



## MEDIATION REVIEW 2002



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Ruairi Gogan, Head of Mediation

## Introduction

This Review is published as Part III of the Annual Report of the Equality Tribunal for the year 2002. Mediation at the Equality Tribunal completed its second year of operations at the end of 2002. This innovative new 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 (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.



Mediation Team

During 2002 a mutually acceptable agreement was reached between the parties in 52% of cases that completed mediation. This represents an increase of nearly one quarter on the resolution rate for 2001, when 42% of cases reached agreement. Overall mediation completions (resolved and not resolved) increased by three and a half times in 2002, compared to our first year of operation (from 19 to 64). **The analysis of mediation agreements revealed that in nearly 40% of individual equal status cases, 17% of grouped equal status cases and 14% of employment equality cases monetary compensation was not at issue.** Apologies for the effects of the treatment complained of feature in just over half of equal status agreements, even-though discrimination was formally denied.

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.

## The Equality Tribunal

The Equality Tribunal was established on 18 October 1999 under its formal legal name, the Office of the Director of Equality Investigations. It is an independent quasi-judicial statutory body whose core function is to investigate and/or mediate complaints of unlawful discrimination under the Employment Equality Act 1998 and the Equal Status Act, 2000.

Under Irish equality legislation, discrimination is unlawful on 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. The Tribunal is headed-up by the Director, Ms. Melanie Pine. Nearly half of its 29 staff are Equality Officers, who investigate cases or Equality Officers/Mediators who may also mediate cases.

### 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. A 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 arrears of remuneration 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.

## Mediation

The Employment Equality Act 1998 (Section 78) 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 mediate 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 requires the publication of mediation agreements. Mediation can, therefore, be defined as 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, if they so wish. In investigation there has to be a winner and a loser, whereas at mediation, both parties could be considered ‘winners’ if agreement is reached.

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, TD, on 28 March 2001.

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## Equality Mediation

### Mediation Service Structure

The Mediation Service is staffed by a Head of Unit, who is also a Senior Equality Officer, and 4 other mediators (Equality Mediation Officers), who also work as Equality Officers. While the Head of Unit has devoted most of his time (with effect from October 2002) to management of the service and direct mediation, the other mediators all carry substantial caseload as Equality Officers and must balance their work between the two areas. It is important to note, however, that a mediator will never act as an Equality Officer in a case s/he has mediated.

### Purpose

The Equality Tribunal's Statement of Strategy 2001-2003 set the overall goal for the Mediation Service - to contribute to the realisation of equality by developing and operating an effective mediation service.

Two of the key objectives of this goal, training of mediators and the development of procedures and guidelines were achieved in 2001. For 2002 key objectives were set for the Mediation Service to ensure the continued achievement of this goal, including –

- Effective mediation of Employment Equality and Equal Status cases
- Effective overall management of the mediation caseload
- Continuing professional learning and training for mediators
- The promotion of mediation as an alternative to the more complex investigation process

These objectives will be considered in further detail in the Operations Report for 2002 (Section 4, page 7).

### Training

The Tribunal's Mediators all completed a training course in Autumn 2000 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>1</sup>. In tandem with this, mediation guidelines and principles for the operation of the Mediation

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<sup>1</sup> Now part of The Association for Conflict Resolution ([www.acresolution.org](http://www.acresolution.org))

Service in the Office were developed. The Equality Tribunal is committed to continuing development and/or professional training for all staff. Building on the 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.

## Code of Ethics

The Service drew up mediation guidelines in 2000 which includes a statement of the principles that underscore its operations, essentially a code of ethics for equality mediation.

The principles cover issues such as –

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

Some of 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 that 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>2</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.

### Mediation Model

Equality mediation is promoted as an alternative to the 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 labour relations negotiation and conciliation model. 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 straight forward, 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 unrepresented, 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.

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

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. More details on how the model is implemented can be found in Appendix A.

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## Report of Operations 2002

### Mediation Outcomes

The Mediation Service more than achieved its key objective by significantly increasing the total number of mediation cases processed (+237% in total, resolved +313%, not resolved +182%) while also seeing a rise in the proportion of cases resolved (up from 42% to 52%) as shown in [Table 4.1](#). 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 or before a case is deemed not resolvable. The second key objective for the Mediation Service in 2002 was the overall effective management of the caseload. The Mediation Service is examining appropriate ways to measure achievements in relation to this objective. At this stage we can say that mediation agreements in 2002 were achieved, on average, within 7 months of the date of referral compared to employment investigations that, on average, take 18 months. These figures include all processing work within

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#### Statistical Approach – Explanatory Note:

The production of statistics under the Employment Equality Act and the Equal Status Act that facilitates easy comparison between the two areas is made more complex by the number of linked or joined claims. These are a well-known feature in the equal pay area where a group of claims against a single employer may be grouped together in a combined investigation and decision. This practice has arisen because class actions are not a feature in Irish law. Similar situations can arise under the Equal Status Act where group of complainants might make individual claims of discrimination against a single service provider about the same incident. Such grouped claims are generally combined in a single investigation or mediation.

To facilitate better comparison between the two areas for the purpose of this review claims by individuals have been counted separately to multiple claims (where two or more complainants are linked together in the same case). This system provides a more accurate reflection of the workload – since, for example, one group of 4 complainants and 1 respondent in a single mediation requires less work from a mediator than 4 separate mediations with one complainant and one respondent. However it should be noted that grouped mediation is generally more complex than mediation between a single complainant and respondent.

the Tribunal, not just the work of mediators and Equality Officers as appropriate. The shortest case was completed in only 1 month while the longest case took 20 months, however the majority (61%) were under the 7 month average. A more detailed analysis of mediation outcomes is set out in Sections 5 & 6 of this Review.

**Table 4.1**

		Outcomes (Completed Mediations)			
		2002		2001	
		Resolved	Not Resolved	Resolved	Not Resolved
<b>Employment</b>	Individual	13	17	2	8
	Grouped	1 <sup>3</sup>	1 <sup>4</sup>		
<b>Sub-total EE</b>		14	18	2	8
<b>Equal Status</b>	Individual	13	8	4	2
	Grouped	6 <sup>5</sup>	5 <sup>6</sup>	2 <sup>7</sup>	1 <sup>8</sup>
<b>Sub-total ES</b>		19	13	6	3
<b>Total</b>		<b>33<sup>9</sup></b>	<b>31<sup>10</sup></b>	<b>8</b>	<b>11</b>
<b>% Change</b>		<b>+313%</b>	<b>+182%</b>		
<b>% Resolved</b>		<b>52%</b>		<b>42%</b>	

### Withdrawn from Mediation

It is inevitable that some cases are withdrawn from the mediation process without any mediation taking place. This can arise where the complaint is withdrawn by the complainant, for example when there is a direct settlement between the parties or when the complainant decides not to pursue the case or when either party withdraws consent, which they can do at any stage. If the complaint is not withdrawn the mediator will generally issue a non-resolution letter to formally close the mediation file. Table 4.2 shows the cases withdrawn or deemed not resolved without mediation taking place.

<sup>3</sup> One group of 9.

<sup>4</sup> One person with 2 cases

<sup>5</sup> One group of 11, five groups of 2 (Total: 6 groups 21 persons)

<sup>6</sup> Two groups of 4, one of 3 and two of 2 (Total: 5 groups 15 persons)

<sup>7</sup> One group of 3, one of 2

<sup>8</sup> One group of 2

<sup>9</sup> 26 individuals and seven groups (totalling 30 persons) giving a grand total of 56 persons

<sup>10</sup> 25 individuals and six groups (totalling 17 persons) giving a grand total of 42 persons

Table 4.2

		Withdrawals from Mediation			
		2002		2001	
		Cases	Individual claims	Cases	Individual claims
<b>Employment</b>	Individual	3	3		
	Grouped			1	24
<b>Equal Status</b>	Individual	5	5	5	5
	Grouped	5	15		
<b>Total</b>		<b>13</b>	<b>23</b>	<b>6</b>	<b>29</b>

### Mediation Referrals

The significant increase in outcomes was all the more remarkable as the Service also had to cope with a major increase in the number of cases referred to mediation in 2002 compared to the previous year (See Table 4.3). There was an even more dramatic increase in the real casework of the Service (+128%) than in the number of individual claims (+75%) because of the impact of two grouped cases in 2001 totalling 33 claims between them.

Table 4.3

		Mediation Referrals			
		2002		2001	
		Cases	Individual claims	Cases	Individual claims
<b>Employment</b>	Individual	51	51	23	23
	Grouped	4 <sup>11</sup>	11	2 <sup>12</sup>	33
<b>Sub-total EE</b>		<b>55</b>	<b>62</b>	<b>25</b>	<b>56</b>
<b>Equal Status</b>	Individual	44	44	17	17
	Grouped	22 <sup>13</sup>	73	11 <sup>14</sup>	29
<b>Sub-total ES</b>		<b>66</b>	<b>117</b>	<b>28</b>	<b>46</b>
<b>Total</b>		<b>121</b>	<b>179</b>	<b>53</b>	<b>102</b>
<b>% Change</b>		<b>+128%</b>	<b>+75%</b>		

<sup>11</sup> Two persons submitted 2 claims each, one person submitted 5 claims (different respondents & Labour Court referral) re same issue and there was one group of 2 persons.

<sup>12</sup> One group of 9, one of 24 (Total: 2 groups 33 persons)

<sup>13</sup> One group of 11, one of 8, six of 4, two of 3 and twelve groups of 2 (Total: 22 groups 73 persons)

<sup>14</sup> Three groups of 4, one of 3, seven of 2 (Total: 11 groups 29 persons)

### Continuing Training

Continuing professional learning and training remains an important objective of the Service. To achieve this objective a Consultant Trainer in Mediation was contracted to provide advanced mediation training for the existing mediators. This contract continued into 2003. Additional learning and training through attendance of mediators at appropriate conferences and workshops both in Ireland and abroad was also possible during the year.

### Promoting Mediation

In fulfilment of the publicity and promotional objective for the Service (a) a report on the development of the service over its first two years of operations was published in December 2002 and (b) presentations on mediation were made to a variety of customer groups.

## Mediation Outcomes and Referrals (by discriminatory ground)

Table 5.1 shows the breakdown by grounds under both Acts of the 'resolved' and 'not resolved' mediations –

Table 5.1

Resolved Mediations by Ground					
		2002		2001	
		Ground	No. of Cases	Ground	No. of Cases
<b>Employment</b>	Individual	Gender	4	Disability	1
		Disability	4	Traveller	1
		Race	2		
		Age	1		
		Marital Status	1		
		Multiple	1		
		Grouped	Race	1	
	<b>Sub-total EE</b>			<b>14</b>	
<b>Equal Status</b>	Individual	Traveller	6	Disability	1
		Race	2	Traveller	3
		Gender	1		
		Age	1		
		Family	1		
		Multiple	2		
	Grouped	Traveller	5	Traveller	2
		Age	1		
<b>Sub-total ES</b>			<b>19</b>		<b>6</b>
<b>Total</b>			<b>33</b>		<b>8</b>

Table 5.2

'Not Resolved' Mediations by Ground					
		2002		2001	
		Ground	No. of Cases	Ground	No. of Cases
<b>Employment</b>	Individual	Gender	5	Disability	3
		Disability	6	Gender	1
		Age	3	Sexual Or.	1
		Sexual Or.	1	Multiple	3
		Multiple	2		
	Grouped	Gender	1		
<b>Sub-total EE</b>			<b>18</b>		<b>8</b>
<b>Equal Status</b>	Individual	Traveller	3	Disability	2
		Disability	1		
		Age	1		
		Marital Status	1		
		Multiple	2		
	Grouped	Traveller	5	Traveller	1
<b>Sub-total ES</b>			<b>13</b>		<b>3</b>
<b>Total</b>			<b>31</b>		<b>11</b>

While the trend in equal status reflects the high levels of case referral on the Traveller community ground, the situation is different in the employment equality area (where gender normally has the highest number of case referrals), where one group of nine complainants reached agreement on an equal pay claim on the race ground and four cases were resolved on the disability ground.

Table 5.3

Mediation Referrals by Ground

		2002		
		Ground	No. of Cases	
<b>Employment</b>	Individual	Gender	11	
		Disability	11	
		Age	10	
		Race	5	
		Sexual Or.	1	
		Family	2	
		Marital	1	
		Multiple	10	
		Grouped	Gender	2
			Multiple	2
<b>Sub-total EE</b>			<b>55</b>	
<b>Equal Status</b>	Individual	Traveller	21	
		Disability	5	
		Race	4	
		Age	3	
		Family	3	
		Gender	1	
		Marital	1	
		Multiple	6	
		Grouped	Traveller	20
			Age	2
<b>Sub-total ES</b>			<b>66</b>	
<b>Total</b>			<b>121</b>	

## Analysis of Agreements

### Employment Equality Agreements

- 4 cases were on the gender ground, 4 on disability, 3 on race (including one group of 9 claims), one each on age, marital status and a multiple ground case.
- Three of the 14 cases involved discriminatory dismissal and were referred for mediation by the Labour Court. One of these was also the subject of a parallel complaint to the Tribunal of discriminatory treatment. A further agreement in relation to a complaint of discriminatory treatment resulted in a separate Labour Court action being withdrawn.
- Payments to the complainant were a feature of 12 out of 14 employment mediation agreements, totalling €73,390 - ranging from a low of €1,150 to a high of €14,389. It is important to note that the individual circumstances of each case make it inappropriate to try to identify particular criteria linked to a payment or to calculate an average. One seventh of agreements did not involve financial payments by employers.
- Examples of other benefits included payment of the complainant's legal expenses, payment net of tax and payment in a tax efficient manner.
- While admissions of liability for discrimination was specifically denied by respondents in 8 of the 14 cases under analysis, there were observations recorded in some agreements which showed, for example, that "procedures were not satisfactory" or "treatment was not in keeping with normal procedures".
- The introduction of equality proofing or equality policies were agreed in 2 cases.
- Apologies were recorded in 2 cases and payments in the same two were described as goodwill gestures.

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## Equal Status Agreements

- Of the 13 individual cases 6 were on the Traveller community ground, 2 race, 2 on multiple grounds (age/disability & age/gender) and one each on age, gender and family status. Of the 6 grouped cases 1 was on age (2 claims) and 5 on the Traveller community ground comprising one group of 11 and 4 groups of 2.
- No financial payments were made in 5 out of the 13 individual cases and in 1 of the 6 grouped cases that reached agreement. Therefore in nearly 40% of Equal Status mediations involving one complainant, financial compensation was not at issue.
- Travel concessions featured in one agreement and vouchers in 2 others
- €13,762 was paid in total in 13 of the 19 Equal Status agreements, ranging from €150 up to €1,250.
- Liability was denied by service providers in 9 cases and was admitted in 1 out of the 19.
- Apologies for the treatment and its effects were given in 10 of the 19 cases.
- A promise of equal treatment in the future and/or a welcome to avail of services in the future was made in 11 cases.
- The treatment complained of was explained by some service providers on the basis that, for example, there was “mistaken identity”, “misunderstandings” of admissions policies “bad judgement by door staff”
- In 8 of the 19 cases there was explicit recognition by the service provider of the hurt, embarrassment and/or upset felt by the complainants.

## Conclusion

The significant increase recorded in the annual report for cases referred to the Equality Tribunal represents a major challenge for the office in the continued delivery of an effective and timely service. The speed at which mediated cases can be completed, if the parties are in a position to agree, offers some hope that the increased caseload can be tackled in an effective and efficient manner. Mediation provides an opportunity for the parties in dispute to reach an agreement in an amicable manner.

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.

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## Appendix A - Mediation Model

### 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.

### 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.

### 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 B. The terms are similar for both employment equality and equal status agreements.

### 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.

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## Appendix B - Sample Equal Status Agreement – Standard Terms

### 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.

#### 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.

## 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)

## 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.)*

## 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

## 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".

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

Representative: \_\_\_\_\_ Representative: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Witnessed by: Name, Equality Mediation Officer

Date: \_\_\_\_\_