



**THE CHARTERED INSTITUTE OF ARBITRATORS  
WALES BRANCH**

In association with

THE UNIVERSITY OF GLAMORGAN



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# ADR FORUM

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**Glamorgan Business Centre**

University of Glamorgan, Treforest, Mid Glamorgan

Friday 29<sup>th</sup> April 2005

## LANDLORD AND TENANT DISPUTES

### Paper

**“Resolving Tenant and Leaseholder disputes by ADR”**

By

Gregory Hunt

Chartered Institute of Arbitrators

## **“Resolving Tenant and Leaseholder disputes by ADR”**

Presented by Dr. Mair Coombes-Davies

You will have been expecting Gregory Hunt, Head of Business Relationships at the Chartered Institute of Arbitrators, to be speaking to you today. However, Gregory has been forced to send his apologies as he is unable to make it here due to the fact that he is signing a contract with a major local authority at this very moment. This contract will secure a high volume ADR service expected to resolve upwards of 500 leaseholder disputes before the end of 2005, and many more as we move in to 2006.

This new service will be the fifth that DRS-CI Arb, the Institute’s dispute resolution service, has developed to resolve housing disrepair, tenant and leaseholder disputes. New services are expected with other local authorities throughout the Midlands, the North West of England and Scotland before the end of the year.

Furthermore, DRS-CI Arb is in discussions with private landlord bodies, such as Age Concern England, and close to introducing ADR to resolve disputes between leaseholders and private landlords on a national UK basis.

Gregory hopes that further services will be added in Wales shortly thanks to the hard work of the Institute’s Welsh Branch in organising days such as this, when the work of DRS-CI Arb can be promoted to a wider audience.

The methods used to resolve disputes in these local authorities will be familiar to you all – conciliation and arbitration. In most cases both conciliation and arbitration are dealt with by documents-only procedures, although there is an option for a hearing within arbitration if the parties or the arbitrator feel it is necessary.

However, it is the new service that is the most interesting. This service will see the development and use of four ADR components resulting in a huge saving to the local authority and its residents. Indeed, based upon a recent press release by the London Borough of Hackney, there are savings of £1m+ per year to be made by using ADR.

The components of the new service are:

- 2 hour mediation
- 2 hour adjudication
- documents-only adjudication, and
- arbitration, default method being documents-only but with the option of a hearing built in

It is expected that the majority of disputes will fall in to the 2-hour mediation or adjudication sessions. For these sessions, DRS-CI Arb will provide local mediators and adjudicators, trained and accredited to defined standards, who will sit in local authority offices throughout the day and mediate or adjudicate three cases per day for a set fee.

In terms of mediation, the process is well tested in county courts throughout the country, and a high success level is expected. The parties will provide the mediator with no more than two sides of A4 each as pre-reading material, and the mediator will attempt to assist the parties in the settlement of their own dispute within the two-hour session. If mediation fails or all of the issues are not resolved, then the parties will be free to escalate the remaining issues to adjudication or arbitration.

Adjudication in this form is less tested, but the adjudicator will listen to the evidence of the parties and then provide them with a written decision within two days of the session. This decision becomes binding on the local authority if it is accepted by the leaseholder. If the decision is not accepted by the leaseholder then they will be free to pursue arbitration, LVT or the courts as further options.

In terms of documents-only adjudication, the process is tested and is already used successfully by DRS-CI Arb via its use in the Communications & Internet Services Adjudication Scheme – CISAS. CISAS was developed 18 months ago following cries from certain communications providers, such as Orange, T-Mobile and Telewest, for an alternative to the Telecommunications Ombudsman.

Since its development and approval by Ofcom, the regulator, CISAS has resolved almost 400 disputes between customers of over 90 communications providers in the UK, and over 80% of decisions made by the adjudicator in this documents-only format have been accepted by the consumer – a major success rate considering that only 66% of cases are found in favour of the consumer. Furthermore, in the 400 cases to-date, only once has a consumer rejected the decision made and sought further relief in the courts.

Documents-only arbitration is, of course, the mainstay of DRS-CI Arb, and has been used in tens of thousands of cases in the past ten years.

In this particular procedure, the parties will use documents-only as a default although the power is there to allow the arbitrator to call an oral hearing. If an oral hearing is held there is a further option of using wingers as advisers to the arbitrator, and these will be drawn from one winger from the Local Authority's Housing Team and one from the local Leaseholders Association. If either or both do not turn up on the day the hearing will continue in the presence of the arbitrator only.

In terms of costs, all costs will be paid by the local authority. That is, the costs of DRS-CI Arb and the mediator / adjudicator / arbitrator and any expert appointed to assist. In the London Borough of Hackney, they go one step further by actually funding the tenant by providing them with a grant of £500 to fund legal assistance.

These five services, and the latest addition in particular, are expected to provide greater access to justice to tenants and leaseholders and to reduce the sums of money spent by local authorities in legal fees incurred in disputes with their tenants and leaseholders. They are also expected to reduce the backlog of disputes, which in one particular local authority is in the region of 1,300 cases.

Finally, due to the Institute's national membership structure, DRS-CI Arb will be able to draw on the resources of mediators, adjudicators and arbitrators throughout the UK to be able to provide local services to local authorities. Panellists will be required to receive extra training and continue their professional development in order to remain on the panel, and we will look to local authorities themselves to provide access to the Institute to train members of their staff and tenants and leaseholders in their own areas via the Institute's one day awareness to ADR programmes.

For further information, including copies of the rules, guidance notes and application forms for the various schemes, please contact Gregory Hunt who's contact details are shown on the back page of the DRS-CI Arb leaflet in your delegate packs.