NATIONAL TRADING STANDARDS

Estate and Letting Agency Team

Protecting Consumers
Safeguarding Businesses

CONSULTATION RESPONSE SEPTEMBER 2021:

BEIS: REFORMING COMPETITION AND CONSUMER POLICY

Drafted by [redacted], on behalf of National Trading Standards Estate & Letting Agency Team (NTSELAT)

Our response to the consultation is in line with our role as a Regulator under The Estate Agents Act 1979 and Lead Enforcement Authority under The Tenant Fees Act 2019. NTSELAT approves and monitors UK redress schemes under The Estate Agents Act 1979 and is the Competent Authority under Schedule 1, Part 2 of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, for the Estate Agents Act 1979. We regularly meet with both redress schemes/ADR entities as part of the approval and monitoring process. We also obtain statistics on monthly basis. ADR is mandatory for the estate agency sector.

Members of our Team are qualified trading standards officers, a qualified environmental health officer, qualified licensing officer and a former police officer. We also have two qualified solicitors. We have knowledge of multiple pieces of trading standards legislation and environmental health and housing legislation, with a focus on protecting the interests of consumers and safeguarding honest businesses.

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

Answering this part of the consultation from a Regulator perspective as well as a lead enforcement authority, it is our experience that vulnerable consumers are very often reluctant to take complaints further because of the mental and financial distress already suffered. By the time consumers are advised about ADR, most will want to simply give up because they are already worn down by their experiences. You must also consider the nature of their complaint when determining how to help vulnerable consumers. If an agent has threatened them, or acted aggressively, some consumers may not wish to progress their complaint any further; fear of retaliatory action such as eviction, for example, or higher rents, or not having their offers passed on. Some agents may well have an unfair contract term in their tenancy agreement/contracts that seek to prevent a consumer from complaining. We have also seen instances of landlords imposing a charge on tenants upon making a complaint. Vulnerability includes consumers with language barriers (English is not their first language), low education, poor mental health and anxiety, as well as being vulnerable if they are first time buyer or tenant. Anyone can become a vulnerable consumer at any point in their lives. Buying a home is listed in the top 3 reasons for stress, below bereavement and divorce. It is one of the only sectors where people can legitimately lose substantial amounts of money – especially during the house sale process where people can withdraw at any stage before signing contracts. Because people are looking for a place to call home, moving home is very emotive. Buyers and tenants aren't able to choose an agent when buying or renting a property, the agent that they use is determined by the house that they wish to live in, which is being sold/offered for rent by that particular agent. Buyers and tenants are also unable to choose the ADR/redress provider they use as this is decided by the agent they are dealing with.

For estate agents in UK, and letting and property management agents in England, there is already a requirement for the agents to make it clear that they are a member of one of the 2 approved redress schemes, who are also approved for ADR. In Wales, it is a licence condition to be a member of a redress scheme. Where agents are not disclosing this information, local trading standards can take enforcement action, be that via advisory letters, warning letters or more formal sanctions. Improved signposting by Citizens Advice Consumer Service would help consumers know about ADR. Unfortunately, not all operators mention redress schemes/ADR schemes and we have seen many examples whereby the consumers have been signposted to the Law Society. If consumers are not advised correctly, or are signposted too many times, they will not access ADR/Redress. Some consumers are

very mistrustful of ADR schemes – they don't feel that their complaint will be heard fairly because the agent is paying the scheme for membership.

Both redress schemes/ADR schemes have consumer facing areas on their websites. Our own website signposts consumers to the redress schemes. There is a lot of guidance available for consumers. It would be advantageous to ensure that information regarding complaints procedures and ADR was more prominent in contracts and on websites.

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

NTSELAT receives statistics from both approved ADR entities on a monthly basis and we regularly meet with both schemes to discuss complaints, including time taken. We monitor the schemes to ensure that they continue to meet their approval criteria.

The use of email and other technology has become the main way of communicating between agents and consumers, certainly in recent times with the covid pandemic. A lot of records are held digitally, with the majority of agents using data software to record everything from initial enquiries, through to viewings and completion. Such notes record telephone discussions, meeting appointments with clients as well as meetings/updates between conveyancers, solicitors etc. It is far easier to access digital records.

Raising a complaint with an ADR scheme, or indeed raising a complaint generally, is often daunting for many consumers. If complaints were resolved within a timely manner, it would alleviate the anxiety felt by consumers, and indeed by agents too. The current ADR schemes for property matters try to ensure that complaints are dealt with quickly. What would help matters enormously is the reduction in the current time of 8 weeks that agents have to respond to consumers in the first instance, before approaching an ADR scheme. Given this timescale, sometimes complaints can take up to 6 months or more to resolve. We agree with the findings of the MoneySaving Expert's 'Sharper teeth' report and the report from the APPG. We therefore agree there is a good case for halving the upper threshold of 8 weeks in markets where ADR is mandatory, however, we also recognise that property transactions can be extremely complex and costly. Poor communication between the agent and the consumer often adds to the distress and anxiety. If an agent realises that they are going to require further time to investigate the matter, this should be communicated as early as possible to the consumer. Complaints must be taken seriously and be addressed as quickly as possible.

Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

NTSELAT meets regularly with the schemes that it approves in the regulated market of estate agency and obtains monthly statistics to view how each scheme is performing. Having regular data from ADR schemes and conducting review meetings will help highlight any issues that the ADR scheme is facing to try to help alleviate them. Audits should be conducted on an annual basis, and where schemes do not meet the required standards/criteria, potentially having a financial penalty system, if they continue to fail to meet their requirements. Dip sampling cases should be mandatory for all audits. Competent Authorities could also regularly survey participants who used ADR, via the ADR schemes. Having knowledge of consumer law would also help the ADR scheme. Staff training should be mandatory to keep up with updates in legislation and be conducted on an annual basis. We agree with the suggestion of a fit and proper person test for key personnel, which will help increase consumer confidence that their cases will be dealt with in line with the 4 key principles of neutrality, efficiency, accessibility and transparency.

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

Schedule 6 of the Regulations state what information is to be given to the relevant competent authority every 2 years. It is our opinion that this should be on a yearly basis. Audits should be conducted annually – training records should be checked as well as dip sampling cases. As already mentioned, we, as a competent authority, receive statistics on a monthly basis for the average time taken to resolve disputes, the number of cases heard each month and the average amount of awards. Having such data being made mandatory would help highlight areas for concern and would increase consumer confidence that the ADR schemes are being monitored closely. Yearly training of staff to be made mandatory to ensure competency and effectiveness. Any cap on the maximum amount of awards made by the ADR providers should be set and reviewed regularly – with input from the regulator, consumers and trade bodies.

Our thoughts are that referrals to the Regulator and local trading standards services should be made mandatory for ADR/redress schemes, much like the current operation of referrals to trading standards by The Citizens Advice Consumer Service. Having such a system in place will help increase intelligence to trading standards (who operate in an intelligence led way) and it can help interventions happen earlier, for example, through business advice or in some cases, prosecutions for serious breaches of consumer protection

legislation. ADR schemes may often hear cases which contain breaches of criminal legislation.

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

It is our opinion that ADR should become mandatory for these sectors. The complaints received by CACS and local trading standards services across the UK clearly show that having mandatory ADR/redress for these sectors would help raise standards in the sectors and increase consumer confidence. If businesses in these sectors were to pay on a 'per case' basis that would certainly encourage the businesses to operate fairly and treat complaints seriously, however, these sectors are consumer heavy, that is, the level of transactions in these sectors are some of the highest in terms of frequency and the amount of financial detriment can be high. Legislation covering the mandatory requirement to be a member of a redress scheme if engaging in residential estate agency work in UK and for letting and property management companies in England requires such agents to pay an annual membership fee to one of the 2 approved redress schemes. Enforcement officers can issue a penalty notice to agents who fail to renew their membership (£1,000 for estate agency work and up to £5,000 for lettings and property management work). Redress schemes currently require all branches of estate agents, letting agents and property management companies operating in residential property matters, to be signed up for redress. Both local trading standards and NTSELAT are able to enforce this legal requirement, however, the legal requirement is under alternative legislation, not the ADR Regulations. There could potentially a breach of The Consumer Protection from Unfair Trading Regulations 2008, that of a Regulation 3 offence, a professional diligence breach, if using the Competent Authority Regulations.

Understanding consumer law is going to be essential for these ADR schemes and referrals regarding 'repeat offenders' should be brought to the attention of enforcement authorities.

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

We believe that setting a limit as to what claims could be in scope would significantly impact consumers. Anyone who has suffered detriment, be that financial, or mental, should be entitled to access ADR. The Regulations

already contain a list of issues whereby it cannot accept a complaint and this should be the case for all ADR entities.

Consumers are reportedly confused by ADR and we believe that having some ADR entities being able to charge a nominal fee, and others not charging a fee, only further increases confusion. The idea of a nominal fee is unlikely to be popular, despite the suggestion that it could be refunded back to the consumer if their complaint was upheld. We agree that it would deter frivolous cases, however, as the consultation has pointed out, this is a different approach taken to the consumers in other regulated markets, including property.

Q71. How can government best encourage businesses to comply with these changes?

Businesses need to see value for money and they need to be able to fully understand the benefits to their business when dealing with complaints and increasing consumer confidence when dealing with them. Businesses have endured a lot over the last 18 months and they need to see changes as a positive – as a team, NTSELAT encourages businesses to see that legislation is not a 'hindrance' but is a foundation upon which to build their business for the better. Legislation offers a compliance framework to operate legally and to continue to have happy consumers. Legislation raises standards and aims to create a level playing within the affected sector. If all businesses were working towards the same goal and legislative requirements, it would certainly increase confidence that all businesses were being treated equally and businesses would trust that non-compliance would be acted upon.

Engagement with important stakeholders will be crucial – local trading standards can help enormously with engagement with businesses – advisory visits, mailshots with guidance to businesses as well as Citizens Advice who can let consumers know of the requirement for ADR. Collaborative working and communication would be fundamental to the success of informing and advising both businesses and consumers. Trade Associations will also play an important part, as would The Chartered Trading Standards Institute, not only for TS members of the Institute, but also members who are currently voluntary subscribers to ADR.