



## WRC Mediators Principles and Code of Ethics

The objective of the Workplace Relations Commission Mediation Service is to provide an alternative dispute resolution process to:

1. Complaints referred to an adjudication officer under Section 41 of the Workplace Relations Act 2015. We call this **Pre-Adjudication Mediation**. This is provided for under Section 39 of the Act which says: "the Director General may, where he or she is of the opinion that a complaint or dispute is capable of being resolved without being referred to an adjudication officer under section 41, refer the complaint or dispute to a mediation officer."
2. Workplace interpersonal conflicts and disputes. We refer to this as **Workplace Mediation**.

The Mediation Service adheres to the following principles and ethics in the mediation process:

- **Voluntary Process:** Mediation is a voluntary process. Mediation cannot proceed if either party objects to a mediation referral. Likewise each side may withdraw consent at any stage of the process and mediation will be terminated immediately. The Mediator can also withdraw from the mediation at any time if they deem the mediation as unsuitable or disruptive.
- **Confidentiality:** Mediation is conducted in private and the terms of any settlement are not published. Information furnished at mediation cannot be published or otherwise disclosed.

The Commission further guarantees that any information disclosed to the Mediator remains confidential to the Mediator and the party who disclosed it, unless the party has given permission for the information to be shared with any other parties to the mediation. The Mediator shall not release any

information to any third party unless permission has been given by both sides involved in a mediation to do so.

In the case of a pre-adjudication mediation, the Mediator does not release any information to an investigating Adjudication Officer if the dispute is not resolved at mediation. In fact, the Adjudication Officer will not be aware that a mediation has taken place nor will they enquire on whether the case was mediated on. The Mediator cannot be called to give evidence of what occurred at mediation in the course of a subsequent investigation.

- **Impartiality:** The Mediation Service guarantees impartiality and does not take sides with either party. It is not the role of the Mediator to determine the rights or wrongs of the situation or to adjudicate the outcome. The parties are the owners of the process. Any agreed outcome reached is their agreement and is merely facilitated by the Mediator.
- **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 additional needs who wishes to use the Service.
- **The Mediation Session:** Mediation for unfair dismissal, employment equality or equal status cases; and workplace mediation is delivered in a face-to-face format. Face-to-face mediation sessions are generally held in person, however if agreed by the parties, sessions can also be held on a suitable teleconference platform which provides the required confidential protections for 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. In a small percentage of cases, more than one meeting may be necessary as part of the mediation process.

Mediation for all other employment rights cases is provided by telephone and email in the first instance. A face-to-face mediation can be facilitated in these cases if requested by the parties.

- **Participation:** Before the mediation session commences, the Mediator will talk separately to the parties and provide them with a clear explanation of the nature and purpose of mediation. In the case of face-to-face mediations, it is essential that everyone necessary to reach a settlement is present and participates in the mediation process.
- **Issues for Discussion:** It is the responsibility of the parties to identify, if necessary with the help of the Mediator, the issues requiring negotiation. The

parties own the process and are responsible for the terms of any settlement they reach.

- **Conflict of Interest:** The Mediator will not proceed with mediation if there is a concern that a conflict of interest might arise between themselves and one or other of the parties. If the Mediator or one of the parties believes that a conflict of interest might exist or might be perceived to exist, the Mediator together with the parties must discuss whether it is appropriate for the Mediator to continue their involvement or to ask another Mediator to step in.
- **Power Balancing, Self Determination and Informed Consent:** The Mediator has a duty to ensure balanced negotiation and to prevent manipulative or intimidating negotiation techniques. The Mediator will endeavour to empower the parties to make free and informed choices as to content and outcome. Mediators will conduct the process in a manner that does not harm the participants or worsen the dispute. The Mediator will modify the process (such as meeting separately with the parties) where necessary and may withdraw from the mediation if it becomes apparent that, even as modified, mediation is inappropriate or harmful. The role of the Mediator is to support and encourage the parties in a mediation to make their own decisions about the resolution of the dispute and will not impose their own ideas or the ideas of the other party.
- **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 either of the parties separately from the other with a view towards progressing the negotiations, that party may, with the Mediator's agreement, give him/her information which will be kept in confidence and not shared with the other party.
- **Advice:** The Mediator will only give information in those areas where they are qualified to do so by training and experience. Where the mediation may affect other rights and obligations or where monetary settlements and tax implications are involved, the Mediator will advise the parties to seek independent advice.
- **Scope of Practice:** Pre-Adjudication Mediation is a statutory mediation process provided for under Section 39 of the Workplace Relations Act 2015 and the Mediator operates within the scope of that legislation. Any agreement reached and signed is a statutory legal document, which is enforceable through the courts as set out in Section 39(6) of the Act.

In the case of Workplace Mediation, mediation is provided for interpersonal differences, conflicts, and difficulties in working together such as the breakdown in a working relationship; issues arising from a grievance and disciplinary procedure (particularly before a matter becomes a disciplinary issue); or as a voluntary stage in some grievance or dignity at work procedures where the WRC is nominated as the provider of a mediation service in some organisations. Workplace Mediation is a service provided on an ad hoc basis and subject to the capacity of the service. It has no statutory basis however written agreements reached and signed between the parties may be subject to standard contract law as with all contractual agreements. The Commission does not provide workplace mediation services in situations where legal proceedings are already underway.

- **Third Parties:** Third parties (e.g. advisors or representatives) are welcome at mediation. The Mediator 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.

In the case of workplace mediations, while representatives or support people are welcome, both parties must agree to the presence of a representative or support person in a joint session, and their role in this session is in the capacity of observation only.

- **Child Protection:** If harm or risk to a child is made known during mediation, the Mediator will ensure that appropriate action is taken to protect the best interests of the child in accordance with the provisions of the Department of Children and Youth Affairs publication 'Children First: National Guidance for the Protection and Welfare of Children 2017'.