

# **Report to Safer, Cleaner, Greener Scrutiny Standing Panel**

**Date of meeting: 6 January 2011**

**Subject: Mediation based dispute resolution**

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**Committee Secretary: Adrian Hendry**

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## **Recommendation:**

**To note the Council's use of mediation as a mechanism for dealing with intractable complaints.**

## **Report:**

### Introduction

1. This report is before Members tonight following a request by the Legal & Estates Portfolio Holder for the Panel to consider the Council's use of mediation in dealing with some of the more intractable, neighbour based disputes.
2. Epping Forest District Council's Safer Communities Team has been using the services of a trained mediator for the last four years to resolve low level neighbour disputes which would otherwise cause a disproportionate drain on resources. These disputes are normally relatively minor, provide no hard evidence to identify a perpetrator and therefore do not justify formal intervention actions. The process requires all parties to agree to the mediation before it can be undertaken. Mediation is a positive process of trying to achieve dispute resolution without resorting to a more formal process
3. The mediator assists those in dispute by using facilitative mediation to negotiate a mutually agreed settlement. In some cases, mediators may express a view on what might be a fair or reasonable settlement, generally where all the parties agree that the mediator may do so, this being evaluative mediation. The process is private and confidential. In most cases a 'neutral' premises is used to carry out the mediation process.

### Mediation outcomes

4. There are a number of possible outcomes from mediation, as follows:
  - (a) The mediation is completed successfully and all parties agree to abide by a set of conditions drawn up by the mediator. This results in no further action and the parties adhere to the mutually agreed conditions. Requests for intervention by various service areas stop at this time;
  - (b) The mediation starts but is not able to reach a successful conclusion. Experience has shown that mediation, once undertaken and subsequently withdrawn from by one or more party, can still be effective. Although no formal agreement is reached parties tend to become more tolerant and complaints reduce or stop;
  - (c) The mediation is offered and refused by one or more parties in dispute. When this situation arises it can identify the main protagonist to the dispute. The refusal of mediation can also be used evidentially in any future enforcement action showing a proportional attempt

at resolution prior to court action. This is also explained to the party who is not engaging in the process. In some cases this will also create a cessation of complaints; or

(d) The mediation after being successfully completed suffers a breakdown by one or more of the parties. This situation can lead to a similar outcome to the circumstances set out in (c) above.

#### Mediation benefits

5. The benefits can be identified as:

- (i) mediation is usually quicker and more cost-effective than other forms of resolution;
- (ii) mediation gives the parties control over the eventual agreement.
- (iii) the strength of protagonists reaching their own agreement is that it is more likely to succeed than imposed solutions;
- (iv) mediation can take place at any stage of the dispute including prior to initiating court proceedings and might even avoid the need to go to court;
- (v) mediation focuses on positive outcomes and how to achieve better working relationships;
- (vi) mediation can help to reduce tension, anger and misunderstanding between disputing parties;
- (vii) mediation can prevent further escalation of a dispute into criminal actions; and
- (viii) complaints to officers, partnership organisations and elected members reduce.

#### The costs of mediation

6. Both EFDC Safer Communities Team and Housing Directorate (Housing Management and Homeless Prevention) use the services of Peter Hesketh, a trained mediator. Mr Hesketh, a former senior Police Officer, does not provide an overall cost framework for what is, an inexact science. However, he is briefed on the facts of each case and after an initial meeting is able to give an idea as to whether resolution is possible and if so, how long it is likely to take.

7. EFDC is able to provide neutral venues for this process to take place at no cost. Agreement has also been reached with Essex Police to use police premises for this purpose at no cost should they be more convenient or there is a potential for one of the parties to become aggressive. This provides locations at Epping, Ongar, Waltham Abbey, Loughton, Debden and Limes Farm. The use of these locations provide a very comprehensive facility across the district.

8. EFDC Safer Communities Team has, between 2007 and 2010, carried out 6 cases of mediation. These cases involved long term disputes where all parties were deeply entrenched in their respective positions. Of these cases, the likelihood of any completely successful resolution suitable to all parties was slim. However, all but one case provided the opportunity for some input from the mediator. This allowed the various parties to air their grievances to an impartial individual in a neutral location. Although the cases did not all lead to full agreement by all parties, they allowed the dispute to be aired fully and suggestions for compromise and resolution were made. The average cost of each mediation process was £418.

9. During the period 2009 – 2010, EFDC Housing services used mediation on 4 occasions. The average cost per complete mediation case was £381.75.

10. Appendices A, B and C provide additional information in respect of:

Appendix A: Safer Communities problem solving process chart

Appendix B: Economic and Social cost of crime 2003/04 (Home Office)

Appendix C: "The Role Of Mediation in Tackling Neighbour Disputes and Anti-Social Behaviour", Scottish Executive Social Research