

BUILDING CONTROL

PROCEDURAL ISSUES MEDIATION SCHEME



Introduction

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.

The scheme was originally introduced in November 2014 and since its launch has offered the benefits of a simple process with quick turnaround through a review by fellow building control peers.

However, it has now been recognised by Building Control Alliance members that the original scheme requires streamlining to enable both Approved Inspectors and Local Authority Building Control to receive a more rapid response to referred cases by the addition of an informal peer review process. It is hoped that the introduction of this informal review will result in less cases having to be progressed onto Stages 2 and 3 of the mediation scheme. Performance targets for issuing decisions have also now been reviewed to provide reassurance to applicants that submitted cases will receive a prompt response

In addition, the mediation page on the Building Control Alliance website will now include the redacted reports of the past 3 years mediation cases together with an index to enable building control bodies to search past reports and decisions reached. It is hoped that this function will provide guidance to all building control bodies on similar cases without having need to submit a case for mediation.

It is the intention that all Stage 1, 2 and 3 decisions will be published to aid self-determination by all building control bodies.

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 in a timely fashion to help obviate the need for more formal processes.

It is also recognised that neither BCA, ACAI nor LABC can require or instruct members to use a mediation service but with a strong recommendation from these bodies and Government endorsement it has now become accepted practice.

It should be noted that any outcome of mediation must comply with any statutory requirement in the Building Act or the Building Regulations. It is not the purpose of mediation to circumvent the law.

The Mediation System

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 three stages and all cases will automatically be considered under the first stage. Progression to Stages 2 and 3 will be following consultation with all applicants.

Stage One - An informal discussion with the BCA Mediation co-ordinator and or a Panel member from the relevant Organisation as a peer review. It is hoped that in many cases this will provide a quick solution.

Stage Two – An informal review of the case will be undertaken by a two-person Panel to advise the parties involved.

Stage Three – A formal review will be undertaken by a four-person Panel to advise the parties involved.

This first stage should offer speed in resolution with turnaround times of within 5 working 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 third stage is a more formal approach where either party is unhappy that all the facts have not been adequately presented at Stage Two 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.

Stages One and Two of the mediation scheme will be run free of charge but Stage Three 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 Three 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 parties.

The aim of this procedure is to 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, every effort should be made to resolve any difference of opinion between an Approved Inspector and the Local Authority at a local level first.

If agreement cannot be reached, either party can inform the other that they wish to use the mediation procedure. The informal discussion under Stage One may be used by either one or both parties.

Stage One

- One or both parties should contact (by e-mail) the BCA Mediation co-ordinator with basic details of the difference of opinion for a Stage One view. A completed Stage 1 Mediation Form should be completed (see page 10 of the scheme)
- Each party will be provided with a BCA nominated Independent Person from their relevant Organisation within 5 working days. This will provide the basis for an informal discussion on a peer review basis.
- If this does not resolve the situation, the parties should request this be escalated to Stage Two.

Stage Two

- The parties should contact (by e-mail) the BCA Mediation co-ordinator with details of the difference of opinion for a Stage Two view, giving reasons why Stage One had not been successful.
- The parties should give basic details of the issues as they see them.
- The BCA Mediation co-ordinator will convene (by e-mail) a mediation Panel having a minimum of two people, one 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, via email, telephone, Skype (or similar) or meeting, will discuss the issues and arrive at an initial view.
- The views of the Panel will be communicated by e-mail to the parties within 10 working days.
- Where a positive outcome is achieved, 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.
- Where it is considered to be a nationwide issue, the provision of a guidance note may be produced by the BCA.
- If the Panel cannot form a consensus view, they may suggest a Stage Three '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 MHCLG involvement or by legal action.

Stage Three

- A mediation Panel will be convened of four people, two from each of the relevant peer bodies. This Panel will be aware of the Stage One and Two representations. Stage Three 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 MHCLG 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.

- Where it is considered to be a nationwide issue, the provision of a guidance note may be produced by the BCA.

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 MHCLG.
- d) The Panel will consist of four experienced Building Control professionals, two from each of the private and public sectors. In cases where panel members views are divided the case will be discussed with the current chair of the Building Control Alliance, or when not available the previous past chair, prior to issuing a decision.

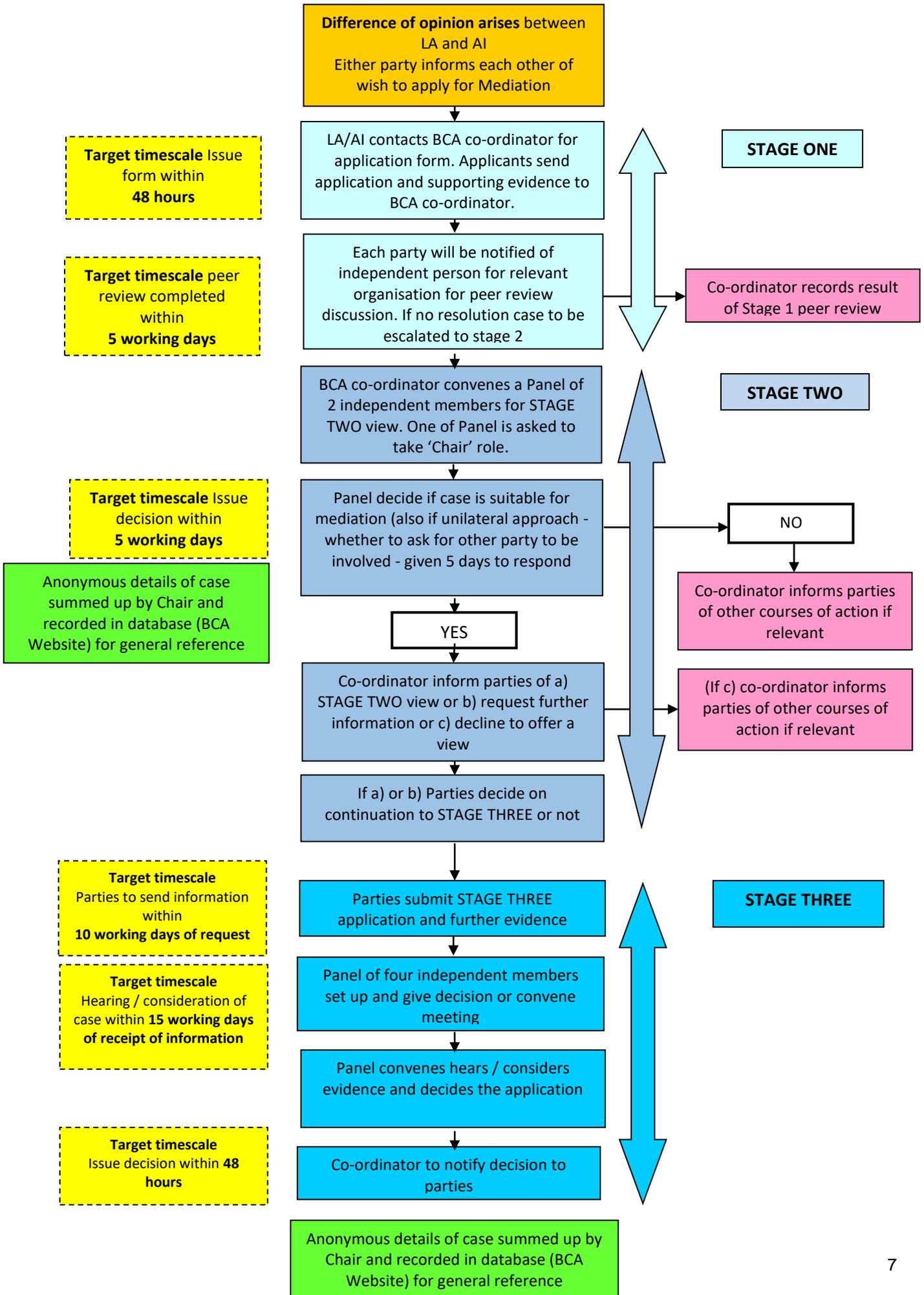
Mediation Application Form

(Please submit electronically to mediation@buildingcontrolalliance.org
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:..... Email:.....Tel no.....</p>	
Relevant statute in question		
List of supporting plans, documents and information (Stage 2)		
For official use only DECISION		

Mediation Process Flowchart





The Building Control Alliance is a unique industry group made up of representatives from clients, stakeholders and all the organisations directly involved in building control in England and Wales.

It includes the organisations supporting the many thousands of building control professionals –

- Chartered Institute of Building
- Chartered Association of Building Engineers
- Royal Institution of Chartered Surveyors

and the professional associations promoting public and private sector building control –

- Local Authority Building Control
- Association of Consultant Approved Inspectors.



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