

Housing Services ***The Mediation Process***



**A guide to dealing with neighbour
disputes by inviting an outsider
(*Mediator*) to speak with those
involved and help them to find their
own solutions**

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Introduction

Almost everyone knows of somebody who has had a dispute with their neighbour about one thing or another. Be it a noisy dog, car repairs or an argument over a boundary fence or hedge. To someone not directly involved in the dispute the reason for many neighbours falling out can often appear trivial but to those involved it is a matter of the greatest importance and needs to be sorted out.

Often a specific incident which is not sorted out quickly can lead to frustration and anger and create a response appearing totally disproportionate to the incident itself.

What is Mediation?

Mediation is the process whereby someone not involved in a dispute and not known to the people involved, acts as a go-between to help the people involved come to a solution which they can agree on.

The emphasis is placed on those involved to find their own solution and be guided by the mediator.

It has been said: -

“Mediation turns a two-way fight to the death into a three-way search for an agreement”.

The Principles of Mediation

- Mediation is free to all Council Tenants and Council Leaseholders throughout the Tendring district
- Everything discussed with a mediator is kept private and confidential. No one is told anything unless it is with permission
- Mediators do not take sides in a dispute or decide who is right or wrong
- The Mediation Service is an independent organisation with no direct links with Tendring District Council

In some disputes it may not be appropriate to refer the case to independent mediation immediately. For example, there may be serious breaches of the tenancy agreement which require investigation by the Council's Housing Estates Management Section.

The Mediation Process

Wherever possible, neighbours should try to resolve a dispute between themselves without involving the Council.

Reporting a Dispute

In the first instance, neighbour disputes should be referred to the Housing Estates Management Section. Details of the dispute will be recorded and a case reference number allocated. You will then be contacted by your area Estates Officer who will discuss with you the options available to resolve the dispute.

The Estates Officer will, with your consent, act as a “go-between” with your neighbour to seek a mutually acceptable solution to the problem.

Firstly the Estates Officer will visit you and ask you to explain exactly what the problem is and he will ask your permission to visit the neighbour and raise the issues with them. He will then discuss the basic details of the dispute with your neighbour and give them the opportunity to explain their views and opinions on the matter.

Acting as a “go-between” the Estates Officer will gauge from these interviews whether there is some common ground and seek to obtain a mutually acceptable agreement between you and your neighbour. The process may involve you and your neighbour agreeing to meet to better understand each other’s point of view.

In the majority of cases the intervention of an Estates Officer can be very successful in resolving the problem but usually only if referred at an early stage.

In those cases where the dispute cannot be resolved by the Estates Officer on a local basis, it may be necessary to consider referral to an independent mediator.

Referral to Independent Mediation

Often in cases involving several neighbours or where a dispute has been going on for some time, it is necessary to consider independent mediation. Also where the dispute may involve Council tenancy issues, such as neighbour nuisance, it may be best dealt with by a totally independent and impartial mediator.

The Estates Officer will ask all parties involved if they are prepared for us to submit the dispute to independent mediation.

Where the parties to the dispute agree, Tendring District Council has a referral arrangement with a specialist mediation service.

Cases will be referred to the mediation service by the Estates Management Section if it is considered: -

- the parties concerned have a desire to solve the dispute;
- the issues are complex and need more attention than our existing resources allow;
- the issues are best resolved by a totally independent view.

Referral Process

We will write to you and the other neighbours involved in the dispute confirming that the case has been referred for independent mediation and that you will be contacted directly by the Mediation Service.

From the time a case has been referred to the Mediation Service, all communication involving the dispute should be with them. It is important that you do not continue to report further incidents involving the dispute to the Estates Management Section as this could lead to delays and confusion.

The Mediation Service will appoint a two-member team of trained mediators to each case. This team will contact you and arrange an initial visit to each of the parties involved before commencing the process of Mediation. The Mediators will talk to the parties concerned separately to find out their story and how they feel about what is happening. They will then check what the parties have done to try to resolve the problem so far and if they have tried, why it didn't work.

The mediators will then agree a plan of mediation and check that the parties concerned wish to give it a try. They will then set up the first mediation session at a time and place convenient with the parties concerned.

The Mediation Process consists of: -

- the parties involved agreeing that there is an issue or issues which need to be resolved;
- the parties participating voluntarily;
- the process being separate to other action or enforcement that the landlord make take;
- the contents of the dispute and discussions being confidential. They are not disclosed to the Council;

- total impartiality;
- the parties involved being satisfied with any agreements made;
- the parties involved being given the overall authority to settle their own dispute.

Mediators will report regularly to the Council on the progress of any case referred only to the extent as to whether it has been concluded successfully, is ongoing or has failed. It is the parties involved who keep authority over the process and it is they alone who decide on the conclusions.

What Happens if Mediation Fails?

Mediation is a voluntary process and the results of any mediation agreement are not legally binding.

Mediation is unlikely to be successful when run alongside any form of statutory action of tenancy enforcement action being taken against one or all of the parties. A case should ideally be referred prior to action being taken or once other action has been completed.

If mediation fails and tenancy enforcement action proves to be necessary the court may take this into account.

Frequently Asked Questions

Mediation is a voluntary process and nobody should be forced into taking part, however, you may have concerns that can easily be answered.

Will you have to meet the neighbour?

No, the mediators may be able to help without needing to bring the two parties together. However, experience has shown that the most effective way to resolve a dispute is usually for the two parties to meet with the mediators present. As mediation is a voluntary process no-one will force the neighbours to do anything that they do not want to and every stage will be explained to them.

Can Mediation work if there is a disagreement about what occurred?

The mediators will not try to work out who has done what and the parties will not need to prove anything to the mediators. Mediation works by agreeing a course of action to solve any current difficulty or any future difficulty. The mediators will try to help everyone to agree on what difficulties exist, but will not blame anyone. The neighbours may see the situation very differently but this does not prevent mediation from working, however the parties do need to agree there is a difficulty.

How can mediation help if one neighbour will not take part in mediation?

This is much less common than people imagine. As the mediators are independent and will not accuse anyone of anything, neighbours are often prepared to see them. If a neighbour does not wish to see them then they may still be able to help the other neighbour. Ultimately, mediation is a voluntary process.

What will mediators tell each neighbour?

The mediation service acts completely confidentially. This means that the mediator will not tell anyone outside of the organisation what has been told to them without that person's permission. In order to resolve a dispute it is necessary to share ideas and suggestions between the parties, but this is always done with consent.

Could mediation inflame the situation between two neighbours?

The mediators will not continue with the mediation process without the permission of the relevant neighbours. Although dealing with a dispute even through mediation can be distressing, allowing a dispute to continue rarely means that it goes away, it

normally just gets worse. It is normally better to try and resolve the difficulty as soon as possible.

How long will it take?

Most mediations take a month or two to resolve, sometimes a little longer. This is much quicker than legal proceedings might take.

How much will it cost?

The service is free. The cost of referring a case to mediation will be met by Tendring District Council.