

**Royal Institution of Chartered Surveyors (RICS) response – BEIS consultation on Reforming Competition & Consumer Policy**

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

RICS is fully supportive of the use of ADR as a means of resolving disputes in a way that involves considerably less cost, time and stress for the consumer than pursuing a matter through the courts. It is vital that the consumer is provided with information about ADR but is not overwhelmed or confused by legal/technical jargon and an over-abundance of options. Information for the consumer should include signposting to a credible ADR provider that is independent and able to help the consumer access the most appropriate ADR solution for their particular problem.

**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?**

It seems that a consequence of changing lifestyles and aspirations, which may be partly stimulated by the Covid situation, is that many consumers are “staying put” and investing in home improvements and redesign. We think it is important to recognise that building disputes will increase in numbers and they can be immensely technical and involve significant sums of money for consumers. It follows that consumers will be anxious to know how long the process for dealing with a complaint will last, what it will cost and what they can expect in terms of potential outcomes.

Businesses should be allowed adequate time to investigate and resolve complaints internally, such time required to be based on the relative value and complexity of the issue(s) raised. There should be a set time limit after which any complainant should be offered the opportunity of seeking independent redress through ADR.

An industry standard Complaints Handling Procedure (or perhaps a customer charter) for building and construction businesses could be established, which would include prescribed timescales for handling complaints that take into account the varying complexity of issues that may need to be investigated. A clear and comprehensible industry CHP could include information about the nature and category of complaints that can be covered (and those not covered), expected timescales, the outcomes that can be achieved from the CHP, what the consumer’s responsibilities would be and what the consumer could expect from the process. Responsibilities on the part of the consumer may be set out in a statement about the extent to which the consumer would be expected to cooperate in the CHP.

**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?**

RICS agrees that organisations that offer ADR to consumers should be assessed, approved and routinely reassessed. Our experience to date suggests that the current Competent Authority regime is inconsistent and inefficient.

The initial assessment undertaken to approve RICS as a consumer ADR provider involved a great deal of administration that was ultimately shown to be unnecessary and/or irrelevant. We believe that the assessment procedure undertaken by the Competent Authority can be refined, it should be tailored to take into account the sectorial needs/wants of consumers and businesses, rather than assess ADR providers against a one size fits all model.

Since obtaining approved ADR provider status in 2016, RICS has not seen any proactive follow up by the Competent Authority, even though we have asked for a fresh audit of our consumer ADR service procedures on several occasions. Our overall impression is that the Competent Authorities may not be currently resourced sufficiently to provide continuous oversight of approved ADR providers.

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

RICS believes that ADR should be tailored to meet the needs and priorities of the parties. For example, ADR for the consumer involved in a building dispute should involve the use of a third-party neutral who is knowledgeable and experienced in dealing with construction disputes and will understand technical issues. This will give the builder and the consumer confidence in the ADR procedure and help achieve buy-in to the outcome.

**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?**

Where there is already contractual ADR available, this consultation should not seek to override such arrangements. We understand, however, that many SMEs operating in the building industry do not use standard contracts, such as the JCT forms, which include ADR provisions designed for consumers (E.g. the JCT Building Contract for a Home Owner/Occupier). Builders and consumers should be encouraged to use standard contracts, with consumer ADR provisions.

We believe that where building work is undertaken on behalf of the consumer, the builder should be mandated to adhere to an industry standard Complaints Handling Procedure (or perhaps a customer charter) for building and construction businesses. Where issues cannot be resolved through the builder’s complaints procedure, the builder should offer the consumer the opportunity of seeking independent redress through an ADR service provider which is equipped to provide specialist ADR for building disputes.

We recognise there is already a raft of ADR options available to consumers including arbitration, mediation, adjudication, conciliation and more, and that there are many providers

who offer ADR services, though many do not specialise in building and construction disputes. While we would advise against a one-size-fits-all approach, as such an approach cannot be expected to work for all consumers, we submit that it may be helpful for government to set out a framework for consumers for specialist ADR and ADR providers for construction disputes.

An ADR system for building disputes must be credible, quick and effective, and there needs to be a degree of expertise.

**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?**

RICS believes that there is no need for a lower limit on the value of claims that can be referred to ADR. While we recognise the value of the argument that a lower limit may encourage the consumer to seek to resolve a dispute without recourse to ADR or court, it is apparent that many consumer disputes are not merely measured in monetary value but also matters such as discontent with the way works and relationships have been managed. ADR can enable a discontented consumer to achieve a non-monetary remedy, such as an apology or moderation of behaviour.

We believe that a nominal fee of £10 or £20 to access ADR in a building dispute would serve no purpose. Building disputes can often involve significant sums of money. A fee of £10 or £20 would not cover the administrative costs of providing an ADR appointment. Nor will the sum act as a disincentive to the consumer who doesn’t really have a case but will persist with a complaint through ADR simply because it will cost little or nothing.

At the other end of the scale, we recognise that investment in building works by the consumer can amount to many £1000s. It follows that the outcome of a dispute can be financially crucial to the consumer and builder. While the costs of ADR should be significantly cheaper than litigation, we submit that, drawing on the example provided by court fees, the fee to access ADR should be scaled to reflect with the amount in dispute and the time and resources required to resolve the matter(s) through ADR.

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

Businesses that sign up to a building industry standard Complaints Handling Procedure (or customer charter) and offer tailored ADR to the consumer could be branded as “consumer friendly”.

A builder may be incentivised if the ADR solution was paid for only when used.

A builder may be required to sign up to a standard Complaints Handling Procedure (or customer charter) and offer tailored ADR to the consumer as part of the builder’s membership of a trade association.

The consumer could be encouraged to use a builder who is “consumer friendly”.