

MEDIATION INFORMATION SHEET FOR MANAGERS OF SHELTERED AND RETIREMENT HOUSING

Through AIMS, managers of retirement and sheltered housing have an additional resource to use in resolving disputes – mediation. The following explains how AIMS uses mediation, both in offering an independent mediation service to parties in dispute, and in using facilitative techniques throughout our casework.

Mediation In Relation To Litigation

Where disputes arise, managers sometimes find themselves having to think about alternatives to using the legal system. For one thing, the dispute is not always something that the courts can deal with or provide a suitable remedy for. Even where going to court could be an option, its adversarial nature can damage relationships and contribute to further disputes. This is also true of tribunals and arbitration. These processes are adversarial and law-based; they concentrate on discovering who is right and who is wrong according to law and precedent.

In contrast, mediation is one type of ADR (alternative dispute resolution) process that enables people involved in a conflict to reach a mutually acceptable agreement with the help of a neutral third party, or mediator.

Mediation has been used for many years in the UK. Since 1999 it has taken on new importance as one element of the reforms of the civil justice system put forward by Lord Woolf (now Lord Chief Justice) in his report “*Access to Justice*”. The Woolf reforms emphasise the use of the most appropriate and proportionate means of resolving a dispute, which in many cases will be mediation.

Mediation focuses on the future, not the past, and helps parties consider what is in their interests and not just what the law says. In doing so it allows all parties to walk away from the table (and the dispute) with a better understanding of the others’ positions, having resolved problems that were at the root of the dispute and with some guidelines as to future continuing relationships.

Mediation is not a panacea and is not suitable for all problems. In many situations going to court will be the best means of resolving a dispute. But mediation adds another tool for anyone involved in complaint handling and dispute resolution.

Below are examples of the differences between mediation and litigation.

Litigation	Mediation
Authoritative – judge or tribunal makes issues a binding judgement	Consensual – parties seek their own agreement assisted by an impartial mediator
Adversarial – results in a win/lose outcome	Non-adversarial – attempts to help parties reach an outcome without a loser
Rigid – externally imposed rules on procedure, timetable, representation, evidence and costs	Flexible – parties agree the timetable, procedure, agenda, representation, costs
Positional – parties get boxed into 'take it or leave it' positions	Facilitative – emphasis is on communication of interests and on problem-solving
Public – the hearing is usually open to the public	Private – the hearing is confidential and 'without prejudice'
Risk of judgement against leads to late 'collapse' into settlement, after costs and delay	Outcome is by agreement, so no pressure to settle to avoid judgement against
Focuses on past – emphasis is on history of the dispute, past behaviour and legal precedent	Focus on future – emphasis is on current and future interests

Mediation And Complaints Procedures

Some of the difficulties with litigation also arise with in-house complaints procedures, which are usually the first port of call when direct negotiation fails to resolve matters. No matter how user-friendly the complaints procedure is, it is evident that positions often become entrenched at this stage. As the process continues, parties become defensive and communication suffers. If a dispute proceeds all the way through a complaints procedure, there are precious few choices at the end of it if the dispute remains unresolved. Incorporating independent mediation as an early stage in the complaints procedure can take the heat out of the complaint and stop the damage to communication and ongoing relationships.

How Aims Works

AIMS is a unique advice service in that we use mediation techniques throughout our work. As we do not provide advocacy we try to reach agreement between parties without the need for court or tribunal action. AIMS provides detailed telephone and written advice on a wide range of enquiries relating to sheltered and retirement housing and offers our service to both residents and landlords – which also makes AIMS unusual among advice services.

If a problem is identified and the client gives AIMS permission, an adviser may write to the landlord to try to resolve the matter. In agreeing to make detailed representations to managers AIMS corresponds in a way that tries to encourage agreement or compromise. If it becomes evident that a matter is unlikely to be resolved by correspondence AIMS can suggest a full mediation meeting to the parties involved.

Warden/Scheme Manager Services

AIMS' statistics show that residents of sheltered housing make many enquiries about the warden/scheme manager service. These enquiries can relate to changes in the service, the costs, and the role of the warden. We are aware that the role of the warden has changed and the warden's rights must be considered, so we take great care in the way we respond to these enquiries. We are also aware that some of the problems that arise between residents and wardens relate to communication, different expectations, and clashes of personality and lifestyle. This is why the subject is useful to illustrate the way AIMS adopts facilitative techniques – rather than adversarial ones – throughout our casework.

In most cases AIMS has found that the warden's caring role has diminished and they are expected to act as an administrator for the scheme. This gradual change of role is not necessarily popular with some residents who feel that they require support from someone who is living on the scheme. Other residents who do not require this type of service may be content for the warden to have a more administrative role.

These case studies show how AIMS might deal with enquiries regarding the role of the warden.

Case 1 – Clarity about warden's duties

A relative of a resident contacts AIMS to complain that the warden is not doing enough and hardly ever leaves her office. The relative gives AIMS examples of the warden's refusal to carry out simple tasks such as taking letters and parcels to the post office. AIMS was informed that the previous warden who had been in post for about five years was happy to carry out these type of duties.

AIMS had to explain that what duties the warden carries out depends on the job description. It was possible that there had been a change in the job description so AIMS advised the relative to write to the managing agents to ask for a copy. In a few weeks when they had received this it became clear that the warden was now only required to check on the residents' welfare on each weekday and to ensure that the alarm system was functioning correctly. AIMS was then able to suggest other local organisations to help with the services that their relative required.

Case 2 - Change in warden service

AIMS was contacted by a relative of a resident on a scheme where there was a nursing home and two blocks of leasehold retirement flats. The residents in the leasehold block had the benefit of the staff in the nursing home where 24-hour cover was available. When the nursing home closed the leaseholders lost the warden service that served all of the residents on the scheme. There was also an intercom system, which connected residents to the warden or other staff in the nursing home.

AIMS found that the leaseholders were being provided with these services at a very reasonable cost as the nursing home residents paid the majority of the cost. After AIMS made contact with the managing agents all the parties involved realised the difficulty in providing the same level of services to leaseholders after the closure of the home. AIMS wrote to the managers to ask how they proposed to continue providing the type of service that was required by the lease. The freeholder then became aware of the difficulties and asked for a meeting with AIMS. This led to several interim measures such as a call out system where the freeholder agreed to subsidise the cost for several years. The freeholder also agreed to buy back one of the flats in the leasehold block as soon as possible so it could be occupied by a new resident warden. The leaseholders were content that after AIMS' intervention the freeholders and managers had done everything they could to help, following the closure of the nursing home.

All of these cases demonstrate how AIMS helped to solve a potential dispute relatively quickly without the need to use the landlord's complaints procedure. They show how AIMS' non-adversarial approach can help to resolve problems in sheltered housing without either party being drawn into conflict.

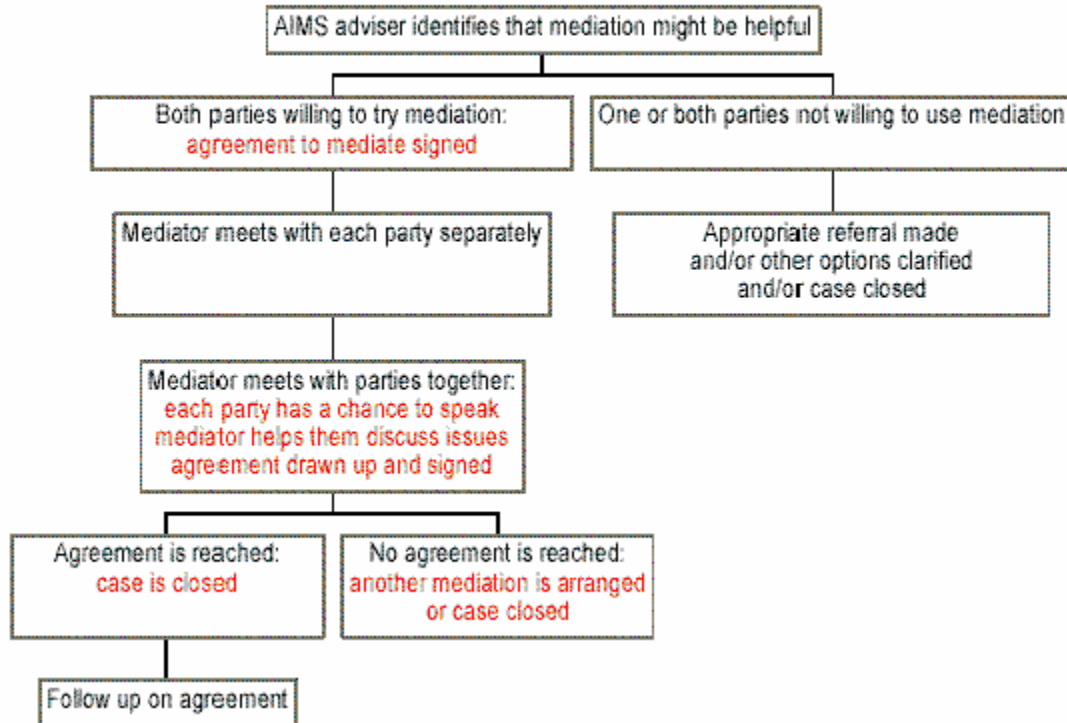
MEDIATION

In some cases AIMS offers a mediation session. Mediation can be an expensive service to offer, especially when operating on a national basis, and therefore we work with some guidelines to ensure the best use is made of our limited resources.

At AIMS, our advice service is kept separate from the mediation service. Staff will not mediate in a case where they have previously advised one of the parties. In this way, impartiality is preserved. Wherever possible, legal issues are resolved prior to a mediation meeting, so that no party is placed in a position where they might negotiate

away their legal entitlement. Prior to any mediation being arranged, AIMS must be satisfied that there is a genuine desire to resolve the situation, and all parties are asked to sign a formal “Agreement to Mediate” which sets out the basic ground rules on which the mediation is to be conducted.

HOW DOES MEDIATION WORK?



Case study 3 – mediation

AIMS was approached by a housing manager concerned about the deteriorating relationship between a tenant and a scheme manager. The scheme manager had taken sick leave because of the situation, and the housing manager was requesting AIMS to mediate to try to resolve matters. Both the tenant and scheme manager were willing to participate and a mediation hearing was arranged. A written mediation agreement was signed by both parties and a subsequent letter received from the housing manager indicated that the mediation had been a success with both parties being impressed by the expertise provided by the mediator.

Case study 4 – mediation

AIMS was contacted by a landlord concerned about the longstanding breakdown of communication between a tenant and warden. Correspondence received indicated that there was serious mistrust of the warden by the tenant who had made a number of unproven accusations against the warden. Despite a meeting taking place between the tenant, warden and housing manager to improve communication the situation continued to deteriorate. AIMS set up a mediation between the tenant, warden and social worker and this resulted in the tenant agreeing to make a written apology to the warden and the warden accepting that she should respect the tenant’s desire for privacy. The social

worker agreed to be a first point of call should a problem arise between the tenant and the warden in future.

When is mediation appropriate?

As a manager of retirement housing, you should consider mediation where:

- You want to preserve or restore the relationship with the person(s) with whom you are in dispute.
- You want to settle the dispute, providing you can get acceptable terms from the other side.
- You want to avoid the cost of preparing for a legal hearing which may never happen.
- You would prefer to settle the issue in private.
- You believe an injection of communication and common sense would lead to a settlement.
- You want to control the outcome of the dispute rather than have a judge, ombudsman or arbitrator decide it for you.

Mediation will be *unsuitable* for cases where:

- The jurisdiction or sanction of a court is essential – e.g. it is important to set a legal precedent.
- Where one party wants to be publicly vindicated or to see the other side humiliated and is prepared to accept the risks and costs.

Mediation also might not be suitable where:

- there is an issue of personal safety or fear of violence
- where a party might not be able to follow through on an agreement

AIMS does not represent any party in mediation, so we encourage parties to bring supporters and/or advocates where appropriate. However, we believe that the parties themselves are best placed to present their interests, so we also ensure that any supporters are clear about their role.

It is AIMS' experience that disputes arise in retirement housing for a variety of reasons. It may be that problems of inter-dependent living can cause conflict among residents and can become a problem for the manager, who is faced with varied demands from residents with differing needs and interests. It may be an issue of individual personality clashes between residents and managers, or of expectations about services that are not met, or of a complaint that has simply not been resolved in spite of everyone's best efforts.

Where disputes do arise, between residents or between residents and managers, AIMS firmly believes that mediation should be considered early on. It keeps control of the dispute, and its resolution, within the hands of the parties and enables them to find the best way forward that meets the needs of everyone, managers and residents alike. Phrases like "give and take", "being heard" and "negotiation" may sound nebulous, but where responsible management seeks to meet the requirements of older people whose home represents more than bricks and mortar to them, mediation should be positively considered.

If you would like to discuss mediation in general or any particular situation, please feel free to contact us at AIMS - we are a resource for managers as well as residents!

AIMS

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