

## **Mediation at the Injuries Resolution Board**

The Injuries Resolution Board now offers mediation as a quick and cost-effective way of dealing with personal injuries claims.

Mediation is a voluntary and confidential process, widely acknowledged as an effective way of resolving disputes. In mediation, those involved can talk about and explore issues of importance to them. This could include the claim value, extent of injury, liability, negligence, or future treatment requirements, to name a few. Our mediators are experienced at mediation. They are neutral and won't take sides and have knowledge of the personal injuries' environment and Personal Injuries Guidelines. Our mediators do not make decisions for the parties but help clarify the issues and facilitate agreement.

Mediation will typically be telephone based and parties to the claim will not need to talk directly to each other. The mediator, through a series of separate calls will listen to all parties to gain a full understanding of the issue(s) and will help the parties to reach a mutually acceptable solution to resolve the claim.

We believe there is no downside to trying mediation – it's quick, there's no extra cost to you, you can withdraw without consequences, and if there's no agreement reached it won't affect your legal rights. Also, mediation is offered at the start of our process, making it the fastest independent way of dealing with the outcome of any accident/incident.

We are currently offering the service for Employer Liability claims and will offer it in Public Liability and Motor claims later in 2024.

### **What Happens in Mediation?**

If you opt for mediation, one of our experienced and independent mediators will work with the claimant and the respondent (those who the claim is being made against) with the aim of facilitating both parties to reach an agreed outcome.

Typically, our mediations will be done over the telephone, with an appointment arranged in advance by the mediation team at the Injuries Resolution Board. You do

not have to talk directly to the other party. Instead, the mediator, through a series of separate calls will listen to both parties to gain a full understanding of the issue(s).

The Mediator will

- ask each of you to share your view of the situation.
- give information that will help your discussion, e.g., information on the law and the Personal Injury Guidelines.
- make sure everyone has their say and behaves in fair and reasonable way.
- help you reach a fair agreement if possible.

The mediator will guide you through the process, but they can't decide anything for you. The parties are in control.

If agreement is reached, they will draft a written version of anything agreed orally. This will then go to both parties to sign and return. Once signed, there is a ten-day cooling off period, during which you can change your mind. If everyone is still happy after 10 days, the agreement becomes legally binding, and we will issue an Order to Pay. This order has the same standing as a court order.

It's important to know that you can withdraw from the mediation process at any stage, and this will not have any consequences for what happens to your claim afterwards.

In certain circumstances, an in-person mediation can be arranged, at the discretion of the Injuries Resolution Board.

## **Mediation and/or Assessment**

The Injuries Resolution Board provides both mediation and assessment services. Both are non-adversarial, and quicker and less costly than litigation.

All personal injury claims must be made to the Injuries Resolution Board unless the claim has been settled at an early stage with the other side or the insurer directly. All applications from claimants are automatically included for consideration for assessment.

If the claim is within the remit of the Injuries Resolution Board and the respondent (the person(s) that the claim has been made against), agrees to assessment we may arrange for assessment of the claim. During our assessment process our Assessors will use medical and other evidence to assess the level of compensation for pain and suffering and any out-of-pocket expenses.

What's changed is that before the claims are assessed, we are offering the chance to mediate.

Mediation will allow both parties to explore and voice their issues, and unlike assessment can explore a wider range of issues such as value of the claim, liability, extent of the injuries, future treatments etc. Where the mediation is successful, you get an even quicker outcome than through assessment.

Where claims are mediated and subsequently assessed due to the parties not reaching agreement in the mediation, the aim is that both services would be completed within 9 months or less. The expected timeline for resolution of claims where agreement is reached in mediation is 3 months or less.

If no agreement is reached in mediation, the claim may still be assessed if the respondent (the person the claim is against) has consented to assessment.

In summary,

**As a claimant** – assessment is mandatory, and you have the option for mediation also at the start of the process.

**As a respondent** – you will have the option to choose mediation, or assessment or both.

Where the respondent only agreed to mediation, and not assessment, and assessment should the mediation fail to resolve the claim, we will then release the claim from our service. The claimant can at that point issue court proceedings if they wish. Going to court is the longest and most expensive journey for a claim.

## **How Do I Apply for Mediation?**

We are currently offering the mediation service for Employer Liability claims only and will offer it in Public Liability and Motor claims later in 2024. We will update the website as we expand our service.

### **If you are a claimant:**

Our claim form is available online on our website or a paper-based form may be accessed via the website at [www.injuries.ie](http://www.injuries.ie).

All applications from claimants are automatically entered into our service for assessment.

If you would like the mediation option, you need to tick yes to the mediation question in the employer liability section. There is no additional cost for the service.

### **If you are a respondent:**

If a claim has been made against you, we will send you notice of the claim with a consent form with several options for you to consider.

You will have the option to consent to mediation, mediation and assessment, assessment only or none of these options. There is no additional cost for mediation.

For the mediation to go ahead, all parties to the claim will have to agree to take part.

## **How do I Prepare for Mediation?**

The Injuries Resolution Board will send you a date and time for your mediation, which will include the name of your mediator and the number on which they will phone you.

### **Before the appointment:**

- Take time to think about what you are hoping to achieve.
- Ensure you will be somewhere private and quiet to receive the mediator's call.
- If you have a legal representative or someone attending the mediation with you, they will also need to sign our confidentiality agreement (see below)

### **Documentation:**

We only ask for two things ahead of mediation:

- A signed confidentiality form. This requires you to acknowledge you understand that mediation is a confidential process, and nothing discussed during the mediation can be shared outside, even if no agreement is reached. Everyone who is planning to attend the mediation will have to sign this.
- A pre-mediation form. We encourage both parties to fill out a pre-mediation form. This document is not shared with the other party. By filling out this document, the mediator can understand what is important to each party and can use the time allocated to the mediation to focus on a mutually acceptable solution. The mediation can go ahead without this, but it is a help for the mediator to understand some of the issues in advance.

The confidentiality agreement and the pre-mediation form will issue with your mediation appointment letter.

The mediator will also receive a copy of your claim application and your treating medical report.

## **After Mediation**

### **If you reach agreement:**

Where matters are resolved, the mediator will draft a written agreement and will get all those involved to sign it. There is then a ten-day cooling off period to allow for a change of mind. If everyone is still happy after the ten days, we will send out a legally binding Order to Pay instructing the party against whom you are claiming to issue a payment to you. This Order has the same weight as a court order.

### **If mediation is unsuccessful?**

If there is no agreement during mediation, the claim may proceed to assessment if the respondent has consented to assessment of the claim. If the respondent has not consented to assessment of the claim, the claim will be released, and it will be a decision for the claimant if they wish to pursue the claim through litigation/court.

## **Why Choose mediation?**

### **Main Benefits of Mediation**

- Quick – resolution in less than 3 months.
- Allows you talk about the issues.
- Confidential.
- Voluntary – all those involved agree to mediate.
- Doesn't affect legal rights if no agreement is reached.
- Independent and impartial.
- The parties' control whether there's an agreement or not, but never have to speak directly to each other thereby reducing stress.
- Agreements are legally binding.
- Issues to be mediated can be broader than via our assessment service.

## **Other Frequently Asked Questions**

### **Can I have a Legal Representative at Mediation?**

You don't need a legal representative to take part in a mediation. However, you can choose to have a solicitor accompany you, or represent you, at the mediation. Our mediators have access to conference lines, so it is possible for you and your solicitor to take part together.

If you choose legal representation, you may need to be available to sign any agreement reached. Also, everyone attending the mediation must agree to keep the confidentiality of the process.

## **What if English isn't my first language?**

Where an interpreter is required, it shall be provided by the Injuries Resolution Board. Please let us know if you need interpreter support, and in which language.

## **If there's no agreement at mediation, will it have any implication for a subsequent Assessment or court proceedings?**

All communications both written and oral relating to a mediation are confidential and cannot be disclosed in relation to a later assessment or any proceedings in court.

The confidentiality is unending, even if agreement is not reached. All parties have equal responsibility for preserving this.

Confidentiality can only be lifted in very limited circumstances provided for in law.

## **Can mediation happen if the other side doesn't want it?**

We can only arrange for a mediation if the person/company against whom you are making the claim also agrees to take part. This is because mediation is voluntary and consent of all parties.

## **Why is it only available for Employer Liability Cases**

Mediation is a new service for the Injuries Resolution Board, so we are only offering it in Employer Liability claims now. However, it will be extended to Public Liability and Motor Liability claims on a phased basis later in 2024.

## **Is there any other useful information?**

The Personal Injuries Guidelines can be accessed on our website. They set guideline levels for the awarding of compensation by PIAB and the Courts.

## **Does anyone else use Mediation to settle disputes?**

Mediation is recognised internationally as a highly effective way of resolving disputes. It's successfully offered by similar organisations in Ireland, like the Residential Tenancies Board, the Financial and Pension Services Ombudsman and the Workplace Relations Commission. It is also widely used in family law, community mediation and commercial disputes.