

In the London Arbitration Centre

LAC Case No.IC5221

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; 29<sup>th</sup> July 2021

Between;-



[REDACTED]

The 'consumer'

And

[REDACTED]

The 'trader'

Final Decision

### Introduction

The trader carries on business as a self employed builder. On about 11<sup>th</sup> January 2021, the trader was engaged to carry out work at the consumer's property. The work involved renovation to the kitchen with the installation of new kitchen units. The consumer states that the trader did not carry out the work properly. The trader does not challenge the allegations made by the consumer.

The consumer states that she and the trader have agreed the amount of the loss suffered by the consumer as a consequence of the defective works carried out by the trader. She states the amount of the loss that has been agreed with the trader is in the sum of £4,367.33 ('the debt amount'). The issue between the parties is the terms on which the debt amount is to be paid by the trader to the consumer.

No less significant to the background is the disruption caused to the consumer in not having a functioning kitchen or full access to her property. The only positive is that the trader has provided to the consumer an Appeal to the London Arbitration Centre (LAC) in relation to matters which cannot be agreed between the parties thereby saving the consumer the trouble and expense of taking legal proceedings.

### The dispute

It is not clear on the information provided by the parties when an agreement was reached but I understand on 24<sup>th</sup> March 2021 the consumer was able to advise the trader that she had a legal cause of action against the trader. As at the 26<sup>th</sup> May 2021, when the claim was made to London Arbitration Centre (LAC), no money has been paid by the trader to the consumer.

The consumer states that the trader is offering a payment plan which involves a payment of £50 a week. The consumer does not find this acceptable. She points to the cost of the remedial works which

she has had to finance a second time. She states she has only been able to meet these additional expenses using her credit cards and borrowing from relatives. The consumer states if she was to agree a payment plan it will be no less than £250 a week.

### The procedural history

On 20<sup>th</sup> June 2021, the trader returned a completed court form EX140. This form is used by HMCTS as an examination into the debtors affairs following a judgement or award made by the Court. The form had been adapted for use by the LAC under the Open Government Licence as the best way of inquiry into the trader's financial affairs.

By engaging in ADR, the consumer had effectively been able to skip to the process of enforcement which would not have been available to the consumer if the consumer had taken legal proceedings. If legal proceedings had been taken, this would involve service of legal forms attended with the encumbent delay before she could apply for judgement. This would only have been available to the consumer after a lengthy and time consuming process and after payment of significant court fees. Of course, by engaging in ADR the consumer has been provided with an independent Appeal process at no cost to the consumer.

I should add here that the trader, as part of instructions for completing the form, was advised by LAC that;-

*You will be required to certify (on each form) the information you provide is correct and therefore you may be proceeded against under the Fraud Act 2006 if it subsequently transpires that you have supplied false information particularly in relation to information contained within form EX140. You should also support the answers you provide with form EX140 with documents wherever an answer can be verified by documentary evidence. These should be listed on page 12 and returned with the completed form. Failure to do so may result in an adverse inference being drawn where information supplied by you can be reasonably expected to be supported by documentary evidence.*

After returning the completed form EX140, the trader confirmed he had not given his full national insurance number nor filled out the full bank account numbers. The trader indicated that he did not want his last tax return for the period 2019-2020 disclosed to the consumer but retracted this after being advised of LAC transparency requirements. The trader's tax return for the period 2019-2020 was provided on 22<sup>nd</sup> June 2021 and copied to the consumer. The trader redacted his UTR, NI and personal phone number on the tax return.

In my view, there has been no prejudice to the consumer in the trader redacting the information because for present purposes the subject inquiry is the trader's ability to pay the agreed sum. I understand the trader's concern to ensure protection his personal information.

In her email dated 22<sup>nd</sup> June 2021, the consumer stated she required the trader to disclose his bank statements going back 12 months . The consumer was reminded that the ADR was not a process of investigation or inquiry. She was entitled to make submissions on information which the trader could supply but had chosen not to do so. After an exchange of emails, the trader agreed to supply additional information in the form of bank statements. The trader advised the bank statements would cover the period between 24<sup>th</sup> March 2021 to 23<sup>rd</sup> June 2021.

On 13<sup>th</sup> July 2021, the trader provided bank statements for his bank accounts with Lloyds, Halifax and Monzo Bank. The consumer was invited to Reply to the documents and information provided by the trader. I have taken the salient points from the consumer's Reply. She points out that the trader

purchased a Van at a cost of £9,500.00 whereas a lease option would have served the trader's purpose equally well. She states the trader could still sell his Van and return to a leasing option.

The consumer also points to the trader's public liability insurance and queries why the trader could not have sought an indemnity from his insurers in respect of the defective works.

In his email dated 15<sup>th</sup> July 2021 timed at 07.43, the trader states;-

*Hello Both*

*Following [REDACTED] response i just want to address a couple of things, this is just to give a full and clear picture.*

*I Received a payment of around £8000 from the Insurance company and also took my old damaged van back to sell it on to someone that requested it, so after that the total i received from the sale and the insurance combined is £9500, which was the total cost of a new van. It was a courtesy van from the insurance company i was using, i paid nothing for the use of that as it was paid for by the insurance company.*

*I currently have 2 CCI's on my record which i am working out and disputing so not making any payments as of yet, this is the reason i cannot lease any vehicles or get loans, it is not possible for me due to this.*

*Public Liability is a necessity for most self employed people. especially people in the building trade, if i believed that they would cover this then i would have sorted it and asked them to pay out.*

The consumer states that she is wary about the two County Court Judgements. She states this is a matter of concern in relation to the prospect of the trader not complying with any order made in this process of ADR.

#### Review of the information

##### *The information contained in the form EX140*

The form is dated 20<sup>th</sup> June 2021. The trader tells us that he is a self employed builder who has been working as a sole trader for 4 years. He has no dependents to support financially. He does not own any assets other than a Renault Traffic Van which he has valued at £9,500.00. He is currently engaged on a contract and appears to have further work in progress. Last year he made £8,000.00 profit from his business. I note from common knowledge, last year was a difficult period when the population as a whole was subject to a government imposed lockdown. This has not been conducive to a business environment.

On the liability side, the trader tells us he has a 'bounce back loan' outstanding in the sum of £9,833.33. His outgoings per month amount to approximately £820.00 per month which equates to approximately £9,840.00 per annum.

The trader gave his bank balances as follows;-

Halifax (personal) a/c	£0.52
Lloyds (business) a/c	£50.00
Monzo (personal) a/c	£11.55

Skipping forward, the trader provided bank statements for these accounts on 13<sup>th</sup> July 2021. I have compared the balances against those shown on the statements as at 21<sup>st</sup> June 2021;-

Halifax (personal) a/c	£1.53
Lloyds (business) a/c	£1000.58- £658.58
Monzo (personal) a/c	balance not shown

Whilst the information provided by the trader is not accurate, particularly in relation to the business account, it is not wildly inaccurate such as would make a substantial difference. I don't regard either £50.00 or £658.58 to be a large sums of money in relation to the debt in this case. Of course, these balances are running balances and have noted end balances of £77.06 at Halifax and £388.58 at Lloyds. I am concerned, however, I have not been able to see the running balances at Monzo bank particularly since there appears to have transfers from the traders business account to this account at a greater frequency than the payments to the trader's other personal account with the Halifax. This is regrettable but not fatal to the trader's case because the Halifax and Monzo account are personal accounts fed from the trader's income from his business account.

I should add that the trader does not make reference to the two County Court Judgements in section 10 (on page 10) of the form EX140 which he informed us about in his email dated 15<sup>th</sup> July 2021 timed at 07.43 referred to above. There is no explanation why this was missed by the trader, if significant.

*The tax return for the period 6<sup>th</sup> April 2019 to 5<sup>th</sup> April 2020*

The trader's had a turnover shown as £55,590.00 in this period. Net profit for the year is shown as £5778.00. Nothing is shown for wages but other allowable business expenses are shown at £15,782.00. This is quite high against the other allowable business expenses such as the cost of goods for resale or use at £27,320.00 and the trader's travel, rent, rates, power, insurance costs, professional fees and office costs which combined total £6,710.00.

*The business bank account*

I have calculated that the average mean balance between 24<sup>th</sup> March 2021 and 26<sup>th</sup> June 2021 to be £3,072.57 based on the lowest balance of £12.82 and the highest balance £6,132.32.

My assessment of the trader's financial position

I remind myself that I have only seen one tax return and I do not have a history of annual turnover. I also remind myself that the tax year 6<sup>th</sup> April 2020 to 5<sup>th</sup> April 2021 has been a difficult period for everyone for the reasons I have already mentioned.

I have to take a view on the economy as a whole and the trader's situation. On the basis of information available right now, with government restrictions being eased, I see no reason why the trader will not be able to reach the levels of turnover reached in 2019 -2020. If anything, the longer the trader is in business, the easier it should be to find work.

I have formed my view of the payment plan based upon the profit for the financial period between 2019-2020 and the average mean balance in the trader's bank account for the period disclosed above. My overall view of the information is that the debt amount can be and should be paid within a 12 month period. The 12 month period should commence from the date the dispute was first referred to the LAC. Like I say, I understand no payments have been made by the trader to the consumer to date.

When I analyse the two opposing payment amounts offered and required on a time scale, the two sums can be shown as follows;-

$$£4367.33/£50 = 87 \text{ weeks}$$

£4367.33/£250 = 17 weeks

Based on a 12 month payment plan the weekly payment should equate to £83.99. I have to remember that the trader is self employed and the likely prospect of further government imposed lockdowns which may impact on the trader's ability to meet the payments ordered at regular intervals.

I do not believe the trader has the ability to make payments of £1,000.00 per month requested by the consumer based upon my analysis. I have noted the discrepancies on the information supplied with regards to the trader's business account but this does not change my view. I can understand the consumer's frustration but the order I make must be realistic otherwise any payment arrangements would quickly fall apart. The consumer would then be in no better position. I do agree with the consumer, however, that the trader should be compelled to sell his Van, if necessary. The only competing scenario is that the trader should be allowed to carry on business with the least interruption in order to pay the consumer.

The balance of justice is to provide that payment of the debt amount be suspended on condition that the trader meets certain minimum payments which I have set out below. This type of order would allow the trader some flexibility if trading conditions were to deteriorate but requires the trader to pay excess sums above the minimum payment to avoid having to sell his Van and make a lump sum payment to the consumer before 31<sup>st</sup> May 2022. This means if during any given period, trading income was reduced then reduced payments could be made to the consumer but only up to the minimum payment amount. The trader would then be required to catch up with excess payments when trading conditions were better.

So to be clear, if the trader does not comply with the conditions, the whole amount becomes due and payable immediately. The consumer will then be able to register the award I make at Court and enforce payment of the outstanding debt amount using the methods available.

I want to make it clear, if the minimum amounts do not reach the consumer's bank account on the due date, this would constitute a failure by the trader to comply with my order below and the whole amount of the outstanding debt amount would become due and payable immediately. The minimum sum required from the trader is the amount required, to use a colloquial, to 'stay in the game'. The recommended monthly payment is £445.00. If the trader does not keep to the recommended amount then he will have to make a lump sum payment before 31<sup>st</sup> May 2022 which might then entail the trader selling his Van.

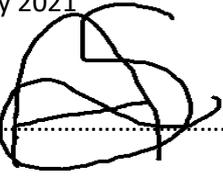
#### The Order

The trader pay the sum of £4,367.33 to the consumer but payment is suspended on the following terms;-

- (1) The trader pay the consumer **£367.33** on **13<sup>th</sup> August 2021** and thereafter pay a **minimum sum of £375.00** on the **1<sup>st</sup> of every calendar** month by a payment into the consumer's bank account which details are as follows; [REDACTED]
- (2) By no later than 31<sup>st</sup> May 2022, the outstanding balance of £4,367.33 (reduced by payments made paragraph 1 above) is to be paid to the consumer by a payment into the consumer's bank account which details are as follows; [REDACTED]

If the trader fails to comply with either condition set out above, the sum of £4,367.33 or the balance outstanding shall become due and payable immediately.

Dated 29<sup>th</sup> July 2021

Signed.....

Ayub Sadiq

ADR Official appointed by the London Arbitration Centre Limited