

# **THE EQUALITY TRIBUNAL**

## **Mediation Review 2010**

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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 2010.

Mediation at the Equality Tribunal completed its 10th year of operation in 2010. Mediation once again proved a very valuable resource for the Tribunal in 2010 with **69%** of the cases where bona fide mediation took place not returning to investigation. A detailed account of the performance of the Tribunal's Mediation Service's in 2010, is contained in **Chapter 2 – Report of Operations 2010**.

During 2010, the Equality Tribunal continued to receive positive feedback from its clients on a level comparable to the results of its **2009 Mediation Users Survey**. That survey produced highly-commendable results with satisfaction ratings rising by **5%** on average over the 2004 Survey results. Overall almost **91%** of survey respondents expressed satisfaction with the mediation service provided by the Equality Tribunal. In addition, **92%** of participants expressed satisfaction with the Mediator stating that the Mediator had shown fairness to both sides and helped create a calm atmosphere for mediation. The full survey results can be found at **Appendix 4**.

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 three times faster than an investigation before an Equality Officer.

Mediation is an informal process in which the Mediator, 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 given the option of a “cooling-off” period before being asked to sign an agreement to ensure that both sides can give informed consent on signing.

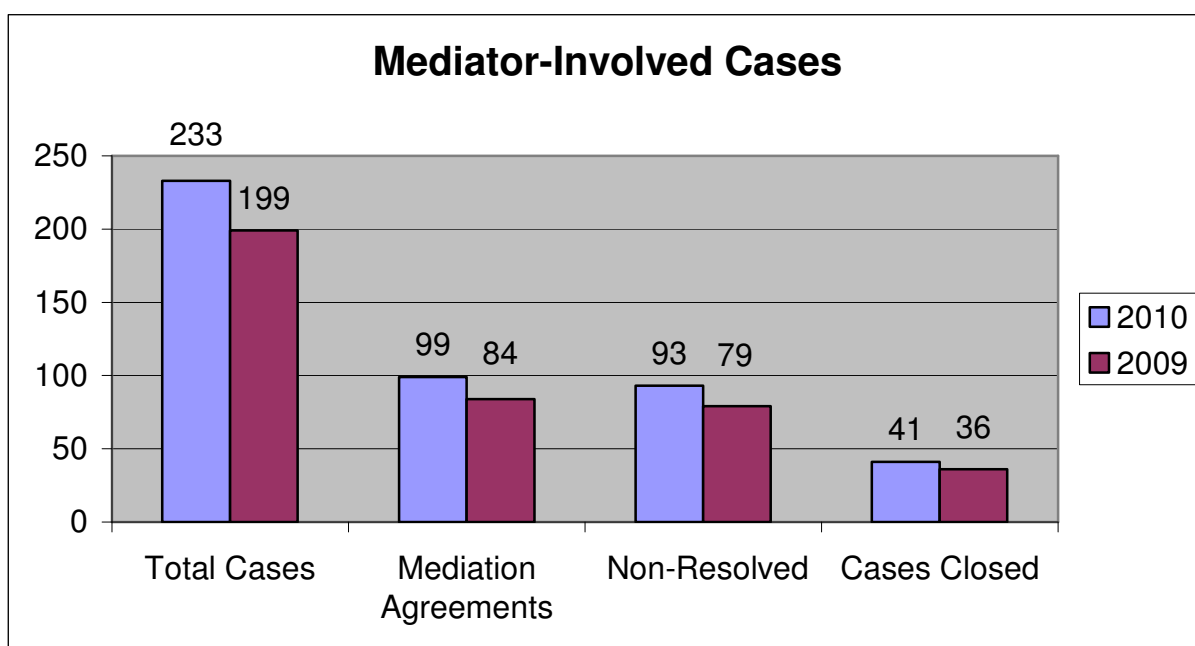
In the event that agreement is not reached at mediation the complainant may seek to have the investigation resumed. In judicial review proceedings, the High Court confirmed the Tribunal’s interpretation that, under equality legislation, such a request must be submitted in writing within 28 days of the 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 Mediator will not pass on any information obtained at mediation to an investigating Equality Officer. It is also important to note that an Mediator 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 2010 can be found in **Chapter 3 – Significant Features of 2010 Agreements.**

## CHAPTER 2

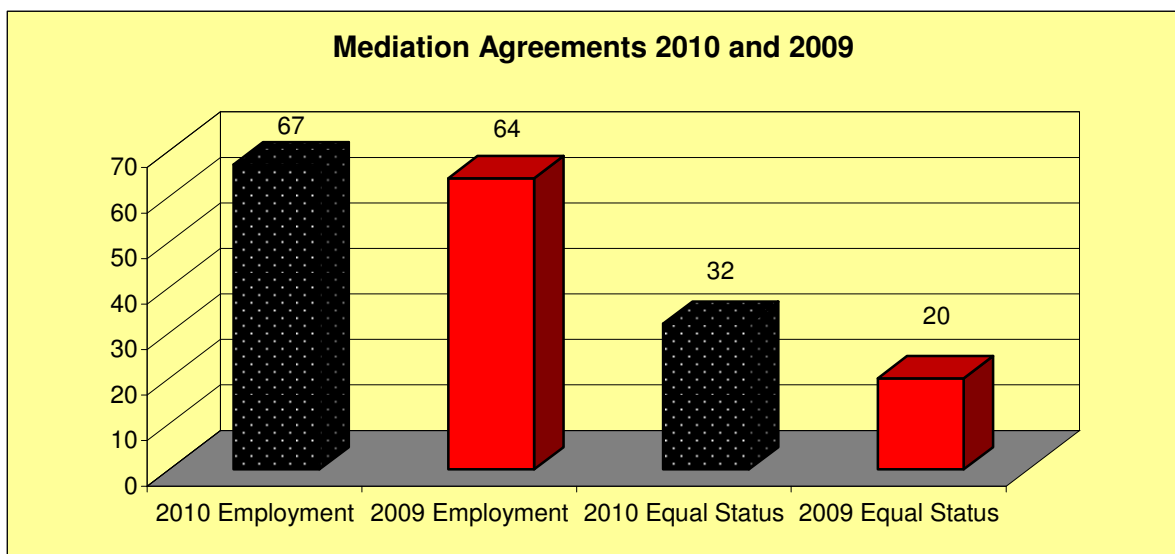
### REPORT OF MEDIATION SERVICE OPERATIONS 2010

- In 2010, a total of **329** cases were referred to Mediation exceeding the 2009 total of **251** cases being referred to Mediation by **31%**. Following the withdrawal of a proportion of cases prior to mediation, **233** cases were eventually dealt with by Mediators in 2010, representing an increase of **18%** over 2009 (**233** cases compared to **199**).



- In all, **99** mediation agreements were achieved in 2010 against **93** non-resolved cases, reflecting increases of **18%** in both categories over 2009 outcomes. These figures equalled the **52%** mediation success rate achieved at the mediation table by the Tribunal in 2008 and 2009
- In addition, a further **41** complaints were withdrawn or closed on or after the mediation stage (compared to **36** in 2009). These involved cases where, having engaged with the mediator, parties either settled their dispute between themselves or the complainant decided that they did not wish to pursue the matter further.

- Overall, **69% (161)** of cases handled by the Mediation Service did not require subsequent investigation representing a **2%** increase over 2009. In calculating this **69%**, account was taken of successful mediation outcomes, mediation cases where the complaint was not pursued following engagement with the Mediation Service and the **21** complaints from the **93** non-resolved cases that did not proceed to investigation post mediation.
- Analysis of the Mediation Outcomes for 2010 shows a commendable **18%** increase in successful mediations over 2009. Overall, in 2010, Mediators resolved **67** Employment Equality cases and **32** Equal Status complaints compared to **64** and **20** respectively in 2009.



A key objective for the Mediation Service in 2010 was the overall effective management of its caseload. In general, mediation agreements in 2010 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 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.

In 2010 the Tribunal continued the 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 letting these cases go directly to investigation, the Tribunal was able to utilise its scarce mediation resources more positively in 2010 resulting in a **9%** increase in the number of cases closed by the Mediation Service over 2009 (**161** compared to **148**). Overall the Tribunal’s mediators engaged with the parties in **17%** more cases in 2010 than in 2009 (**233** compared to **199**).

During 2010, the Equality Tribunal continued to source MII Part 1 Accredited Training for its newer staff with Certified Member Status being obtained for two new mediators towards the end of 2010 from the Mediators Institute of Ireland (MII). During the year, 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.

## **CHAPTER 3**

### **SIGNIFICANT FEATURES OF 2010 AGREEMENTS**

#### **1.1 Employment Equality Agreements**

- Agreement to appoint an employee to an Acting Up Position and to pay her the appropriate salary for as long as she continues in the position
- Agreement to introduce revised marking schemes for hearing-impaired candidates in internal promotion schemes
- Offer of a full-time contract to a shop worker and an assurance of occasional weekends off
- Agreement to enable a sick employee to retire early and to avail of the benefits of the company's ill-health retirement scheme
- A Letter of Comfort to an employee and a salary increase
- Reassignment of an employee to Night Shifts and a financial gesture of goodwill
- Agreement to facilitate an employee with a further disciplinary hearing to consider their reinstatement with the company
- Agreement to withdraw an "anti-compete" clause from an ex-employee's contract to enable them to work for a competitor

## **SIGNIFICANT FEATURES OF 2010 AGREEMENTS**

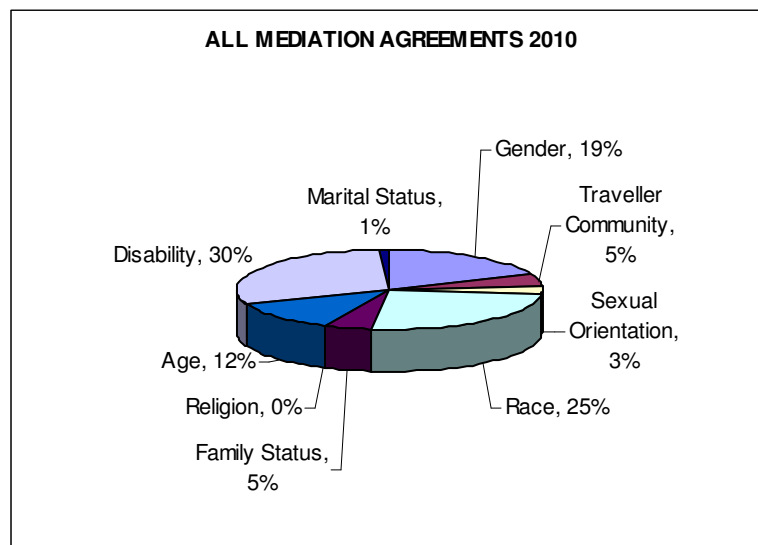
### **1.2 Equal Status Agreements**

- Agreement to change the format of TV show's "viewers competition" to accommodate people with communication disabilities
- Agreement by a Hotel to improve wheelchair access to function rooms and toilets
- Free tickets to a major Horse Racing Event to a man who felt discriminated against because he had previously been refused free admission on "Ladies Day"
- Agreement by an Airport Authority to examine ways of making departure-gate information more accessible to deaf people
- Provision of additional supports to a student with a disability during the Leaving Cert cycle
- Payment of compensation by a Car Rental firm to an elderly couple over its failure to provide the correct model of vehicle ordered
- An explanation by an Airline on how its online booking system works and an apology to the complainant for any confusion caused
- Explanation by an Insurance Broker as to how a premium was calculated and payment of €200 as a gesture of goodwill
- Agreement by a Sporting Body to improve wheelchair accessibility in and around its grounds and to educate stewards further as to their responsibilities to people with disabilities

## CHAPTER 4 MEDIATION OUTCOMES – ANALYSIS BY GROUND

### Mediation Agreements Under All Acts 2010

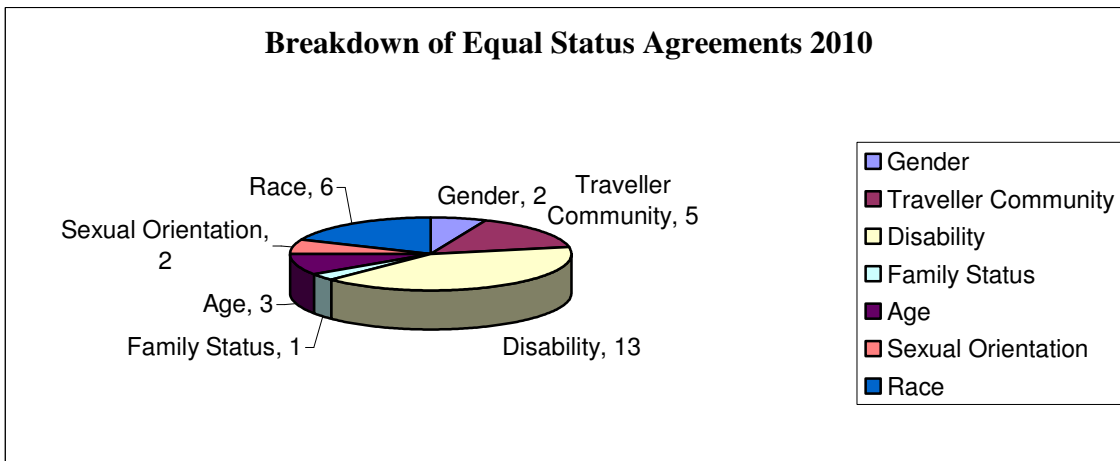
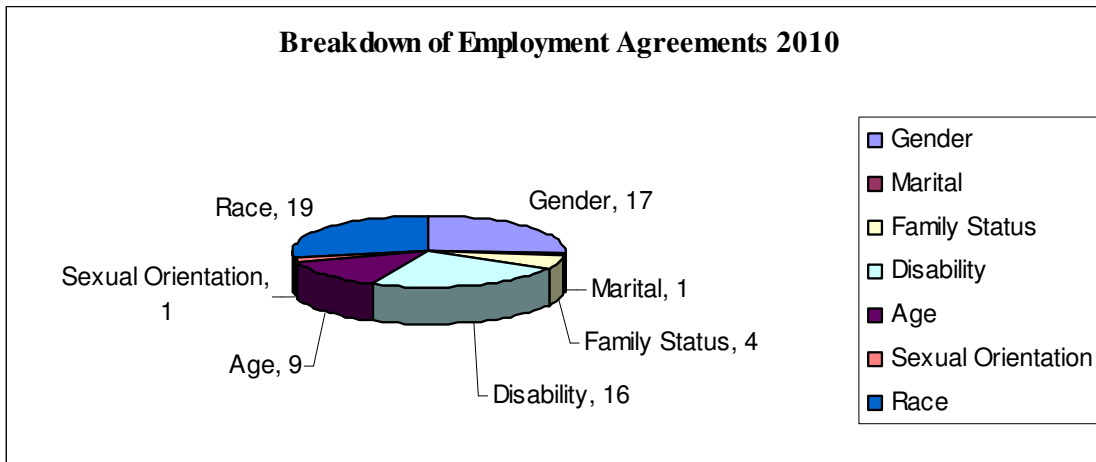
Ground	Agreements	By Ground Percentage
Gender	19	19%
Traveller Community	5	5%
Sexual Orientation	3	3%
Race	25	25%
Family Status	5	5%
Religion	0	0%
Age	12	12%
Disability	29	30%
Marital Status	1	1%
<b>Total 2010</b>	<b>99</b>	<b>100%</b>



#### Statistical Analysis

- Disability continues to be the dominant Ground in Mediation Agreements
- Settlements under the Gender and Race grounds also continue to figure strongly

# Comparison Between Employment and Equal Status Agreements for 2010



## Statistical Analysis

- Race, Gender and Disability continue to dominate Employment Agreements
- The Disability Ground is by far the most prominent in Equal Status Agreements
- Neither the Religion nor Traveller Community ground featured in Employment Agreements

## **CHAPTER 5      THE EQUALITY TRIBUNAL - AN OVERVIEW**

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 2008, the Equal Status Acts 2000 – 2008 and the Pensions Acts 1990-2008.

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 Mediators. A similar approach to mediation is also found in the Equal Status Act 2000 (Section 24) and the Pensions Act 2004. Mediators 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 Mediator”.

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 Mediator 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
- 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 Mediator is always careful not to pressurise the parties to reach a settlement.
- Mediators do not rely on written submissions prior to the mediation taking place.
- At the mediation session, the Mediator asks the parties themselves to describe at first hand the background to the dispute.
- The Mediator 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 6      STRUCTURE OF THE MEDIATION SERVICE**

### **Purpose and Objective**

The Equality Tribunal's Statement of Strategy 2008 - 2010 identifies Effective Complaint Resolution as one of its three High Level Goals. With regard to mediation, the Tribunal's objective is to provide a Mediation Service in line with national and international best practice and to deliver mediated agreements which are durable and equitable.

### **Structure of the Tribunal's Mediation Service**

The Equality Tribunal is headed by the Director, Mr Niall McCutcheon, 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, trade unions and other organisations.

### **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. In this context, MII Part 1 Accredited Mediation Training was sourced for new Equality Officers in early 2010 leading to an additional two new mediators becoming Certified MII members during the year.

## **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 trade unions and other user groups.

(c) awareness of the Tribunal's Mediation Service is enhanced through mediators' attendance at Mediation Conferences

## **Appendices**

- Appendix 1 Principles of Mediation at the Equality Tribunal**
- Appendix 2 Equality Mediation Model – Structure of a Mediation Session**
- Appendix 3 Outline Mediation Agreement – Standard Version**
- Appendix 4 Mediation Users Survey Results 2009**
- Appendix 5 Organisation Chart of the Mediation Service (as at 31 December 2010)**

## 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 2008, the Equal Status Act, 2000 - 2008 and the Pensions Acts 1990 - 2008. 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 he will refer it to an Mediator. 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 Mediator, 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 is present and participates in the mediation process.
- **Issues for Discussion:** It is the responsibility of the parties to identify, if necessary with the help of the Mediator, 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 or to ask another Mediator to step in.
- **Joint Sessions:** Parties are normally seen together. However, in some cases the Mediator may consider it helpful to discuss an issue alone with either of the parties before or during a mediation session. Should the Mediator decide to do this, the conditions and procedures for this will be clarified and agreed with the parties beforehand.
- **Power Balancing:** The Mediator 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 Mediator 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 Mediator'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 Mediator 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 Mediator 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 Mediator will advise the parties to seek independent advice.
- **Third Parties:** Third parties (e.g. advisors or representatives) are welcome at mediation. The Mediator 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 enrolled as 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 the basis of an agreement is reached between the parties at mediation, the Mediator can proceed in one of two ways. In cases where both sides are represented or where a simple outcome such as an apology is involved, the parties may express a preference for the Mediation Agreement to be drafted and signed on the day. In such cases, if the Mediator is satisfied that both sides fully understand the terms and conditions of the mediated agreement, the Mediator will facilitate the parties by preparing an Agreement document for signature there and then.

Alternatively, if a complicated settlement is involved the Mediator may decide to give the parties some time to digest what has been agreed. In such circumstances, the Mediator will take the information away and prepare a written record of the terms of the settlement as they see them.

This draft Agreement is then sent to both sides for consideration to ensure that they fully appreciate the settlement terms involved. By so doing, both sides are afforded a “cooling off” period before they are formally asked to sign the Agreement.

When each party is satisfied with the final terms of the settlement, both parties are asked to sign it. The settlement once signed is legally binding and may be enforced on application to the Circuit Court. A copy of the Agreement is then formally sent to each party with notification that the Tribunal has closed its complaint file. A copy of the agreement is also retained by the Equality Tribunal.

- **No Settlement:** If agreement is reached between the parties, the Mediator prepares a written record of the terms of the settlement. A draft copy of the proposed settlement is then given to each party after the final mediation session. When each party is satisfied with the final terms of 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.

## **Appendix 2 - Mediation Model - Structure of a Mediation Session**

### **Mediation Session – Introduction**

Mediation sessions are generally scheduled to last about two hours. Before the joint mediation session commences, the Mediator will introduce themselves to each side separately and outline how they propose to conduct the mediation session. This usually only takes a few minutes and is designed to reassure the parties about the informality of the process and to help put them at ease.

The Mediator usually starts the full mediation process by explaining the guidelines and principles underlying the mediation process and especially the voluntary and confidential nature of the process. Generally starting with the complainant, both sides are asked to tell the Mediator their side of the story - what happened from their perspective to bring them before the Equality Tribunal, how they feel about the circumstances surrounding the incident(s) of alleged discrimination, what they think happened at the time of the incident(s) and the type of resolution they feel might be appropriate in the circumstances.

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 Mediator will help the parties to identify the differences between them and the key issues that need to be addressed. The Mediator, 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 Mediator 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 Mediator 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 Mediator can proceed in one of two ways. In cases where both sides are represented or where a simple outcome such as an apology is involved, the parties may express a preference for the Mediation Agreement to be drafted and signed on the day. In such cases, if the Mediator is satisfied that both sides fully understand the terms and conditions of the mediated agreement, the Mediator will facilitate the parties by preparing an Agreement document for signature there and then.

Alternatively, if a complicated settlement is involved the Mediator may decide to give the parties some time to digest what has been agreed. In such circumstances, the Mediator will take the information away and then prepare a written record of the terms of the settlement as they see them. This draft Agreement is then sent to both sides for consideration to ensure that they fully appreciate the settlement terms involved. By so doing, both sides are afforded a “cooling off” period before they are formally asked to sign the Agreement.

When each party is satisfied with the final terms of the settlement, both parties are asked to sign it. The settlement once signed is legally binding and may be enforced on application to the Circuit Court. A copy of the Agreement is then formally sent to each party with notification that the Tribunal has closed its complaint file. A copy of the agreement is also retained by the Equality Tribunal.

Standard terms of agreement which have been developed over the last two 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 Mediator that the case cannot be resolved by mediation, a notice to that effect will be issued by the Mediator 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 Mediation Agreement**

#### **Employment Equality Acts 1998 - 2008**

#### **Section 78(5)**

#### **Mediation Agreement**

**between**

**Complainant**

**Respondent**

**Case Ref. No :**

#### **Terms of Settlement**

##### **1. Background**

A. The complainant referred a case to the Equality Tribunal in accordance with Section 77(1)(a) of the Employment Equality Act 1998 alleging discriminatory treatment in relation to employment, on the ground.

B. Section 78 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 ".

C. The parties involved in this case agreed to participate in the process of mediation. The case was referred by the Director to , Equality Mediation Officer, for mediation under Section 78(1) of the Act. The parties had a joint mediation session with the mediator on and reached agreement on the terms of a settlement. In accordance with Section 78(5) 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 , 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 97(2) of the Employment Equality Act, 1998).

##### **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 97 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 agreements.)

B. As a gesture of goodwill but without any admission of liability, the Respondent agrees to pay the Complainant the sum of €      within 14 days of the signing of this Agreement, in full and final settlement of the complaint at 1A above.

C. The complainant accepts that the terms of this Agreement are confidential and are in full and final settlement of the complaint at 1A above.

**4. Enforcement by Circuit Court**

Section 91(2) of the Employment Equality Acts 1998 – 2008 provides that "if an employer or the person who is party to a settlement to which Section 78(5) applies fails to give effect, in whole or in part, to the terms of the settlement, then, on an application under this section, the Circuit Court may make an order directing that person to carry out those terms ..... but the Circuit Court shall not, by virtue of this subsection, 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 82

An application under Section 91 may be made by the complainant or by his/her representative, 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.

As parties to this Mediation Agreement, both sides accept that any elements of the aforementioned terms of settlement which may not be specifically covered by the provisions of Section 91 may be enforceable under contract law in the event of non-implementation.

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.

<b>Signature of Complainant:</b>	<b>Signature of Respondent:</b>
<b>Signature of Witness:</b>	<b>Signature of Witness:</b>
<b>Position:</b>	<b>Position:</b>
<b>Date:</b>	<b>Date:</b>

## Appendix 4

### Results of Mediation Users Survey 2009

#### Overall satisfaction rating

90.84% of survey respondents considered that the overall satisfaction of the mediation service provided by the Equality Tribunal was very good or good.

#### Overall impression

89.65% of survey respondents considered that the overall impression of the mediation service provided by the Equality Tribunal was very good or good.

#### Satisfaction with physical environment

Suitability of mediation rooms in Dublin	90.9% rated this as very good/good
Ease of getting to location in Dublin	87.34% rated this as very good/good
Suitability of other locations	84.44% rated this as very good/good
Ease of getting to other locations	84.45% rated this as very good/good

#### Draft settlement

Clarity- reflecting what was agreed	92.31% rated this as very good/good
Timely	87.97% rated this as very good/good

#### Mediation Officer

Fairness to both sides	92.94% rated this as very good/good
Allowing an open discussion	91.76 % rated this as very good/good
Calm atmosphere	92.94% rated this as very good/good

#### Guidelines

Easy to understand	96.67% rated this as very good/good
Explains mediation clearly	95.12 % rated this as very good/good

#### Writing to the Tribunal

Speed of reply	81.17% rated this as very good/good
Information provided	88.6% rated this as very good/good
Politeness	94.94% rated this as very good/good

#### Phone service

Speed of reply	88.1% rated this as very good/good
Information provided	93.75% rated this as very good/good
Politeness	95.12% rated this as very good/good

## **Appendix 5: Mediation Service Organisation Chart**

**(as at 31 December 2010)**

<b>Brian O'Byrne    Head of Mediation</b>
<b>Equality Mediation Officers</b>
<b>Marian Duffy</b>
<b>Vivian Jackson</b>
<b>Hugh Lonsdale</b>
<b>Orlaith Mannion</b>
<b>Tara Coogan</b>
<b>Enda Murphy</b>
<b>Gary O'Doherty</b>
<b>Conor Stokes</b>
<b>Brenda Ward</b>
<b>James Kelly</b>
<b>Catherine Jestin</b>
<b>Elaine Cassidy</b>
<b>Stephen Bonnländer</b>
* All also act as Equality Officers