



Nationwide

Mediation

Service

**Proudly Partnered through
the IFA, the IPAV & the MII**



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1. Introduction



Mediation is a way for parties involved in a dispute to resolve that dispute without resorting to the traditional court route.

IFA believes that mediation should be considered as an option by farmers where disputes have arisen over various property-based transactions. The following document provides further information on mediation, how it works in practice, and provides further detail on a mediation service available to farmers renting or leasing their lands through the IPAV, with the support of IFA and the MII.

Joe Healy
IFA, President



The Mediators' Institute of Ireland is the professional association for mediators in Ireland and is committed to promoting mediation as the process of choice for resolving conflicts in a wide variety of contexts. Our members are drawn from all 32 counties and are committed to the highest standards in training and practice.

We are delighted to be a part of this Nationwide Mediation Service that will offer mediation for disputes in agricultural contexts so that parties can benefit from a safe, confidential and collaborative process provided by trained and highly skilled mediators.

Sabine Walsh
MII, President



IPAV promotes mediation as a simple and effective method of resolving disputes that may arise in any farm setting, especially land letting. Mediation is quick and very cost effective and is handled by highly skilled mediators who are members of IPAV &/or the MII. IPAV is delighted the IFA have opened the IFA Master lease of agriculture to IPAV Members and we strongly recommend our Members avail of this lease, especially in the knowledge that the MII's mediation service is now available in conjunction with its use.

We are proud to recommend this nationwide mediation service in partnership with the IFA and the MII, and hope for the future, that it will dispense with the need for many future court appearances.

Ella Dunphy
IPAV, President

2. About the Partners: IPAV, MII & IFA

The Institute of Professional Auctioneers and Valuers (IPAV)

The Institute of Professional Auctioneers and Valuers (IPAV) was established in 1971 as a representative professional body catering for the professional and educational requirements of qualified, licensed auctioneers, valuers, estate agents and property professionals. IPAV currently represents over 1,300 Members throughout Ireland.

The IPAV is the only professional Institute solely catering for the Educational and Disciplinary requirements of qualified, licensed auctioneers, valuers, estate agents and property professionals in Ireland.

The Institute's Agricultural Committee has a very active presence among members, and has regular in-depth briefings and seminars, with high attendance figures showing that our members are very focused on the agricultural aspects of their business and the needs of their farming clients. IPAV are delighted to recommend the tried and tested *IFA Master lease of agriculture* as the only lease for its Members to use. Furthermore, IPAV are pleased that IFA members may decide to engage IPAV members to let or lease their lands.

The Mediators' Institute of Ireland (MII)

The MII is the professional institute for Mediators in Ireland. It was established in 1992 to promote the use of quality mediation as a process of dispute resolution in all areas by ensuring the highest standards of education, training and professional practice of mediation and by increasing public awareness of mediation. The MII holds a register of MII Members who are required to adhere to standards of practice, continuous professional development, practice oversight, and a code of ethics. It also has non-practicing Affiliates including Trainee Mediators and individuals and organisations which have an interest in mediation.

Irish Farmers' Association (IFA):

IFA is the representative organisation of over 75,000 members throughout the country and is the recognised voice of Irish farmers in Europe and internationally. The Association promotes the ongoing development and competitiveness of Irish agriculture and the food industry, which is making an important contribution to Ireland's economic recovery.

The Association's 946 Branches are recognised as the fundamental unit of the organisation, playing a vital role in IFA's countrywide network, reaching into every parish across rural Ireland and maintaining our mass membership.

Cost:

* IPAV members will conduct a **free** open market rental valuation on the land to be leased for IFA Members.

* MII selected Member's initial, and if required second mediation consultation, will attract a **50% discount to IPAV & IFA members**.

3. Farming & Mediation

Disputes and disagreements are an everyday reality of people's private and professional lives. They can arise from a multitude of reasons and rankle even the firmest of farming relationships and associations. Whether it is ownership of land going back several decades, to modern share farming agreements, disagreements can arise that are personally, professionally, financially, legally and socially damaging.

In the farming sector, success hinges on stability in relationships, associations and contracts. The land lease, for example, affords all parties advantages and security. However, any agreement or contract has the potential to cause disagreement, and agricultural land agreements are no exception. Therefore, it is crucial that the efficient and effective resolving of disputes be part of the IFA Master lease of agriculture so that parties can immediately identify a route to resolving a problem.

Whilst some issues are easily resolved, many disputes cannot be easily straightened out and require the assistance of a third party. Whereas this is traditionally the legal route – solicitor and court – the role of mediation is increasingly common. It is arguable that Mediation is well suited to most disputes because it gives parties control of the outcome of a dispute, as well as being much faster and less costly than going to court.

The Institute of Professional Auctioneers and Valuers endorses a Mediation Service in conjunction with the IFA and the MII, which can be activated by IFA members in the event of a dispute. The service can be activated either through the IPAV Member or directly Online to MMI members, or via referrals from Solicitors, Accountants or Agri-Consultants.

4. What is Mediation?

Mediation is a way for parties involved in a dispute to resolve that dispute without resorting to the traditional court route. The process has the benefit of being confidential, faster and often far cheaper than the court process. Additionally, it works on the belief that parties have the potential to work together to come up with their own solutions to their dispute, and the belief that parties can continue to work together after mediating a dispute.

5. What is the Mediation Service?

1. One or more parties seek to mediate a dispute, and approaches IPAV &/or the MII &/or the IFA.
2. The Mediator is appointed, who then contacts both parties and invites them to separate, one-to-one pre-mediation consultations. The confidential and impartial role of the Mediator begins here, and each party is encouraged to speak openly and honestly about the issue at play.
3. The mediation session is then scheduled when all parties come together – sometimes in the same room or sometimes in separate rooms – and the Mediator commences the process of helping the parties to address their dispute. Any party can leave the process at any time if they decide the process is not meeting their needs. However, the Mediator will encourage all parties to absolutely exhaust the process before they disengage
4. Where the parties can find a mutually agreeable and workable solution, they sign a Mediated Agreement which, once signed, is binding on all parties.

6. Who Mediates?

MII has a membership of accredited, experienced Mediators who are trained and skilled in the process, with particular knowledge of property. A Mediator always acts as an independent, entirely impartial party and it is his / her role to assist parties in developing their own negotiated solutions and agreements. In this way, the disputing parties are empowered to resolve and repair or move on from their own disputes.

Clients can access a list of mediators through the MII. The chosen Mediator will conduct the mediation process either individually or in pairs, and they do so under the Code of Practice and Ethics of the Mediators' Institute of Ireland. Where other professionals are required including specialists like solicitors or accountants, they are brought into the process when necessary.

Only Advanced Members and Members who hold a current MII practicing certificate are approved by the MII to mediate and are bound by the MII Code of Practice and Ethics to only mediate where they have the appropriate training, knowledge and competence to effectively mediate.

7. How long does Mediation take?

The key to Mediation is to move and progress quickly. Even a long-standing dispute which has been under the legal process for many years can be quickly progressed within a matter of days through mediation.

From the time the mediator has been approached, the initial pre-mediation consultation usually takes place within 3-5 days. In that session, the Mediator assesses whether parties are in a position to make decisions on the dispute (in other words are the real decision-makers at the table?), and whether the parties need to gather information on the dispute, which may take a number of days. The next stage – the mediation itself – is usually scheduled within 3 – 5 days of the initial consultation.

A mediation can be completed in one session or can be divided into a number of sessions; however, it is not designed to be an on-going process, and it is the Mediator's role to encourage parties to make progress. The effectiveness of the process is entirely in the hands of the parties in dispute, aided by an able, focused and trained Mediator.

8. Costs of the Service

The costs of mediation are always divided equally between all parties involved. This is critical to the balance of the process.

Costs usually include the Mediator's fee, any costs for meeting room hire and food, tea / coffee, etc. that may be required.

The initial consultation involves a set charge of €300 (plus VAT), based on a dispute involving up to three parties. The initial and if required second consultation will attract a 50% discount to IPAV & IFA members, which reduces the cost to €150 (plus VAT).

The fee is €250 (plus VAT) per hour thereafter. It is important to reiterate that this is not an on-going or unending process. If the Mediator finds no progress, she or he may stop the process and suggest alternative routes to dealing with the dispute.

Payment is requested upfront, based on a proposed number of hours to be agreed between parties and the Mediator. Again, mediation is designed to be time-and cost-efficient, rather than being open-ended, which is costlier on all parties.

9. Protecting Parties: Complaints & Redress

Mediators work under MII (The Mediators' Institute of Ireland) code of ethics and best practice. In the event that a party has a complaint against a Mediator, they should

- 1 Raise it directly with the Mediator(s) initially
- 2 If still unresolved, raise it with the MII through the MII Complaints Procedures

Further details are available from MII at <http://www.themii.ie/complaints.jsp>

10. Case Study – Succession & Agricultural Lands

Background: Agricultural lands were transferred from father to sons prior to father's passing, over 10 years' ago. In the current day, the brothers are tenants in common owners of the entire lands, and they now want to consolidate their individual holdings with a view to farm development. Each brother operates a distinct farming focus, whilst sharing equipment, land rotation and labour.

Issues: The proportionate allocation of lands transferred by the father whilst alive differed from the proportions referred to subsequently in the father's will, therefore raising the question as to whether any parties gained more or less in the will. Taxation and farm grants also made it difficult for the brothers to cost effectively take their proportions into individual folios.

Status: The brothers have fallen into disagreement over their individual entitlements to the lands and have attempted to resolve this matter through the courts.

Solution: A mediation process in three parts:

- 1 Pre-mediation whereby the mediator meets all parties, including spouses. This ensures all interests have an opportunity to articulate their position and be listened to by an independent, without bias person.
- 2 Mediation with the brothers, analysing all possible ways to resolve the dispute. After this session, parties are asked to seek individual legal, financial and farming advice in relation to the options discussed.
- 3 Mediation with the brothers – now equipped to make informed decisions – concluding with a mediated agreement being signed.

Duration: Initial consultation + 14 hours' mediation spread over 3 days in a 2-week period. In between meetings, parties were expected to satisfy themselves as to any legal, financial, taxation matters that would arise from the negotiations thus far.

Cost: €4000 (ex VAT). Costs were split equally between the brothers. This amount was considerably lower than the expense already incurred in trying to resolve the issue through the courts.

Conclusions:

1. All parties had an opportunity to express their position in confidence.

2. The brothers proposed the solution themselves – making it a workable plan that they developed together and which they all ‘owned’.
3. This process took 2 weeks after over 10 years of costly legal dispute. All discussions were confidential and discreet.
4. The brothers were able to maintain their relationships and continue to work together – sharing farm equipment, rotating land use and generally supporting each other.

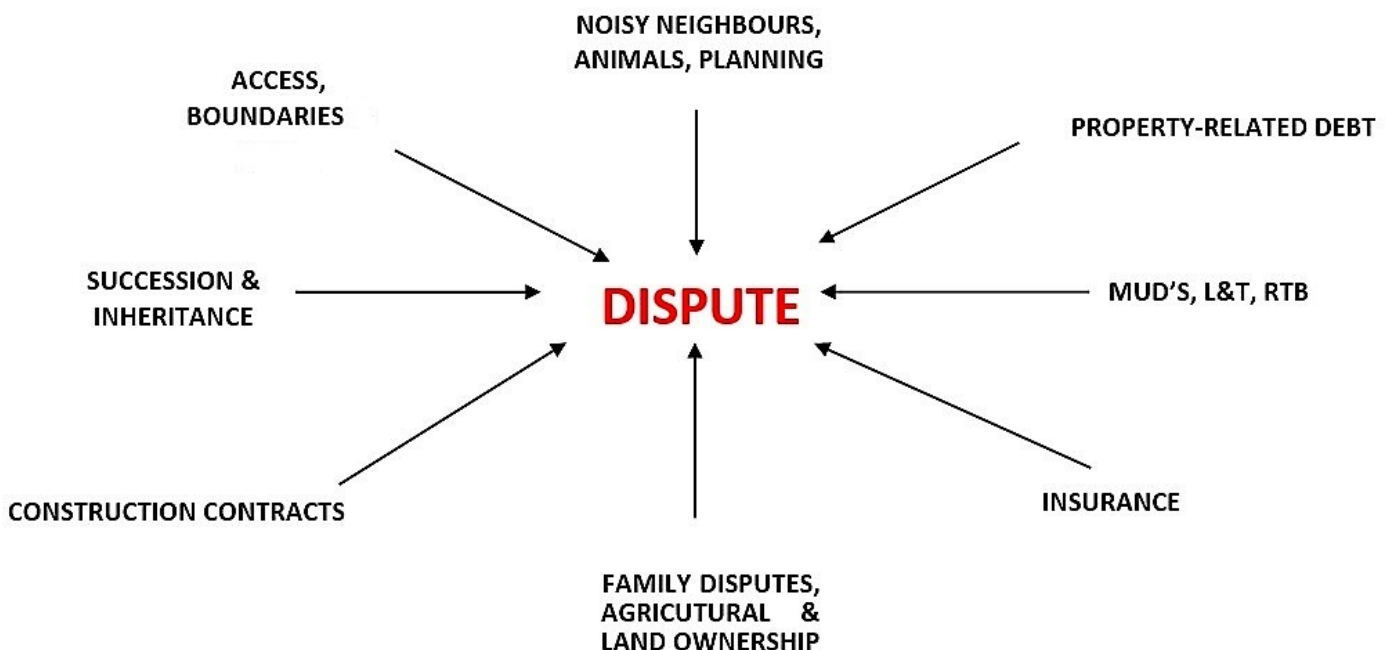
This mediation was very successful. It was regarded by all parties as a very ‘safe’, low risk environment in which they were comfortable discussing an emotive and financially critical issue knowing it as all taking place in confidence. The process was fast and cost-effective, and the parties were able to conclude the matter amicably, with relationships intact and working cooperation between brothers intact

11. Other Farming areas where mediation services could be used

Property, by its nature, can create a whole variety of disputes: a boundary between neighbours, an inheritance between siblings, a disagreement between landlord and tenant, to mention a few.

The use of mediation has been further promoted, and has increased, since the commencement of the Mediation Act, 2017 on 1st January 2018.

Other areas where mediation can help include:



12. Contact Details

A full list of IPAV Members can be accessed from www.ipav.ie

A full list of MII's registered Mediators can be accessed from www.themii.ie

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