



An tÚdarás Rialála
Seirbhísí Dlí
Legal Services
Regulatory Authority

Guidelines for the resolution of complaints by mediation or informal means

Section 67 Legal Services Regulation Act 2015
June 2020

1. Introduction

These guidelines set out the process which will be implemented once a complaint has been determined to be admissible and considered suitable for informal resolution through mediation, such resolution to be managed by the LSRA.

The Legal Services Regulation Act, [2015 \(the “2015 Act”\)](#) allows legal practitioners and complainants to resolve complaints of inadequate service and/or excessive cost at an early stage.

The Legal Services Regulatory Authority (the LSRA) also encourages legal practitioners to attempt to resolve complaints at the earliest possible opportunity i.e. upon initial receipt of notification of a complaint from the LSRA in accordance with [s. 57\(2\) of the Act.](#)

In the event a complaint is resolved to the satisfaction of the complainant at this early stage it is likely that the complaint will be closed by the LSRA prior to an admissibility determination being made and recorded as such for reporting purposes.

[s.54\(1\)](#) of the Act permits the LSRA to continue to investigate complaints which have been resolved at an early stage, if the LSRA considers it to be in the public interest to do so. However, the vast majority of complaints will be closed by the LSRA once the complaint is resolved to the satisfaction of the complainant. This means that complaints will not progress to the point where an admissibility determination must be made.

A preliminary review of complaints which are not resolved at an early stage will be conducted in line with [s.57 \(1\)](#) and the admissibility of the complaint will be determined in line with [s.58 of the 2015 Act](#). The preliminary review will consider the initial complaint, submissions made by the legal practitioner in response to the complaint and any additional information sought under [s.57 \(4\) of the 2015 Act](#) from either the complainant or the legal practitioner.

Throughout this document, the terms informal resolution and mediation are used frequently and often interchangeably. They refer specifically to the processes by which the LSRA may offer to assist in resolving complaints informally, generally through mediation. The LSRA may provide mediation services either directly free of charge by its own trained staff, or by external mediation professionals appointed with the agreement of all parties to a complaint. However any costs associated with this will be borne by the parties to the complaint directly.

The LSRA can only provide informal resolution or mediation services once it has already decided that a complaint is admissible – that is, that it is allowed under the Act.

As outlined above, complaints may also be resolved informally prior to being deemed admissible by the LSRA. For example, parties to a complaint may come together to reach an informal resolution at an earlier stage in the complaints handling process. These guidelines do not apply to such scenarios - they only relate to the informal assistance the LSRA may offer for complaints which it has deemed to be admissible.

2. Purpose of these Guidelines

[Section 67](#) of the Act requires the LSRA to prepare and publish guidelines in relation to the resolution of complaints by informal means.

These guidelines, prepared in accordance with [s.67 of the Act](#), do the following:

- (a) Set out the process whereby a determination can be made in respect of whether a complaint can be resolved by informal means;
- (b) Provide for the recording of the manner in which a complaint was resolved and of the terms of any agreement between the complainant and the legal practitioner the subject of the complaint;
- (c) Outline the steps to be taken (including notice to the Authority, the complainant, the legal practitioner concerned and, where applicable, the Complaints Committee) if the complaint cannot, in the opinion of the person attempting to do so, be resolved by informal means; and

(d) Contain any other matters that the Authority considers necessary or appropriate for facilitating the resolution of the complaint by informal means.

3. How the LSRA informal resolution process works

Complaints that are determined to be suitable for resolution by informal means in line with s.67(a)

Every complaint which is determined to be admissible will be assessed by the LSRA with regards to its suitability for resolution by informal means.

All complaints which in the view of the LSRA relate to inadequate service ([s.51\(1\)\(a\)](#)) will, in accordance with [s.60\(1\)](#) be referred for resolution by informal means.

All complaints which in the view of the LSRA relate to excessive cost ([s.51\(1\)\(b\)](#)) will, in accordance with [s.61\(1\)](#) be referred for resolution by informal means.

Complaints which in the view of the LSRA relate to inadequate service to a substantial degree ([s.50\(1\)\(b\)](#)) will, in accordance with [s.64\(1\)](#) be referred for resolution by informal means.

Recording of the manner in which a complaint was resolved in line with s.67(b)

When the informal resolution process has concluded and the complaint resolved, the person assisting the parties to resolve the complaint will record the terms agreed in a Mediation Settlement and send it to each party.

A Mediation Settlement is an agreement reached by the parties within the informal resolution process. The parties shall determine if and when a complaint has been resolved, and whether the Mediation Settlement is to be enforceable between them.

A Mediation Settlement shall have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties. ([s.11 Mediation Act, 2017](#))

A Mediation Settlement is confidential to the signatories unless it is necessary to subsequently seek to enforce a term of the Mediation Settlement. Any breach of a Mediation Settlement may subsequently result in new or renewed complaints to the LSRA. In that event the confidentiality of the Mediation Settlement is waived to the extent required by law. ([Section 10 Mediation Act 2017](#))

This possibility will be included in any Mediation Settlement for the purpose of transparency and with a view to avoiding any ambiguity regarding possible disclosure of information in the future.

A copy of the Mediation Settlement will be retained by the person assisting the parties to resolve the complaint in line with the LSRA's Data Retention Policy or that of the external mediator, whichever is applicable.

Steps to be taken in circumstances where resolution cannot be achieved in line with s.67(c)

The LSRA's informal resolution process is a confidential process. The parties (and any persons accompanying or assisting them, including a legal advisor) are bound by confidentiality in relation to all answers or statements made in the course of attempting to resolve a complaint in the manner specified in [s.60](#), [s.61](#) or [s.64](#) of the Act.

In line with [s.65\(1\)](#) no answer or statement made, in the course of attempting to resolve a complaint by a complainant or legal practitioner who is the subject of the complaint, may be used in any disciplinary, civil or criminal proceedings or communicated to any person other than the persons participating in the attempt to resolve the complaint.

In the event a complaint cannot be resolved informally, the person assisting the parties to resolve the complaint will notify the LSRA, the complainant, the legal practitioner and, where applicable, the Complaints Committee that the "complaint was not amenable to mediation".

In the event that a complaint of inadequate service to a substantial degree is resolved to the satisfaction of the complainant it may subsequently be referred to the Complaints Committee for further investigation by the LSRA.

All documentary evidence, including that which was provided subsequent to the admissibility determination being made and during the course of the informal resolution process may be made available to the LSRA, the Review Committee in the event a review of an LSRA determination is sought and/or the Complaints Committee in appropriate cases. [Section 10\(3\) Mediation Act, 2017](#) applies with regard to admissible evidence and discovery.

Sections [10](#) and [17](#) of the Mediation Act, 2017 apply in respect of specific exceptions to confidentiality.

Standard Operating Procedures for the informal resolution of complaints through mediation in line with s.67(d)

The LSRA will publish its internal standard operating procedures for the informal resolution process on its website, www.lsr.ie

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