



L E A S E

THE LEASEHOLD
ADVISORY SERVICE

ALTERNATIVE DISPUTE RESOLUTION

Guidance Note



LEASE, the Leasehold Advisory Service, is funded by government to provide free advice to leaseholders, landlords, professional advisers, managers and others on the law affecting residential leasehold.

LEASE is funded by the Department for Communities and Local Government and the Welsh Government.

Our team of qualified lawyers can provide advice by telephone, by letter, by email, or in person at the office; we can arrange seminars and group meetings where large numbers of leaseholders want to discuss a joint issue.

Do check the LEASE website www.lease-advice.org for wide-ranging information concerning residential leasehold issues including a large number of FAQs.

Finally, we must stress the importance of reading your own lease, particularly those passages dealing with your rights and obligations.

Contents of this guide

<i>Alternative Dispute Resolution.....</i>	<i>3-6</i>
<i>Your questions answered</i>	
<i>Useful addresses</i>	<i>7-8</i>

Alternative Dispute Resolution

Guidance Note



Why do disputes happen?

Disputes are a natural part of life. People see things differently, do not behave in the same way and will of course have their own individual outlook on life.

Are disputes a particular feature of residential leasehold property?

Certainly. Leases are complex documents and not easy to understand. They often lead to different interpretations of complex clauses. For instance, when it comes to a window replacement programme in a block of flats, many leaseholders do not see why they should pay for other people's windows. If the lease does not make any reference to windows, a complex dispute is almost inevitable.

And what about flatowners and their neighbours?

A regular area for disputes. Noise from upstairs, children's bicycles left in the hallway, the bath and shower frequently overflowing. These sorts of issues can sour relationships and spoil your quality of life.

But why should I be interested in alternative dispute resolution (ADR)?

Because it works. It has a good success rate. It puts you in the driving seat and not relying on the judgment of a court or tribunal over which you have no control. And it is voluntary. You can walk away at any time if you do not feel you are making progress and still reserve your right to go to court or tribunal.

Do courts and professional organisations encourage ADR?

Yes. Both the courts and some professional bodies such as the Law Society, the Association of Retirement Housing Managers (ARHM), the Association of Residential Managing Agents (ARMA) and the Royal Institution of Chartered Surveyors (RICS) encourage parties to explore ADR. The Federation of Private Residents Associations (FPRA) is a long-established organisation representing long leaseholders in England and Wales and also recommends the use of ADR to resolve disputes.

Are there different types of ADR?

The most well-known type of ADR is mediation. But there are others available. As well as mediation, this guidance note covers arbitration and adjudication.

Mediation

What are the advantages of mediation?

A court case can take months and even years to bring a dispute to an end. And the process can become very costly to both parties, adding to frustration and making relations even worse.

Mediation can be a swifter and less expensive way of sorting out issues. Private and confidential, it can bring to the table matters the parties may prefer to keep away from the courts.

Within an informal setting the parties can enter into a dialogue, exchanging views in a comfortable and less stressful environment.

Are there drawbacks to mediation?

If a dispute is destined for the courts then mediation can delay matters. Even then it can serve to clarify issues which may not have become apparent until later on in the court process.

What is the role and background of the mediator?

Mediators are impartial and neutral. They are not present to sit in judgment and impose a solution or outcome on the parties.

Mediators will have undergone training and should be accredited by a recognised body. They may well be solicitors, barristers, surveyors or accountants and familiar with residential landlord and tenant issues. They should be covered by liability insurance.

Empathy, flexibility, patience and considerable listening skills are important abilities for a mediator to have. The ability to look below the surface of the facts and issues to detect and understand the parties' needs and interests is also important.

As a leaseholder, what results could I achieve with mediation which could not be obtained through litigation?

A satisfactory outcome can lead to a change in the way the landlord or managing agent behaves. Perhaps it will lead to an adjustment to their methods of working; or a presentation of service charge accounts in a different way; and with major works, earlier and more intensive involvement of leaseholders beyond what is required by the law.

Above all, mediation looks to the future in a positive frame of mind, rather than dwelling upon the past.

As a landlord, what results could I achieve with mediation which could not be obtained through litigation?

Mediation can lead to solutions not permitted by court or tribunal proceedings.

A court order can be made for payment of rent, service charges or insurance. This can be enforced through various ways that can be time-consuming. A decision of the Leasehold Valuation Tribunal (LVT) will determine certain facts such as whether service charges are payable based on, for example, their reasonableness. But if the amount outstanding is not paid, then county court proceedings may become necessary. Proceedings for an injunction forbidding certain behaviour can be expensive and unpredictable and if the injunction is breached could entail further proceedings to secure the good behaviour of the leaseholder.

The LVT can decide whether service charges are payable and/or reasonable and whether a term of a lease has been broken. But the tribunal's powers are not wide-ranging and lack the flexibility of mediation.

A satisfactory mediation outcome is designed to be a win-win situation. In the example of an injunction it could be recognition of what led to the behaviour and steps put in place to reduce the chances of it happening again. For example, a landlord may be given an apology and systems created to nip in the bud warning signs of future problems.

Do I need professional representation for mediation?

The idea of mediation is to reduce costs and professional representatives should only be engaged where really necessary.

Nevertheless, it may be wise to seek legal advice where specialist input is needed in advance of a session. An example is the interpretation of a particular clause in a lease; another might be: who is liable for the roof or windows in a building where the scope and costs of their repair is in issue?

Surveyors and structural engineers may also need to be consulted where the mediation will involve arguments over schedules of dilapidations and costings.

Are there occasions when mediation is not appropriate?

It may not be appropriate where there are issues of fraud or where a legal precedent needs to be set.

How is a typical mediation session structured?

Mediation is a consensual process. A session will not take place unless and until both parties agree to it.

The mediator will open the session by explaining the procedure and ground rules which govern the etiquette and conduct of the parties.

The mediator will meet each party first and give them a chance to summarise the issues from their own perspective so that the mediator can fully understand their concerns.

The parties will then enter into a joint session. Each will be invited to present their views of the dispute, uninterrupted by the other: the mediator will summarise the issues and then encourage both sides to come up with possible, mutually acceptable, solutions.

The intention of the joint session is to have a structured discussion, ensuring each person listens to and understands the other's viewpoint, and actively attempts to resolve the dispute.

Where agreement is reached, the mediator will help the parties to draw up an agreement to be signed by them.

The mediator will destroy any notes they have made at the conclusion of the session.

Where agreement is not possible, either or both parties are free to initiate or continue with LVT or court action but cannot call the mediator to give evidence.

Are there penalties if a party turns down mediation?

Think carefully before you refuse an offer of mediation.

Court rules provide that, in considering costs, the court must have regard to the conduct of the parties and, in particular, the efforts

made, if any, before and during the proceedings in order to try to resolve the dispute.

A successful party at court is therefore open to paying their own costs should they fail to agree to mediation without good reason.

We encourage you to take professional advice if you are minded to turn down an offer of mediation.

Arbitration

What is arbitration?

The lease may state that disputes relating to service charges should be dealt with by arbitration. Or the parties may agree to go to arbitration irrespective of what the lease provides.

Arbitration should be regarded as an alternative type of court with the arbitrator setting down rules for disclosure of expert evidence and documents.

Unlike court proceedings, the result of arbitration can stay confidential.

The arbitrator may be agreed upon by the parties or in default by a professional body such as the Law Society or the RICS. When it comes to issues involving major works or service charge accounts the arbitrator would tend to have experience of property and/or litigation.

With minor exceptions the decision of an arbitrator will be final and binding.

Adjudication

What is adjudication?

Adjudication will involve a neutral third party, usually a professional conversant with the subject matter of the dispute.

Although the decision of an adjudicator is binding upon the parties, it is usually an interim one: that is, it will usually finally be settled using arbitration or a court.

Adjudication is more commonly found in disputes between a landlord and their contractors where it is a requirement of the Housing Grants Construction and Regeneration Act 1996.

I am interested in mediation. Where should I go?

First, do not rule out negotiation either by correspondence or a face-to-face meeting. Should it not be possible to settle matters in this way then go on to consider mediation.

LEASE supports this form of ADR by referring people who need this type of help to Law Works and, where appropriate, to the Residential Property Tribunal Service (see *Useful Addresses* overleaf for contact details).

Published January 2012

Useful addresses

Find a Civil Mediation Provider

www.civilmediation.justice.gov.uk

LawWorks

National Pro Bono Centre, 48 Chancery Lane, London WC2A 1JF
Tel 020 7092 3940 Fax 020 7242 3407

Association of Residential Managing Agents (ARMA)

178 Battersea Park Road, SW11 4ND
Tel: 020 7978 2607 Fax: 0207 498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

Association of Retirement Housing Managers (ARHM)

Southbank House, Black Prince Road, London SE1 7SJ
Tel: 020 7463 0660 Fax: 020 7463 0661
Email: enquiries@arhm.org Website: www.arhm.org

The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD
Tel: 020 7222 7000 Website: www.rics.org

The Law Society

113 Chancery Lane, London, WC2A 1PL
Tel: 0207 242 1222 Website: www.lawsociety.org.uk

The Federation of Private Residents' Associations

PO Box 10271, Epping CM16 9DB
Tel: 0871 200 3324 Info: info@fpra.org.uk Website: www.fpra.org.uk

Residential Property Tribunal Service (RPTS) National Helpline

Tel: 0845 600 3178 Website: www.justice.gov.uk

Chartered Institute of Arbitrators

12 Bloomsbury Square, London WC1A 2CP
Tel: 0207 421 7444 Website: www.ciarb.org

Adjudication Society, LLP

c/o Fenwick Elliott, Aldwych House, 71/91 Aldwych,
London WC2B 2HN
Website: www.adjudication.org



L E A S E

**THE LEASEHOLD
ADVISORY SERVICE**

Maple House, 149 Tottenham Court Road, London W1T 7BN

Telephone: 020 7383 9800 Fax: 020 7383 9849

Email: info@lease-advice.org Website: www.lease-advice.org