

DSA / ACAI

MEDIATION SCHEME



Acknowledgements

This document is based on the DSA "MODEL ARBITRATION AND CONCILIATION PROCEDURE" and ACAI and DSA wish to echo the acknowledgements given in that document.

The ACAI and DSA also wish to thank the following members of the Mediation Working Group who produced this document:

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FOREWORD

Local Authority Building Control is renowned for its common sense approach to building construction, and its efforts to resolve problems locally. Having to undertake a legal process to enforce compliance with regulation is considered by most as the very last resort that should be adopted, only when all else has failed. This attitude prevails also in relation to the statutory relationship with Building Control colleagues in the private sector.

There are of course capable systems of dealing with disagreements currently, by applying for determinations by the Office of the Deputy Prime Minister. Other legal mechanisms are also available. But these processes can often be protracted and time consuming and whilst they offer a solution, we are not convinced that they provide for the most effective and professional approach that we could offer.

With this in mind the DSA / ACAI liaison group (Building Control Initiative – BCI) embarked on creating a Mediation Scheme. The scheme offers the benefits of a simple process with quick turnaround through a review by fellow building control peers.

Of course the scheme has no legal stature and nor should it have. Nor will it hold all the solutions or have the capability for all cases. The determination facility of the ODPM and other legal mechanisms remain appropriate in many instances. The mediation scheme merely offers another opportunity to resolve issues within the profession helping to obviate the need for more formal processes.

Mediation is regarded as a very effective and amicable method of dispute resolution, we are therefore delighted to be able to introduce this scheme to you from the District Surveyors Association and the Association of Consultant Approved Inspectors.

Andrew Little
President, DSA

Tony Threadgold
Chairman, ACAI

MEDIATION SCHEME

Background

Private sector building control was born into an environment of divergence with the public sector due to a number of factors. Over the twenty years since the introduction of the 'two tier' system the relationships between public and private have developed as confidence has grown of successful co-existence.

Public and private sector based individuals meet together regularly in professional, social, educational and even business partnerships and the two representative organisations DSA and ACAI are working closely together to discuss areas of common ground and interaction.

Whatever the social and professional relationship the overall procedural interaction is governed by statute and there remains therefore the potential for conflict in individual situations. In these cases a formal intervention may be required.

Currently the only path to resolve these differences is through the court process. This is very expensive for both parties in terms of direct cost and time. Worse perhaps is that as the rulings through the courts are given by those unfamiliar with the building control process, satisfaction as to the accuracy of those rulings by the losing party is rare.

Building Control professionals are renowned for their common sense approach to building construction and their efforts to resolve problems locally. In Local Authorities it is a well known fact that having to undertake a legal process to enforce compliance with regulation is considered by most as the very last resort that should be adopted, only when all else has failed.

An Alternative Route

One of the benefits of professional status is that of self-regulation i.e. acceptance of adherence to codes and judgement delivered by ones peers.

In formulating the Initial Notice protocol the ACAI / DSA liaison group (Building Control Initiative – BCI) introduced a mediation process in relation to the application of the agreement. It was however felt that the scope of such an arrangement was limited to issues raised directly as a consequence of the protocol.

The mediation scheme detailed here is a development of the IN Protocol. This applies to any issue of interpretation raised in connection with the public/private interaction.

It is recognised that the formal legal proceedings option will remain, it is the intention to offer an additional choice which should have the attractions of reduced cost and faster response.

It is also recognised that neither ACAI nor DSA can require or instruct members to use a mediation service but with a strong recommendations from both bodies and Government endorsement it should become accepted practice.

ODPM and the Building Control Performance Standards Advisory Group (BCPSAG) have congratulated BCI on the mediation system. It is expected that the scheme will be incorporated into the future versions of the Performance Standards document.

The Mediation System

The extended mediation scheme is based on the IN protocol and is serviced by equal numbers of representatives from ACAI and DSA.

All panel participants will be independent of the case being considered, subject to the fact that their working environment will inevitably be affected by the outcome. This situation will not be a case for a claim of non-independence.

The scheme has two stages. In the first the cases are sent to the panel members by electronic or hard copy means for an initial view.

This first stage should offer speed in resolution with turnaround times in days rather than weeks (or months in the case of the alternative legal route).

Cases can be referred unilaterally but the second party must be informed of the approach and invited to participate.

The second stage is a more formal approach where either party is unhappy that all the facts have been adequately presented at stage one and wish to fully develop their argument together with supporting evidence.

Statements in support of arguments can include third party reports and reasonable time should be allowed for the preparation of such reports.

The case put to mediation will not be subject to additional debate by other executive groups within the ACAI or DSA once a decision is given, however the impact of the decision can be debated and further requests presented for clarification.

Parties accept that decisions will be made public.

The first stage of the mediation scheme will be run free from charge the second will be subject to charges on a non profit basis. Charges will be the direct costs of the panel participants in time and travel.

If jointly entered into, both parties should agree to be bound by the decision of the mediators and if stage two escalation is agreed then parties will be deemed to have agreed to equal responsibility for costs unless confirmation is received as to other agreed arrangements.



MEDIATION SCHEME PROCEDURE

This is a voluntary procedure to be used when there is a disagreement between a local authority and an Approved Inspector in any aspect of their statutory relationship.

The aim of this procedure is provide a quick response to disputes and avoid legal actions, by seeking a review of the case by independent Building Control peers.

Whilst a decision is not legally binding, it is expected that the parties will agree to abide by the decision reached, rather than to pursue legal action.

In the event that the dispute escalates into legal action, the decision reached in mediation may be regarded as authoritative.

In the event of a technical dispute between an Approved Inspector and a Local Authority every effort should be made to resolve the issue at a local level first.

If agreement cannot be reached, either party can inform the other that they wish to use the mediation procedure.

Stage One

- The parties should contact (by e-mail if possible) their relevant representative bodies with details of the dispute for a stage one view.
- The parties should give basic details of the issues as they see them.
- Upon receipt of a completed Mediation Application Form, the relevant representatives will convene (by e-mail if possible) a mediation panel having a minimum of two people from each of DSA and ACAI. The panel will not contain any person from the Local Authority or Approved Inspector Company that is party to the dispute.
- The panel will give their individual views on the case and will arrive at an initial view. If they cannot form a consensus view they may suggest a stage two 'escalation' or suggest that the matter may need to be pursued through more formal channels.
- In rare circumstances, the appointed panel may feel that the matter is inappropriate for the mediation scheme e.g. deemed, vexatious or better resolved either by ODPM determination or application for relaxation or by legal action.
- The views of the panel will be communicated by e-mail to the parties.

Stage Two

- The panel will be aware of the stage one representations. Stage two allows for further evidence to be presented. It may be that a consensus can be met with further written evidence or a formal meeting may be necessary.
- In either case both parties may be requested to provide:-
 - i. Relevant plans and/or documentation
 - ii. A statement setting out the issue in dispute
 - iii. A statement setting out their contentions
 - iv. Any supporting evidence or expert opinion
 - v. Any informal ODPM comments

The above information is to be provided ten days before the panel hearing, and will be circulated to the panel members no less than seven days before the hearing.

The hearing should take place within fifteen working days of receipt of the application.

- Formal Meeting Procedure
 - i. The parties present the issue and their contentions
 - ii. The Panel questions the parties
 - iii. The panel will retire to discuss an initial view
 - iv. The panel will present its initial view
 - v. The parties have the opportunity to make any final comments
 - vi. The Panel will retire to come to a recommendation
 - vii. The Panel's recommendation will be made in writing within 48 hours

Notes

- a) The aim is to resolve the dispute within 28 days.
- b) All decisions are to be reported to the DSA Technical Committee and ACAI Executive, who will keep a record and may, where appropriate, forward details to the ODPM.
- c) The Panel should consist of not less than 4 experienced Building Control professionals in equal numbers from DSA and ACAI
- d) In order to create fairness the panel chair shall alternate between DSA and ACAI for each case received.



Mediation Application Form



(Please submit electronically if possible. One form from each party should be submitted)

Applicant		
Description of work		
Location of work		
Brief identification of issue for Mediation. Has a formal notice been served?		
Applicant's address		
Applicants statement of case	<p style="text-align: right; margin-right: 50px;">Signed (if sent hard copy)</p> <p style="text-align: right;">Date</p>	
Relevant statute in question		
List of supporting plans, documents and information (Stage 2)		
For official use only		
DECISION		

Mediation Process Flowchart

