



An tÚdarás Rialála
Seirbhíse Dlí
Legal Services
Regulatory Authority

*LSRA Procedures for the
Informal Resolution of Complaints*



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Introduction

This document sets out the fundamental principles and operational practices which govern the Legal Services Regulatory Authority (LSRA) informal resolution process. The aim of the LSRA informal resolution process is to assist the parties to resolve an issue which has given rise to a complaint to the LSRA.

The LSRA is committed to adhering to high professional standards both in relation to how its informal resolution process is conducted and in relation to its staff and contractors attempting to assist persons to resolve complaints.

All LSRA staff and contractors who manage the informal resolution process are accredited members of the Mediators' Institute of Ireland (the MII) or other recognised body. They are referred to in this document as mediators.

All mediators are governed by these procedures, except as provided by law. The terms of these procedures apply to every LSRA informal resolution process from the beginning of the process. The procedures apply to all persons assisting the parties to resolve the complaint whether working on a case alone or with a colleague or supporting/advising a colleague. LSRA staff and contractors are bound by the LSRA Code of Standards and Behaviour and the Code of Ethics issued by the Mediators Institute of Ireland (MII) or other governing body to which an accredited Mediator is affiliated.

It is important that there is a level of standardisation in approach to the LSRA informal resolution process. However, as every complaint and the parties involved are unique, resolution may depend on the process retaining a level of flexibility. It is not possible to cover every scenario and there may be occasions when the particular situation requires a different approach.

In the informal resolution process the mediator shall have regard to the needs of the parties and in particular to any aspects of access or disability.

Definitions and Descriptions

LSRA Informal Resolution Process

A process in which an impartial third party (the mediator) facilitates communication and negotiation and promotes voluntary decision-making by the parties to resolve a dispute.

The process starts at the first contact between the mediator and the parties and ends when the mediator advises the parties in writing that it is concluded.

Mediator

In the context of the LSRA informal resolution process, a mediator means any person employed by the LSRA, or contracted to the LSRA, to facilitate the informal resolution process. They are accredited members of the Mediators' Institute of Ireland (the MII) or other recognised, accrediting body and will hold a current practicing certificate issued by the MII or other recognised body.

Parties

The parties are the complainant and the responding legal practitioner. A party may be an individual, a corporate entity, an organisation or a group of people who are directly involved in the complaint. The parties may choose to be represented.

Informal Resolution Session

Informal resolution sessions are the actual session(s), whether by phone, face-to-face or other forum, where the mediator is engaging with the party/parties.

Referral for Informal Resolution

Where a complaint alleging excessive costs, services of an inadequate standard or services of an inadequate standard to a substantial degree is determined to be admissible, the LSRA will refer the complaint for informal resolution.

The complainant and the responding legal practitioner will be invited to make efforts to resolve the complaint through the informal resolution process.

Fundamental Principles of the LSRA Informal Resolution Process

The fundamental principles of the process are:

1. The process is voluntary and confidential;
2. The mediator is a facilitator and remains impartial;
3. The parties have the right of self-determination to decide their own solutions rather than having a solution imposed on them;
4. The parties agree to engage in the process and to treat each other and the process with respect.

Informal Resolution Process

The informal resolution process begins at the first contact between the mediator and the parties and ends when the mediator advises the parties in writing that the process is concluded.

The mediator assigned by the LSRA to assist the parties to achieve resolution will decide on the manner in which the informal resolution process will be conducted.

In the majority of cases, the informal resolution process will be conducted over the telephone.

Where appropriate, the mediator may decide to conduct a joint-session engagement with the parties. The mediator will decide how best to structure the joint-session engagement. For example, the joint-session may take place with each party and the mediator present or online, or may comprise of a mix of joint-sessions and meetings with each party separately.

Role of Mediator

The mediator must act, and be seen, to act in an impartial manner throughout the process. This means freedom from favouritism, bias or prejudice. The mediator must not take sides. If a mediator believes that their position has been compromised or that a conflict of interest may exist or may be perceived to exist, they may terminate the process or notify their manager so that the case may be allocated to another mediator. Nothing shall prevent the mediator from talking to, phoning, communicating with or meeting one party, with or without the knowledge of the other party.

The parties are asked to disclose all relevant information during the informal resolution process. The mediator will help them to identify the strengths and weaknesses of their cases, explore possible options for resolution and to reality-test those options. The mediator will also, through clarification and/or explanation attempt to remedy any imbalance in knowledge for either party.

Beginning the Process

An initial telephone contact is the beginning of the informal resolution process and confidentiality begins at this point. Confidentiality is an implied term, effective immediately from the start of the informal resolution process.

The initial telephone contact will outline the following key aspects of the informal resolution process:

No Admission of Allegations Made

The parties will be advised that an agreement by a legal practitioner, who is the subject of a complaint, to attempt to resolve the complaint shall not be taken as an admission of any allegation contained in a complaint.

Voluntary Process

Parties will be advised that agreeing to engagement in informal resolution is voluntary. The LSRA informal resolution process will be explained to the parties and they will be invited and encouraged to participate.

The parties will be advised that any person, including the mediator, may end the process at any time. In the event the mediator forms the view the complaint is unlikely to resolve, he/she may decide to withdraw from the process and provide reasons in writing to the parties. In that event the mediator will notify the LSRA and the parties that the complaint did not resolve and the complaint will be returned to the LSRA for investigation.

Confidentiality

LSRA informal resolution is a confidential process. This means that no statement made in the course of attempting to resolve a complaint by the parties 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.

The mediator's records and notes relating to the informal resolution process shall be confidential and shall not be disclosed in any proceedings before a court or otherwise.

This allows the parties to engage in conversations, both with the mediator and between each other, that they might otherwise be reluctant to engage in.

All matters discussed in separate meetings, plenary meetings, by telephone or other communication forums during the informal resolution process are confidential to those included in those discussions, except where permission has been given for all or some of the information to be shared with the other party.

Exceptions to Confidentiality

There are specific circumstances where exceptions to confidentiality may apply. The Mediation Act 2017 provides in accordance with section 10(1):

“Subject to subsection (2) and section 17, all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise.

Section 10(2) provides:

Subsection (1) shall not apply to a communication or records or notes, or both, where disclosure—

- *is necessary in order to implement or enforce a mediation settlement,*
- *is necessary to prevent physical or psychological injury to a party,*
- *is required by law,*
- *is necessary in the interests of preventing or revealing—*
- *the commission of a crime (including an attempt to commit a crime),*

- *the concealment of a crime, or*
- *a threat to a party,*

or

- *is sought or offered to prove or disprove a civil claim concerning the negligence or misconduct of the mediator occurring during the mediation or a complaint to a professional body concerning such negligence or misconduct.*

Section 10(3) states: “Evidence introduced into or used in mediation that is otherwise admissible or subject to discovery in proceedings shall not be or become inadmissible or protected by privilege in such proceedings solely because it was introduced into or used in mediation.”

Self Determination

The mediator is neither a judge nor an arbitrator. The parties have the right of self-determination to decide their own solutions and solutions will not be imposed on them. While the mediator is responsible for the informal resolution process, the parties make the decisions in relation to the outcome of the complaint. The content and outcome of the informal resolution process belongs to the parties.

Fees

There is no charge for the informal resolution process conducted by staff of the LSRA. Parties who request the appointment of a person external to the LSRA are responsible for sharing the payment of their fees equally, unless otherwise agreed. If a party wishes to bring an expert, advisor or supporter to the informal resolution process, they will be responsible for any associated fees.

Timeliness

The mediator is required to complete the informal resolution process as expeditiously as is practicable having regard to the nature of the dispute and the need for the parties to have sufficient time to consider the issues.

The LSRA has embedded indicative timeframes for the conclusion of informal resolution cases in its administrative processes to ensure the efficient and timely management of informal resolution cases. It is intended to adhere to those timeframes insofar as possible given the potential for unique issues to arise in individual cases.

Conclusion of the Informal Resolution Process

Agreement

If the complaint is resolved by the parties, the mediator will record the terms agreed and send it to each party. This record is confidential to the parties. The parties may have to use the record to enforce a term or to seek redress in the event of a breach of the terms agreed. In that event, the confidentiality of the agreed terms is waived to the extent required by law.

Even if complaints of services of an inadequate standard to a substantial degree are resolved, they may still be sent to the Complaints Committee for investigation.

In the event a complaint cannot be resolved informally, the mediator will notify the LSRA that the “complaint was not resolved”. The file will be referred back to the LSRA. The LSRA Complaints Resolution Officers will investigate complaints of inadequate standard of legal services and excessive costs. The Complaints Committee will investigate complaints of inadequate standard of legal services to a substantial degree. The LSRA/the Complaints Committee shall invite the parties to furnish a statement setting out their respective positions with regard to the complaint.

At the end of the investigation the LSRA/the Complaints Committee will decide to:

- uphold the complaint in full or part;
- not uphold the complaint; or
- refer the complaint to a separate tribunal for an inquiry. (Complaints investigated by the Complaints Committee only).

If the complaint is upheld in full or upheld in part, the legal practitioner can be directed to take certain actions to rectify the issue, for example to:

- transfer the legal files to a solicitor of the complainant’s choice;
- correct the legal work or pay for the legal work to be completed;
- refund or reduce legal costs;
- undergo further professional training; or
- pay compensation to the complainant.

At the request of either party, the decisions of the LSRA Complaints Resolution Officers can be reviewed by a Review Committee. There is no review option for a decision by the Complaints Committee.

Ends March 2024