



## Developments in Alternative Dispute Resolution (ADR)

THE EQUALITY TRIBUNAL'S MEDIATION SERVICE  
- 2 YEARS ON

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## 1 Summary

Mediation at the Equality Tribunal is an innovative new service that 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 more speedy (on average 3 times quicker) than an investigation before an equality officer. The process is informal and does not involve written submissions. Mediation is private and agreements are not published (unlike equality officer decisions). 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 the complainant may seek to have the investigation resumed. If the case returns to investigation both sides are precluded from using information disclosed by the other side at mediation without consent. In addition the mediator will not pass on any information from mediation to an investigating equality officer.

An analysis of the results achieved since Christmas 2000 show that in 50% of cases, a mutually acceptable agreement is reached between the parties. The analysis also revealed that in nearly 22% of equal status and 13% of employment equality mediation agreements **monetary compensation was not an issue**. Where compensation was agreed between the parties the amounts paid were below €1,000 in 80% of equal status cases and below €2,000 in 55% of employment cases.

Advisers or representatives are welcomed at mediation, although it is interesting to note that in nearly 60% of cases the parties in dispute were not represented.

Mediation 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.

## 2 ODEI - THE EQUALITY TRIBUNAL<sup>i</sup>

The Equality Tribunal was established on 18 October 1999 under the Employment Equality Act, 1998. It is an independent quasi-judicial statutory body whose core function is to investigate and/or mediate complaints of unlawful discrimination. Its remit was extended to cover discrimination outside of employment under the Equal Status Act, 2000 from 25 October 2000.

Under Irish equality legislation, discrimination is unlawful on the following 9 grounds - gender, religion, marital status, age, family status, disability, sexual orientation, 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 Equality Tribunal operates under the aegis of the Department of Justice, Equality and Law Reform.

As an impartial quasi-judicial body, the Equality Tribunal has the function of investigating or mediating complaints of unlawful discrimination that are formally referred to it.

### **2.1 Investigation and Decision**

The Equality Tribunal is committed to reaching decisions, which are balanced, robust and well founded in law and which contribute to a high level of protection against discrimination, consistent with legislation and case law. An Equality Tribunal investigation is carried out by an Equality Officer.

Where discrimination is found to have occurred, redress will be awarded. Redress awardable comprises, as appropriate, one or more of the following – compensation, an order for equal pay, an order for equal treatment and/or a direction of a specific course of action.

Decisions are made available to the widest possible audience, including on the website ([www.odei.ie](http://www.odei.ie)), to foster an awareness of what does and does not constitute discrimination and to contribute to the prevention of future discrimination.

The decisions of the Equality Tribunal's Equality Officers are binding and enforceable at law. Where they are appealed, appeals lie to the Labour Court for cases under the Employment Equality Act 1998, and to the Circuit Court for cases under the Equal Status Act 2000. The Office has significant powers to underpin its functions. The Equality Tribunal acts in accordance with the principles of natural justice in all its work.

## **2.2 Mediation**

Section 78 of the Employment Equality Act 1998 (see Appendix A) provides for the establishment of a mediation service, staffed by Equality Mediation Officers or mediators. A similar approach to mediation is also found in the Equal Status Act 2000 (Section 24). Equality Mediation Officers are recruited from the ranks of Equality Officers and are given specialised training for mediation.

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”. Under the Employment Equality Act 1998 the Labour Court, on making a similar judgement, may refer a case to the Director for mediation by an equality mediation officer if the Court decides not to attempt to resolve the case itself.

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 write up the terms of the settlement
- The agreement shall be signed by the complainant and the respondent
- The agreement, when signed, is legally binding and enforceable.

There is no provision that allows the publication of mediation agreements

### 3 Alternative Dispute Resolution (ADR)

#### 3.1 Dispute Resolution Processes

Dispute resolution processes can be divided into two categories. The first category involves dispute resolution by a third party who decides the outcome – for example arbitration, the judicial process (e.g. civil courts) and quasi-judicial processes (e.g. Equality Officer investigation). The second category involves dispute resolution by ‘negotiation’ – and covers direct negotiation between the disputing parties, conciliation (e.g. labour relations conciliation) and mediation.

The differences between the 2 categories can be summarised –

**Table 1: Comparing Dispute Resolution Processes**

<b>Third party decides outcome</b>	<b>Parties in dispute decide outcome</b>
<ul style="list-style-type: none"><li>▪ a winner and a loser</li><li>▪ possibly 2 losers</li><li>▪ parties have<ul style="list-style-type: none"><li>· no ownership</li><li>· no control of outcome</li></ul></li><li>▪ no "grey" areas</li><li>▪ findings of fact and law</li></ul>	<ul style="list-style-type: none"><li>▪ no losers</li><li>▪ parties retain<ul style="list-style-type: none"><li>· ownership</li><li>· control of outcome</li></ul></li><li>▪ accommodates "grey" areas</li><li>▪ generally future focussed</li></ul>

In the traditional Equality Tribunal quasi-judicial investigation the Equality Officer will generally request detailed submissions from both sides before arranging a joint hearing(s) at which each side will have an opportunity to present their case, call witnesses, respond to points raised by the other side and to respond to questions from the Equality Officer. After completing the investigation the Equality Officer issues a written decision, making findings in fact and law, setting out the reasons for the decision. Decisions are legally binding and are published.

Mediation is different! Bush and Folger (1994)<sup>ii</sup> describe mediation as follows –

*Mediation is generally understood as an informal process in which a neutral third party with no power to impose a resolution helps the disputing parties try to reach a mutually acceptable settlement.*

The Equality Tribunal's approach to mediation is described in detail below.

#### 4 The Equality Tribunal's Mediation Service

The Tribunal recognised that staff needed to acquire the necessary skills to ensure that the service was effective. Seven members of staff have completed training which gives Part 1 accreditation with Mediators Institute Ireland (MII). This training course was also accredited by the U.S. based Academy of Family Mediators<sup>iii</sup>. In tandem with this, mediation guidelines and principles for the operation of the Mediation Service in the Office were developed.

On 10 November 2000 one Senior Equality Officer and four Equality Officers were formally appointed as Equality Mediation Officers by the Director of the Equality Tribunal. These five officers are the first mediators in the new Mediation Service. In mid-December 2000, the Tribunal began offering mediation as an alternative mechanism for resolving disputes.

The new innovative Mediation Service was formally launched by the then Minister for Justice, Equality and Law Reform, Mr. John O'Donoghue, T.D., on 28 March 2001.

Continuing Professional Training: The Equality Tribunal is committed to continuing development and/or professional training for all staff. Building on the excellent foundation course undertaken by the mediators in Autumn 2000 the Tribunal contracted a Trainer/Consultant for advanced mediation training in Autumn 2001. This training programme is continuing and is intended to lead to full practitioner member status of the Mediators Institute Ireland by Summer 2003.

## 5 Approach

### 5.1 Guidelines & Ethics

The Equality Tribunal's mediation guidelines and principles / ethics are set out in Appendix B and the mediation consent form is at Appendix C. The key features can be summarised as follows –

Consent / Voluntary Process / Power Balancing: The principle of self-determination is recognised as a fundamental principle of mediation. Mediation is a voluntary process and either party may withdraw at any stage. The mediator has a duty to ensure balanced negotiation and to prevent manipulative or intimidating negotiation techniques. If the parties wish to agree a settlement it must be on the basis of “informed consent” from each side.

Impartiality: The mediator must guarantee impartiality. If at any stage the mediator feels unable to conduct the mediation in an impartial manner s/he must withdraw from the process. It is important that any real, perceived or potential conflicts of interest are disclosed by the mediator at the earliest opportunity. The mediator may only proceed if the parties agree to continue with the mediation.

Confidentiality: There are two aspects to the confidentiality issue. From the Equality Tribunal's and the mediator's perspective there is a guarantee that information disclosed at mediation will not be given to an Equality Officer if there is a subsequent investigation. In addition the terms of a settlement are not published, unlike the Decisions of Equality Officers. The Equality Tribunal reserves the right to use extracts from agreements in a manner which cannot identify the parties, in the interests of promoting interest in and knowledge of the mediation option.

From the parties' perspective it is normal to include a confidentiality clause in the terms of any settlement reached. The parties cannot disclose information furnished at mediation except in accordance with the Act<sup>iv</sup>

Representation & Advice: While a significant proportion of the parties appearing before the Equality Tribunal are not represented, advisors and other representatives are made welcome if they are involved. Many different categories of representative / advisor have been present at mediations including trade union and employer representatives, solicitors, barristers, voluntary representative groups and representatives from Citizens Information Centres.

## 5.2 Mediation Model

Equality mediation is promoted as an alternative to the better known quasi-judicial Equality Officer investigation, with its written submissions and formal hearing. The mediation model selected is similar, in many respects, to the traditional family mediation model. It is different from the well established labour relations negotiation and conciliation model.

The different approaches between equality mediation and labour conciliation are summarised in the table below –

**Table 2: Equality Mediation & Labour Conciliation**

<b>Equality Mediation</b>	<b>Labour Conciliation</b>
<ul style="list-style-type: none"> <li>▪ no written submissions</li> <li>▪ joint sessions predominate</li> <li>▪ side conference seldom used</li> <li>▪ no assumption that agreement is certain</li> </ul>	<ul style="list-style-type: none"> <li>▪ written submissions quite normal</li> <li>▪ joint sessions rare</li> <li>▪ side conference predominates</li> <li>▪ assumption that compromise will be reached in the “middle ground”</li> </ul>

It is important to realise that in equality mediation it is inappropriate for a mediator to assume that there will be a settlement based on a compromise between the two sides. If discrimination has occurred it is improper to put a complainant in a position of negotiating his/her equal rights. It is one thing for either party to realise in the course of mediation that a case may not be clear cut, it is altogether quite different and unacceptable for a mediator to suggest from the outset that the parties should compromise what they regard as their principles.

The mediator comes to the mediation without any detailed knowledge of the case at issue; other than the names and contact details of the parties, their representatives, if any, the ground(s) under which discrimination is claimed and a basic description of the type of complaint, for example – discriminatory treatment, harassment etc. in employment, discriminatory treatment in the equal status area. If the disability ground is involved the mediator will find out if the parties require any facilities to ensure reasonable accommodation.

The non-reliance on written submissions is an important feature of equality mediation. In many cases the parties involved, especially persons who are un-represented, are more comfortable when they are asked to talk about the issues and how they feel about them as opposed to putting these issues in to a written submission.

It should be noted that the mediation option is available to the parties at any stage in the investigation process right up to the day of the hearing. It is not unknown for a hearing to be adjourned to give the parties an opportunity to resolve the case by mediation.

### **5.3 Mediation Session – Introduction**

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

Generally starting with the complainant each side is asked to tell the mediator ( and through her/him the other side) 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. This dialogue is an important feature of the mediation 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.

#### **5.4 Mediation Session – Identification of Issues**

The mediator will help the parties more clearly identify the gap 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 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.

#### **5.5 Mediation Session – Agreement**

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 issued to each party, thus allowing both sides a “cooling off” period so that each 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 D. The terms are similar for both employment equality and equal status agreements.

#### **5.6 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**. The Act provides that the application **must** be accompanied by a copy of the mediator's 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.

## 6 Results to Date

### 6.1 Completed Mediation Cases

In the 23 months since mediation was first offered 139 cases out of 270 cases referred for mediation have completed the mediation process with agreements reached in 50% of cases. The same rate of resolution applies to both Employment Equality and Equal Status. Twenty nine cases were withdrawn and settled outside the mediation process leaving 82 live mediation cases as at 30 November 2002.

On average cases which resulted in mediated agreements were completed in just six months (from original date of referral to date of signing) compared to an average of eighteen months in employment investigation cases (from original date of referral to date of decision).

In approximately half the cases that were resolved an outline agreement was reached in the first session. In general the mediation process rarely involves more than two sessions before an agreement is formally signed off.

### 6.2 Linked / Grouped Cases

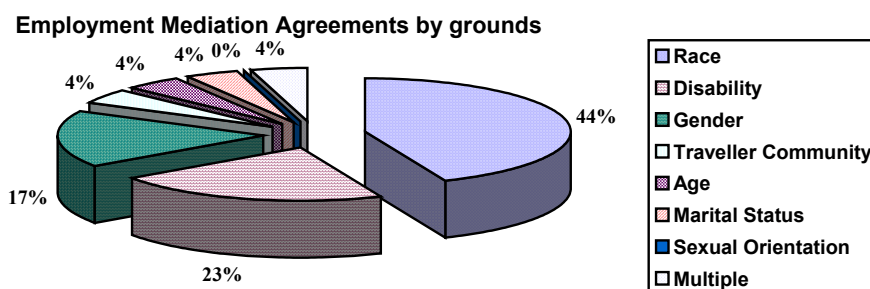
Grouped or linked cases were a feature of agreements under both Acts – with six groups of two complainants and three groups of more than two featuring under the Equal Status Act and one group of nine complainants in the employment area.

### 6.3 Grounds

The tables and charts below show the breakdown by grounds under both Acts –

**Table 3: Employment Equality Mediation - by grounds**

	<b>Agreement</b>	<b>Not Resolved</b>
Race	10	0
Disability	5	8
Gender	4	10
Traveller Community	1	0
Age	1	2
Marital Status	1	0
Sexual Orientation	0	2
Multiple	1	2
<b>Total</b>	<b>23</b>	<b>24</b>



**Table 4: Equal Status Mediation - by ground**

	<b>Agreement</b>	<b>Not Resolved</b>
Traveller Community	37	39
Age	3	1
Gender	1	0
Disability	1	1
Race	1	0
Family Status	1	0
Marital Status	0	1
Multiple	2	4
<b>Total</b>	<b>46</b>	<b>46</b>

While the trend in Equal Status reflects the high levels of case referral on the Traveller Community ground, the situation is totally different in the employment equality area (where gender has the highest number of case referrals) with one group of nine complainants who reached agreement on an equal pay claim on the race ground and five cases which were resolved on the disability ground.

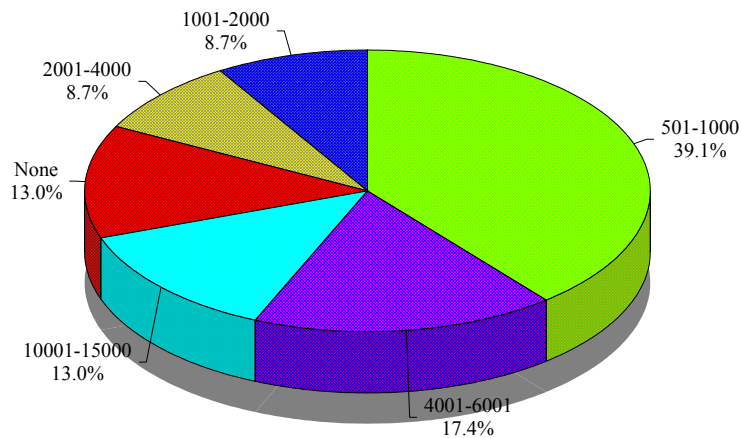
#### 6.4 Agreed levels of compensation

An interesting feature which has emerged, especially in the Equal Status area, is the fact that many cases were resolved with no monetary compensation or with some other form of compensation. Nearly 22% of Equal Status mediation agreements involved no money (8 cases) or compensation other than money (2 cases).

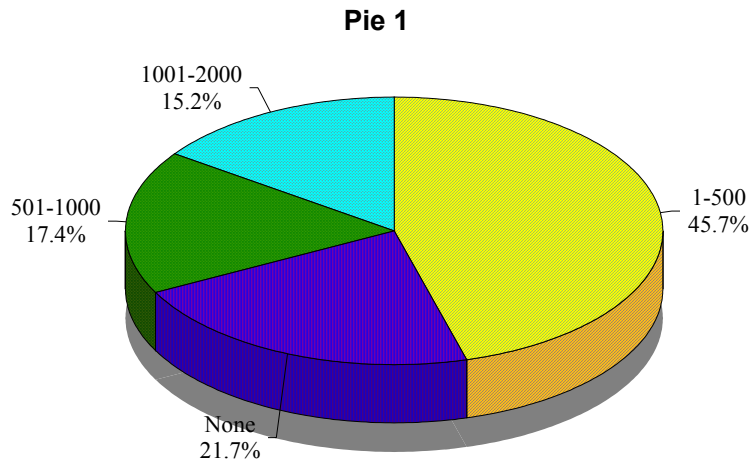
**Table 5: Mediation: Compensation Categories**

	Employment	Equal Status
No Compensation	3	8
Not Monetary		2
Monetary	10	31
Monetary + other	10	5
Total	23	46

#### Employment Equality Compensation Bands



## Equal Status Compensation Bands



The levels of compensation agreed averaged at €3,656 in employment and €656 in equal status (details in the Table 6 below).

**Table 6: Mediation - Agreed Compensation Levels**

<b>6.5 Compensation</b>	<b>Employment</b>	<b>Equal Status</b>
None	3	8
Minimum	€519	€150
Maximum	€14,398	€2,000
Total Compensation	€73,125	€24,936
Average	€3,656	€656

**Table 7: Compensation Bands**

<b>Compensation Band</b>	<b>Employment</b>	<b>Equal Status</b>
None	3	10
€1 – 500	0	21
€501 – 1000	9	8
€1001 – 2000	2	7
€2001 – 4000	2	
€4001 – 6000	4	
€6001 – 10000	0	
€10000 - 15000	3	

### 6.6 Non-Monetary Compensation

Non-monetary compensation did not feature significantly in employment cases. However in one employment case an employer agreed to additionally compensate the complainants

by covering their legal fees and other expenses. In the equal status area non-monetary aspects of agreements have included air flights, vouchers and in one case a donation to a Traveller’s support group.

### 6.7 Other agreed issues

An agreement by a respondent to introduce an equality policy features in one employment case and one equal status case. In most of the cases where monetary compensation was not an issue agreements were made about future access and the treatment of the complainant in a non-discriminatory manner. In access cases there was a clear understanding by the parties of the requirements of the Equal Status Act, but both sides felt it important that their rights and responsibilities be spelled out in an agreement.

Apologies were a significant feature of many mediation agreements, especially in the equal status area. In some cases an apology was offered without any request by the complainant. In many such cases this considerably shortened the time taken to reach an agreement.

### 6.8 Representation at Resolved Mediation

Fifty eight per cent of the parties did not have representation in the mediation cases which reached agreement. Twenty per cent of the parties used legal representation. The Equality Authority represented just over a quarter of complainants in employment cases and the voluntary sector represented a fifth of complainants in the Equal Status area.

**Table 8: Mediation - Representation Breakdown**

Representation	Employment		Equal Status	
	Complainant	Respondent	Complainant	Respondent
None	4	8	32	36
Employer Body		11		
Legal	10	4	4	10
Equality Authority	6		1	
Union	3			
Voluntary			9	
<b>Total</b>	<b>23</b>	<b>23</b>	<b>46</b>	<b>46</b>

## 6.9 Sector & Geographical Spread

The main sectors involved in the resolved cases were the private sector in employment cases (87%) and pubs/hotels/nightclubs in the equal status area (70%).

**Table 8: Respondent Sector**

<b>Respondent Sector</b>	<b>Employment</b>	<b>Equal Status</b>
Private Firm	20	
Public Sector	3	
Shop		6
Travel		3
Leisure		4
Bank		1
Pub/Hotel/Nightclub		32
<b>Total</b>	<b>23</b>	<b>46</b>

<b>Location</b>	<b>Employment</b>	<b>Equal Status</b>
Dublin	8	17
Rest of Leinster	11	4
Cork	1	15
Rest of Munster	1	5
Connaught	1	5
Ulster	1	0
<b>Total</b>	<b>23</b>	<b>46</b>

## 7 Conclusion

The principal objective of this report is to demystify the mediation process by identifying key developments in equality mediation since its inception almost two years ago and by describing how the process works. The report, therefore, will help the many people who wish to find a different way of resolving their disputes rather than through the quasi-judicial investigation process, but who are unsure about trying mediation. The Tribunal hopes that this analysis will encourage more people to try this innovative new process.

ODEI – THE EQUALITY TRIBUNAL

2 December 2002

## **8 Appendices**

Appendix A	Section 78 of the Employment Equality Act 1998
Appendix B	Mediation Guidelines
Appendix C	Mediation Consent Form
Appendix D	Mediation Agreement – Standard Terms
Appendix E	Endnotes

**Section 78 of Employment Equality Act 1998**

Mediation.

78. — (1) Subject to subsection (3), if at any time after a case has been referred to the Director under section 77(1) 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.

(2) Subject to subsection (3), if at any time after a case has been referred to the Labour Court under section 77(2) it appears to the Labour Court that the case is one which could be resolved by mediation, the Labour Court shall either—

- a) attempt to resolve the case in that way itself, or
- b) refer the case to the Director for mediation by an equality mediation officer.

(3) If the complainant or the respondent objects to a case being dealt with by way of mediation, the Director or, as the case may be, the Labour Court shall not exercise their powers under this section but shall deal with the case under section 79.

(4) Mediation, whether by an equality mediation officer or by the Labour Court, shall be conducted in private.

(5) Where a case referred under section 77 is resolved by mediation—

- a) the equality mediation officer concerned or, as the case may be, the Labour Court shall prepare a written record of the terms of the settlement,
- b) the written record of the terms of the settlement shall be signed by the complainant and the respondent,
- c) the equality mediation officer concerned or, as the case may be, the Labour Court shall send a copy of the written record, as so signed, to the complainant and the respondent, and
- d) a copy of the written record shall be retained by the Director or the Labour Court, as the case may require.

(6) If after—

- a) a case has been referred to an equality mediation officer under subsection (1) or (2)(b), or
- b) the Labour Court has attempted to resolve a case under subsection (2)(a),

it appears to the equality mediation officer or, as the case may be, the Labour Court that the case cannot be resolved by mediation, that officer or that Court shall issue a notice to that effect to the complainant and the respondent.

(7) Where—

- a) a notice has been issued under subsection (6) with respect to a case,
- b) within 28 days from the issue of that notice the complainant makes an application to the Director or, as the case may be, the Labour Court for the resumption of the hearing of the case, and
- c) if the notice was issued by an equality mediation officer, a copy of that notice accompanies the application under paragraph (b),
- d) the Director or the Labour Court, as the case may require, shall proceed or, as the case may be, continue to deal with the case under section 79.



# Mediation Service

## GUIDE TO PROCEDURES

Revised July 2002

ODEI - the equality tribunal  
(Office of the Director of Equality Investigations)

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**1. Background:** ODEI - the equality tribunal (Office of the Director of Equality Investigations) operates under the Employment Equality Act, 1998 and the Equal Status Act, 2000. ODEI is the accessible and impartial forum to remedy unlawful discrimination. It is an independent statutory office contributing to the achievement of equality by investigating or mediating complaints of unlawful discrimination. It operates in accordance with the principles of natural justice and its core values are impartiality, professionalism, accessibility and timeliness. The principal role of ODEI is the investigation and mediation of complaints of discrimination on the grounds of **gender, marital status, family status, sexual orientation, religious belief, age disability, race and membership of the Traveller community**<sup>1</sup> in relation to employment and in relation to access to goods and services, disposal of property and certain aspects of education.

**2. How does it operate ?** ODEI can process complaints of discrimination by two different methods. The traditional and better known method is investigation<sup>2</sup>. An investigation is a quasi-judicial process carried out by an Equality Officer. The investigating ODEI Equality Officer will request detailed written submissions from both parties before arranging a joint hearing(s) of the case, at which each party will be given an opportunity (a) to present their case, (b) to call witnesses, (c) to respond to points raised by the other party and (d) to answer questions from the Equality Officer. After completing the investigation, the Equality Officer issues a written decision setting out the reasons for the decision. Equality Officers have extensive powers to enter premises and to obtain information to enable them to conduct an investigation. Decisions are legally binding and are published. The alternative method is mediation.

**3. What is Mediation ?** Mediation is an internationally recognised process whereby a neutral and impartial person facilitates the parties in a dispute to explore their area(s) of dispute and, where possible, to assist them in reaching a mutually acceptable agreement / settlement. **The mediator empowers the parties to negotiate their own agreement on a clear and informed basis, should each party wish to do so.** The process is voluntary and either party may terminate it at any stage.

**4. Principles of Mediation at ODEI:** The objective of the Mediation Service at ODEI 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

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<sup>1</sup>Subject to the time limits laid down in each Act.

<sup>2</sup>Full details on the investigation procedures are available on request from ODEI

Employment Equality Act, 1998 and the Equal Status Act, 2000. The Mediation Service is staffed by ODEI Equality Mediation Officers (mediators) who have been specifically trained for this innovative new service. The Mediation Service adheres to the following principles in the mediation process :-

- **Consent** : Consent to mediation is sought independently from both parties. The fact that one side or the other has consented is not disclosed. The Director of Equality Investigations refers a complaint to the Mediation Service only if both parties consent and it appears that the case is one which could be resolved by mediation. The Mediation Service arranges a mutually convenient meeting between the parties and a mediator 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 and its mediators guarantee impartiality and do not take sides with either party.
- **Voluntary Process:** Mediation is a voluntary process. The consent of both parties is necessary before mediation may be offered. Either party may withdraw that consent at any stage 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** : It is essential that everyone necessary to reach a settlement participates in the mediation process.
- **Power Balancing:** The mediator has a duty to ensure balanced negotiation and to prevent manipulative or intimidating negotiation techniques.
- **Third Parties:** Third parties (e.g. an advisor or representative) are welcome at mediation. The mediator 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 mediator 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 mediator 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 mediator, the issues on which they wish to negotiate. The parties are responsible for the terms of settlement, if any, which 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 disclosed<sup>3</sup>. Any person who discloses information in contravention of the Acts<sup>4</sup> 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.

- **Joint Sessions:** Parties are normally seen together. However, in some cases the mediator may consider it helpful to discuss an issue alone with each or either of the parties. Should the mediator 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 mediator agrees to have discussions with each or either of the parties separately from the other, that person may, with the mediator's agreement, give him/her information which will be kept in confidence and not shared with the other party.
- **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 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

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<sup>3</sup>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.

<sup>4</sup>Section 97(2) of the Employment Equality Act, 1998 and Section 36(2) of the Equal Status Act, 2000

party. A copy is also retained by the Director of Equality Investigations. 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 mediator that the case cannot be resolved by mediation a notice to that effect will be issued by the mediator 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. This application must be accompanied by a copy of the mediator's notice.

### **5. What are the Advantages of Mediation ?**

- Through mediation the parties are empowered to negotiate directly and to reach their own agreement, rather than allowing an investigating Equality Officer to impose a decision.
- Mediation offers a quicker and more informal process than that of investigation and detailed written submissions are not required
- Agreements reached at mediation often meet the needs of parties in a more comprehensive way than decisions imposed by a third party, as the process facilitates persons in clarifying their relevant concerns and perspectives.
- Agreements reached at mediation are more likely to be sustainable. They tend to operate more successfully than decisions imposed by a third party, especially where there is an ongoing relationship between the parties.
- There is nothing to lose by trying it. Mediation can be terminated at any stage by either party. The investigation process may be resumed, should the complainant wish to do so.
- Mediation is private and the details of settlements are not published.

**NOTE: The mediator does not try to control the outcome of the mediation process. Parties may choose to agree a settlement or choose not to agree a settlement. The terms of a settlement reached at mediation may differ from the decision which an Equality Officer might have reached in the case had it been referred for investigation.**



## Mediation Service

### *Mediation Option*

Anyone who feels that they have been discriminated against under either the Employment Equality Act, 1998 or the Equal Status Act, 2000 on the grounds of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community, may refer a complaint to ODEI-the equality tribunal (Office of the Director of Equality Investigations)<sup>5</sup>.

If, on receiving a complaint, it appears that a case is one which could be resolved by mediation rather than investigation, the Director of Equality Investigations will ask the complainant and respondent to indicate in writing whether they would consider mediation. Mediation is an alternative method of resolving complaints, seeking to arrive at a solution through an agreement between the parties, rather than through an investigation and decision.

Consent to mediation will be sought independently from both parties. The fact that one side or the other has consented will not be disclosed. The Director will not refer the complaint to the Mediation Service unless both parties consent.

(Please tick the relevant box)

I agree to participate in the process of mediation

I do not agree to participate in the process of mediation

Signature: .....

Address: .....

.....

.....

Tel. No. ....

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**Equal Status Act, 2000  
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 Office of the Director of Equality Investigations 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". The consent of both parties is required before mediation can commence.

C. The parties involved in this case agreed to participate in the process of mediation. The case was referred by the Director of Equality Investigations 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.

[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 Office of the Director of Equality Investigations 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.

### **Terms of Agreed Actions**

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 :** \_\_\_\_\_

**Position: Complainant**

**Representative:**

**Position:**

**Date:**

**Witnessed by Name, Equality Mediation Officer**

**Date:**

**Signed by :** \_\_\_\_\_

**Position:**

**Respondent / Duly authorised to sign on behalf of Respondent.**

**Representative:**

**Position:**

**Date:**

**Endnotes**

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<sup>i</sup> ODEI THE EQUALITY TRIBUNAL is a business name – the legal title is the Office of the Director of Equality Investigations

<sup>ii</sup> Robert A. Baruch Bush and Joseph P. Folger, (1994) *The Promise of Mediation* Jossey-Bass Publishers, San Francisco

<sup>iii</sup> Now part of The Association for Conflict Resolution ([www.acresolution.org](http://www.acresolution.org))

<sup>iv</sup> Section 97(2) of the Employment Equality Act 1998