.

Decision

The home buyer's claim did not succeed.

Adjudication Case 17

Complaint

The home buyer complained:

- after they had paid a Reservation Fee, they had had to cancel the reservation agreement. However, the builder only paid them back 50% of the fee stating that it was a fixed deduction made clear in the Reservation Form;
- the home buyer states that they did not see or have a copy of the Reservation form;
- the home buyer considers the builder to be in breach of the Consumer Code.

As a result of the above, the home buyer requires full reimbursement of the Reservation fee plus £250 compensation.

Defence

The builders advised that:

- the home buyer had previously cancelled a reservation on the same development and that they had been put to considerable expense drawing up two sets of legal documents;
- as a consequence they were perfectly entitled to make a deduction to cover their expenses.

Finding

The adjudicator's view in this case was that.

- the copy of the Reservation form provided as part of the evidence contained the home buyer's signature – they had clearly seen a copy and were aware of what it contained;
- the builder had made it clear in the reservation form that a deduction would be made;
- the deduction to cover costs was legitimate.

Decision

The home buyer's claim did not succeed.

Adjudication Case 18

Complaint

The home buyer complained that:

- the Home Builders failed to provide her with enough pre-purchase information and failed to adhere to various parts of the Code – specifically she was led to believe that her property was at the end of cul de sac and nothing would be built on the adjacent land;
- it turns out that the builder fully intended to develop this land as the next phase of development;
- she was not told of her rights under the code nor given a copy;
- the Reservation form states that the reservation fee was non-refundable.

As a result of the above, the home buyer requested payment of £15,000 to cover diminution of value of the home and £250 compensation.

Defence

The builders advised that:

- they deny any such assertion that the land was not going to be built on – this was always their plan. Planning permission had been sought prior to the purchase and that this together with information about play areas, cycleways and highways work was in the public domain;
- they made an offer to purchase the home back from the home buyer, but this was not taken up;
- they did provide a copy of the code at reservation stage as part of the routine documentation;

- they acknowledge that the reservation form was incorrect, but as part of the reservation process, they have a document that clearly states the builder's policy when refunding reservation fees.

Finding

The adjudicator's view in this case was that the builder had provided sufficient information to enable the home buyer to make a reasoned and informed decision. The home buyer was unable to provide any evidence that the home builder had breached any Code requirement.

Decision

The home buyer's claim did not succeed.

Adjudication Case 19

Complaint

The home buyer complained that he purchased the property on the basis of representation made by the builder that:

- a second gate would be installed to the side garden;
- that the single track lane at the front of the property would be closed to traffic;
- that after purchase, these actions were not taken and that as such, he was misled.

As a result of the above, requires payment of £15,000, provide an apology, to close the road or fence the front garden, and pay £250 in compensation.

Defence

The builders advised that:

- there was no such agreement and that there is no evidence of such;
- no representation was made when contract documents were exchanged, no oral statements were referred to by the home buyer or their solicitor;
- there is no reference to gates or fences in any of the literature exchanged pre-sale, at Reservation or at contract stage.

Finding

The adjudicator's view in this case was that the home buyer was unable to provide any evidence to support his case and that from the evidence provided by the builder, the builder had complied with the Code requirements.

Decision

The home buyer's claim did not succeed.

Adjudication Case 20

Complaint

The home buyer complained that the builder had informed verbally and in writing that the home being purchased was in close proximity to a good school and that he relied on this in agreeing to purchase the property. It subsequently proved that the property was not in the school's catchment area.

As a result of the above, the home buyer requested a sum of £15,000, compensation, an apology and an explanation, together with removal of all "misleading" references in sales brochures.

Defence

The builders advised that:

- the school was a short walk away, but they were not responsible for the local authority admission policy and they had not suggested that the property was in the catchment area – only that there were a number of schools nearby and they had provided the home buyer with the list;
- the purchaser did not as part of the purchasing process refer to any oral statements upon which he was relying.

Finding

The adjudicator's view in this case was that as there was no substantive evidence that the home buyer had been given any information as regards the catchment area of the school, he felt that the builder's sales literature was clear and truthful.

Decision

The home buyer's complaint did not succeed.

Adjudication Case 21**Complaint**

The home buyer complained he had suffered financial loss due to the completion date being moved back.

As a result of the above, the home buyer required reimbursement of the Reservation fee and £250 compensation.

Defence

The builders advised that:

- they did not give a completion date as asserted by the home buyer;
- they did hope to complete in late November, early December, but had not made such a promise to the Home buyer; however, their agents did keep the home buyer informed at all times;
- legal completion was to have taken place in the following January, however the home buyer withdrew from the sale mid December;
- they felt entitled to keep the Reservation fee to compensate for their expenditure.

Finding

The adjudicator's view in this case was that whilst the builder was partly at fault, the home buyer's case would only succeed in part. There was no substantive evidence that a formal legal completion date had been issued. The Adjudicator felt there was sufficient evidence to show that the home buyer had been kept informed.

Decision

In that the Reservation document clearly showed that deductions would be made if cancelled, the home buyer shall be due the balance of £100, plus £50 in compensation for the builder not quite following his procedures.

Adjudication Case 22**Complaint**

The Home buyer complained that their builder did not return the Reservation fee when they decided that they were unable to proceed with the purchase.

As a result of the above, they claimed back the Reservation fee in full, an explanation and an apology, and pay £250 in compensation.

Defence

The builders did not submit any defence.

Finding

The adjudicator's view in this case was that as the home buyer was not able to submit a copy of the Reservation form to prove a fee was paid, nor by any other means prove that a payment was made to the builder, he was unable to find in their favour.

Decision

The home buyer's claim did not succeed.

Adjudication Case 23

Complaint

The Home buyer complained that the builder was in breach of several sections of the code requirements, including:

- an inaccurate completion date;
- no copy of the Code was given to him;
- poor levels of customer service;
- misleading sales and advertising literature;
- incorrect kitchen specification;
- no contact details for the builder were given and no after sales service was provided;

As a result of the above, the home buyer requested £7100 for upgrading the kitchen to the "correct" specification, £1130 for replacing the floor tiles, £750 for rectification to the wardrobes, £45 for the front door, £1000 for loss of earnings and costs, and £250 in compensation.

Defence

The builders advised that:

- they apologise for not passing across a copy of the code;
- they thought they had provided good levels of service and had responded to every issue that was raised;
- they did not get any instructions as regards changing the kitchen;
- they accept that the floor tiles in certain areas were not as agreed and were happy to refund the costs associated with that and with adjusting the front door and with adjusting the wardrobes;
- there was an error on the lease – but they had apologised as soon as this was raised by the home buyers solicitor and it was changed immediately;
- full details of the after sales service and contact details were passed to the home buyer, but apologised if details of the dispute services available were not included

Finding

The adjudicator's view in this case was that that the home buyer's claim succeed in part. Given the evidence submitted by both parties, he felt that the home builder did not fully keep the home buyer up to date with the construction or sales process. However, he felt that the home builder had installed the kitchen correctly, and that he had not been properly made aware of any alterations.

Overall, the adjudicator considered that the builder was in breach of the sections of the code that related to accurate sales information, the reservation process, and dealing with disputes.

Decision

The adjudicator directed the builder to make a written apology to the home buyer and to make all necessary changes to their process to ensure that they were compliant with the Consumer Code, including developing a complaints policy, provision of information about dispute resolution processes.

He directed the builder replace the incorrect floor tiles and to pay £250 compensation. However as the home buyer had not substantiated the other losses, he was unable to make a determination.

Adjudication Case 24

Complaint

The home buyer complained that:

- whilst it was agreed that laminate flooring be provided “throughout” the property, it was missing from the staircase;
- Kingspan loft insulation was not installed as agreed;
- an extra TV socket was not installed as agreed;
- the sound and water pipe insulation was unsatisfactory and water pipes should be metal.

As a result of the above, the home buyer claims a sum of £3504, provide an apology, take such practical steps as are necessary to resolve the problems and pay £250 in compensation.

Defence

The builders advised that:

- they would never install laminate flooring to a staircase as in their opinion it would be unsafe. The order form stated laminate in all rooms, but a staircase is not considered a ‘room’; their quote did not include for the staircase. They offered to carpet the staircase at no cost;
- full loft insulation was provided, although it was not specifically Kingspan – there was no agreement to change the specification;
- whilst an extra TV socket was discussed, nothing was agreed;
- there is no evidence to suggest that the insulation was incorrect and their standard specification is for plastic plumbing.

Finding

The adjudicator’s view in this case was that there was an agreement to provide laminate flooring “throughout” the home and whilst this would not include wet areas, it would be interpreted as meaning the staircase. The request for Kingspan was made because the child was extremely allergic to dust; Kingspan is a sealed insulation, unlike the standard specification used by the builder. There was evidence submitted to show that the builder had actually indicated that they would install Kingspan at no extra cost; however this was not done on site.

Whilst there was evidence to show that an extra TV socket was discussed and was listed on the extra’s, the builder’s copy showed it to be crossed out and the sum of money paid was for the balance of the items without the TV socket.

Decision

The builder was required to pay the cost of laminate flooring to the staircase at £1620 and to remove the existing insulation and replace with Kingspan at their expense. The builder was also required to make a written apology and pay £250 compensation.

Adjudication Case 25

Complaint

The home buyer complained that:

- the carport provided with the home was not fit for purpose; the main issue being that it was difficult to enter and exit when cars were parked on the opposite side of the estate road;
- the builder has not constructed roads in accordance with the local authority's Manual for Streets.

As a result of the above, the home owner wants some fencing removed and part of the garden paving to enable her to parallel park on the property. This had already been done for another plot on the estate and therefore a precedent has been set.

Defence

The builders advised that:

- the home buyer was able to fully view the plot, home and carport before purchasing;
- the property and estate roads have been built fully in accordance with the design standards set down by the local authority and in accordance with the approved plans;
- they have provided parking space for two cars and it is possible to exit and enter the property;
- they are not liable for irresponsible parking by other residents on the estate;
- they accept that the driveway was constructed narrower than planned and will undertake remedial work to resolve this.

Finding

The adjudicator's view in this case was that the home buyer was unable to demonstrate their builder's specific breach of any parts of the Consumer Code requirements. It was the adjudicator's view that the specific technical issues do not fall within the scope of his jurisdiction.

Decision

The home buyer's claim did not succeed.

Adjudication Case 26

Complaint

The Home buyer complained that

- their builder had been using his garage for the site sales office and have not surrendered it to him. He was aware that this was the arrangement, but had been told that it would be released to him at the end of July 2012;
- it was eventually released at the end of January 2013. As a consequence he has suffered loss due to having to store his goods elsewhere;
- a number of correspondences were ignored.

As a result of the above, the home buyer requested £580 being the storage costs to date, plus any future costs until the garage is surrendered, and £180 in compensation.

Defence

The builders advised that:

- the home buyer was made aware that there would be a delay for release of the garage;
- there was no fixed date for this to happen.

Finding

The adjudicator's view in this case was that the home buyer understood that there would be a delay until he got his garage, but the builder's actions were unreasonable – the adjudicator felt that the builder had not given the purchaser sufficient information at the time of the Reservation and was therefore in breach of Code clause 2.1. He also considers the builder was in breach of clause 3.1 in that the builder had failed to ensure that clear terms were set down in respect of the agreement to use the garage as a sales office.

Decision

The adjudicator ordered the builder to pay £600 towards the storage costs and £180 in compensation.