



THE EQUALITY TRIBUNAL

AN BINSE COMHIONANNAIS





Mediation Review 2004

The Equality Tribunal
3 Clonmel Street, Dublin 2

Phone: +353 1 4774100
LoCall: 1890 34 44 24
Fax: +353 14774141

Email: info@equalitytribunal.ie
Website: www.equalitytribunal.ie

Table of Contents

1	INTRODUCTION	page 1
2	THE EQUALITY TRIBUNAL	page 3
	2.1 MEDIATION	page 4
	2.2 CODE OF ETHICS	page 5
	2.3 MEDIATION MODEL	page 5
3	EQUALITY MEDIATION 2004	page 7
	3.1 PURPOSE AND OBJECTIVES	page 7
	3.2 MEDIATION SERVICE STRUCTURE	page 7
4	REPORT OF OPERATIONS 2004	page 8
4.1	KEY OBJECTIVES –EXPANSION OF THE SERVICE	page 10
	<i>Continuing training</i>	page 10
	<i>Promoting mediation</i>	page 11
	<i>Users survey of the Mediation Service</i>	page 11
5	MEDIATION REFERRALS – ANALYSIS	page 12
	5.1 REFERRALS IN 2004	page 12
6	MEDIATION OUTCOMES – FURTHER ANALYSIS	page 15
7	ANALYSIS OF AGREEMENTS	page 20
	7.1 EMPLOYMENT EQUALITY AGREEMENTS	page 20
	7.2 EQUAL STATUS AGREEMENTS	page 21
	APPENDICES	page 22
	1. Principles of Mediation	page 23
	2. Mediation Model - Structure of Mediation Session	page 27
	3. Standard Agreement Terms	page 30

Chapter 1

Introduction

This Mediation Review is published in conjunction with the Annual Report of the Equality Tribunal for the year 2004. Any readers interested in an analysis of the Tribunal's discrimination caselaw should also consult the Tribunal's Legal Review 2004.

The Tribunal is headed by the Director, Ms Melanie Pine. 12 of its 31 members of staff who are Equality Officers appointed by the Director to investigate cases are also Equality Mediation Officers appointed by the Director to mediate cases.

Mediation at the Equality Tribunal completed its fourth year of operation at the end of 2004. This innovative service offers the parties in a discrimination case the opportunity, **if they wish**, to reach an agreed settlement. It is completely voluntary (either party may withdraw at any stage) and, generally, more speedy 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 may be 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 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. 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 from mediation to an investigating Equality Officer.

The singular advantage of mediation is that it can achieve a "win-win" situation if the parties wish to reach a settlement and innovative and creative solutions are also possible. This allows the parties to reach a settlement which meets their particular needs.

Chapter 2

The Equality Tribunal

The Equality Tribunal, which is an independent quasi-judicial statutory body, was established in 1999 under its former legal name: the Office of the Director of Equality Investigations. Its function is to investigate and/or mediate complaints of unlawful discrimination under the Employment Equality Acts 1998 – 2004, the Equal Status Acts 2000 - 2004 and the Pensions Acts 1990 - 2004. There have been no mediations to date in relation to complaints taken under the Pensions Acts.

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, the disposal of goods and property, the provision of services and accommodation, and in certain aspects of education.

The Employment Equality Act 1998 - 2004 (Section 78) provides 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 - 2004 (Section 24). Equality Mediation Officers are recruited from the ranks of Equality Officers and are given specialised training for mediation resulting in professional accreditation.

Both 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.

Mediation agreements are not published and are confidential.

2.1 Mediation:

Where either party objects to, or withdraws from, mediation or where mediation does not result in agreement, the complainant may seek an investigation and a Decision in the case by an Equality Officer. Investigations are held in private and the legally binding Decisions are published.

2.2 Code of Ethics

The Mediation Service continues to operate under its code of ethics as set out in the mediation guidelines.

The 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.

2.3 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 is similar, in some respects, to the traditional family mediation model and also has some similarity to the labour relations negotiation and conciliation model.
- ❖ The Equality Mediation Officer is careful not to pressurise the parties to reach a settlement.
- ❖ 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.
- ❖ Equality Mediation Officers do not rely on written submissions prior to the mediation taking place.
- ❖ The mediation option is available to the parties at any stage in the investigation process right up to the day of the 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

Equality Mediation 2004

3.1 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 2004, key objectives were set for the Mediation Service to ensure the continued achievement of this goal, including:

- ❖ the expansion of the mediation team by more than doubling its numbers;
- ❖ effective mediation of Employment Equality, Equal Status and Pensions cases;
- ❖ effective overall management of the mediation caseload;
- ❖ continuing professional learning and training for mediators.

3.2 Mediation Service structure

At the beginning of the year the Mediation Service was staffed by a Head of Unit and four other mediators (Equality Mediation Officers), who also worked as Equality Officers. During the year a further eight mediators were trained and appointed as Equality Mediation Officers. The Head of Unit has responsibility for the management of the Service and for direct mediation, as well as other duties unconnected to the mediation function. The other Equality Mediation Officers all carry substantial caseloads as Equality Officers and must balance their work between the two areas. It is important to note, however, that an Equality Mediation Officer will never act as an investigating Equality Officer in a case s/he has mediated.

Chapter 4

Report of Operations 2004

A total of 253 cases were referred to mediation in 2004 as compared with 109 cases in 2003. The increase (132%) reflects a shift in policy on the part of the Tribunal during 2004 whereby the Director chose to exercise her statutory powers to assign more cases to mediation where no objection was received from either party, rather than seeking specific consent.

- ❖ The numbers of cases referred to mediation increased by 132% on the 2003 figure.
- ❖ A significant number of resolutions of cases undertaken in 2004, by the expanded mediation team, concluded in early 2005.
- ❖ There was a slight decrease in the numbers of cases which were resolved at mediation in 2004: 59 cases compared 64 to cases resolved in 2003.
- ❖ The number of non-resolved cases was 36 compared to 41 such cases in the previous year.
- ❖ In approximately 90% of cases the mediation process is essentially completed at the first session – with either full/outline agreement being reached or a case being deemed not resolvable.

Table 4.1 Outcomes (Completed Mediations)

Mediation Outcomes	2004		2003	
	Resolved	Non-Resolved	Resolved	Non-Resolved
<i>Employment Equality Acts 1998-2004</i>				
- Section 77				
Single(individual complainant)	24	15	30	23
Grouped	0	2	0	1
Sub Total	24	17	30	24
- Section 86				
Single	0	0	0	0
Grouped	0	1	0	0
Sub Total	0	1	0	0
<i>Equal Status Acts 2000-2004</i>				
Single	28	11	25	8
Grouped	7	7	9	9
Sub Total	35	18	34	17
<i>All Equality Legislation</i>				
Single	52	26	55	31
Grouped	7	10	9	10
Total	59	36	64	41
Change	-5	-5		
% Change on 2003 figures	- 8%	-12%		

Note: The term 'Single' refers to cases taken by one individual and 'Grouped' to cases where more than one individual has made a complaint in relation to a single incident.

A key objective for the Mediation Service in 2004 was the overall effective management of the caseload. In general mediation agreements in 2004 were achieved in less than a third of the time a case would take to be investigated by an Equality Officer.

On average, resolved cases took 5.5 months from the date of referral to mediation to the date the agreement was signed.

4.1 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, and to fulfil the 2004 key objectives, eight new Equality Mediation Officers undertook formal training in February, March and April 2004. This was followed by a period of mentoring of the newly trained Officers, by colleagues who were already qualified Equality Mediation Officers, before the new group took mediations in their own right late in 2004. All of the Equality Mediation Officers working in the Equality Tribunal are professionally accredited by the Mediation Institute of Ireland as having completed either Part I or Part II training. Those who have completed Part I only will complete Part II training in 2005.

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 mediation were made to a variety of user groups and other interested parties.

Users' survey of the Mediation Service

A survey of service users was undertaken in 2004. 690 forms were issued to parties who had taken part in the mediation process over the previous three years. There were 148 responses received representing a response rate of 21.5%.

The overall view of both the respondents and the complainants and their representatives was encouraging. The majority of those who responded expressed the view that the service provided by the Mediation Service of the Tribunal and by other staff with whom they came into contact was of a high quality. 56% of those who responded provided additional information on the Service which was overwhelmingly positive and supportive of the way in which mediation is provided. Details of the responses to the survey are contained in the Tribunal's Annual Report for 2004.

Chapter 5

Mediation Review - Analysis

5.1 Referrals in 2004

Table 5.1 Mediation Referrals

Mediation Referrals	2004	2003
	Cases	Cases
<i>Employment Equality Acts 1998-2004</i>		
- Section 77		
Single	127	51
Grouped	15	2
Sub Total	142	53
- Section 86		
Single	0	0
Grouped	1	0
Sub Total	1	0
<i>Pensions Acts 1990-2004</i>	0	0
<i>Equal Status Acts 2000-2004</i>		
Single	94	30
Grouped	16	25
Sub Total	110	55
<i>All Equality Legislation</i>		
Single	221	81
Grouped	32	27
Total	253	108
Change	145	
% Change on 2003 figures	133%	

The procedures in relation to referrals were changed in 2004 and written consent is no longer requested. A case is now referred to mediation if the Director thinks the case is resolvable and if neither party objects to the referral.

Table 5.2 Mediation Referrals – (by discriminatory ground)

Breakdown by Ground	Employment Equality Acts 1998-2004				Equal Status Acts 2000-2004			
	All 2004		All 2003		All 2004		All 2003	
	Grouped	%	Grouped	%	Grouped	%	Grouped	%
Gender	24	17%	7	13%	4	4%	1	2%
Traveller Community	1	1%	0	0%	23	21%	21	38%
Race	17	12%	10	19%	9	8%	1	2%
Disability	26	18%	11	21%	29	26%	9	16%
Age	25	17%	11	21%	18	16%	6	11%
Marital Status	1	1%	2	4%	2	2%	1	2%
Family Status	6	4%	0	0%	2	2%	4	7%
Sexual Orientation	4	3%	0	0%	1	1%	0	0%
Religion	2	1%	0	0%	0	0%	0	0%
Multiple Grounds	37	26%	11	21%	22	20%	12	22%
None Declared	0	0%	1	2%	0	0%	0	0%
Total	143	100%	53	100%	110	100%	55	100%

An examination of the multiple ground cases shows that in employment cases the gender ground appears to be the most represented ground. Traveller community and race grounds dominate the multiple ground cases in Equal Status cases.

Chapter 6

Mediation Outcomes - Further Analysis

Tables 6-1 to 6-5 give further details of completed mediations (both resolved and not-resolved) from the perspective of discriminatory ground.

Table 6.1 Resolved Mediations – Cases (by ground)
Mediation Agreements By Grounds

Breakdown by Ground	Employment Equality Acts 1998-2004				Equal Status Acts 2000-2004			
	All 2004		All 2003		All 2004		All 2003	
	Cases	%	Cases	%	Cases	%	Cases	%
Gender	1	4%	5	17%	0	0%	2	6%
Traveller Community	2	8%	0	0%	13	37%	12	35%
Race	7	29%	4	13%	3	9%	3	9%
Disability	4	17%	5	17%	9	26%	4	12%
Age	2	8%	7	23%	7	20%	4	12%
Marital Status	1	4%	1	3%	1	3%	0	0%
Family Status	1	4%	1	3%	1	3%	5	15%
Sexual Orientation	0	0%	0	0%	0	0%	0	0%
Religion	0	0%	0	0%	0	0%	0	0%
Multiple Grounds	6	25%	7	24%	1	3%	4	12%
Total	24	100%	30	100%	35	100%	34	100%

Table 6.2 Non-Resolved Mediations – Cases (by ground)

Non-Resolved Mediation By Grounds

Breakdown by Ground	Employment Equality Acts 1998-2004				Equal Status Acts 2000-2004			
	All 2004		All 2003		All 2004		All 2003	
	Cases	%	Cases	%	Cases	%	Cases	%
Gender	5	28%	4	16%	0	0%	0	0%
Traveller Community	0	0%	0	0%	7	39%	13	81%
Race	6	33%	2	8%	2	11%	0	0%
Disability	2	11%	7	28%	5	28%	1	6%
Age	2	11%	7	28%	3	17%	1	6%
Marital Status	0	0%	0	0%	0	0%	0	0%
Family Status	0	0%	0	0%	0	0%	0	0%
Sexual Orientation	0	0%	1	4%	0	0%	0	0%
Religion	0	0%	0	0%	0	0%	0	0%
Multiple Grounds	3	17%	3	12%	1	6%	1	6%
None Given	0	0%	1	4%	0	0%	0	0%
Total	18	100%	25	100%	18	100%	16	100%

It will be noted that in employment cases, race and gender continue to be the grounds where the largest number of cases are taken. Under the Equal Status Acts the Traveller ground predominates (59%), with the disability ground also accounting for a significant number (19%) of cases dealt with.

Table 6.3 Resolution Rate 2004 – Employment Equality cases (by ground)
Mediation Resolutions By Grounds

Breakdown by Ground	Employment Equality Acts 1998-2004					
	All 2004			All 2003		
	Cases Resolved	Cases Non-Resolved	%*	Cases Resolved	Cases Non-Resolved	%*
Gender	1	5	17%	5	4	56%
Traveller Community	2	0	100%	0	0	-
Race	7	6	54%	4	2	67%
Disability	4	2	67%	5	7	42%
Age	2	2	50%	7	7	50%
Marital Status	1	0	100%	1	0	100%
Family Status	1	0	100%	1	0	100%
Sexual Orientation	0	0	0%	0	1	0%
Religion	0	0	0%	0	0	-
Multiple Grounds	6	3	67%	7	3	70%
None Given	0	0	0%	0	1	0%
	0	0				
Total	24	18	57%	30	25	55%

Notes

* % Figure obtained by (Mediation cases resolved ÷ Mediation outcomes)

Mediation outcomes = Mediation cases resolved + Mediation cases not resolved

Table 6.4 Resolution Rate 2004 – Equal Status cases (by ground)
Mediation Resolution By Grounds

Breakdown by Ground	Equal Status Acts 2000-2004					
	All 2004			All 2003		
	Cases Resolved	Cases Non-Resolved	%*	Cases Resolved	Cases Non-Resolved	%*
Gender	0	0	-	2	0	100%
Traveller Community	13	7	65%	12	13	48%
Race	3	2	60%	3	0	100%
Disability	9	5	64%	4	1	80%
Age	7	3	70%	4	1	80%
Marital Status	1	0	100%	0	0	-
Family Status	1	0	100%	5	0	100%
Sexual Orientation	-	-	-	0	0	-
Religion	-	-	-	0	0	-
Multiple Grounds	1	1	50%	4	1	80%
None Given	0	0	-	0	0	-
Total	35	18	66%	34	16	68%

Notes

* % Figure obtained by (Mediation cases resolved ÷ Mediation outcomes)

Mediation outcomes = Mediation cases resolved + Mediation cases not resolved

Table 6.5 Resolution Rate 2004 – All cases (by ground)

Mediation Resolution Rate By Grounds

Breakdown by Ground	Total Mediation Resolutions under all Acts					
	All 2004			All 2003		
	Cases Resolved	Cases Non-Resolved	%*	Cases Resolved	Cases Non-Resolved	%*
Gender	1	5	17%	7	4	64%
Traveller Community	15	7	68%	12	13	48%
Race	10	8	56%	7	2	78%
Disability	13	7	65%	9	8	53%
Age	9	5	64%	11	8	58%
Marital Status	2	0	100%	1	0	100%
Family Status	2	0	100%	6	0	100%
Sexual Orientation	0	0	-	0	1	0%
Religion	0	0	-	0	0	-
Multiple Grounds	7	4	64%	11	4	73%
None Given	0	0	-	0	1	0%
Total	59	36	62%	64	41	61%

Notes

* % Figure obtained by (Mediation cases resolved ÷ Mediation outcomes)

Mediation outcomes = Mediation cases resolved + Mediation cases not resolved

Chapter 7

Analysis of Agreements

7.1 Employment Equality Agreements

Some of the most significant features of the 24 Employment Equality Mediation Agreements were:-

- ❖ No cash payments were made in eight (33%) of the agreements.
- ❖ Examples of other imaginative features of Employment Equality Mediation Agreements include:
 - Payment of monies agreed to be accruing from pay differential.
 - The issue of a letter of regret and the payment of legal fees incurred in taking the complaint.
 - Acknowledgement of distress caused to complainant
- ❖ Payments to the complainant were a feature of 16 employment mediation agreements (73%), amounting to more than €61,000 - ranging from a minimum payment of €400 to more than €21,000. Seven payments were €1,000 or less. Eight were between €1,000 and €10,000. Only one payment exceeded €10,000. The individual circumstances of each case make it inappropriate to try to identify particular criteria linked to a payment or to calculate an average.
 - Four of the employment agreements involved discriminatory dismissal and were referred for mediation by the Labour Court under section 78 of the Employment Equality Acts 1998-2004.
 - Admission of liability for discrimination was specifically not included in agreements in the majority of cases.
 - Apologies were recorded in seven cases.

7.2 Equal Status Agreements

Some of the most significant features of the 35 Equal Status Mediation Agreements were:-

- ❖ No cash payments were made in fifteen (43%) of the agreements.
- ❖ Other imaginative features of the Equal Status Mediation Agreements include
 - Payment of airline tickets to the UK.
 - Undertakings to welcome people to the respondent's premises and provide a complimentary meal.

- Payment of the cost of tickets to a show.
- The provision of speech and language training.
- Payments to charity.
- Payments to a sporting organisation.
- Payment of legal fees.
- ❖ Cash payments totalling more than €60,000 were made on foot of Equal Status Agreements during 2004. In one case a further €60,000 was promised conditional on certain terms being fulfilled.
- ❖ Individual cash payments ranged from €100 to €40,000. However, the average payment was €1,850.
- ❖ Apologies for the particular treatment and/or its effects featured in 15 of the 35 agreements.

Appendices

Appendix 1

Principles of Mediation at the Equality Tribunal

Appendix 2

Equality Mediation Model – Structure of Mediation

Appendix 3

Outline Mediation Agreement – Standard Clause

Appendix 1

Principles of Mediation

Principles of Mediation at the Equality Tribunal: 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 1998-2000, the Equal Status Act, 2000-2004 and the Pensions Acts 1990-2004. The Mediation Service adheres to the following principles in the mediation process:-

- ❖ **Consent:** If the Director of the Tribunal considers that a case could be resolved by mediation she will refer it to an Equality Mediation Officer. **However, the case will not be referred for mediation if either party objects to the case being dealt with by mediation.** Both parties will be asked if they object to a mediation referral. 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. A number of such meetings may be necessary as part of the mediation process.
- ❖ **Impartiality:** The Mediation Service guarantees impartiality and does not take sides with either party.
- ❖ **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.
- ❖ **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.
- ❖ **Participation:** In order to reach a settlement it is essential that everyone concerned participates in the mediation process.
- ❖ **Power Balancing:** The Equality Mediation Officer has a duty to ensure balanced negotiation and to prevent manipulative or intimidating negotiation techniques.
- ❖ **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 at the outset as to how the third parties contribute to the mediation process.

- ❖ **Advice:** The Equality Mediation Officer will give information only in those areas where s/he is qualified to do so by training and experience. Where the mediation may affect other rights and obligations, the Equality Mediation Officer will advise the parties to seek independent advice.
- ❖ **Issues for Discussion:** It is the responsibility of the parties to identify, if necessary with the help of the Equality Mediation Officer, the issues on which they wish to negotiate. The parties are responsible for the terms of any settlement, they reach.
- ❖ **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 disclosed¹. Any person who discloses information in contravention of the Acts² 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.

- ❖ **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. Should the Equality Mediation Officer decide to do this, the conditions and procedures for this will be clarified and agreed with the parties beforehand.
- ❖ **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, 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.

¹ 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.

² Section 97(2) of the Employment Equality Act 1998 - 2004 and Section 36(2) of the Equal Status Act 2000 - 2004

- ❖ **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 before the final mediation session. 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 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.

Appendix 2

Mediation Model - Structure of 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 their 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.

Mediation Session – Agreement

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, 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. 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 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

Standard Agreement Terms
Equal Status Act 2000 - 2004
Section 24(4)

Mediation Agreement between

Name, Complainant
And
Name, Respondent

Terms of Settlement

Agreement No: AGR2002-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 - 2004 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 - 2004).

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.

[Possible option: The parties agree, however, that general information about the case, the Act, the grounds involved and its successful conclusion at mediation may be disclosed in the normal course of their activities provided the parties involved are not identified,.....]

(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.



- 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:



THE EQUALITY TRIBUNAL
AN BINSE COMHIONANNAIS

3 Clonmel Street, Dublin 2.

Phone: 353 1 477 4100 LoCall: 1890 34 44 24 Fax: 353 1 477 4141

Email: info@equalitytribunal.ie www.equalitytribunal.ie