



THE EQUALITY TRIBUNAL
AN BINSE COMHIONANNAIS

MEDIATION REVIEW 2007

CONTRIBUTING TO A FAIRER SOCIETY

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CHAPTER 1

INTRODUCTION

This Mediation Review is published as part of the Annual Report of the Equality Tribunal for the year 2007.

Mediation at the Equality Tribunal completed its seventh year of operation in 2007. This was a year that saw the Tribunal enter a major transitional phase as work on the Tribunal's forthcoming decentralisation to Portllington intensified - resulting in a significant turnover of staff during the course of the year.

While the Tribunal lost some of its professional mediation expertise in 2007, resulting in a fall-off in mediations conducted, mediation once again proved a very valuable resource for the Tribunal with 74% of the cases referred to mediation in 2007 being closed through the mediation process. A detailed account of the performance of the Tribunal's Mediation Service's in 2007, is contained in Chapter 4 – Report of Operations 2007.

The Tribunal's Mediation Service offers the parties in a discrimination case the opportunity, if they wish, to reach an agreed settlement. The process respects the confidentiality of the parties, is completely voluntary (either party may withdraw at any stage) and generally much faster than an investigation before an Equality Officer.

Mediation is an informal process in which the Equality Mediation Officer, who is a neutral and impartial third party with no power to impose a resolution, helps the parties in dispute to try to reach a mutually acceptable settlement. In investigation there is usually a winner and a loser, whereas at mediation, both parties could be considered 'winners' if agreement is reached.

The process does not involve written submissions. Mediation is private and agreements, which are legally enforceable through the courts, are not published. The parties are also offered a "cooling-off" period before being asked to sign an agreement to ensure that both sides can give informed consent on signing.

In the event that agreement is not reached at mediation the complainant may seek to have the investigation resumed. In judicial review proceedings, the High Court confirmed the Tribunal's interpretation that, under equality legislation, such a request must be submitted in writing within 28 days of the issue of a non-resolution notice. If the case returns to investigation, both sides are precluded from using information disclosed at mediation without consent. In addition the Equality Mediation Officer will not pass on any information obtained at mediation to an investigating Equality Officer. It is also important to note that an Equality Mediation Officer will never be asked subsequently to investigate a complaint that s/he has mediated.

The singular advantage of mediation is that it can achieve a "win-win" situation if the parties wish to reach a settlement. Innovative and creative solutions are also possible which often allow the parties to reach a settlement which meets their particular needs. Examples of mediation outcomes achieved in 2007 can be found in Chapter 7 – Significant Features of 2007 Agreements.

CHAPTER 2

THE EQUALITY TRIBUNAL

The Equality Tribunal, which is an independent quasi-judicial statutory body, was established in 1999. Its function is to investigate and/or mediate complaints of unlawful discrimination under the Employment Equality Acts 1998 to 2007, the Equal Status Acts 2000 – 2004 and the Pensions Acts 1990-2004.

Discrimination is unlawful on nine grounds [gender, marital status, family status, sexual orientation, religion, age, disability, race (including colour, nationality or national or ethnic origin) and membership of the Traveller community] in relation to employment, occupational benefits, the disposal of goods and property, the provision of services and accommodation, and in certain aspects of education.

Mediation

The Employment Equality Act 1998 (Section 78) provided for the establishment of a mediation service, staffed by Equality Mediation Officers. A similar approach to mediation is also found in the Equal Status Act 2000 (Section 24) and the Pensions Act 2004. Equality Mediation Officers are recruited from the ranks of Equality Officers and are given specialised training for mediation resulting in professional accreditation.

The Acts provide that “if at any time after a case has been referred to the Director ... it appears to the Director that the case is one which could be resolved by mediation, the Director shall refer the case for mediation to an equality mediation officer”.

The Acts further provide that:

- mediation cannot take place if either party objects;
- mediation shall be conducted in private;
- if the case is resolved, the Equality Mediation Officer shall record the terms of the settlement in writing;
- the written record shall be signed by the complainant and the respondent;
- the written record, when signed, is legally binding and enforceable (subject to the limits on redress set out in the Acts);
- a copy of the written record is retained by the Tribunal.

Where either party objects to mediation, or where either party withdraws before mediation starts, the case will then go before an Equality Officer for investigation and Decision. Where mediation does not result in agreement, the mediator will issue a formal non-resolution notice at which point the complainant may apply to have the case returned for investigation and Decision by an Equality Officer. It is important to note, however, that the relevant Acts provide that such requests must be submitted within 28 days of a non-resolution notice being issued otherwise the case file is closed.

In all such cases, investigations are conducted by an Equality Officer other than the one who mediated the complaint. The Equality Tribunal also ensures that the Equality Officer hearing the case will have no knowledge of what occurred at mediation. Investigations are held in private and legally binding Decisions are published.

Code of Ethics

The Mediation Service operates in accordance with its code of ethics as set out in its Principles of Mediation (see Appendix 1). In developing these principles, the Tribunal took cognisance of the Code of Ethics of the Mediators Institute of Ireland of which the Tribunal's mediators are all members.

The Tribunal's Principles of Mediation cover issues such as –

Consent, Voluntary Process, Accessibility, Impartiality, Advice, Power Balancing, Joint Sessions, Confidentiality, Participation, Disclosure, Issues for Discussion, Third Parties and Representatives, Settlement and No Settlement.

Mediation Model

- Equality mediation is an alternative to the quasi-judicial Equality Officer investigation, which requires written submissions from the parties involved and normally entails a formal hearing.
- The mediation model operated by the Tribunal draws from a range of mediation orientations such as the Narrative, Transformative and Cognitive models of mediation.
- The Equality Mediation Officer is always careful not to pressurise the parties to reach a settlement.
- Equality Mediation Officers do not rely on written submissions prior to the mediation taking place.
- At the mediation session, the Equality Mediation Officer asks the parties themselves to describe at first hand the background to the dispute.
- The Equality Mediation Officer will be able to point to sources of information, but will not advise the parties as to how they should proceed.
- The mediation option is available to the parties at any stage in the investigation process right up to the day of an equality hearing.
- A hearing presided over by an Equality Officer may be adjourned to give the parties an opportunity to resolve the case by mediation.
- Any agreement reached at mediation must be on the basis of the "informed consent" of each party.
- Advisors and other representatives are welcome but there is no requirement that those attending mediations or hearings of the Tribunal should be represented.

CHAPTER 3

STRUCTURE OF THE MEDIATION SERVICE

Purpose and objectives

The Equality Tribunal's Statement of Strategy 2004 – 2006 set the overall goal for the Mediation Service,

to provide an expert and effective mediation service in accordance with the core values of the Tribunal

For 2007, key objectives were set for the Mediation Service to ensure the continued achievement of this goal, including:

- effective mediation of Employment Equality, Equal Status and Pensions cases;
- effective overall management of the mediation caseload;
- continuing professional learning and training for mediators

Structure of the Tribunal's Mediation Service

The Equality Tribunal is headed by the Director, Ms Melanie Pine, with the Head of Mediation having responsibility for the Tribunal's Mediation Service. The Head of Mediation's principal functions include managing the Tribunal's mediation caseload and putting in place appropriate training for the Tribunal's pool of mediators. In addition, the Head of Mediation is responsible for ongoing liaison with outside mediation-related organizations such as the Mediators Institute of Ireland and the Association of Conflict Resolution in the USA while also making presentations on the Tribunal's Mediation Service to third level institutions and other organisations.

In 2007 the Tribunal adopted a practice of "screening" cases for mediation in situations where both parties had not rejected mediation. This role was performed by the Head of Mediation whose knowledge and experience of previous equality mediations enabled him to identify those cases that were unlikely to succeed at mediation. By so doing, the Tribunal was able to utilise its scarce mediation resources more positively in 2007 resulting in a 4% increase in the number of cases disposed of by way of mediation over 2006.

During 2007, the Tribunal lost three of its 2006 complement of eight mediators, two to full-time Kings Inns courses and another through redeployment. Despite the loss of these professional mediators and other strains on staff support services, the Mediation Service still dealt with a total of 136 mediation cases in 2007 (a 26% decline on 2006).

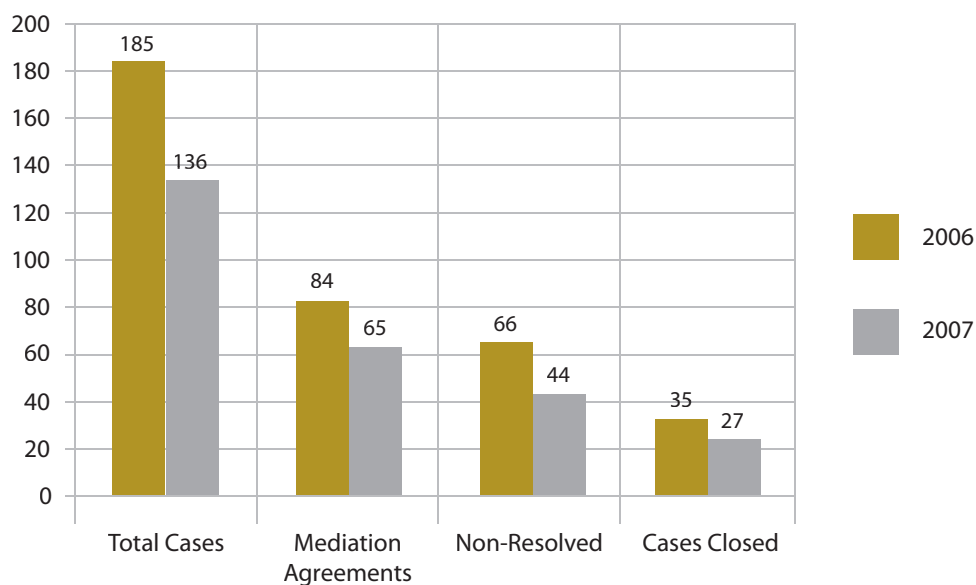
During 2007, all mediators continued to enhance their knowledge of mediation practice and theory by undergoing additional mediation training, attending mediation conferences and engaging in peer group meetings. The Tribunal was also successful in obtaining Practitioner Status certification from the Mediators Institute of Ireland (MII) for all of its existing panel of mediators in 2007.

In order to maintain the continuity of the Mediation Service over the period of the forthcoming planned decentralisation of the Tribunal to Portarlinton, seven new Equality Officers/Mediators were recruited during 2007. On foot of a tendering process, trainers were recruited in late 2007 to commence MII Part 1 Accredited Training for these new members in early 2008. In addition, the Tribunal has also sought approval for the outsourcing of some mediation cases to outside professionally-trained mediators, should circumstances require it during the decentralisation phase.

CHAPTER 4

REPORT OF OPERATIONS 2007

As outlined earlier, the Tribunal's proposed decentralisation to Portarlington and other factors had a short-term negative effect on the number of professional mediators available to the Tribunal in 2007 resulting in a 26% fall-off in the number of mediations in which the Tribunal's mediators were involved during the year (136 compared to 185 in 2006).



In all, 65 mediation agreements were achieved in 2007 against 44 non-resolved cases, reflecting decreases of 23% and 33% respectively on 2006 figures.

While the number of complaints being considered for mediation remained at 2006 levels, the numbers of cases actually referred to mediation dropped slightly in 2007 as a result of the Tribunal's decision to "screen" cases prior to referring them to mediation. In 2007, a total of 189 cases were referred to mediation compared to 223 cases in 2006.

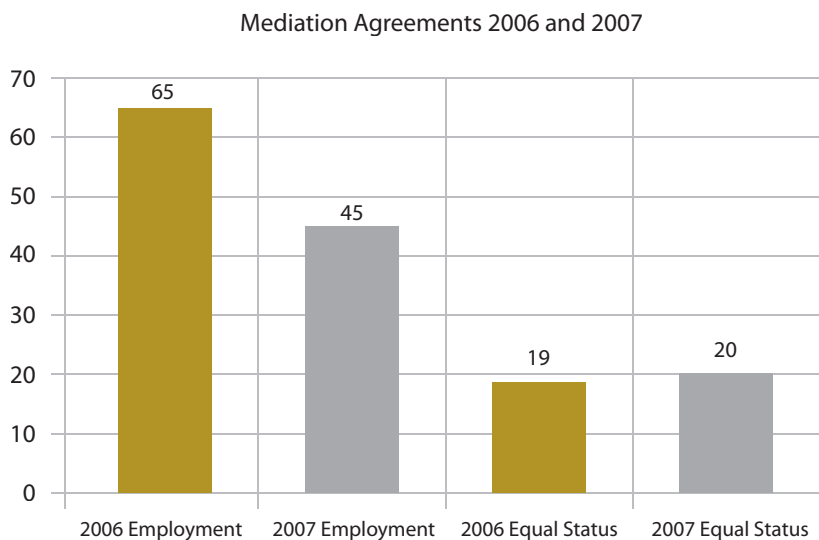
Overall, the screening process proved productive with the Tribunal achieving a success rate of 60% at the mediation table in 2007, an increase of 4% from the 56% success rate of 2006.

Of the 136 complaints which were dealt with by way of mediation in 2007, 74% (101) were disposed of through the mediation process and did not require subsequent investigation, reflecting a positive 4% increase on 2006 figures.

In calculating these figures, account was taken of mediation agreements and mediation cases where the complaint was not pursued following mediation. Of the 44 non-resolved cases referred to above, 9 complaints did not proceed to investigation post mediation.

In a similar vein, a further 27 complaints were withdrawn or closed on or after the mediation stage (compared to 35 in 2006). These involved cases where, after engaging with the mediator at mediation, parties either settled their dispute between themselves or the complainant decided that they did not wish to pursue the matter further.

Analysis of the Mediation Outcomes for 2007 shows a marked difference from 2006 with regard to the nature of cases coming before Equality Mediation Officers. In 2006, Mediators resolved 65 Employment Equality cases and 19 Equal Status complaints while in 2007 these figures were 45 and 20 respectively.



The above outcomes continue to illustrate the strong upward trend in employment related complaints received by the Equality Tribunal in recent years and the gradual stabilisation in the number of complaints being submitted under Equal Status legislation.

A key objective for the Mediation Service in 2007 was the overall effective management of its caseload. In general, mediation agreements in 2007 were achieved in less than a third the time a case would take to be investigated by an Equality Officer.

On average, resolved cases took less than 8 months from the date of referral to mediation to the date the agreement was signed. In approximately 90% of cases the mediation process was essentially completed after one mediation session – with either agreement being reached or the case being deemed not resolvable.

Key Objectives –Expansion of the Service

Continuing Training

Arising from the Tribunal's core value of professionalism, continuing professional learning and training remains an important objective of the Service. Having successfully completed their MII Part 2 Accredited Training in 2006, an additional six of the Tribunal's Mediators gained certification as Practitioner Members of the Mediators Institute of Ireland in 2007.

In the context of continuing professional learning and training, tenders were sought in late 2007 to provide MII Part 1 Accredited Mediation Training in 2008 for the seven new Equality Officers/Mediators who were recruited in 2007 as part of the ongoing process of decentralisation.

Promoting mediation

In fulfilment of the publicity and promotional objective for the Service:

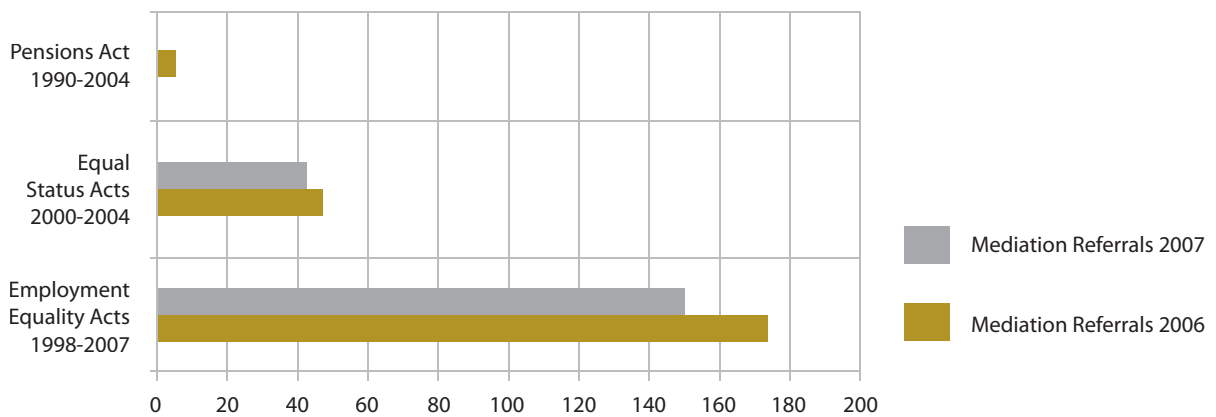
- (a) a report on the operations of the Mediation Service is published each year, as part of the Tribunal's Annual Report, and
- (b) presentations on the Equality Tribunal's Mediation Service are made on an ongoing basis at national and international conferences, as part of third-level mediation training programs and to a variety of user groups.
- (c) awareness of the Tribunal's Mediation Service is enhanced through mediators' attendance at both national and international Mediation Conferences
- (d) the Tribunal's explanatory leaflet on its Mediation Service gained the "Plain English" quality mark during 2006

CHAPTER 5

MEDIATION REFERRALS – ANALYSIS

Table 5-1 Mediation Referrals 2006 and 2007

Mediation Referrals	2006 Cases Referred to Mediation	2007 Cases Referred to Mediation
Employment Equality Acts 1998 and 2004	174	148
Pensions Acts 1990-2004	3	0
Equal Status Acts 2000-2004	46	41
Totals for All Equality Legislation	223	189
Change Year to Year		- 34
Percentage Change on 2006 figures		- 15%



Statistical Analysis

- While Employment Equality complaints increased in 2007, the Tribunal’s “screening process” resulted in less employment cases going to mediation in 2007
- Equal Status cases being referred to mediation also showed a decline (10%) over 2006 as a result of screening.

Table 5-2 Mediation Referrals 2006 and 2007 – By Discriminatory Ground

	Employment Equality Acts				Equal Status Acts				Pensions Acts			
	All 2006 Cases		All 2007 Cases		All 2006 Cases		All 2007 Cases		All 2006 Cases		All 2006 Cases	
Gender Traveller Community	46	26%	33	22%	1	2%	1	2%	1	33%	0	0%
Race	2	1%	1	1%	13	28%	10	25%	0	0%	0	0%
Disability	53	30%	33	22%	4	9%	3	7%	0	0%	0	0%
Age	24	14%	36	24%	13	28%	19	46%	0	0%	0	0%
Marital Status	23	13%	11	7%	3	7%	2	5%	1	33%	0	0%
Family Status	0	0%	0	0%	1	2%	0	0%	0	0%	0	0%
Sexual Orientation	1	1%	2	2%	0	0%	2	5%	0	0%	0	0%
Religion	3	2%	4	3%	2	4%	0	0%	0	0%	0	0%
Multiple Grounds	0	0%	2	2%	0	0%	0	0%	1	33%	0	0%
Total	22	13%	26	17%	9	20%	4	10%	0	0%	0	0%
	174	100%	148	100%	46	100%	41	100%	3	100%	0	0%

Statistical Analysis

- No Pension Acts referrals in 2007 compared to 3 in 2006
- 2007 saw 3 referrals on the Religion ground compared to none in 2006
- Employment mediation referrals on the Race ground dropped by 8%
- Employment mediation referrals on the Disability ground increased by 10%
- Equal Status mediation referrals on the Traveller community ground down by 3%
- Significant increase of 18% in Equal Status referrals on the Disability ground
- Equal Status referrals under Multiple Grounds show a 10% drop

In all, 65 mediation agreements were achieved in 2007 against 44 non-resolved cases, reflecting decreases of 23% and 33% respectively on 2006 figures.

While the number of complaints being considered for mediation remained at 2006 levels, the numbers of cases actually referred to mediation dropped slightly in 2007 as a result of the Tribunal's decision to "screen" cases prior to referring them to mediation. In 2007, a total of 189 cases were referred to mediation compared to 223 cases in 2006.

Overall, the screening process proved productive with the Tribunal achieving a success rate of 60% at the mediation table in 2007, an increase of 4% from the 56% success rate of 2006.

CHAPTER 6

MEDIATION OUTCOMES – ANALYSIS BY GROUND

Table 6-1 Mediation Agreements - By Ground

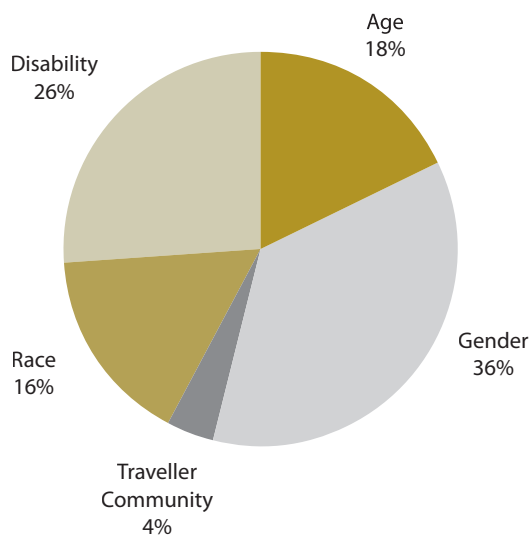
Breakdown by Ground	Employment Equality Acts 1998 to 2007				Equal Status Acts 2000-2004			
	2006		2007		2006		2007	
		%		%		%		%
Gender	36	36%	27	27%	13	13%	5	5%
Traveller Community	4	4%	0	0%	20	20%	25	25%
Race	16	16%	22	22%	20	20%	0	0%
Disability	26	26%	29	29%	27	27%	55	55%
Age	18	18%	18	18%	20	20%	5	5%
Marital Status	0	0%	0	0%	0	0%	0	0%
Family Status	0	0%	0	0%	0	0%	10	10%
Sexual Orientation	0	0%	2	2%	0	0%	0	0%
Religion	0	0%	2	2%	0	0%	0	0%
Total Agreements	65	100%	45	100%	19	100%	20	100%

Statistical Analysis

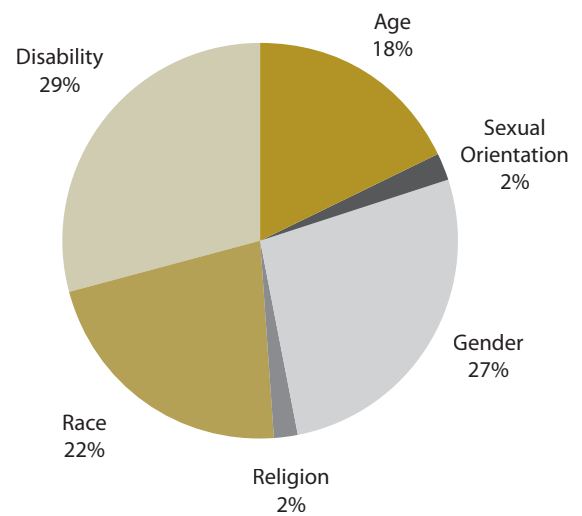
- 9% drop in Employment resolutions on the Gender ground
- 6% increase in Employment resolutions on the Race ground
- 8% decrease in Equal Status resolutions on the Gender ground
- 28% rise in Equal Status resolutions on the Disability ground
- 15% drop in Equal Status resolutions on the Age ground
- Unlike 2006 there were no Equal Status resolutions in 2007 on the Race ground.

Table 6-1 Charts

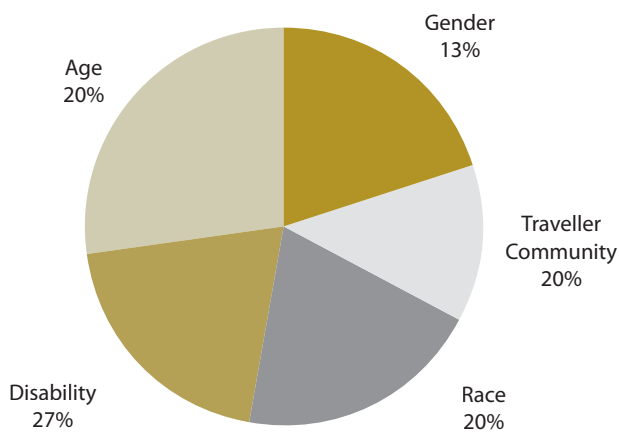
Mediation Agreements 2006
Employment



Mediation Agreements 2007
Employment



Mediation Agreements 2006
Equal Status



Mediation Agreements 2007
Equal Status

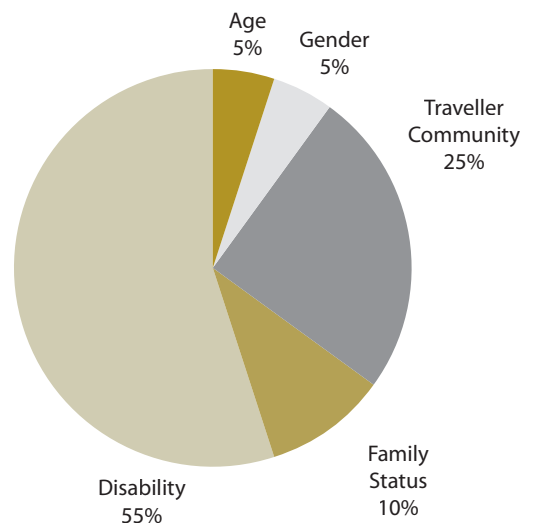


Table 6.2 Non-Resolved Mediations – Cases By Ground

Breakdown by Ground	Employment Equality Acts 1998 to 2004				Equal Status Acts 2000-2004			
	2006		2007		2006		2007	
		%		%		%		%
Gender	43	43%	24	24%	12	12%	0	0%
Traveller Community	2	2%	3	3%	13	13%	20	20%
Race	14	14%	26	26%	25	25%	0	0%
Disability	13	13%	24	24%	25	25%	40	40%
Age	28	28%	18	18%	13	13%	0	0%
Marital Status	0	0%	0	0%	0	0%	20	20%
Family Status	0	0%	0	0%	0	0%	0	0%
Sexual Orientation	0	0%	5	5%	13	13%	20	20%
Religion	0	0%	0	0%	0	0%	0	0%
Total Cases	56	100%	38	100%	10	100%	5	100%

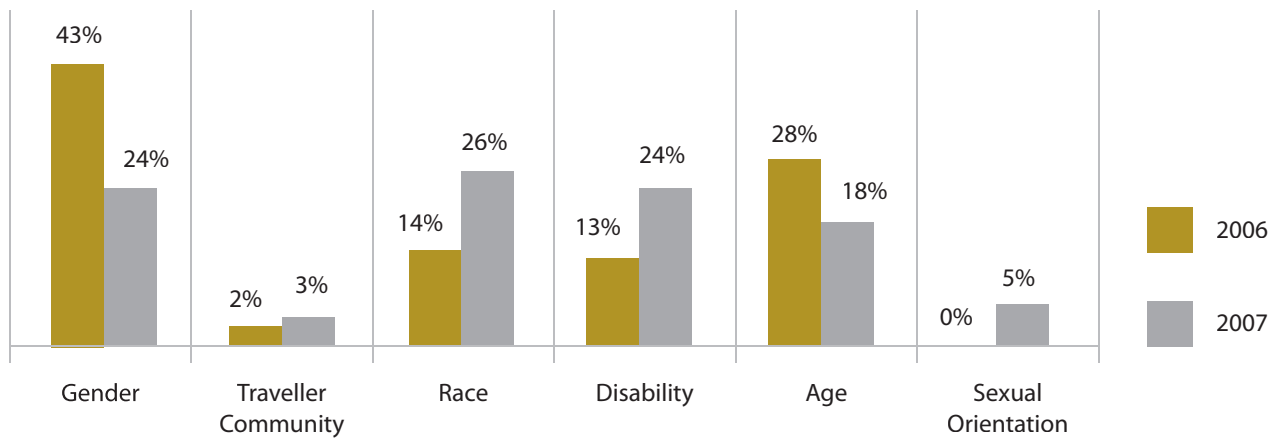
Statistical Analysis

- 19% decrease in non-resolved employment cases on the Gender ground
- 12% increase in non-resolved employment cases on the Race ground
- 11% increase in non-resolved employment cases on the Disability ground
- 10% decrease in non-resolved employment cases on the Age ground
- 15% increase in non-resolved Equal Status cases on the Disability ground
- 20% increase in non-resolved Equal Status cases on the Marital status ground.
- 7% increase in non-resolved Equal Status cases on the sexual orientation ground

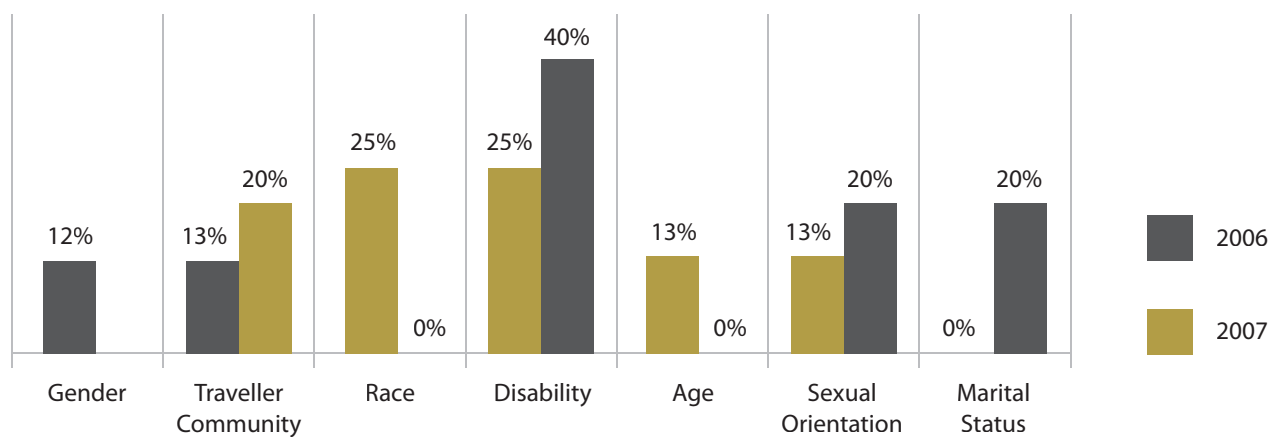
Note: 2007 also saw one non-resolved Pensions case compared to none in 2006

Table 6-2 Charts

Non-Resolved Mediations - Employment



Non-Resolved Mediations - Equal Status



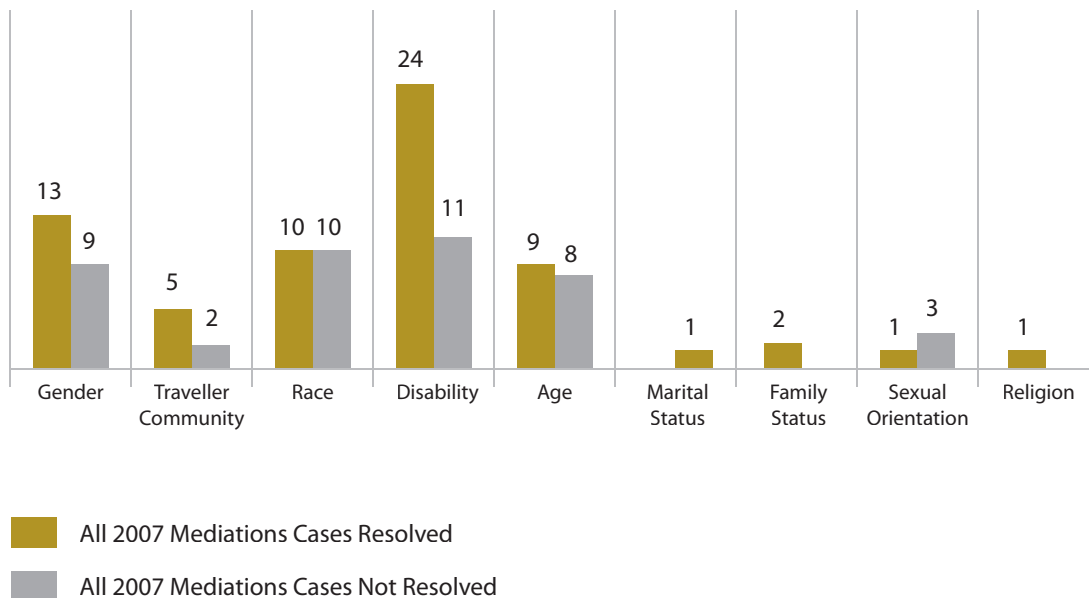
2007 Employment and Equal Status Statistics Combined

Table 6-3 All 2007 Mediations By Ground

All 2007 Mediations By Ground

Ground	Mediations Held	Cases Resolved	Cases Not Resolved
Gender	22	13	9
Traveller Community	7	5	2
Race	20	10	10
Disability	35	24	11
Age	17	9	8
Marital Status	1		1
Family Status	2	2	
Sexual Orientation	4	1	3
Religion	1	1	
Total 2007	109	65	44

Chart 6-3



Statistical Analysis

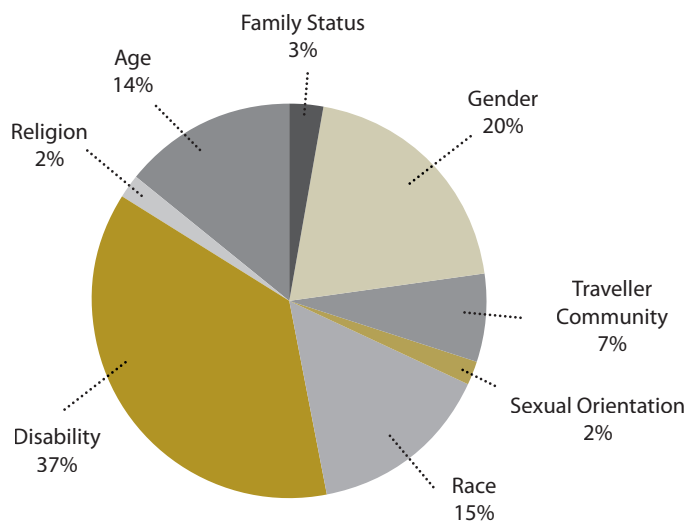
- Very positive outcomes in Disability mediations (24 resolved v 11 non-resolved)
- Favourable outcomes also in Gender and Traveller community mediations.

Table 6-4 Successful Mediations Under All Acts 2007

Successful Mediations Under All Acts 2007 By Ground

Ground	Cases Resolved	Percentage Resolved
Gender	13	20%
Traveller Community	5	7%
Race	10	15%
Disability	24	37%
Age	9	14%
Marital Status		
Family Status	2	3%
Sexual Orientation	1	2%
Religion	1	2%
Total 2007	65	100%

All Mediation Agreements 2007



Statistical Analysis

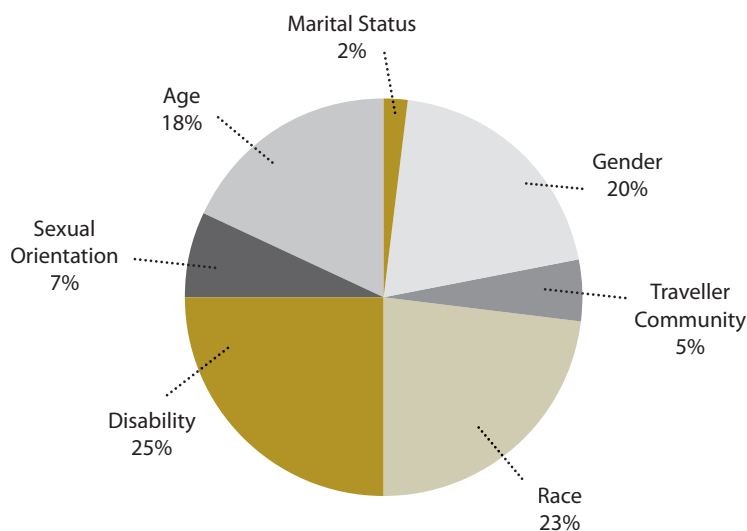
- Over a third of cases resolved at mediation are on the Disability ground
- Settlements under the Gender, Race and Age grounds also figure strongly

Table 6-5 Non-Resolved Mediations Under All Acts 2007 By Ground

Non-Resolved Mediations Under All Acts 2007 By Ground

Ground	Cases Unresolved	Percentage
Gender	9	20%
Traveller Community	2	5%
Race	10	23%
Disability	11	25%
Age	8	18%
Marital Status	1	2%
Family Status		
Sexual Orientation	3	7%
Religion		
Total 2007	44	100%

All Non-Resolved Mediations 2007



Statistical Analysis

- Gender, Race, Disability and Age between them account for 86% of cases not resolved at mediation

CHAPTER 7

SIGNIFICANT FEATURES OF 2007 AGREEMENTS

1.1 Employment Equality Agreements

Some of the most significant and imaginative features of the 45 Employment Equality Mediation Agreements were:-

- An agreement that independent interviewers would be recruited by a company to sit on all future internal interview boards
- An apology for any upset caused to a female employee as a result of an indiscreet question and inappropriate remark at interview
- An assurance that a teacher's class workload would be reduced in the forthcoming school term
- An agreement to change a complainant's increment date and to pay any outstanding back-money due
- An agreement that a person with a hearing impairment was entitled to apply for and would be considered for all future vacancies in the organisation
- An assurance that a number of female employees would not be asked to work for a particular supervisor should he ever return to the company's employment
- An apology for the manner in which an employee's job was terminated and a €1000 gesture of goodwill in acknowledgement of upset caused
- A personal letter of apology to an employee and an assurance that a positive reference would be provided
- An offer by a respondent to make a payment to a charity of the employee's choice
- An agreement to provide a teacher with a job-sharing position
- An agreement to make a substantial contribution towards a complainant's legal fees
- An apology by an employer for their failure to clarify the reasons behind a decision not to call a particular employee for interview
- A promotion and ex-gratia payment of €1000

1.2 Equal Status Agreements

Some of the most significant and imaginative features of the 20 Equal Status Mediation Agreements were:-

- The refund of travel expenses incurred by a complainant in attending a mediation session.
- An acknowledgement by a Bank that procedures in relation to the opening of a person's account and subsequent communication of new arrangements regarding the account were less than perfect.
- An apology and the provision of gift tokens for use in a respondents' shop
- An apology to a group of wheelchair users for restrictions placed on them on a visit to an Amusement Park and an open invitation to them to return and enjoy free rides on a day of their choice
- An agreement to provide a person with a hearing impairment with the necessary supports to fully engage in a horticultural training course
- The refund of a weekend's hotel costs to a family who were unhappy about time restrictions placed on children's access to a swimming pool
- The publication of an apology in a local newspaper by a hotel to a client who felt she had been discriminated against

APPENDIX 1

PRINCIPLES OF MEDIATION

The objective of the Tribunal's Mediation Service is to provide an alternative dispute resolution process to that of investigation in respect of claims for equal pay in employment and complaints of discrimination, harassment, sexual harassment and victimisation under the Employment Equality Acts 1998 to 2007, the Equal Status Act, 2000 - 2004 and the Pensions Acts 1990 - 2004. The Mediation Service adheres to the following principles in the mediation process:

Referral: If the Director of the Tribunal considers that a case could be resolved by mediation she will refer it to an Equality Mediation Officer. By default, cases are referred to mediation unless one or other party objects.

Voluntary Process: Mediation is a voluntary process. Mediation cannot proceed if either of the parties objects to a mediation referral. Likewise each side may withdraw consent at any stage of the process and mediation will be terminated immediately. The complainant may request the resumption of the investigation as laid down in each Act.

Impartiality: The Mediation Service guarantees impartiality and does not take sides with either party. It is not the role of the Mediator to determine the rights or wrongs of the situation nor to adjudicate the outcome.

Accessibility: The Mediation Service is committed to ensuring accessibility for all persons. Special arrangements as appropriate will be put in place for any person with special needs who wishes to use the Service.

The Mediation Session: The Mediation Service arranges a mutually convenient meeting between the parties and an Equality Mediation Officer as soon as practicable after the case has been referred. In a small percentage of cases, a number of such meetings may be necessary as part of the mediation process.

Participation: Before the mediation session commences, the Mediator will provide the parties with a clear explanation of the nature and purpose of mediation. It is essential that everyone necessary to reach a settlement participates in the mediation process.

Issues for Discussion: It is the responsibility of the parties to identify, if necessary with the help of the Equality Mediation Officer, the issues requiring negotiation. The parties are responsible for the terms of any settlement, they reach.

Conflict of Interest: The Mediator will not proceed with mediation if there is a concern that a conflict of interest might arise between themselves and one or other of the parties. If the Mediator or one of the parties believes that a conflict of interest might exist or might be perceived to exist, the Mediator together with the parties must discuss whether it is appropriate for the Mediator to continue their involvement.

Joint Sessions: Parties are normally seen together. However, in some cases the Equality Mediation Officer may consider it helpful to discuss an issue alone with either of the parties before or during a mediation session. Should the Equality Mediation Officer decide to do this, the conditions and procedures for this will be clarified and agreed with the parties beforehand.

Power Balancing: The Equality Mediation Officer has a duty to ensure balanced negotiation and to prevent manipulative or intimidating negotiation techniques. The Mediator will endeavour to empower the parties to make free and informed choices as to content and outcome.

Disclosure: The mediation process is based on full disclosure and it is important that all information relevant to the dispute is shared by the parties at mediation. However, if the Equality Mediation Officer agrees to have discussions with either of the parties separately from the other with a view towards progressing the negotiations, that party may, with the Equality Mediation Officer's agreement, give him/her information which will be kept in confidence and not shared with the other party.

Confidentiality: Mediation is conducted in private and the terms of any settlement are not published. Information furnished at mediation or investigation may not be published or otherwise disclosed. Any person who discloses information in contravention of the Acts is guilty of an offence.

The Service further guarantees that any information disclosed to the Equality Mediation Officer remains confidential to the Mediation Service and shall not be released to an investigating Equality Officer if the dispute is not resolved at mediation and the investigation is resumed. The Mediator cannot be called to give evidence of what occurred at mediation in the course of a subsequent investigation.

Advice: The Equality Mediation Officer will only give information in those areas where s/he is qualified to do so by training and experience. Where the mediation may affect other rights and obligations or where monetary settlements are involved, the Equality Mediation Officer will advise the parties to seek independent advice.

Third Parties: Third parties (e.g. advisors or representatives) are welcome at mediation. The Equality Mediation Officer will facilitate all the parties involved in reaching agreement and will discuss, at the outset of the mediation, how best third parties can contribute to the mediation process.

MII Code of Ethics: The Tribunal's mediators are all members of the Mediators Institute of Ireland (MII) and conduct mediation in accordance with the MII's Code of Ethics. The Tribunal's mediators also comply with the Institute's requirements with regard to Continuing Professional Development .

Child Protection: If harm or risk to a child is made known during mediation, the Mediator will ensure that appropriate action is taken to protect the best interests of the child in accordance with the provisions of the Department of Health and Children's publication 'Children First: National Guidelines for the Protection and Welfare of Children 1999'.

Settlement: If agreement is reached between the parties, the Equality Mediation Officer prepares a written record of the terms of the settlement. A draft copy of the proposed settlement is issued to each party after the final mediation session. When each party is satisfied with the final terms of the settlement, it is signed by both parties. The Tribunal will then send a copy to each side with a letter formally closing the complaint file. A copy is also retained by the Director of the Equality Tribunal. The settlement once signed is legally binding and may be enforced on application to the Circuit Court.

No Settlement: If agreement is not reached and it appears to the Equality Mediation Officer that the case cannot be resolved by mediation, a notice to that effect will be issued to both parties. Within 28 days from the issue of that notice the complainant may make an application to the Director for a resumption of the investigation of the complaint. Where such an application is not made within the specified time limit, the complaint file is closed by the Tribunal.

APPENDIX 2

MEDIATION MODEL - STRUCTURE OF A MEDIATION SESSION

Mediation Session – Introduction

Mediation sessions are generally scheduled to last about two hours. The Equality Mediation Officer usually starts the process, after introductions, by explaining the guidelines and principles underlying the mediation process and especially the voluntary nature of the process, confidentiality issues etc.

Generally starting with the complainant, both sides are asked to tell the Equality Mediation Officer their side of the story - what happened from their perspective to bring them before the Equality Tribunal and how they feel about the circumstances surrounding the incident(s) of alleged discrimination, what they think happened at the time of the incident(s), what the respondent's policies are and how they are implemented.

This dialogue is an important feature of the mediation process as it gives the parties a chance to say what happened from their point of view while the other side listens. In many cases this might be the first time the parties have spoken to each other since the alleged incident(s) of discrimination. In some cases the parties may never have discussed the issues face to face.

Mediation Session – Identification of Issues

The Equality Mediation Officer will help the parties to identify the gap between them and the key issues that need to be addressed. The Equality Mediation Officer, unlike an Equality Officer, makes no findings in fact or law and cannot take a position as to whether s/he believes all or part of one side's story or that of the other. The Equality Mediation Officer does not give advice to either side but can point to sources of information (e.g. Equality Officer Decisions) and advice (legal advisers, trade unions, the Equality Authority, Citizens' Information Centres and voluntary bodies), where appropriate.

The parties are asked how they might see the dispute being resolved and, if they wish to negotiate on particular aspects of the framework, the Equality Mediation Officer will assist them. In some cases it is useful to discuss the finer details of a possible settlement with each side separately at a side-conference (caucus).

Mediation Session – Agreement

If the basis of an agreement is reached between the parties at mediation, the Equality Mediation Officer will normally conclude the mediation session and take away the information s/he has obtained. The Equality Mediation Officer then prepares a written record of the terms of the settlement and sends a draft copy of the proposed settlement to each party, thus allowing both sides a “cooling off” period so that they can be sure that they wish to sign the agreement. When each party is satisfied with the final terms of the settlement, it is signed by both parties and a copy formally sent to each party. A copy of the agreement is retained by the Equality Tribunal. The settlement once signed is legally binding and may be enforced.

Occasionally, on completion of the mediation session, it can happen that both sides indicate a preference for signing the Mediation Agreement on the day. In such circumstances, if s/he is satisfied that both sides fully understand the terms and conditions of the mediated agreement, the Equality Mediation Officer will facilitate the parties by preparing and Agreement document for signature on the day.

Standard terms of agreement which have been developed over the last few years are set out in Appendix 3. The terms are similar for both employment equality and equal status agreements, although the Section numbering will change, as appropriate to the legislation.

Mediation Session - Non Resolution

If agreement is not reached and it appears to the Equality Mediation Officer that the case cannot be resolved by mediation, a notice to that effect will be issued by the Equality Mediation Officer to both parties. If a complainant wishes to apply for a resumption of the investigation s/he must make an application to the Director of the Equality Tribunal for a resumption of the investigation of the case within 28 days from the issue of the non-resolution notice. If an application for a resumption of the investigation is not properly made within the 28 day period the Tribunal ceases to have jurisdiction in the case.

APPENDIX 3

SAMPLE OF STANDARD MEDIATION AGREEMENT

**Equal Status Acts 2000 - 2004
Section 24(4)
Mediation Agreement between**

**Name, Complainant
And
Name, Respondent**

Terms of Settlement

Agreement No: AGR2005-No.

Case Ref. No: MED/2002/No.

1. Background

A. The complainant referred a case to the Equality Tribunal in accordance with Section 21(1) of the Equal Status Act, 2000 alleging discrimination in relation to... The case was on the grounds of...

B. Section 24 of the Act states that "if at any time after a case has been referred ... it appears ... that the case is one which could be resolved by mediation the Director shall refer the case for mediation to an Equality Mediation Officer". Mediation cannot commence if either party objects.

C. The parties involved in this case did not object to the process of mediation. The case was referred by the Director to ...Name... Equality Mediation Officer, for mediation under Section 24(1) of the Act. The parties met at a joint session with the mediator on DATE (+follow up, where appropriate) and reached agreement on the terms of a settlement. In accordance with Section 24(4) of the Act this document (agreement) forms the written record of the terms of settlement agreed by the parties to this case and has been prepared by ...Name... Equality Mediation Officer, on the basis of the discussions between the parties at mediation.

2. Confidentiality

Mediation is conducted in private and the terms of any settlement are not published. Information furnished at mediation may not be published or disclosed except on the order of the High Court or Circuit Court or with the consent of the person furnishing the information and of any other person to whom the information may relate. Any person who discloses information in contravention of the Act is guilty of an offence (Section 36 of the Equal Status Act, 2000)

3. Terms of Settlement

A. It is a term of this agreement that the terms of settlement, the names of the parties and information furnished at mediation will not be disclosed by either party except in accordance with Section 36 of the Act.

(Note: In the interests of promoting mediation as an alternative dispute resolution process the Equality Tribunal reserves the right to publish, in a manner which does not identify the parties involved, information on the number of cases resolved at mediation along with sample extracts from (or outline) agreements.)

B.

[SPECIFIC TERMS OF SETTLEMENT INSERTED HERE]

C. The complainant agrees that the terms of this agreement are in full and final settlement of the case referred to at 1.A above

4. Enforcement by Circuit Court

Section 31(2) provides that “if a person who is party to a settlement to which Section 24 applies fails to give effect, in whole or in part, to the terms of the settlement, then ... the Circuit Court may make an order directing the person affected ... to carry out those terms ... The Circuit Court shall not direct any person to pay any sum or do any other thing which (had the matter been dealt with otherwise than by mediation) could not have been provided for by way of redress under Section 27 of the Act.

An application under Section 31 may be made by the complainant or by the Equality Authority, with the consent of the complainant, after 42 days from the date of the written record of the settlement.

These rights are without prejudice to any additional rights which may be available to either party under contract law, consistent with the Act.

5. The parties have read and understand the contents of this agreement which they confirm is a true and accurate record of the terms of settlement agreed between the parties.

Signed by:	Signed by:
Position: Complainant	Position: Respondent
Representative:	Representative:
Position:	Position:
Date:	Date:
Witnessed by Name, Equality Mediation Officer Date:	

APPENDIX 4

ORGANISATION CHART OF THE EQUALITY TRIBUNAL (AS AT 31 DECEMBER 2007)

Director		
Melanie Pine		
Employment Equality	Equal Status	Mediation
Deirdre Sweeney <i>Head of Employment Equality</i>	John Hurley <i>Head of Equal Status</i>	
Stephen Bonnlander Gerardine Coyle Vivian Jackson Hugh Lonsdale Gary O'Doherty Mary Rogerson Conor Stokes Raymund Walsh <i>Equality Officers</i>	Tara Coogan Marian Duffy Dolores Kavanagh Orlaith Mannion Enda Murphy Brian O'Byrne Mary O'Callaghan Bernadette Treanor <i>Equality Officers</i>	Brian O'Byrne * Acting Head of Mediation Gerardine Coyle* Marian Duffy* Vivian Jackson* Dolores Kavanagh* Mary O'Callaghan * Mary Rogerson* Bernadette Treanor* Raymund Walsh * <i>* Mediation Officers</i>
Resource Management		
Legal Management	Corporate Resources	Secretariat
Sile Larkin <i>Legal Advisor</i>	Fiona Lafferty <i>Head of Corporate Resources</i>	Sile Larkin* <i>Head of Secretariat</i>
	Brenda Ward <i>Corporate Resources Manager</i>	
	Vacancy <i>Office Manager</i>	Alan McDonnell <i>Deputy Registrar/ Secretariat Unit Manager</i>
Deirdre Gallagher <i>Legal Research Assistant</i>	Frank Bergin <i>Acting Office Manager</i>	Brian Farrell <i>Executive Officer</i>

Deirdre McCormack <i>Legal Unit Support Officer</i>	Noel Kelly Avril Graham <i>Corporate Resources Support Officers</i>	Roisin Cahill Amanda Cullen Noelle Doody Susan Fetton Siobhan Lynch Finbar O'Mahoney <i>Secretariat Support Officers</i>
	John Fitzgerald Joe Pettigrew <i>Services Officers</i>	

* These staff members have dual roles. Eight Equality Officers also act as Equality Mediation Officers (mediators and the Legal advisor also acts as Head of Secretariat).



THE EQUALITY TRIBUNAL
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