

# Catalyst Mediation

## **Catalyst Mediation : Model Mediation Clauses**

### **Why and how**

Including a clause in an employee contract or internal grievance procedure which requires an attempt to settle a dispute or conflict by mediation, should increase the chances of settling the dispute before formal proceedings need to be instigated.

The advantage of a mediation clause is that:

- it prompts the parties to consider a process which would not necessarily occur to them;
- it introduces a specific process, which gives the parties a framework for exploring settlement:
- it may give the parties pause to think through what happens if they do not mediate and go for a formal appeal or other internal procedure.

One of the key elements of a mediation is its voluntary nature - that is the individuals involved want to take part in order to reach an agreement. Therefore care should be taken to ensure that in any clauses or implementation the individuals do not feel they are being coerced.

The clauses are only model clauses and will need to be selected for, and adapted to, the circumstances and legal requirements of the particular contract or grievance procedure.

### **Internal Clause Examples**

The assumption made is that the minimum grievance procedure under the Employment Act 2002 is in place. The Mediation Clause would be considered or take effect at or before "the first grievance meeting".

These should be included in their entirety to give weight, formality and substance to the process of setting up the mediation and that the intention of the party is that the mediation should commence quickly.

### **Draft 1: Instigated by an Employee In Conflict**

1. If any dispute arises between employees, which cannot be settled informally, they will attempt to settle it by mediation before any formal procedures are instigated.
2. The costs of mediation will be borne by the Employer.
3. To initiate the mediation a party must
  - a. give notice in writing to the other party [and / or their Union Representative if any] requesting mediation.
  - b. request the Manager / Head of Department to approach the other party [and / or their Union Representative if any] with a [suggestion] [recommendation] that a mediation be instigated.
4. The Manager / Head of Department will present the parties [and / or their Union Representative if any] with a choice of [3] mediators drawn from the agreed list of mediation providers.
5. The Parties will agree the mediation provider with the Manager / Head of Department, together with [3] possible dates for the mediation within a further [3] days. The proposed dates will also be suitable for the Union Representative (s) if any.
6. The Manager / Head of Department will inform the mediation provider of the need for a mediation within a further [2] days, providing the optional dates for the mediation and whether the mediation is to be conducted over one day or two half days, depending on the availability of the parties.