

Linda Shaw
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Action Group

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Dear Linda

Re: Use of LEASE Mediation Service by Brighton & Hove City Council

I am writing to clarify our policy with regard to the use of alternative dispute resolution to resolve leasehold disputes between Brighton & Hove City Council and leaseholders of council owned properties. My reason for writing, is that I have recently received several enquiries from Councillors and Leaseholders asking for clarification of the Council's policy with regard to using the LEASE Mediation Service to resolve leaseholder disputes.

As you are aware, LEASE is the name for the Leasehold Advisory Service. The Leasehold Advisory Service is an Executive Non-Departmental Public Body funded by the Government to provide free advice on the law affecting residential leasehold and commonhold property in England and Wales. LEASE also offers a mediation service, known as the LEASE Mediation Service.

The Council already has a policy of considering alternative dispute resolution, such as mediation, in cases where it has not been possible to resolve the disputes through our three-stage internal dispute procedure. However, the majority of our leaseholder disputes are resolved satisfactorily through the internal dispute procedure without the need for recourse to either the Leasehold Valuation Tribunal (LVT) or to mediation. In the summer of 2009, Brighton & Hove Council used the LEASE Mediation Service for the first time. This helped to bring a satisfactory resolution to a protracted dispute. This case was the first time that a leaseholder had actively requested mediation.

Our Leaseholder Handbook is aimed at helping council leaseholders understand the rights and responsibilities of both themselves as the homeowners and the council as their leasehold manager, and provides information on resolving disputes, including the use of alternative dispute resolution. For reference, a copy of the Leaseholder Handbook can be found on the Council's website:

http://www.brighton-hove.gov.uk/downloads/bhcc/housing/council_housing/Leaseholders_handbook.pdf

The Handbook outlines the procedures that the Council follows to try to resolve disputes. Please see section 6.5 of the Handbook. Although the council has a Corporate Complaints Procedure, because the area of leaseholders' service charges is specialised, Housing Management has its own procedure to try to resolve any problems. This approach has been praised and recognised as good practice by the Leasehold Valuation Tribunal. The Leaseholder Handbook clearly states at paragraph 6.86 that the council will consider alternative dispute resolution where appropriate:

“If no resolution has been reached at the end of this process, the council will consider whether alternative dispute resolution, such as mediation, would be appropriate” [para 6.86, page 30].

A link to the LEASE website is also available on the Council's website, which can be found via the Council's 'A to Z of services' section under 'Leasehold'. For reference the web link to the relevant page on the Council's website is below:

<http://www.brighton-hove.gov.uk/index.cfm?request=c1136262>

From this link, a leaseholder can find further information on the LEASE Mediation Service, including a link to an online video which explains how LEASE mediation works. An application form is also available from this website.

However, the recent enquiries asking whether mediation is available, and the low take up of mediation as a means of resolving disputes does seem to indicate that we are not communicating the option of alternative dispute resolution as clearly as we would like. The Council is therefore currently in the process of reviewing the information that we provide to Leaseholders, to ensure that we are clear about the option of mediation and when this may be an appropriate way of resolving a dispute. We are currently reviewing our website, to ensure that information on the LEASE Mediation Service can be easily found by Leaseholders, and we will include information on mediation services in the forthcoming Leaseholders Action Group newsletter.

Mediation will not always be considered by the Council, or by a leaseholder, as an appropriate way of resolving a dispute. Although mediation can be useful in some cases, some disputes revolve around a question of fact. For example, many disputes relate to whether a service charge is payable or not under the terms of the lease. Questions such as these are often questions of fact which, if disputed, can sometimes only be determined by a court or a Leasehold Valuation Tribunal (LVT). In some cases, the Council may therefore advise the leaseholder that mediation may not be a helpful way of resolving the dispute. Mediation also only works when both parties are willing to participate and explore a solution. I therefore do not feel that mediation should be adopted by default, but it should be considered in all cases where the internal dispute process has not found a satisfactory resolution to the dispute.

Finally, it is worth pointing out that the LEASE Mediation Service is not the only form of alternative dispute resolution available. Whilst the LEASE Mediation Service is a specialist service and appears to offer good value for money, some leaseholders may wish to seek alternative forms of dispute resolution through e.g. a private mediator. This may be the case where a Leaseholder has had previous contact with the LEASE and has not been satisfied with the advice that they have been given. In such cases, the Council would be willing to consider alternative forms of dispute resolution on an individual case basis.

I hope that this helps to clarify the Council's position with regard to resolving disputes. We hope that our position will become clearer to leaseholders as a result of the advice information that is currently underway. We expect to have completed the review of the information that we give out to leaseholders by the end of March 2010. In the meantime please let Peter Mustow know, if you would like the issue of mediation to be an agenda item at the next Leaseholder Action Group meeting.

Please do not hesitate to contact me if you have any further queries regarding this,

Yours sincerely,

Nick Hibberd
Assistant Director, Housing Management

cc. Councillor Anne Meadows, Chair of Adult Social Care & Housing Scrutiny Committee
Councillor Maria Caulfield, Cabinet Member for Housing
Councillor Georgia Wrighton, Deputy Chair of Adult Social Care & Housing Scrutiny Committee
Giles Rossington, Scrutiny Officer
Dave Arthur, Senior Leasehold & Right to Buy Officer
Shula Rich, Chair, Brighton & Hove District Leaseholders Association
Linda Shaw, Brighton & Hove Leaseholders Action Group
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