Our Ref: Your Ref: Date:

Draft letter for solicitors for issue under the Mediation Act 2017

Dear

The Mediation Act 2017 (‘the Act’) requires that in advance of issuing any proceedings, I should advise you to consider mediation as a means of attempting to resolve your dispute. Mediation is a voluntary process. We cannot therefore insist that the proposed defendant(s) submits to mediation but we can offer it and given the many advantages of mediation to both a plaintiff and a defendant, the defendant(s) may well agree to it.

Mediation involves the appointment of a mediator who is entirely independent of the parties and whose role is to assist the parties to reach a mutually acceptable agreement to resolve their dispute. The mediator does not decide who is right or wrong. Their sole function is to assist the parties in arriving at a mutually agreeable solution.

The advantages and benefits of mediation are generally regarded to be as follows:-

1. The process is relatively inexpensive. Both parties pay one half of the mediator’s fees. Any legal costs incurred in the mediation must be borne by the party obtaining the legal services.
2. The parties are not confined to considering the issue that might be the subject of any court proceedings. If the parties wish to consider resolving other issues as part of a wider context, that is open to them.
3. Because mediation is not an adversarial process the parties are more likely to be in a position to resume a positive relationship following mediation than is the case following litigation.
4. The process is entirely confidential. If it is unsuccessful and litigation follows, neither party is entitled to advise the Court of what occurred in the mediation (subject to the exceptions that arise out of Section 10 of the Act).
5. Mediation has a high success rate. Because of the confidentiality of the process it is impossible to be precise, but most mediators would claim to have a success rate of at least 70%.
6. Mediation, unlike litigation, is a fast process. A mediation would normally only last one day and one would expect the mediation to take place a month or so after the mediator is appointed.

If the parties cannot agree upon a mediator, there are a number of institutions who will make an appointment. These include the Law Society, the Chartered Institute of Arbitrators, Mediator’s Institute of Ireland and Mediation Ireland. The names and addresses of the mediators registered with the Law Society are available online through their ‘[Find a Mediator](https://www.lawsociety.ie/Find-a-Solicitor/Mediator-Search/?filters=v_all)’ facility.

All of these mediators would have appropriate qualifications. However some mediators are better qualified than others in specialised areas of dispute. If you are interested in pursuing mediation, I would be happy to discuss with you how we might go about finding a mediator with an appropriate skill set to resolve your dispute.

I am obliged to inform you of the content of Sections 10 and 11 and sub-sections 14(2) and (3) of the Act. I am attaching at Appendix A, a copy of Sections 10, 11 and 14.

– Section 10 relates to confidentiality and sets out the exceptions to which I referred above.

– Section 11 deals with enforceability.

A mediation settlement is generally enforceable as a legal contract between the parties. Section 14(2) requires a solicitor when instituting proceedings to file in court a statutory declaration confirming that he or she has performed the obligations imposed by section 14(1), to advise the client as to the nature of mediation, benefits et cetera and sub-section (3) states that if a solicitor fails to do so the Court will adjourn the proceeding until the solicitor is in a position to provide such a declaration.

Bearing the above in mind, and having regard to the facts relating to your own dispute, I would advise as follows:-

*(The solicitor should go on to give specific advice as to the appropriateness or otherwise of mediation in the particular circumstances of the client’s dispute. The solicitor should bear in mind in doing so the provisions of Section 21 as indicative of the approach the court is likely to take to a party who refuses to consider engaging in mediation. The solicitor should ensure that he receives instructions from the client in response to the correspondence before commencing proceedings).*

Yours sincerely

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**Note 1: The above is a general letter meeting the requirements of the Mediation Act 2017. It should be modified to meet the circumstances of a particular dispute. It should in particular be modified if the dispute arises out of a family law issue.**

**Note 2: Section 14(1)(d) requires the solicitor to advise the client that mediation may not be an appropriate means of resolving the dispute where the safety of the client and / or their children is at risk.**