



THE EQUALITY TRIBUNAL
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Mediation Review 2006

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1 Introduction

This Mediation Review is published as part of the Annual Report of the Equality Tribunal for the year 2006.

Mediation at the Equality Tribunal completed its sixth year of operation at the end of 2006 with cases under the Pensions Acts being referred to mediation for the first time. The mediation service offers the parties in a discrimination case the opportunity, if they wish, to reach an agreed settlement. The process respects the confidentiality of the parties, is completely voluntary (either party may withdraw at any stage) and generally speedier 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. In judicial review proceedings, the High Court confirmed the Tribunal's interpretation that, under equality legislation, such a request must be submitted in writing within 28 days of the issue of a non-resolution notice. If the case returns to investigation, both sides are precluded from using information disclosed at mediation without consent. In addition the Equality Mediation Officer will not pass on any information obtained at mediation to an investigating Equality Officer. It is also important to note that an Equality Mediation Officer will never be asked subsequently to investigate a complaint that s/he has mediated.

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

Once again, mediation proved a very valuable resource for the Tribunal with 70% of the cases referred to mediation in 2006 being disposed of through the mediation process and not being returned for investigation. A detailed account of the performance of the Tribunal's Mediation Service's in 2006, is contained in **Chapter 4 – Report of Operations 2006**.

2 The Equality Tribunal

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

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

2.1 Mediation

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

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

The Acts further provide that:

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

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

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

2.2 Code of Ethics

The Mediation Service continues to operate under its code of ethics as set out in its Principles of Mediation (see Appendix 1).

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

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

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

3 Structure Of The Mediation Service

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 2006, key objectives were set for the Mediation Service to ensure the continued achievement of this goal, including:

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

3.2 Structure of the Tribunal's Mediation Service

The Equality Tribunal is headed by the Director, Ms Melanie Pine, with the Head of Mediation having responsibility for the Tribunal's Mediation Service. In 2006, however, the position of Head of Mediation remained vacant for the entire year. This was due to the absence of the incumbent on study leave until June 2006 and his transfer from the Tribunal on his return. In the absence of a replacement, the Tribunal's senior Mediator, who had taken on the role of acting Head of Mediation in late 2005, continued to perform these duties for the remainder of the year to ensure continuity in the service.

In addition to continuing to perform his duties as an Equality Officer and Mediator, the acting Head of Mediation also had responsibility for ongoing liaison with outside Mediation-related organizations such as the Mediators Institute of Ireland and the Association of Conflict Resolution in the USA while also being engaged to give presentations on the Tribunal's Mediation Service to outside organisations and universities.

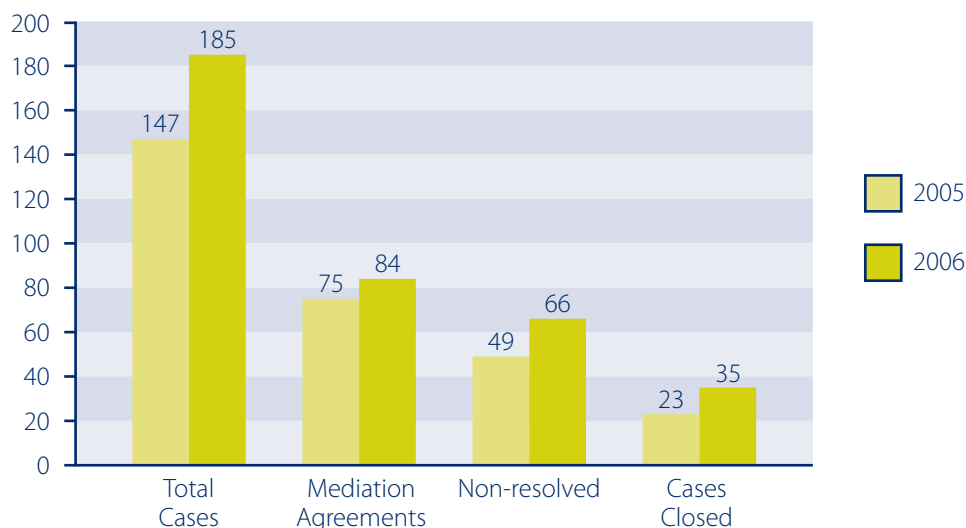
In 2006, eight of the Tribunal's 29 members of staff were Equality Mediators who also acted as Equality Officers requiring them to balance their work between the two areas. Despite strains on staff support services during 2006, the Mediation Service still dealt with an additional 38 mediation cases (a **26%** increase over 2005) over the course of the year.

During 2006, all mediators continued to enhance their knowledge of mediation practice and theory by undergoing additional mediation training, attending mediation conferences and engaging in peer group meetings.

In order to maintain the continuity of the Mediation Service during the forthcoming planned decentralisation of the Tribunal, incoming Equality Officers will be offered training as mediators. The Tribunal has also sought approval to plan some outsourcing of mediation cases to external trained mediators, should circumstances require it, especially during the transition phase to Portllington.

4 Report Of Operations 2006

- **2006** saw a significant **26%** increase in the number of mediations in which the Tribunal's mediators were involved (**185** compared to **147** in 2005).
- Of the **185** complaints which were dealt with by way of mediation in 2006, **70% (129)** were disposed of through the mediation process and did not require investigation subsequently.
- The numbers of cases referred to mediation dropped slightly over the period with a total of **223** cases being referred to mediation in 2006 as compared to **249** cases in 2005.
- There was also a note-worthy increase (**12%**) in the numbers of cases which were resolved at mediation: **84** cases compared to the **75** cases in 2005.

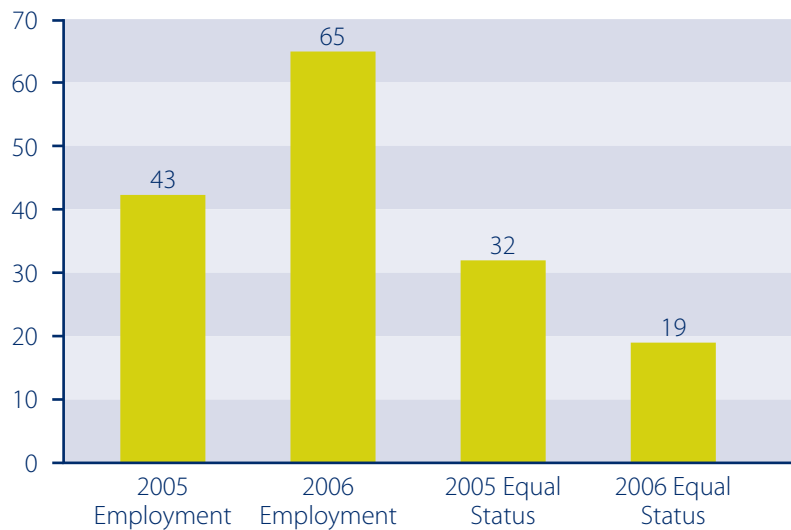


- The number of non-resolved cases also increased: **66** cases failed to resolve at mediation in 2006 compared to **49** such cases in 2005, an increase of **34%**.
- Overall, the Tribunal achieved a success rate of **56%** at the mediation table in 2006 (**84** mediation agreements compared to **66** non-resolved cases).
- Account was also taken of the number of mediation cases where the complaint was not pursued following mediation. Of the **66** non-resolved cases referred to above, **10** complainants chose not to seek an investigation of their complaint post mediation.
- In a similar vein, a further **35** complaints were withdrawn at the mediation stage (compared to **23** in 2005). These involved cases where, after engaging with the mediator at mediation, parties either settled their dispute between themselves or the complainant decided that they did not wish to pursue the matter further.

- In approximately **90%** of cases the mediation process was essentially completed after one mediation session – with either agreement being reached or the case being deemed not resolvable.

Analysis of the Mediation Outcomes for 2006 shows a marked difference from 2005 with regard to the nature of cases coming before Equality Mediation Officers. In 2005, Mediators resolved **43** Employment Equality cases and **32** Equal Status complaints while in 2006 these figures were **65** and **19** respectively.

Mediation Agreements 2005 and 2006



The above outcomes reflect the strong upward trend in employment related complaints received by the Equality Tribunal in recent years and mirror the decline in complaints being submitted under Equal Status legislation.

The following Table provides a more detailed analysis of the outcomes achieved at mediation during 2005 and 2006.

Table 4-1 Outcomes (Completed Mediations)

Mediation Outcomes				
	2005		2006	
	Resolved Cases	Non-Resolved Cases	Resolved Cases	Non-Resolved Cases
Employment Equality Acts 1998-2004				
Single (individual complainant)	42	32	62	50
Grouped	1	2	3	6
Sub Total	43	34	65	56
Pensions Acts 1990-2004				
Single	0	0	0	0
Grouped	0	0	0	0
Sub Total	0	0	0	0
Equal Status Acts 2000-2004				
Single	29	14	16	9
Grouped	3	1	3	1
Sub Total	32	15	19	10
Totals for All Equality Legislation				
Single	71	46	78	59
Grouped	4	3	6	7
Sub Total	75	49	84	66
Change Year to Year			+ 9	+ 17
Percentage change on 2005 figures			+ 12%	+34%

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 2006 was the overall effective management of its caseload. In general, mediation agreements in 2006 were achieved in less than a third the time a case would take to be investigated by an Equality Officer.

On average, resolved cases took less than 8 months from the date of referral to mediation to the date the agreement was signed

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. Having successfully completed MII Part I Accredited Training, all of the Equality Mediation Officers working in the Equality Tribunal are already professionally accredited by the Mediation Institute of Ireland.

In the context of continuing professional learning and training, and to fulfil the 2006 key objectives, seven of the Tribunal's Equality Mediation Officers completed MII Part 2 Accredited Training in 2006. In addition, one of the mediation team is the holder of a Masters Degree in Mediation and Conflict Resolution from University College Dublin and it is hoped that other Equality Mediation Officers will follow in the coming years.

Promoting Mediation

In fulfilment of the publicity and promotional objective for the Service

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

5 Mediation Referrals – Analysis

Referrals in 2006

Table 5-1

Mediation Referrals		
	2005	2006
	Cases Referred to Mediation	Cases Referred to Mediation
Employment Equality Acts 1998 and 2004	177	174
Pensions Acts 1990-2004	1	3
Equal Status Acts 2000-2004	71	46
Totals for All Equality Legislation	249	223
Change Year to Year		- 26
Percentage Change on 2005 figures		- 10%

Statistical Analysis

- Employment Equality cases being referred to mediation, which have shown a consistent increase in recent years, may now be “levelling-off”
- Equal Status cases being referred to mediation show a dramatic **33%** decline

Table 5-2

Mediation Referrals – By Discriminatory Ground												
	Employment Equality Acts				Equal Status Acts				Pensions Acts			
	All 2005 cases		All 2006 cases		All 2005 cases		All 2006 cases		All 2005 cases		All 2006 cases	
Gender	51	29%	46	26%	3	6%	1	2%	0	0%	1	33%
Traveller Community	0	0%	2	1%	7	10%	13	28%	0	0%	0	0%
Race	25	14%	53	30%	7	10%	4	9%	0	0%	0	0%
Disability	37	21%	24	14%	20	29%	13	28%	0	0%	0	0%
Age	23	13%	23	13%	14	20%	3	7%	0	0%	1	33%
Marital Status	1	1%	0	0%	0	0%	1	2%	0	0%	0	0%
Family Status	3	2%	1	1%	1	1%	0	0%	0	0%	0	0%
Sexual Orientation	0	0%	3	2%	0	0%	2	4%	0	0%	0	0%
Religion	0	0%	0	0%	0	0%	0	0%	0	0%	1	33%
Multiple Grounds	38	21%	22	13%	19	24%	9	20%	0	0%	0	0%
None Declared	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Total	178	100%	174	100%	71	100%	46	100%	0	0%	3	100%

Statistical Analysis

- Employment mediation referrals on the Race ground increased by over **100%**
- Employment mediation referrals on the Disability ground dropped by **50%**
- Equal Status mediation referrals on the Traveller community ground rose by almost **100%**
- Equal Status mediation referrals on the Age ground dropped significantly from **14** in 2005 to **3** in 2006.
- Mediation referrals under the Pensions Acts show a total of **3** separate cases referred on the Gender, Age and Religion grounds.

6 Mediation Outcomes – Analysis By Discriminatory Ground

Table 6-1 Resolved Mediations – Cases By Ground

Mediation Agreements By Grounds								
Breakdown By Ground	Employment Equality Acts 1998 and 2004				Equal Status Acts 2000-2004			
	All 2005		All 2006		All 2005		All 2006	
	Cases	%	Cases	%	Cases	%	Cases	%
Gender	8	19%	20	31%	0	0%	2	10%
Traveller Community	1	2%	2	3%	8	25%	3	16%
Race	5	12%	9	14%	4	13%	3	16%
Disability	10	23%	15	23%	10	31%	4	21%
Age	4	9%	10	15%	7	22%	3	16%
Marital Status	1	2%	0	0%	0	0%	0	0%
Family Status	2	5%	0	0%	0	0%	0	0%
Sexual Orientation	2	5%	0	0%	0	0%	0	0%
Religion	0	0%	0	0%	0	0%	0	0%
Multiple Grounds	10	23%	9	14%	3	9%	4	21%
Total	43	100%	65	100%	32	100%	19	100%

Statistical Analysis

- **12%** increase in Employment resolutions on the Gender ground
- **10%** increase in Equal Status resolutions on the Gender ground
- **6%** increase in Employment resolutions on the Age ground
- **9%** drop in Equal Status resolutions on the Traveller community ground
- **10%** drop in Equal Status resolutions on the Disability ground

Table 6-2 Non-Resolved Mediations – Cases By Ground

Non-Resolved Mediation Agreements By Grounds								
Breakdown By Ground	Employment Equality Acts 1998 and 2004				Equal Status Acts 2000-2004			
	All 2005		All 2006		All 2005		All 2006	
	Cases	%	Cases	%	Cases	%	Cases	%
Gender	5	15%	20	36%	1	7%	1	10%
Traveller Community	0	0%	1	2%	5	33%	1	10%
Race	2	5%	7	12%	0	0%	2	20%
Disability	8	24%	6	11%	6	40%	2	20%
Age	12	35%	13	23%	2	13%	1	10%
Marital Status	0	0%	0	0%	0	0%	0	0%
Family Status	0	0%	0	0%	0	0%	0	0%
Sexual Orientation	0	0%	0	0%	0	0%	1	10%
Religion	1	3%	0	0%	0	0%	0	0%
Multiple Grounds	6	18%	9	16%	1	7%	2	20%
None Given	0	0%	0	0%	0	0%	0	0%
Total	34	100%	56	100%	15	100%	10	100%

Statistical Analysis

- **21%** increase in non-resolved employment cases on the Gender ground
- **7%** increase in non-resolved employment cases on the Race ground
- **23%** decrease in non-resolved Equal Status cases on the Traveller community ground.
- **20%** decrease in non-resolved Equal Status cases on the Disability ground

Table 6-3 Mediations 2006 – Employment Equality Cases By Ground

Mediations By Ground						
Breakdown By Ground	Employment Equality Acts 1998 and 2004					
	All 2005			All 2006		
	Cases Resolved	Cases Non-Resolved	% Resolved*	Cases Resolved	Cases Non-Resolved	% Resolved*
Gender	8	5	62%	20	20	50%
Traveller Community	1	0	100%	2	1	67%
Race	5	2	71%	9	7	56%
Disability	10	8	56%	15	6	71%
Age	4	12	25%	10	13	43%
Marital Status	1	0	100%	0	0	-
Family Status	2	0	100%	0	0	-
Sexual Orientation	2	0	100%	0	0	-
Religion	0	1	0%	0	0	-
Multiple Grounds	10	6	63%	9	9	50%
None Given	0	0	-	0	0	-
Total	43	34	56%	65	56	53%

* % Figure obtained by (Mediation cases resolved ÷ Mediation outcomes)
 Mediation outcomes = Mediation cases resolved + Mediation cases not resolved

Statistical Analysis

- Employment mediation agreements rose by **15%** on the Disability ground
- Employment mediation agreements rose by **18%** on the Age ground
- Gender accounted for **33%** of mediations under the Employment Acts

Table 6-4 Mediations 2006 – Equal Status Cases By Ground

Mediations By Ground						
Breakdown By Ground	Equal Status Acts 2000-2004					
	All 2005			All 2006		
	Cases Resolved	Cases Non-Resolved	% Resolved*	Cases Resolved	Cases Non-Resolved	% Resolved*
Gender	0	1	0%	2	1	67%
Traveller Community	8	5	62%	3	1	75%
Race	4	0	100%	3	2	60%
Disability	10	6	63%	4	2	67%
Age	7	2	78%	3	1	75%
Marital Status	0	0	-	0	0	-
Family Status	0	0	-	0	0	-
Sexual Orientation	0	0	-	0	1	0%
Religion	0	0	-	0	0	-
Multiple Grounds	3	1	75%	4	2	67%
None Given	0	0	-	0	0	-
Total	32	15	68%	19	10	66%

* % Figure obtained by (Mediation cases resolved ÷ Mediation outcomes)
 Mediation outcomes = Mediation cases resolved + Mediation cases not resolved

Statistical Analysis

- Equal Status cases going to mediation dropped by almost **40%** in 2006 (from 47 to 29) reflecting the **26%** fall in Equal Status complaints submitted in 2006
- Most noticeable decreases in cases occurred under the Disability ground (**62%** drop) and Traveller community ground (**76%** drop).

Table 6-5 Mediations 2006 – All Acts By Ground

Mediations By Ground						
Breakdown By Ground	Mediation By Grounds					
	All 2005			All 2006		
	Cases Resolved	Cases Non-Resolved	% Resolved*	Cases Resolved	Cases Non-Resolved	% Resolved*
Gender	8	6	57%	22	21	51%
Traveller Community	10	5	67%	5	2	71%
Race	9	2	82%	12	9	57%
Disability	17	14	55%	19	8	70%
Age	12	14	46%	13	14	48%
Marital Status	1	0	100%	0	0	-
Family Status	2	0	100%	0	0	-
Sexual Orientation	2	0	100%	0	1	0%
Religion	0	1	-	0	0	-
Multiple Grounds	14	7	67%	13	11	54%
None Given	0	0	-	0	0	-
Total	75	49	61%	84	66	56%

* % Figure obtained by (Mediation cases resolved ÷ Mediation outcomes)
 Mediation outcomes = Mediation cases resolved + Mediation cases not resolved

Statistical Analysis

- **12%** increase in mediation resolutions in 2006 (**84** compared to **75**)
- Over **300%** increase in mediations on the Gender ground (**43** compared to **14**)
- Almost **100%** increase in mediations on the Race ground (**21** compared to **11**)

7 Significant Features Of 2006 Agreements

7.1 Employment Equality Agreements

Some of the most significant and imaginative features of the 65 Employment Equality Mediation Agreements were:

- An acknowledgement that a job advertisement may have appeared discriminatory in nature
- An admission that inappropriate procedures were employed in relation to a dismissal and an apology for same given.
- An acknowledgement from both parties that they were willing to accept in good faith the other party's interpretation of the incident that had led to the complaint of discrimination.
- The provision of a positive job reference.
- An agreement by the parties that all copies of papers relating to the complaint would be destroyed as soon as possible after the signing of the agreement.
- An offer by a respondent to make a substantial payment to a charity of the complainants' choice
- An offer to an unsuccessful job applicant of tuition in word processing skills in advance of an upcoming word processing examination for a position within that organization.
- An assurance that all staff in a position of authority within a company would be given appropriate training in respect of the Employment Equality Acts, 1998 to 2004.

7.2 Equal Status Agreements

Some of the most significant and imaginative features of the 19 Equal Status Mediation Agreements were:

- An agreement by a college to waive any educational fees payable to the college in respect of the complainant's children who may be eligible to attend the college in the future.
- An offer by a Housing Authority to provide a larger property to the mother of a child with a disability
- An invitation to a complainant and his family to attend a pub/restaurant for a drink or lunch at any time.

- An apology from a hotel to a person with a disability for not seeking clarification of her accommodation needs when her booking was being made
- An undertaking by a Golf Club to work on the development of clear transparent guidelines for members in relation to the number and value of prizes to be awarded in Gents and Ladies competitions
- An acceptance that a case of mistaken identity may have led to a refusal of service in a pub.
- An offer to pay a complainant's legal fees
- An undertaking by a provider of life insurance to review the wording of their application form to ensure that potential clients are aware that HIV and hepatitis tests may be required in certain circumstances where applicants have lived abroad for more than a period of 6 months.

Appendix 1

Principles of Mediation at the Equality Tribunal

Appendix 2

Equality Mediation Model – Structure of Mediation

Appendix 3

Outline Mediation Agreement – Standard Version

Appendix 4

Organisation Chart of the Equality Tribunal (as at 31 December 2006)

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 and 2004, 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 Session:** The Mediation Service arranges a mutually convenient meeting between the parties and an Equality Mediation Officer as soon as practicable after the case has been referred. In a small percentage of cases, a number of such meetings may be necessary as part of the mediation process.
- **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:** It is essential that everyone necessary to reach a settlement 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 and will discuss, at the outset of the mediation, how best third parties can 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 and Section 36(2) of the Equal Status Act 2000

- **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 a Mediation Session

Mediation Session – Introduction

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

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

Mediation Session – Agreement

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

Equal Status Acts 2000 - 2004 Section 24(4)

Mediation Agreement between

Name, Complainant
And
Name, Respondent

Terms of Settlement

Agreement No: AGR2005-No.

Case Ref. No: MED/2002/No.

1. Background

- A. The complainant referred a case to the Equality Tribunal in accordance with Section 21(1) of the Equal Status Act, 2000 alleging discrimination in relation to... The case was on the grounds of...
- B. Section 24 of the Act states that "if at any time after a case has been referred ... it appears . . . that the case is one which could be resolved by mediation the Director shall refer the case for mediation to an Equality Mediation Officer". Mediation cannot commence if either party objects.
- C. The parties involved in this case did not object to the process of mediation. The case was referred by the Director to ...Name... Equality Mediation Officer, for mediation under Section 24(1) of the Act. The parties met at a joint session with the mediator on DATE (+follow up, where appropriate) and reached agreement on the terms of a settlement. In accordance with Section 24(4) of the Act this document (agreement) forms the written record of the terms of settlement agreed by the parties to this case and has been prepared by ...Name... Equality Mediation Officer, on the basis of the discussions between the parties at mediation.

2. Confidentiality

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

3. Terms of Settlement

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

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

B.

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

Representative:

Position:

Date: / /

Appendix 4
 Organisation Chart of the Equality Tribunal
 (as at 31 December 2006)

Director		
Melanie Pine		
Employment Equality	Equal Status	Mediation
Deirdre Sweeney Head of Employment Equality	John Hurley Head of Equal Status	Vacancy Head of Mediation
Gerardine Coyle Vivian Jackson Anne-Marie Lynch Mary Rogerson Raymund Walsh Equality Officers	Marian Duffy Dolores Kavanagh Brian O'Byrne Mary O'Callaghan Bernadette Treanor Equality Officers	Brian O'Byrne * Acting Head of Mediation Gerardine Coyle* Marian Duffy * Vivian Jackson* Dolores Kavanagh* Mary O'Callaghan * Mary Rogerson* Bernadette Treanor* Raymund Walsh * Mediation Officers
Resource Management		
Legal Management	Corporate Resources	Secretariat
Sile Larkin Legal Advisor	Brenda Ward Corporate Resources Manager (reports to Director)	Vacancy* Head of Secretariat (also Head of Mediation)
	Aileen O'Gorman Office Manager	Alan McDonnell Deputy Registrar/ Secretariat Unit Manager
Frances Flynn Legal Research Assistant		Brian Farrell Executive Officer Vacancy IT Manager
Deirdre McCormack Legal Unit Support Officer	Noel Kelly Vacancy Corporate Resources Support Officers	Susan Fetton Kristian Reiman Paul Johnson Vacancy Secretariat Support Officers
	John Fitzgerald Joe Pettigrew Services Officers	

* These staff members have dual roles: Eight Equality Officers also act as Equality Mediation

Officers (mediators) and the Head of Mediation also acts as Head of Secretariat



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