

Structure of a Mediation Session

The Equality Tribunal Mediation Model

Mediation Session – Introduction

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

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

This dialogue is an important feature of the mediation process as it gives the parties a chance to say what happened from their point of view while the other side listens. In many cases this might be the first time the parties have spoken to each other since the alleged incident(s) of discrimination. In some cases the parties may never have discussed the issues face to face.

Mediation Session – Identification of Issues

The Mediator will help the parties to identify the differences between them and the key issues that need to be addressed. The Mediator, unlike an Equality Officer, makes no findings in fact or law and cannot take a position as to whether s/he believes all or part of one side's story or that of the other. The Mediator does not give advice to either side but can point to sources of information (e.g. Equality Officer Decisions) and advice (legal advisers, trade unions, the Equality Authority, Citizens' Information Centres and voluntary bodies), where appropriate.

The parties are asked how they might see the dispute being resolved and, if they wish to negotiate on particular aspects of the framework, the Mediator will assist them. In some cases it is useful to discuss the finer details of a possible settlement with each side separately at a side-conference (caucus).

Mediation Session – Agreement

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

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

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

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 or 42 days (for complaints under the Employment Equality Act) 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 or 42 day (for complaints under the Employment Equality Act) period the Tribunal ceases to have jurisdiction in the case.