BEIS consultation on Reforming Competition and Consumer Policy

Response from the Federation of Master Builders

1st October 2021

Introduction

The Federation of Master Builders (FMB) is the largest trade association in the UK construction industry. With over 7,000 member firms, the FMB is the recognised voice of small and medium-sized (SME) construction.

The FMB is broadly supportive of the recommendations to heighten ADR's use within the construction sector. The FMB operates its own ADR service, which is certified by the Chartered Trading Standards Institute (CTSI) to provide ADR to FMB members and their clients, so as to support the reaching of satisfactory outcomes to building disputes.

Utilising ADR on a wider scale

The FMB's ADR scheme is a flexible process, conducted confidentially, in which we will actively assist both parties to work towards a satisfactory agreement. FMB members are required to participate in the process as part of the FMB's Code of Conduct. Our service operates via mediation in all cases initially, followed by conciliation, independent inspections of work and referral to an adjudication/ombudsman service if necessary.

Making ADR a mandatory requirement within the home improvement sector would be a positive step forward for both consumers using the sector and well-intentioned tradespeople working within it. Through its introduction, there would be an instant impact in that it would deter many unscrupulous traders from either trading or trading dishonestly or with risk to the consumer, as they would require registration to an ADR provider.

Through their mandatory registration with an ADR provider, construction firms operating within the sector would be more accountable and issues arising between firms and consumers could be recorded more consistently. It would also provide greater opportunity for educational and informational resources to be disseminated among these businesses promoting best practice to them and heightening professionalism through the sector.

It is our view that incentives, rather than punishments, are likely to be more effective in this area. For smaller traders in particular, giving them the knowledge and understanding they need to be compliant, rather than penalising those that are non-compliant, would be the most effective approach. However, we support the notion that repeat offenders should be penalised heavily through fines and other measures to protect consumers. If less scrupulous competitors were prevented from trading, this would provide increased confidence to the legitimate businesses, and be likely to drive investment, productivity and employment growth by supporting more activity in the construction sector.

Mechanisms should be in place to ensure that repeat offenders do not continue to practise construction in the home improvements market. If a business is struck off an ADR register for

failings on their behalf, this information should be shared more widely with other ADR providers and the business in question should not be allowed to sign up with another ADR provider.

ADR registration should be linked to the individual legal directors of the construction firm looking to become involved in the home improvements market, where it is a limited company. This information should be recorded and shared within a wider ADR provider register, so that if a business is struck off from an ADR provider, they cannot then also create a 'phoenix company' and re-register with a further ADR provider.

How it would work

The FMB agrees that there is a need for regulators and government to balance the need to ensure timely redress for the consumer with allowing businesses the time to investigate complex complaints. It is our view that this can be achieved by ensuring that mandatory ADR providers are offering a full suite of ADR methods, so that they can employ a blend of different ADR methods relevant to the type and value of the dispute. These include mediation, conciliation, and adjudication/ombudsman services.

We would also support the introduction of a notional charge to consumers for use of ADR services, which would serve to discourage frivolous dispute cases, and those very low value cases where the cost of the service would outweigh the value of the dispute.

The role of the 'Competent Authority' will be important if these recommendations are to be taken forward. ADR providers should have to prove legitimacy as an ADR provider to join the register of providers that enable their clients to operate within the home improvements market. This process should require ADR providers to be assessed by the 'Competent Authority' on an at least annual basis. These checks should include mechanisms such as a financial health check, random case study evaluations and client (consumer and trade) feedback to determine the suitability of an ADR provider. There should also be the constant possibility for the 'Competent Authority' to perform spot checks and more regular audits. To implement these protective measures, it is critical that the 'Competent Authority' receives sufficient funding and resource.

It is also important to note that if Trading Standards are to provide enforcement against those businesses operating in the home improvements market without a registered ADR provider, then they need greater funding. As has been evidenced in earlier reports, the total net spend by local authorities on trading standards services in England dropped by 52% from 2009-2019.[1] If these reforms are to be effective in preventing consumer detriment, then enforcement for those not abiding by the new regulations is critical. This decade-long drop in funding must be reversed and Trading Standards services across the country must be better funded.

Raising awareness

Recent data from BEIS indicated that only 16% of consumers were aware of ADR. If ADR was to become mandatory within the home improvements market, there must concurrently be an awareness-raising campaign explaining the service and how best consumers can utilise it when making home improvements.

To better engage vulnerable consumers and heighten their engagement with the system, organisations such as Citizen's Advice (as well as other community groups) can play a critical role in disseminating the proper information and providing guidance.

[1] 2020, Unchecked.UK, The UK's Enforcement Gap 2020, p. 11

Alongside raising awareness at the consumer level, there must also be clear information and adequate time to prepare given to industry for these proposals to be most effective. Government should engage with industry organisations and trade bodies, so as to act as information conduits that can assist in getting messages out to industry. From the outset, these regulations should be made as simple as possible.

Evolving toward a Licensing Scheme

While introducing mandatory ADR is certainly a step in the right direction for the home improvements market, it is the FMB's view that the Government could go further to enhance consumer protection within the sector and drive-up the professionalism and standards of the workforce operating within the home improvements market.

As the consultation document makes clear, the "fair treatment of consumers must give traders a commercial advantage and those who misbehave must not undermine the commercial success of those who abide by the law".[2] Within the construction sector, this is unfortunately not the current state of play; it's extremely far from it.

The threat of cowboy builders and rogue traders is all too prominent, with FMB research from 2018 indicating one in three homeowners are put off doing major home improvement works because of fears over hiring a 'dodgy builder'.[3] For honest, high-quality tradespeople, this represents potential lost work. Similarly for the Treasury, this represents lost income. For the construction sector as a whole, there's a tangible risk that this unprofessional reputation deters high calibre new entrants from entering and pursuing a career in the sector.

Introducing a licensing scheme

The creation of a licensing scheme for the construction industry would provide the UK with a leading edge in construction safety and competence. It would bolster consumer confidence and stamp out rogue traders and poor construction work. The scheme to create a licenced industry has the backing of more than 30 representative organisations who want to see quality embedded in the industry through nimble regulation[4]. The industry itself is also keen to see a framework for quality implemented, with near 80% of FMB member backing such a proposal and believing it would improve quality[5].

Licensing the UK construction industry would provide a means of barring and removing from the industry those firms who are shown to be incompetent or who undermine standards as a matter of course. Licensing would provide a much higher level of assurance to consumers and improve quality and safety.

The need to renew licences over time could also be used to promote upskilling and continued professional development. It would have the potential to drive a transformation in culture and professionalism across the industry. The determination to grasp the issue of competence in construction has rarely been stronger.

If the licence is to be UK-wide and cover all types and sizes of construction firm, resources will be needed to review new and renewal applications, validate supporting evidence where applicable which includes sufficient checks to ensure that relevant standards have been achieved, as well as undertake enforcement. Most stakeholders advocate a self-sustaining

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[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf , p.15

[3] 2018, FMB, *Licence to build: A pathway to licensing UK construction*, p. 7

[4] Licence UK construction

[5] 2018, FMB, *Licence to build: A pathway to licensing UK construction*

fee-based licensing scheme, but capital would be required from government to kick start the regime and provide ongoing administrative support.

For more information or to discuss this submission please contact the FMB's Public Affairs Team via publicaffairs@fmb.org.uk