

Guidelines on Mediation and the Civil & Public Service Mediation Service (CPSMS)

1. Introduction

- 1.1** The following guidelines updated (June 2017) have been developed to provide guidance on Mediation, how to avail of it, and information on the Civil & Public Service Mediation Service.

Mediation, as an alternative dispute resolution (ADR) intervention, seeks to resolve conflict situations speedily and in confidence without recourse to a formal investigation, aiming to cause the minimum of concern and stress to the individuals involved. It is intended that Mediation will be the preferred method for the resolution of complaints of bullying and harassment in the event that they cannot be resolved through attempts by local management. It can, of course, also be used in response to certain other workplace conflicts including grievance, interpersonal disputes and disciplinary matters, where appropriate.

Within organisations, Personnel Officers/ HR Managers are both experienced in dealing with workplace conflict situations and charged under various Personnel Codes/Policies to take action in response to certain disputes and complaints. As a consequence they are also best positioned to encourage the use of alternatives to formal dispute resolution methodologies, such as Mediation. Dignity at work and other codes provided to address issues of bullying, harassment and sexual harassment specifically point to Mediation as an appropriate dispute resolution mechanism in appropriate circumstances and also to the Civil & Public Service Mediation Service as the service provider.

The panel of Mediators operating the service are serving Civil and Public Servants, professionally trained, accredited to and bound by the Code of Ethics and Practice of the Mediators' Institute of Ireland and acting as a shared resource within Departments, Offices, Local Authorities and Agencies.

It is the right of all employees to be treated with dignity and respect in the workplace and all employees should be provided with a safe working environment which is free from all forms of bullying, sexual harassment and harassment.

Grievance procedures seek to ensure that complaints are dealt with promptly and with sensitivity.

- 1.2** The following guidelines outline how the service operates.

The CPSMS Director and Coordinator oversee the operation of this Mediation Service, including the allocation of cases to Mediators. (Contact details are at page 15).

- 1.3** Mediation requires the voluntary participation and co-operation of all parties in order for it to take place. An assigned Mediator will meet with the parties in pre-mediation, usually separately to begin with, to outline what is involved in Mediation and to discuss the issues that have led them to Mediation. This will take place before the formal agreement of the parties to participate in the process. If, following pre-mediation, the Mediator believes that the dispute is appropriate to Mediation and that there may be a reasonable prospect of resolution s/he will bring the parties together in an effort to reach a common understanding and agreement on acceptable future behaviour. A mediated agreement seeks to reach an accommodation between the parties and thereby restore harmonious working relations. A mediated solution may result in the issues not being dealt with under a disciplinary code/process, however management will have discretion in this matter. Minimal paperwork and/or records will be generated during Merdiation. It is for the Mediator ultimately to determine if a complaint is suitable for Mediation.
- 1.4** Mediation does not seek to attribute or assign blame to any party nor should agreeing to participate in Mediation be considered as an admission of any wrongdoing.
- 1.5** Mediation may be attempted at any/all points to try to resolve the matters at dispute. The parties will be requested to attempt Mediation before the alleged offending behaviour is the subject of other dispute resolution processes. If the Mediation process does not produce a satisfactory outcome, the complainant may seek to have the matter resolved through formal investigation under the relevant code or procedure.
- 1.6** Mediation may be attempted again during the formal investigation provided the investigation is suspended temporarily to allow for the Mediation to take place. It may also be attempted following the outcome of the formal investigation.

2. Purpose

- 2.1** To provide an early intervention and resolution option to conflict situations within the workplace.
- 2.2** To provide a Mediation service across Civil and Public Service organisations including Departments, Offices, Local Authorities and Agencies.
- 2.3** To provide a panel of Mediators who are qualified, competent, trusted and responsive to the needs of organisations and employees.
- 2.4** To provide a panel of Mediators who will provide both a consistent standard and ethical approach to Mediation.
- 2.5** To raise awareness of the benefits of Mediation within organisations through training and other initiatives.
- 2.6** To provide a value for money Mediation service.

2.7 To assist the Department of Public Expenditure and Reform and the Local Government Management Agency in terms of reviews undertaken of relevant HR policies and practices where Mediation may be appropriate.

3. Governance

3.1 The CPSMS Director and Coordinator (contact details at page 14) oversee the operation of the service. These guidelines have been developed in consultation with the Department of Public Expenditure and Reform.

3.2 All CPSMS Mediators working under the Civil and Public Service policies shall be either Certified or Practitioner Members of the Mediators' Institute of Ireland (or hold an equivalent qualification).

3.3 All governance issues in relation to the accreditation, professional behaviour and ethical standards of Mediators and the Mediation process will be addressed through the body to which the Mediator is accredited (usually the Mediators' Institute of Ireland).

3.4 CPSMS Mediators will comply with the Code of Ethics of the Mediators' Institute of Ireland.

3.5 The CPSMS will maintain & encourage participation in a peer support network which will support and provide an opportunity for peer discussion on all aspects of Mediation.

4. Who can avail of this Service?

Current employees of Civil and Public Service organisations wherein the service operates can avail of this service.

5. Structure

5.1 A Mediator will be assigned by the Director/Coordinator from the CPSMS panel of qualified Mediators).

5.2 Only Mediators who have graduated from an approved, accredited Mediation programme and are accredited to the Mediators' Institute of Ireland may be accepted onto the panel of Mediators.

5.3 The CPSMS will endeavour to ensure self-sufficiency with regard to the availability of Mediators.

5.4 The Mediators operating within the CPSMS will confirm their availability to remain on the panel each year and also that they will be given the requisite time away from their normal duties to conduct 3 - 4 Mediations per annum.

6. How to access Mediation – Guidance for HR Managers/Personnel Officers.

6.1 HR Manager/Personnel Officer screening of complaints needs to take place in order to ensure referral for Mediation is appropriate and that dispute resolution efforts at local level have been exhausted in accordance with the relevant policy.

6.2 Prior to the referral of a case, HR departments should ensure that the following considerations have been taken into account in respect of the parties involved in the conflict:-

- That initial consent (verbal or written) has been obtained by HR from the parties in order to refer the case to Mediation.
- That the parties understand the purpose of Mediation as a confidential, voluntary, without prejudice alternative dispute resolution process.
- That where the parties to a conflict wish to proceed with Mediation, each is informed (*preferably in writing*) by HR and understands that other dispute resolution mechanisms including any formal investigation process invoked must be suspended for the duration of the Mediation.
- If the dispute remains unresolved following Mediation, the parties may pursue other dispute resolution methods (or re-instigate a process postponed to facilitate Mediation).
- In so far as is practical, all parties are deemed by HR to be in sufficiently good health to engage in Mediation. In the event of a staff member seeking Mediation while s/he is on sick leave, HR or the Mediator should request that such staff member provide confirmation from his/her GP/Consultant that s/he is deemed fit to participate in the Mediation.

6.3 Situations where referral of a dispute to Mediation may be inappropriate.

- Referrals to the CPSMS for Mediation should not be made:
 - where a complainant indicates that s/he does not agree to the postponement for the duration of the Mediation of a formal investigation process already under way;
 - where a party insists on preconditions to entering Mediation;
 - where a party insists that sanctions must be imposed against the other party;
 - where either party has signaled that they have been placed under duress to participate in the Mediation process.

6.4 Appointment of Mediator.

- All requests in respect of Mediation must be directed by an organisation's HR Department to the Director or Coordinator of the Civil & Public Service Mediation Service who will establish if a case is appropriate for the Mediation Service and if so, assign it to a Mediator(s).
- Liaison between HR and the assigned Mediator(s) requires consistency in terms of understanding of and approach in Mediation and it is therefore preferable that an organisation's HR contact be either the HR manager or the Designated Person, who will have a clear understanding of the Mediation process and referral protocols.

6.5 HR will consult with the assigned Mediator as to when and where the Mediation will take place and provide contact details in respect of the parties to the dispute.

6.6 Staff seeking Mediation should be advised by HR as to the identity of the assigned Mediator and his/her contact details. HR should also provide the contact details of the staff members concerned to the assigned Mediator.

7. Personal costs for Mediators

7.1 Normal Civil Service Travel & Subsistence arrangements will apply and will be paid by the organisation availing of the service.

7.2 Mediators will not charge a fee.

8. Case load allocation

8.1 The CPSMS will monitor Mediation usage to ensure (inter alia) insofar as possible that Mediators are utilised sufficiently to maintain their skills.

8.2 Case load will be monitored by the CPSMS to ensure that the practice of Mediation allows Mediators to carry out their regular duties effectively. Each Mediator will receive approval from his/her employer organisation to undertake a maximum of 4 cases annually.

9. Mediation facilities

9.1 HR within the organisation requesting Mediation will provide suitable accommodation arrangements and facilities – away from the place of employment - in consultation with the Mediator. Consideration might be given to using facilities in other departments/offices/agencies where available/appropriate having particular regard to the need for confidentiality.

9.2 It is for individual Mediators, having consulted the parties, to decide whether such facilities offer reasonable space, confidentiality and comfort to facilitate effective Mediation.

9.3 Where necessary, external arrangements will be made, in consultation with the Mediator, with costs met by the organisation requesting the service.

10. Indemnification for Mediators

10.1 The Department of Public Expenditure and Reform have advised that provided the staff member is undertaking their official duties, the indemnification provided for in General Council Report No. 1357 applies whether the organisation is a Government department or an organisation within the wider public service. The Department stated that the same indemnification would apply to public servants who undertake a Mediation role in the civil service as part of their official duties.

10.2 Appendix to General Council Report No. 1357 – Indemnity:

(i) A civil servant shall be indemnified against any reasonable legal expenses necessarily incurred by him/her and against any damages and/or costs awarded against him/her in the event of civil proceedings being taken against him/her arising out of the manner in which s/he discharges his or her duties, provided that an examination of all the circumstances (including the outcome of such proceedings) establishes that s/he acted bona fide in the execution of his/her duties and did not act with gross negligence or gross neglect of his/her duties.

(ii) This indemnity is subject to the following conditions:-

(a) the officer concerned must immediately notify his/her Department of the receipt by him/her of any claim, and

(b) in appropriate cases, the Chief State Solicitor will act for the civil servant. Where the Chief State Solicitor's Office is so acting, that Office, if necessary after consulting the Attorney General, shall have full discretion as to how the proceedings are addressed including, if it considers it to be the most prudent course of action, the right to settle any cases arising in advance of or during any Court proceedings. Where it has been decided that it is not appropriate for the Chief State Solicitor's Office (CSSO) to act, but the officer satisfies the conditions referred to in paragraph (1) above, the reasonable legal expenses necessarily incurred by him/her in instructing his/her own solicitor will be recouped in such amount as the Minister for Finance, having consulted the Attorney General, deems reasonable. (For this purpose the officer will instruct his/her solicitor to furnish the Chief State Solicitor with such information as is required by the Attorney General for the purpose of calculating the legal expenses).

11. Activity Reporting

11.1 Mediators will return a copy of an Activity Log for each case on completion, to either the Director or Coordinator of the CPSMS (Appendix 4).

11.2 This Activity Log data (anonymised) will be consolidated and presented in the form of reports as necessary and appropriate.

APPENDIX 1

*Code of Ethics for CPSMS Mediators, (Employees of the Civil and Public Service) involved in the provision of the internal Mediation service.

Mediation in many situations is considered an appropriate intervention for the resolution of complaints of bullying and harassment which are not capable of being resolved informally by local management. It can also be used in respect of other workplace conflicts. All those involved in providing this Mediation service will be bound by the following Code of Ethics.

1. Definitions

Mediation – is a process in which an impartial and independent third party facilitates communication and negotiation and promotes voluntary decision making by the parties. It assists them to reach a mutually acceptable solution. It can be accessed before any formal investigation, during the formal investigation or following the outcome of an investigation.

Mediator – a trained person who facilitates the process of Mediation whilst acting at all times in accordance with the principles of impartiality, integrity, fairness and confidentiality with respect for all parties to the dispute and in accordance with the Code of Ethics.

All internal & external mediators providing a service relating to Civil and Public Service policies shall be either a Certified or Practitioner Member of the Mediators' Institute of Ireland (or hold an equivalent qualification).

2. General Principles of Mediation

Confidentiality - Mediation is confidential. The Mediator will not disclose any information about the parties, the content of or the outcome of the Mediation to anyone not involved in the Mediation, unless they have the express consent of all the parties to do so, or where necessary by virtue of a Mediation complaints procedure. The confidentiality of the Mediation process shall not excuse the Mediator's duty to act as required to do so by law, to report any threat of or actual physical or psychological injury to a party; attempt to commit or conceal a crime; concern as to welfare and safety of a child or children, revealed during said process.

At the conclusion of the process, no written record will be retained by any of the parties, other than the written Mediated Agreement, if relevant and the Agreement to Mediate/Mediation Contract.

When the Mediator is to meet with the parties individually, the parties and the Mediator will discuss and agree the confidentiality of the process in advance of the meeting or series of meetings.

Impartiality - The Mediator must act and be seen to act in an impartial manner throughout the process of Mediation. Impartiality means freedom from favouritism, bias or prejudice. The Mediator must not take sides.

**Should be read in conjunction with Code of Ethics of the Mediators' Institute of Ireland*

Neutrality - The Mediator must remain neutral as to the content and outcome of the Mediation. It is not the role of the Mediator to determine the rights or wrongs of the dispute or to adjudicate the outcome.

Legal Privilege - Unless the Mediation is specifically given legal privilege under legislation it is not privileged. However, the Mediation Contract/Agreement to Mediate includes agreement by all parties that Mediation is confidential and that the Mediator will not be called to give evidence as a witness in relation to the Mediation. (Appendix 2).

Respect - The underlying principle of the process of Mediation is respect for all the parties involved and that they enter the Mediation process in good faith.

Self Determination - The content and outcome of the Mediation is the responsibility of the parties. The parties can exercise their self determination by their participation in or withdrawal from Mediation, the content of the process and the outcome. The Mediator must empower the parties to make free informed, un-coerced choices as to content and outcome. The Mediator is responsible for being in charge of the process.

Voluntary Participation - Mediation is voluntary and all parties must freely consent to participating. Any party to the Mediation, including the Mediator, may withdraw at any time.

3. Conduct of Mediation

Nature & Purpose of Mediation - Before the Mediation process begins, the Mediator must provide the parties with a clear explanation of the nature and purpose of Mediation. This may be provided in writing if requested.

Advising Parties of Mediator's Experience and Training - The Mediator shall, prior to the commencement of the Mediation process, provide parties to the process with details of his or her training and experience in Mediation matters.

Agreement to Mediate - All parties (including the Mediator) must agree to and sign the Mediation Contract/Agreement to Mediate. This contract covers issues of confidentiality etc. If accompanying persons or interpreters are being used they too will need to sign the Mediation Contract/ Agreement to Mediate (Appendix 2).

Competence - All Mediators must be either Certified or Practitioner Members of the Mediators' Institute of Ireland or equivalent.

The Mediator may only mediate where they have the appropriate training, knowledge and competence to effectively mediate in the dispute.

Continuing Professional Development is an essential requirement for all Mediators through attending educational programmes, reading and sharing and learning groups to enhance their knowledge and skills related to Mediation.

Conflict of Interest – The Mediator will make such enquiry as is reasonable to determine whether there is any actual or potential conflict of interest which will arise in or during the Mediation process and inform the parties and the CPSMS Director/Coordinator as to whether he or she has any actual or potential conflict of interest in relation to the Mediation process. In such circumstances the Mediator will disqualify himself or herself from the process save where all parties to the dispute request the Mediator to continue the Mediation.

Providing Information - The Mediator must inform the parties how they may obtain a copy of the Code of Ethics if required.

Record Keeping - Minimal paperwork and/records will be generated by this process however; the Mediator must ensure that all records are stored securely.

The Mediator must be aware of all relevant legislation relating to recording and storage of personal information, especially the Freedom of Information and Data Protection Acts.

4. Complaints Procedure

The Complaints Procedure is attached (Appendix 3).

APPENDIX 2

Agreement to Mediate – Mediation Contract (Sample)

1. It is my wish to engage in Mediation, a voluntary process of conflict resolution which I understand allows parties to a dispute the opportunity to address their issues in a confidential and private setting facilitated by an independent Mediator. The Mediator is accredited to the Mediators' Institute of Ireland and acting in accordance with its Code of Ethics and Practice (available at www.themii.ie).
2. I am entering Mediation in good faith and will endeavour to resolve the issues at dispute through this process. I will comply with all reasonable requests made by the Mediator during Mediation.
3. I understand that it is for the parties to the Mediation with the Mediator's concurrence, to determine the scope of the Mediation. The Mediator does not offer advice.
4. I understand that information gathered in the Mediation process is confidential and privileged. Neither the Mediator nor any party to the Mediation including any accompanying person or persons shall divulge any information gained in the Mediation process nor seek to have the Mediator or any party to the Mediation divulge information relevant to that Mediation in any setting whatsoever. In the event that it is necessary for a third party to be consulted in the context of a solution, prior agreement will be sought from the parties to the dispute.
5. I agree that in the event that the Mediator asks me to break out of the plenary meeting into a private meeting/caucus session, I will do so.
6. In the event that during a Mediation meeting I believe it is no longer possible to continue with the Mediation, I agree to meet briefly with the Mediator in private session prior to withdrawing.
7. I understand that the Mediator may terminate the Mediation meeting in circumstances where s/he believes it is not appropriate to proceed.
8. I understand that the confidentiality of the Mediation process shall not excuse the Mediator's duty to act as required to do so by law, to report any threat of or actual physical or psychological injury to a party; attempt to commit or conceal a crime; concern as to welfare and safety of a child or children, revealed during said process.
9. At the conclusion of the process, no written record will be retained by any of the parties, other than the written Mediated Agreement, if relevant and this document (Agreement to Mediate/Mediation Contract).

The undersigned, having read and understood the above, consent to participating in Mediation.

Signed:

(Name in print)

Mediator:

(Name in print)

Signed:

(Name in print)

Date:

APPENDIX 3

Civil and Public Service Mediation Service (CPSMS)

Complaints Procedure

Contents

1. Introduction
2. Definitions
3. Making a Complaint
4. The Complaints Process
5. The Complaints Panel

1. Introduction

In the event that a party has a complaint against a Mediator(s), they may:

1. Raise it directly with the Mediator(s)
2. Raise it with the Director/Coordinator of the CPSMS
3. Raise it with the Mediator's Institute of Ireland and/or with the Personnel Officer/HR Manager of the relevant department, office or agency as appropriate.

The Mediators' Institute of Ireland provides ethical guidance for Mediators in their practice. All Mediators agree to be bound by the Code of Ethics.

This Complaints Procedure sets out how complaints in relation to a Mediator will be dealt. It does not affect anyone's legal rights.

If a staff member has a complaint s/he is encouraged to use direct communication and a conciliatory approach wherever possible when dealing with a complaint, being mindful that Mediation exists to facilitate communication and negotiation, to promote voluntary decision making by the parties to a dispute and to assist them to reach a mutually acceptable solution.

2. Definitions

Definitions of the Civil and Public Service Mediation Service's Structures & Processes

2.1 Mediator:

2.1.1. An employee who is a registered and accredited, Certified or Practitioner Member of the Mediators' Institute of Ireland (MII) or equivalent.

2.1.2 An External Mediator, similarly qualified, who agrees to Mediate under the Code of Ethics as developed by the Mediators' Institute of Ireland.

2.2 CPSMS Director & Coordinator – persons overseeing the CPSMS, supported by the Personnel Officers' Network and the Department of Public Expenditure and Reform.

2.3 Complainant: Any party to Mediation.

3. Making a Complaint

3.1 A complaint may be made about a Mediator if it is believed that they have acted in breach of the Code of Ethics.

3.2 All complaints should be first raised with the Mediator directly. The Civil and Public Service Mediation Service encourages all its Mediators to be open to hearing complaints and to respond promptly and appropriately. By raising the complaint directly with the Mediator, the complaint may then be resolved without the need to use a formal complaints process.

3.3 In the event that such attempts to resolve the issue prove unsuccessful, the complaint may then be brought to the attention of the CPSMS Director/Co-ordinator and/or the Mediator's Institute of Ireland or other accrediting body of the Mediator as appropriate. See www.themii.ie for the full complaints procedure.

APPENDIX 4

Civil and Public Service Mediation Service - Activity Log

To be returned for each case please, to Mary Smyth at email Mary.Smyth@valoff.ie

Please complete a form for each Mediation. The purpose of this form is to record and monitor general statistical information in relation to the Mediation process in the Civil and Public Service. **N.B.** Features that would enable the identification of parties to a Mediation should **NOT** be recorded on this sheet.

Name of Mediator: _____ Date of referral: _____

Name of Co-Mediator (if applicable): _____

Date Mediation commenced: _____

Date of completion: _____

(Excluding any review)

1. CASE number:

2. Number of parties involved in the case:

3. Gender breakdown of parties involved in the case: Male: Female:
(please state in numbers)

6. Work location of parties: _____

7. Outcome:

Pre mediation only	<input type="checkbox"/> Partially Mediated	<input type="checkbox"/>
No Mediated Agreement	<input type="checkbox"/> Mediated Agreement	<input type="checkbox"/>

8. Total number of Sessions: _____ Hours _____
(including pre-mediation)

9. Mediation Facilities:

Please indicate what facilities were used for the Mediation meetings:

10. Reason for Mediation:

Alleged Bullying	<input type="checkbox"/>	Alleged Harassment	<input type="checkbox"/>
Role Clarity	<input type="checkbox"/>	Work changes	<input type="checkbox"/>
Other (Please state)			

Contact Details - Civil & Public Service Mediation Service

All requests for Mediation services must be forwarded to

Mary Smyth

Coordinator

CPSMS

Valuation Office

Tel. 01-8171004

Email: Mary.Smyth@valoff.ie

Director (Vacant)