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From: [redacted]
Sent: Fri, 1 Oct 2021 12:24:07
To: RCCP Consultation
Cc: [redacted]
Subject: NFB Consultation Response - Reforming Competition and Consumer Policy
Sensitivity: Normal

Dear Sir/Madam,

On behalf of the National Federation of Builders, I would like to submit the following responses to Questions 66 to 71 in the Reforming Competition and Consumer Policy consultation published by BEIS on 20 July 2021. The answers given are specifically in relation to suggestion of possible inclusion of the home improvement as a sector requiring mandatory ADR.

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?

ADR is not currently mandatory in the home improvement sector and therefore it would be a significant and onerous step to introduce the mandatory element of ADR to the sector as well as reducing the time frame to 4 weeks for the dispute to have resolved. While other sectors which currently have mandatory ADR may be much more used to the process, and therefore be able to adapt to a shorter timeframe, it does not appear reasonable or fair to apply this in the first instance at 4 weeks to the home improvement sector.

The NFB also believes that consumers should be encouraged to resolve the matter through firstly the company's own internal processes (so long as these were timely) and then an escalated to a non-ADR redress process where one exists. For example, the NFB offers a complaints process that is highly effective and would result in the member being booted out of membership in the extreme, but fortunately we receive very few complaints per year and most are dealt with swiftly as it is embarrassing to the member for us to have to raise issues with them. It sounds as if the policy is will likely have the effect of negating any redress process that isn't approved by the Competent Authority – which would be a shame if there is little to evidence show that uncertified redress routes were not effective? Especially as processes like ours have no cost to the business nor the consumer.

It would also be interesting to know how this would also interact with TrustMark's provisions for the company's own processes and other well-known but not-necessarily formal ADR redress processes. The time scale should have an element of flexibility within it depending on the contract used (if any), and whether an active redress process is being followed and has been or is soon likely to resolve – rather than a hard deadline of 4 weeks, those process should be given a reasonable but not excessive time to conclude. This is especially relevant as the construction supply chain often involves more than one actor (possibly several subcontractors, and so time can take slightly longer than where a consumer purchases goods or services from one supplier, e.g. the motor industry). As the home improvements sector is not a regulated industry, any introduction of mandatory ADR should complement existing well-known and well-respected redress processes, such as those offered by trade associations (but not limited to) rather than applying a general rule across all industries.

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

Please note the following answer applies to 67 and 68:

The NFB would stress the importance of having a quick and effective method at ejecting hopeless claims to prevent

time-spent mediating or arguing, racking up costs to the business where the consumer has no chance of winning. There must be an effective method to assess and accept or reject a complaint put to an ADR to prevent such issues, especially if the applicant cannot be held liable for costs incurred. If, under this proposed policy, you apply for ADR and your application is hopeless, does the business/respondent still have to pay for that? It would seem rather unfair if so. ADR providers should be competent to assess home improvement works, as matters at stake could impact the health and safety of consumers. If an ADR process resolved a financial dispute but unknowingly (because of a lack of knowledge) left a consumer in an unsafe house, that would be a major failing of the ADR process.

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?

The NFB is not convinced that the policy design as currently proposed should be made mandatory.

We are concerned that the Government's estimation of likely costs per ADR case are considerably undervalued due to the complexities of the construction supply chain and the technical expertise that would need to be employed in order to accurately and properly assess each case – if a visit was required, it would need to be from a person qualified to inspect such works, and it may be the case that it involves different types of work requiring more than one person. This would add considerable cost to the process, making it much more expensive than the suggested figures in the policy consultation paper.

The NFB would urge the Government to ensure that what is and is not included in terms of home improvements is made clear, is equitable and fair. The list provided in the consultation is very specific: 'such as roofing, glazing, plumbing work, or the fitting of flooring, kitchens, or bathrooms', our members are builders, and as such would generally do this work but by employing a subcontractor, so is this list just an example or is the Government really only considering those very specific areas of RMI? If so, it would mean that a consumer could apply for ADR for some parts of work and not others, and also that some subcontractors / trades would be included but others would not.

The NFB would also like to point out that this policy is likely to more adversely affect builders the smaller they are and this should be reflected in the impact assessment. This will be because their business resources will be lower (meaning that dealing with ADR processes will have a larger marginal cost to them) and they are likely to do higher volume smaller works and therefore come into contact with many more customers, increasing their risk of going to ADR at some stage, even if undeservedly so.

In the event it is made mandatory, businesses should be free to choose whether they pay on a per-case basis or subscribe to an ADR service. Both options have merits and there is little case to say that both could not be effective depending on the circumstances of individual businesses. In the event that one option is chosen over the other, the NFB would suggest that due to the volume of work of small builders it could well become very onerous on a pay-per-use basis, especially as it is not clear from the policy whether the cost of the ADR would fall on the business, even if found in their favour earlier on in the process.

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?

Ensuring there is no adverse incentive for consumers to pursue ADR is an essential part of this policy, if it is to be implemented so as not to create a situation where consumers start to use this process as an act of first resort, rather than last resort, knowing that they are either not paying at all, paying a minimal £10-£20 per go and potentially not being liable for the costs involved. It is essential not to create a market which encourages the liberal use of ADRs, at the businesses expense, just because it is worth 'having a go' and there is nothing or little for the consumer to lose. This would become costly, frustrating and time consuming for businesses.

We would advocate for a lower limit on the value of claims, being higher than the cost of the likely ADR, so as not to be used as an incentive to write-off the whole value of the work to the consumer because the risk of spending more on the ADR process than just allowing the consumer not to pay for the works – this cannot be used as leverage not to pay for

completed works.

The NFB strongly recommend that the consumer should be held liable (either partly or in full) for costs where there is a finding in the business' favour.

Q71. How can government best encourage businesses to comply with these changes?
This question appears to be redundant as the proposal in the paper is for mandatory ADR, which indicates a legal requirement.

The National Federation of Builders is one of the UK's leading trade associations representing over 600 members comprising 1300 businesses of builders, contractors and SME housebuilders in England and Wales.

Kind regards,

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