

BUILDING CONTROL

PROCEDURAL ISSUES MEDIATION SCHEME



Acknowledgements

This document is based on the District Surveyors Association (DSA) "MODEL ARBITRATION AND CONCILIATION PROCEDURE" and the Building Control Alliance (BCA) wish to echo the acknowledgements given in that document.

The BCA also wish to thank the following members of the LABC / ACAI Mediation Working Group who produced the original document on which this version is based:

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FOREWORD

The Building Control profession is renowned for its common sense approach in the application of statute to building construction and its efforts to resolve any problems locally. The need to undertake a formal 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 between Approved Inspectors and the Local Authorities to whom they must submit statutory notices.

It is absolutely fundamental to the standing of Building Control as a whole that this relationship stands as a model of exemplary professional interaction. Both Government and Industry rely on the building control service to focus on efficiency and high compliance with minimum burden.

In any statutory relationship there is the potential for differences of opinion as to what that statute requires in particular situations. When such a difference of opinion occurs there is need for a form of third party input. If the overall service is to be successful in its aim for efficiency and minimum burden then this third party input also needs to be efficient and burden light.

Currently the only means of determination of differences of opinion between LAs and AIs on procedural matters is through the Magistrates court, a system which can be time consuming and expensive. Additionally, as this process rarely involves peer interjection the losing party often feels aggrieved that an incorrect decision has been made.

With this in mind LABC and ACAI, the member organisations of the BCA who represent the public and private sectors, embarked on creating an additional means of third party input and offer the Mediation Scheme described in this document. The scheme offers the benefits of a simple process with quick turnaround through a review by fellow building control peers.

The scheme has no legal stature and nor should it, nor will it hold all the solutions for all cases however it is fully supported by the BCA. There will be circumstances where the legal mechanisms remain appropriate. The mediation scheme merely offers an alternative means of resolving differences of opinion helping to obviate the need for more formal processes.

We are therefore delighted to be able to introduce this scheme to you.

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MEDIATION SCHEME

Background

The Building Control system in England and Wales allows for Building Control Certification by both Local Authorities and Private Companies (who have been certified to do so) known as Approved Inspectors.

For a number of reasons including the application of certain Local Acts, for public record purpose and the certainty of 'control ownership' the Approved Inspector is required to notify the Local Authority of their appointment on a notice known as the "initial notice" and give specific details in relation to themselves and the work involved.

The Local Authority is required to reject the Initial Notice if certain prescribed situations arise. These matters include such issues as Local Acts not being met or even administrative matters such as the fact that the address is not within their area of jurisdiction.

As ever in statute there exists the potential for differences of opinion to arise in individual cases.

Currently the only path to resolve these differences is through a formal approach to the court process. This route can very expensive for both parties in terms of direct cost and time and flies in the face of the prime desire by Government and Industry for an efficient and burden free Building Control Service. 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 as unhappy about this limited situation as their clients and are keen 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 best approaches to the resolution of differences is peer review i.e. acceptance of judgement delivered by ones peers.

The mediation scheme detailed here is based on such peer review with Building Control and peers from both Local Authority and Private Sector in equal numbers giving a view on the question raised.

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 BCA, ACAI nor LABC 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.

CLG and the Building Control Performance Standards Advisory Group (BCPSAG) have congratulated BCA 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 Pilot protocol used in London and is serviced by equal numbers of representatives from LABC and ACAI.

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 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. This stage will attract a charge.

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 BCA, ACAI or LABC 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 in regard to the technical matters no personal references will be made public.

The first stage of the mediation scheme will be run free of charge but the second will be subject to appropriate pre-agreed 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 difference of opinion between a Local Authority and an Approved Inspector in respect of any part of the statutory interaction between the two.

The aim of this procedure is provide a quick response 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 difference of opinion escalates into legal action, the decision reached in mediation may be regarded as authoritative.

Although this service exists, in any difference of opinion between an AI and the 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) the BCA Secretariat with details of the difference of opinion for a stage one view.
- § The parties should give basic details of the issues as they see them.
- § Upon e-mail receipt of a completed Mediation Application Form (electronic version can be made available), BCA Secretariat will convene (by e-mail) a mediation panel having a minimum of two people from each of the relevant peer bodies. The panel will not contain any person from the Local Authority or Approved Inspector Company that is party to the case.
- § 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 CLG involvement or by legal action.
- § The views of the panel will be communicated by e-mail to the parties.
- § A general record of the case and decision (with names and addresses removed) will be recorded on the BCA website for future reference by BCBs.

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 CLG comments

The above information is to be provided within 10 days of request 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 information.

§ 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

§ A general record of the case and decision (with names and addresses removed) will be recorded on the BCA website for future reference by BCBs.

Notes

- a) The aim is to resolve the difference of opinion within 28 days.
- b) All decisions are to be reported to the BCA, LABC Legislative Committee and ACAI Executive.
- c) A record may, where appropriate, be forwarded to the CLG.
- d) The Panel should consist of not less than 4 experienced LABC and ACAI Building Control professionals in equal numbers. In order to create fairness the panel chair shall alternate between LABC and ACAI representation for each case received.
- e) A 50/50 opinion by the panel in either stage will constitute a 'no decision made' status to the case whereby that outcome will be communicated to the parties. Such communication may also include a suggestion as to the next recommended step. A Unanimous view or a 75/25 view will be regarded as consensus.

Mediation Stage 1 Application Form

(Please submit electronically.
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>Confirm Contact Name:.....Date:.....</p>	
Relevant statute in question		
List of supporting plans, documents and information (Stage 2)		
For official use only		
DECISION		

Mediation Process Flowchart

