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# Alternative Dispute Resolution in UCC



## **Alternative Dispute Resolution**

### **University College Cork**

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## 1. Introduction

The University recognises that various forms of dispute resolution already exist, some of which have been in place for many years and which have had a pivotal role in the resolution of disputes. The University further recognises the key role played by the trade unions and their representatives in resolving individual and collective disputes. Nothing in this document, or in the policy and procedures arising, is meant to detract from existing channels of dispute resolution which it is intended will continue to play an important and valued part in maintaining good working relationships across the University. On the contrary, it is the University's intention to enhance local/low-level resolution of disputes to the benefit of the institution and of individual staff members through the additional mechanisms outlined in this document.

## 2. What is Alternative Dispute Resolution ["ADR"]

Dispute resolution at its most formal where an independent body decides on the rights and wrongs of a case brought before it and there may be a winner and loser at the end of what is often a very costly and stressful process for all of the parties involved. An 'alternative' is to be found in a variety of procedures aimed at local resolution of disputes and the re-establishment of working relationships, so that all parties to a dispute may continue to work together following completion of the process. This is the origin of the term 'alternative' in Alternative Dispute Resolution. These procedures include, but are not limited to, facilitation or facilitative mediation, adjudication, conciliation and arbitration.

The University wishes to introduce policy and procedures for Alternative Dispute Resolution within the institution on an agreed basis with the following objectives:

1. to establish means within the University **to resolve staff disputes at the lowest and most informal level possible with least damage to the individuals involved, the University or to the morale of its staff;**
2. the provision of ADR services within the University needs to be put on a clear and agreed basis so that the informal dispute resolution sections of relevant policies are supported by suitably selected and trained personnel.

**ADR may not be a suitable source of resolution if:**

- The issue is one to be dealt with by the Human Resources Department or the HR Department in conjunction with a Trade Union;
- The issue relates to terms and conditions of employment;
- The dispute is a matter which falls to be dealt with through normal industrial relations procedures;
- It is used as a first resort – staff should be encouraged to resolve issues through discussion before resorting to ADR;
- If it is used by a manager to avoid exercising his/her responsibilities;
- The individual bringing a bullying, harassment or discrimination issue wants a formal investigation;
- The parties do not have the power to settle the dispute;
- One side is intransigent or is not amenable to ADR.

### **3. The Cost of Conflict**

The cost of conflict, in addition to financial and administrative costs, includes other costs such as sickness absence and staff turnover, loss of team morale which, while harder to pin down, can have a serious impact on the organisation.

#### **Personal**

For those staff members involved in a serious staff conflict there can also be serious implications including psychological stress leading to mental health conditions such as anxiety and depression. Involvement in a dispute can lead to poor concentration at work, affect longer term career plans and impact home life creating a vicious circle of pressure. Should the dispute escalate into a legal forum the financial costs can be onerous.

#### **Others**

For every incident of conflict there are likely to be several colleagues drawn into the dispute. This can be exacerbated in the event that legal proceedings are initiated where staff may be forced to take sides in an adversarial way.

### **4. The Benefits of ADR**

The benefits of ADR include:

- It provides an opportunity to restore working relationships and is future oriented;
- It is 'without prejudice' – anything said in mediation cannot be used later in proceedings;
- It does not depend on the skill or power of the parties;
- It allows the parties to set the pace of discussion;
- It brings an opportunity to change the dynamics of the situation, allowing parties to air their frustration or anger in a 'safe', less confrontational environment;
- It gives people the chance to 'draw breath' and get back into talks;
- It keeps communication channels open by using neutral or un-emotive language and enables people to get feedback on the strength of their case;
- It makes it possible to introduce fresh ideas - the process of challenging ideas or probing for the logic of existing positions can itself help to find new solutions;
- The spelling out the consequences of failing to reach a resolution in an uncompromising way can also be extremely valuable – for instance, the impact on customer confidence or job security;
- It can reduce the stress involved in a more formal process;
- The retention of employees is more likely;
- It can result in a reduction in the number of formal grievances or complaints;
- It can reduced the costs of attending external fora;
- Sick leave may be reduced;
- It removes the potentially damaging impact that formal procedures can have on individuals careers;
- It gives a sense of ownership of the outcome thus increasing autonomy, trust and responsibility;

In addition, publicity is normally minimal thereby protecting confidence in the organisation. The financial burden, as well as that placed on human resources, is generally lessened and there is still the opportunity to salvage and rebuild the working relationship at the early stages of a dispute. It must be borne in mind though, that all of the above can only be achieved by both parties agreeing to enter ADR in the first place, if neither party withdraws from the process and pursues the claim through another forum, and if the outcome is agreed.

## 5. Types of Alternative Dispute Resolution [“ADR”]

There are numerous types of ADR. Generally ADR may include:

- Independent Ombudsman
- Facilitative Mediation
- Evaluative Mediation
- Conciliation
- Written – early evaluation
- Adjudication
- Peer Review
- Arbitration

Having considered the many types of Alternative Dispute Resolution the Working Group proposes that the types of ADR most amenable to introduction in the University to strengthen dispute resolution are mediation and the strengthening of the role of the Independent Staff Ombudsman.

### (1) Independent Staff Ombudsman

In the University context the ISO is a designated neutral person who provides confidential and informal assistance in resolving university-related disputes, complaints or conflicts. The role of ISO is particularly suited to managing the process and provision of ADR within an organization such as the University given that person’s independence from the University authorities and the necessity for those providing ADR services to be seen to be equally independent. The Role of ISO is outlined in greater detail in Appendix 2 to this Report. The University currently has two ISOs – one for students and one for staff. It is recommended that the role of the ISO for staff would be enhanced to recognize the potential of the role to contribute to enhanced ADR provision in UCC.

### (2) Mediation

Mediation involves a third-party, the ‘Mediator’ helping two or more people in dispute to attempt to reach an agreement. Agreement comes from those in dispute and not from the Mediator. The Mediator is not there to judge the rights or wrongs of the case or to tell the parties what they should do. The Mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Mediators may be employees trained and accredited by an external body or they may be external to the organization. The issue of sourcing mediation services is dealt with in greater detail below.

Mediation is different from other forms of ADR in a number of ways. It is:

- Informal
- Flexible
- Voluntary
- Morally binding [but not legally unless the parties decide]
- Confidential [ the content of the mediation may not be used in any subsequent proceedings]

The Mediators role reflects the foregoing. S/he is:

- Non-judicial

- Non-expert
- Makes no assessment
- Makes no recommendation
- Makes no findings
- Gives no advice

Mediation seeks to provide an informal and speedy solution to workplace conflict. What it offers is a safe and confidential space for participants to find their own answers by:

- Exploring the issues, feelings and concerns of all participants and re-building relationships using joint problem solving;
- Allowing those involved to empathise with the feelings of those with whom they are in conflict;
- Giving participants insight into their own behavior and opening up opportunities for change;
- Encouraging communication and helping those involved find a solution that both sides feel is fair.

Given the foregoing, mediation is seen as having considerable potential impact in UCC as part of our ADR provision.

## **6. Current provision for Dispute Resolution within and External to the University and the role of ADR in Existing policies and procedures**

### **Within the University**

#### **(1) Unions**

Many disputes are resolved through referral to the employee's trade union/staff association through discussion/negotiation at local level or through raising matters more formally with University Management.

#### **(2) University Policies and Procedures**

The use of alternative dispute resolution in University Policies and Procedures focuses mainly on the use of mediation, particularly at the informal stage of certain procedures.

- i) Staff discipline, Principal Statute, Section F provides for mediation under the informal procedure.
- ii) Grievance Procedure  
As currently constituted, the University Grievance Procedure, in Phase 2, which is optional, specifies a role for the Independent staff Ombudsman in the resolution of a grievance. It does not make specific provision for the use of ADR.
- iii) Duty of Respect and Right to Dignity Policy [DRRD]

The DRRD Policy is undergoing review which is not completed as this report is being compiled. The most recent draft includes provision for mediation under the informal resolution of bullying and harassment issue.

### (3) The Visitor.

Provision for a Visitor to the University is made in the Charter and Statutes of the University. The Government of Ireland is the Visitor of the University. This is a rarely invoked or used method of dispute resolution though still formally available.

### (4) Dispute Resolution Committee

Section 26 of the Universities Act requires the University to specify in a Statute the provisions for Dispute Resolution. The Dispute Resolution Committee consists of three members, external to the University. The terms of reference of the Committee are set out in statute – Principal Statute, Section H2. This form of dispute resolution, despite being available internally has been rarely used.

Both the Visitor and the Dispute Resolution Committee provide formal adjudication on disputes within the University.

### (5) Department of Human Resources

The Department of Human Resources is available to advise and assist all staff on dispute resolution.

## 7. Where to Start?

- Agree a defined purpose for UCC's proposed mediation process, e.g., early intervention, integrated with other sources of ADR within UCC with the goal of preserving relationships and limiting recourse to external fora;
- Development of both an internal and external mediation expertise base;
- Agree key principles and policies on using mediation within the University as a process of alternative dispute resolution;
- Outline the framework within which mediation will be implemented – relationship to existing Human Resource and University policies and procedures.
- Communicate widely with University staff and with Heads of College, School, Department and Units
- Develop appropriate materials [e.g. mediation agreement] and information;
- Develop communication/information materials which will inform/brief staff on the service;
- Decide on how the service is phased in and ensure mediators are qualified and trained;
- Train and brief managers, staff and their representatives across the University to ensure that they are adequately acquainted with the benefits of mediation and the mediation process and their role within it;
- Develop KPI's for the mediation service;
- Run for a pilot period and re-assess in light of experience. Agree a monitoring and evaluation framework to assess impact.

## 8. Practical Issues

Issue	Considerations	Recommendation
Link to existing human resource and management policies and procedures	As University policies and procedures particularly in the area of HR management are improved and revised there will be increasing emphasis on the use of ADR within different policies. Thus, mediation is included under the Staff Discipline Statute, the Duty of Respect and Right to Dignity Policy, the Grievance Procedure and the Terms of	One mediation service should be established within the University and all references to mediation in University policies and procedures should be linked to that service. This is essential to avoid duplication, make the best use of resources and ensure that those trained in mediation acquire sufficient experience in the role.

	reference of the Independent Staff Ombudsman.	
Should the mediators be internal / external / both?	There are different options for introducing mediation into an organisation; one is to select and develop staff members. Another is to source the necessary skills externally possibly on the basis of an SLA where the services can be called up on when necessary. The two approaches are not mutually exclusive.	The University should select and train a small number of suitable staff to provide mediation services and should also tender for the provision of mediation services externally to allow for the specific aspects of each case and e.g. the seniority of the disputants, the complexity or longevity of the case or the implications for the individuals or the University of any delay in resolving the issues. It should be noted that a group of staff members have been trained as mediators to assist in the resolution of disputes between students. These staff members or an extended group may be considered for the provision of internal mediation services initially
Where should the service be located and how supported?	<p>The most plausible locations for the service is in one of:</p> <p>Office of Corporate and Legal Affairs</p> <p>Department of Human Resources</p> <p>Office of the Independent Staff Ombudsman</p>	<p>It is recognised that the new HR model will provide for local and informal HR queries to be dealt with directly by the local HR rep. This must be encouraged and nurtured as the first link in the chain. The early introduction of the designated local HR rep can facilitate early resolution but where this is not possible or successful then the issue can be referred to the ISO</p> <p>Given the absolute importance of independence and impartiality and the perception of same; the mediation service should be located and supplied from the Office of the Independent Staff Ombudsman.</p>
What is the anticipated cost and how will the service be financed?	<p>The main costs initially will be training and development costs for those selected as potential mediators.</p> <p>As the service develops, costs will include the time of the mediators away from their own departments – which would indicate a greater rather than smaller number involved to ensure that staff are not missing from their main duties too regularly.</p>	<p>The main budgetary areas related to ADR are the HR Department and the Office of Corporate and Legal Affairs which controls the legal costs budget.</p> <p>These offices should be requested to cover the cost of the service on a trial basis from existing resources</p> <p>While mediation is not a ‘quick fix’ it should result in reduced legal costs over time.</p> <p>Initial costs could also be offset by taking on board those mediators who have been trained to conduct student mediation if they are willing to be involved [noted above].</p>



How will the service be linked to the Role of Independent Staff Ombudsman?		The service should be controlled and monitored by the ISO.
Training for mediators and managers	<p>ADR cannot be implemented without adequate training of mediators and managers.</p> <p>Mediators need to understand not just the principles of mediation but also how mediation fits within the University's policies such as the Duty of Respect and Right to Dignity Policy. Conflict resolution and the theory of conflict management should also be included in the training.</p> <p>Awareness training for staff and managers on how and when to use mediation would also assist in the implementation</p>	The implementation of mediation as an ADR system in the University will require the selection and training of staff members to carry out the role but also the training and briefing of managers and staff across the University to ensure that they are adequately acquainted with the benefits of mediation and the mediation process.
Selecting Mediators	The process and criteria for selection of mediators will need to be established and set down clearly – not all staff will have the skillset for this role and the process needs to ensure that the most suitable staff members are selected. Consideration should be given to selecting staff from different levels of seniority, grades, types of work [academic/non-academic and gender.	Selection of external mediation services should be done through procurement procedures.

## 9. Overall Recommendations

No.	Recommendation
1	That Alternative Dispute Resolution within the University be strengthened by enhancing the role of the Independent Staff Ombudsman and introducing mediation services aimed at early and informal resolution of internal disputes
2	That the purpose and principles for ADR be clearly outlined
3	That the relationship of ADR services to existing policies and procedures is clarified
4	That mediation services be provided through the Office of the Independent Staff Ombudsman
5	That the terms of reference of the Independent Staff Ombudsman be enhance to take account of the revised role and control of ADR services – as set out in the Appendix to this document
6	That the Independent Staff Ombudsman's role in the Grievance procedure be removed and that optional mediation be included at an appropriate point in the Grievance Procedure

<b>7</b>	that all relevant HR policies be updated to reflect the revised HR model and the recommendations of this report in order to strengthen local resolution of staff related issues
<b>8</b>	That mediation services be delivered by both internally trained mediators and external mediation services depending on the individual case
<b>9</b>	That external mediation services are procured from professional mediators / mediation services
<b>10</b>	That mediation be introduced for a pilot phase of one year and for the initial period the cost of the service should be borne from the Legal Costs budget - Office of Corporate and Legal Affairs
<b>11</b>	That detailed planning for the introduction of mediation services is conducted by the ADR Working Group if these recommendations are approved by the Governing Body.

**Appendix 1 – See Chart outlining the procedures for dealing with Staff Issues in UCC**

**Appendix 2 - Independent Staff Ombudsman – Terms of Reference**

## **University College Cork**

### **Independent Staff Ombudsman [ISO]**

#### **1. Role of Ombudsman?**

The Independent Staff Ombudsman is a designated neutral person who provides confidential and informal assistance in resolving University-related concerns, complaints or conflicts.

#### **2. Appointment of the Independent Staff Ombudsman**

The post of Independent Staff Ombudsman is a part-time one, tenable for a period of two years and renewable once only. The holder will ordinarily be a senior member[s] of University staff, or recently retired member[s] of staff, familiar with the workings of the University and who will report directly to the President. The holder[s] of the post shall be jointly agreed between management and unions.

The Independent Staff Ombudsman does not have the authority to take disciplinary action, overturn decisions or over-ride regulations.

The Independent Staff Ombudsman has a specific role under the University's Duty of Respect and Right to Dignity Policy.

#### **3. In What ways can the Independent Staff Ombudsman help?**

It is anticipated that, in general, staff members will have raised issues with their line manager or local HR representative in advance of bringing them to the Staff Ombudsman.

The model of local provision of HR resources must be supported and the ISO must reflect the University's determination to have local resolution by ensuring that this local channel has been utilized effectively for any staff related issue in the first instance.

In relation to staff issues brought to the attention of the ISO, the ISO may offer assistance with the informal resolution of such issues which may include the provision of mediation services – internal or external.

The ISO provides a safe and confidential environment to discuss concerns or complaints outside formal channels.

The ISO is available to all members of the University staff. A Student Advisor and Ombudsman is available to students.

The ISO is independent of the University's formal administrative structure and all other departments on campus. This independence ensures that University-related concerns can be discussed in an impartial and strictly confidential environment.

The ISO cannot impose solutions, but can identify options and strategies for resolution.

The ISO may:

- listen to, and help to analyze the problem or complaint;
- identify and explain relevant University policies and procedures;
- help to define and evaluate options;
- assist with the resolution of staff conflict issues as informally and locally as possible;
- help to resolve the problem informally and expeditiously;
- initiate discussions with other involved parties (with permission);
- make referrals to other campus and University resources;
- recommend changes in University policies or procedures that may be outdated, ineffectual or arbitrary and;
- offer, source/provide mediation services if agreed with both parties to a dispute.

## **(2) Confidentiality**

All inquiries to the ISO will remain confidential except in cases of serious threat to life or property. The ISO does not report the names of those who use the service to anyone without their permission.

- the ISO will work in confidence to resolve problems.
- the ISO will not disclose any information provided in confidence, except where there is a serious threat to life or property.
- the ISO will protect the identity of individuals and their concerns. The ISO will not disclose having met or talked with a party or parties, without permission of the party or parties.
- the ISO will take specific action related to an individual's concerns only with the individual's express permission and only to the extent permitted.
- if the ISO pursues an issue systemically, the ISO will do so without revealing the identity of the complainant or the situation that could be associated with a particular individual(s).
- the ISO will not violate institutional standards of privacy or confidentiality in the pursuit or provision of information.
- the ISO carefully prepares data and/or reports on an anonymous basis to preserve confidentiality.

## **(3) When should a Staff Member contact the ISO?**

- when a staff member has a conflict with another party and needs help in facilitating resolution, recourse in the first instance should be to the direct supervisor of that person or the local HR representative. In the event that this is not possible or is not successful, the staff member may refer the matter to the ISO for further assistance;
- to discuss a sensitive issue in confidence;
- when a staff member is unsure which policies, procedures, or regulations apply;
- when a staff member feels a policy, procedure, or regulation has been unfairly applied to him/her;
- when a staff member has a complaint about an office or service of the University;
- when a staff member doesn't know who to talk to, where to turn or what options are available.

#### (4) **What an Independent Staff Ombudsman does not do.**

- The ISO does not replace or duplicate the primacy of management. All staff related issues are first and foremost the responsibility of the line supervisor supported by the local HR representative.
- The ISO does not replace or duplicate the service of the Human Resources function. Staff must utilise, where possible, the services and support provided by the local HR representative
- the ISO does not act as an advocate in a dispute. The ISO is neutral and impartial.
- the ISO does not represent individuals in appeals either on campus or off campus.
- The ISO does not provide legal representation or give legal advice.
- the ISO does not get involved in non-University related problems or complaints.
- the ISO does not overturn binding decisions, but can examine procedural fairness.
- **the ISO's Office is not an office of record. Speaking with the ISO is not "notice to the University" of problems or policy violations. Often persons will seek advice from the ISO privately, before deciding what actions to take in response to a problem. If the staff member wants the University to "be on notice," that is, formally to know about a particular problem and formally respond, the ISO can help to identify what office should be contacted.**
- the ISO does not keep formal written records but can help a staff member to determine how to keep his/her own records, if the staff member so wishes.