

Leaseholders and Freeholders

Dispute Resolution Service for Service Charges and Major Works

Guidance notes on service charges and major works disputes procedure for leaseholders and freeholders.

Before proceeding to make an application for dispute resolution with a hearing, you should read the contents of this document.

These guidance notes provide general advice about this disputes resolution service. The application form will only proceed to a genuine dispute to be reviewed by an independent panel, after you have submitted your application fee. You are bound by the rules and failure to comply with them may affect the conclusion of any decision and possibly invalidate it.

The rules and guidance notes contain everything you need to know about the Service and the law that covers it.

Any reference to a rule in this guidance note is to the relevant numbered rule in the Rules of the Service.

This document contains:

1. A Process Map of Disputes Resolution Process
2. Frequently Asked Questions
3. Rules governing this Disputes Resolution Service

You may not apply if you already have a complaint logged or this case has been reviewed by a Court or the Leasehold Valuation Tribunal (LVT).

Process Map for the Disputes Resolution Service

Step 1: Send in your completed application form stating whether you wish a Paper Decision or Hearing, submitting any relevant evidence which you wish to be considered.

Step 2: An administrator will provide a copy of your application with all of your evidence to the Head of Leasehold & Right to Buy Services.

Step 3: Within 15 days of receipt of application form, Head of Leasehold & Right to Buy Services will confirm whether this matter may proceed under a formal Disputes Resolution Process.

Head of Leasehold & Right to Buy Services agrees to proceed under the Disputes Resolution Service.

You will be asked to submit your £50 fee before the next step may proceed.

An administrator for the Disputes Resolution Process will forward all documents relating to your application to Head of Leasehold & Right to Buy Services.

Go to Step 4.

This matter should not proceed through a Disputes Resolution Process.

You will be advised not to submit £50 application fee.

The administrator will advise this matter will not be treated as a dispute. One of the following reasons to be given:

- a) Your case should be heard by the Leasehold Valuation Tribunal or an alternative mediation service.
- b) Head of Leasehold & Right to Buy will respond to your original application directly within 30 days, outside of the dispute process.

Step 4: A Disputes Resolution Panel comprising a resident Hackney Homes leaseholder, a Hackney Homes Complaints Officer, and an independent specialist will be provided with evidence from both you and Hackney Homes.

Step 5: If you requested a paper only decision based on the evidence submitted by you and Hackney Homes, the panel will review the content. The panel may request further clarification.

Step 5a: If you requested a hearing under the Application, you and Hackney Homes will be asked to present any further evidence in support of your case at a specified location in front of the panel.

Step 6: The Disputes Resolution Panel for this case will review the evidence submitted.

The decision will be made available 14 days after final submission of evidence which is binding on both parties. A copy of the written decision will be sent to both you and the Head of Leasehold & Right to Buy Services.

Frequently Asked Questions

You will find some frequently asked questions, with answers about this disputes resolution service listed below.

What is Disputes Resolution?

Disputes Resolution is a procedure where an independent panel settles a dispute between you and Hackney Homes. This is done by an exchange of documents and where you have requested, a two-hour meeting between you, Hackney Homes and the above mentioned independent panel.

Do I have to submit evidence?

Yes. Your case will not proceed without evidence. You and Hackney Homes will need to submit documents to the panel (via the administrator) and the panel will recommend a resolution to you, in the form of a decision, with reasons. If you and Hackney Homes both accept the panel's decision, in writing, the terms will become binding upon you both.

Do I have to present evidence in person?

You may choose to present evidence, when you make your application. This will require a formal meeting with the adjudication panel, lasting not longer than two hours, attended by you and Hackney Homes. If required you may bring along one other person to help you, but this may not be a legal representative. This could be your leaseholder association representative. Any costs of any such representation are your own responsibility.

Who pays the costs?

You have to submit a payment of a capped fee of £50, or as a group of up to 20 people, £500. To limit costs and resources, professional representation is prohibited. However, you may submit reports or findings in support of your application.

What if I applied for a Paper Only decision?

When you make your application, if you have chosen a paper only decision, you do not have to be present. However, you must submit all necessary evidence in support of your genuine dispute.

Remember that general comments or opinions are not evidence.

Who are the Disputes Resolution Panel?

The Disputes Resolution Panel consists of three members, a resident leaseholder (not within the same neighbourhood), a Hackney Homes Complaints Manager/Officer and an independent specialist in leasehold management/accounting. The broad nature of the panel ensures impartiality and independence from the leasehold management service operated by Hackney Homes.

The administration shall be run from Hackney Homes.

What is the role of Disputes Resolution Panel?

The Panel are a group who will issue a decision on the basis of the evidence you submit. Collectively they will act fairly and neutrally between you and Hackney Homes. The Panel cannot help you to make your case. Members can only determine the outcome as fairly and speedily as they are able.

What will the Panel do?

- Review arguments and evidence provided by you and Head of Leasehold and Right to Buy Services
- Act fairly and impartially
- Act according to the prevailing law
- Arrive at a decision based upon the evidence

Is the decision binding?

A decision is the course of action reached by the Panel and instructed to both you and Hackney Homes. A copy of the decision will be sent to you within fourteen working days of the hearing meeting, and it will contain reasons for the decision made.

The decision only becomes binding (legal) when both you and Hackney Homes accept it. If you or Head of Leasehold and Right to Buy Services decide to reject the decision then you or Hackney Homes will be free to take the matter to Court, or to the LVT.

How is the case conducted?

There will be a two-hour meeting in which you and Hackney Homes will be given the opportunity to detail your case to the adjudicator in person. The panel will also have seen evidence from you and Hackney Homes.

How long will the hearing take?

The hearing will take up to two hours, and will take place as soon as possible after you have made your application. On the application form you are asked to notify the administrator of dates most suitable to you for holding the meeting. The administrator will contact the parties straight away and will try and arrange a date when everyone is available.

What can I claim for?

You can apply for service charges or major works up to £5,000 per leasehold unit or up to a max £20,000 for a group application.

How much will it cost me?

The cost of the service to the leaseholder is a capped charge of £50 for individual claimants and £500 for a group up to a maximum of 20 claimants. This charge is to be paid with the initial application.

You will also need to bear your own costs in preparing and submitting your case and of attending any oral hearing. You may not bring any legal action to recover these costs, which will include the cost of postage, stationary, photocopying and legal representation, if used.

How long do I have to agree or reject the decision?

You and the Head of Leasehold and Right to Buy Services both have two weeks in which to accept or reject the decision. You must notify the administrator within the two-week period. However, in certain circumstances (for example, if you have been on holiday), Hackney Homes may agree to an extension with you. If the two-week period passes the decision will no longer be capable of enforcement under the service.

If Hackney Homes and I agree to accept the decision what happens next?

If you and Hackney Homes agree to accept the panel's decision Hackney Homes will either:

- a) Credit your service account in accordance with the decision. If the decision requires repairs or other remedial works to be carried out then they will arrange with you when to carry out the necessary repairs.
- b) Hackney Homes may seek payment directly from you, if the sum has not been paid already, if the Decision states that the charges are reasonable. If you do not accept this, they may instigate any legal action necessary for payment of the outstanding sums.

How do I start my case for dispute?

You must complete the application form, sign and date it and send or take it to Hackney Homes administrator. This form will be acknowledged and then consider whether this will be treated as a dispute. You will then be told to submit any fee payable.

How do I prove my claim?

In order to prove your claim you should make sure that you tell the panel everything in the evidence you supply and/or the two-hour meeting.

You should set out the events which have led to the claim and refer to each supporting document in respect of each allegation. The information you include should include as much information concerning the following as possible:

- The relevant parts of any leasehold agreement
- Your view as to what Hackney Homes has a duty to provide
- The nature of the defects/or failures in service
- Relevant dates (particularly when you first reported each defect or failure and whether it was repaired or any service delivered)
- The names of Hackney Homes staff or representatives concerned (whenever possible use examples of employees or agents)
- The amount(s) claimed, clearly and precisely quantified
- The remedies sought, whether compensation or completion of specific repairs or provision of services

You should avoid 'dressing up' or exaggerating claims to add weight. Allegations that are not supported by evidence will not assist your case and may in fact damage it.

It is not enough for you to show that your dealings with Hackney Homes led to disappointment. You must show that there was a breach of some term of the leasehold agreement, express or implied and that, where appropriate, you took steps to reduce your loss. Allegations must therefore be set out precisely.

What is an example of a dispute?

Here are some examples of disputes which may be considered by the Panel:

- Is the charge levied within the boundary of my estate or block, as defined in the lease?
- Does the service provided constitute a chargeable service within the terms of the lease?
- Has the charge been legitimately incurred and therefore form part of a service charge or major works charge which a leaseholder has to pay?
- Does any supplementary evidence supplied actually support the charges already raised in respect of estimated bill or invoice genuinely support?
- Has the outcome been below an acceptable standard of the intention of the job, service, maintenance or work?

Here are some examples of matters that are not genuine disputes?

These enquiries should be raised with supervisors and managers dealing with these service areas directly, and afterwards through Hackney Homes Complaints Procedure.

- *“The cleaner only comes around twice a week why should I pay for that. Or they are never in when I am at home”.* There are schedules for cleaners requiring them to be present in locations throughout the week. There are also services over weekends in some areas, and inspections are carried out with residents.
- *“When I bought the property I never thought it would cost so much?”* The terms of the lease are clear and freely accepted by the purchaser when they bought their property either on the open market or through right to buy.
- *“I shouldn’t have to pay for repairs, caused by people coming into our estate?”* Maintaining estates in good order and to a reasonable standard incurs costs, whether this is through normal wear and tear or through direct action, Hackney Homes still has to carry out duties.

Can I put forward video evidence?

No, the two-hour meeting is not sufficient for video evidence to be produced.

Can the panel or the administrator advise me on my case?

The panel and the administrator are impartial and cannot act as consultant or adviser to either you or Hackney Homes. They can only advise you on procedural matters.

If necessary, advice should be sought from your leaseholders association or a solicitor or a Citizens Advice Bureau or a law centre or a "neighbourhood advice centre".

Do I Need Legal Presentation?

No. The Service was set up expressly to allow you to present your case without the need for legal representation. Hackney Homes will not use solicitors in this Disputes Resolution Service. If you believe that you wish to present a legal case, you may be referred to LVT, or to Court by the administrator.

How does the Panel decide the case?

The Panel decides the case purely on the arguments and evidence presented by you and defended by Hackney Homes. You must prove your case on the balance of probability to the satisfaction of the panel. The Panel will assess the evidence and analyse the terms of the agreement entered in to by you and Hackney Homes. The Panel specifically looks for a proven breach of this agreement and/or the relevant law.

What evidence will the Panel refer to?

The Panel will try to help you and Hackney Homes resolve your dispute in any way possible but he/she is restricted to consideration of the documents and evidence submitted. You must therefore make every point and submit all supporting evidence that you consider relevant. You must also retrieve and submit any documents sent previously to any other body and which you believe will support your case. Neither the adjudicator nor the administrator are investigators. Therefore, if you have witnesses to support your case, you must obtain their statements and submit them. It is not sufficient for you merely to say that you have evidence. You must produce it.

What if I decide to settle the case during the Disputes Resolution Process?

You and Hackney Homes have the right to enter into settlement negotiations at any time before the case is to be heard or the paper decision is to be made. Negotiations are private discussions between you and Hackney Homes and you should correspond directly with Head of Leasehold and Right to Buy Services and not through the administrator or the adjudicator.

Both parties, however, must notify successful settlements to the administrator, in order that the disputes resolution process can be terminated.

Can I refuse the offer of settlement?

Yes. Hackney Homes has the right to make you an offer to settle and you have the right to accept or to refuse such an offer. When offers of settlement are made, you should consider the following:

- Settlement offers are not necessarily viewed as an admission of guilt or as a delaying tactic.
- If you accept money or other remedy in 'full and final settlement' of any dispute before or during the Disputes Resolution Process. The application may be deemed void as you are agreeing to settle the dispute.

If my dispute is unsuccessful what can I do next?

If you or Hackney Homes decide to reject the decision made by the Panel you or Hackney Homes are free to take the dispute to court or Leasehold Valuation Tribunal. You should seek independent legal advice before proceeding to take a dispute to court.

General Points of Information for Users

1. The application form constitutes an agreement to go to disputes resolution services provided under this service. You are committed to proceeding in accordance with the rules of the service and any fee you have supplied will not be refundable.
2. Make sure that all information required on the application form is provided. Failure to do so will delay the dispute resolution service getting under way.
3. Ensure that your address is correct and written in full, with the postcode and all current contact details. This is your responsibility.
4. The adjudicator will normally only deal with the matters you referred to and the amounts stated in the application form. Make sure that all your claims have been covered in the application form.
5. All correspondence and case statements must quote the case reference number given to you by the administrator and the name of the case.
6. If someone else represents you, then you should communicate with the administrator, or the Panel, only through your representative. Direct communication may cause unnecessary work, confusion and delay.
7. It will not be acceptable for you to send a list of witnesses and ask the adjudicator to contact them. You must supply your own evidence even if you have previously forwarded this to Hackney Homes or the Council.
8. It is not enough for you to show that your dealings with Hackney Homes led to disappointment. This Service looks at a dispute about the contractual obligations between the leaseholder (sometimes freeholder) and Hackney Homes or the Council.

9. Decisions provided under this Leaseholders and Freeholders Disputes Resolution Service for service charges and major works may be referred at a later date under separate collection proceedings instigated by Hackney Homes.
10. Copies of decisions may also be provided and reference made to decisions by the Disputes Resolution Services at independent Leasehold Valuation Tribunals.
11. Any binding contract or decision agreed by both parties will remain confidential at all times to the leaseholder and the landlord, or their agent.