

## Conciliation

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### Introduction

Conciliation is best considered as a settlement negotiation carried out between the disputing parties with the assistance of an independent neutral. To that extent it is very similar to Mediation but, whereas in Mediation the process is almost always facilitative, Conciliation is seen as evaluative on the basis that if the parties fail to reach agreement the Conciliator will put forward proposals for the settlement of the dispute in a recommendation. The parties are free to reject the recommendation.

Once appointed the Conciliator will take charge of the process and will require the parties to send him/her details of the dispute which will normally be circulated to the other side although the Conciliator is free to meet with the parties separately and to receive material on a confidential basis from any party. The Conciliator will convene a meeting of the parties where they will normally meet in joint session and subsequently the Conciliator will meet the parties in private sessions. The Conciliator is obliged to maintain the confidentiality of any information given to him privately and the purpose of his discussions with the party is to arrive at an agreed settlement.

### Engineers Ireland Procedures

Conciliation has been widely used in the Irish Construction Industry since the mid 1990s and it is included in almost all the standard conditions of contract normally as a mandatory step prior to Arbitration. Engineers Ireland first produced a conciliation procedure in 1994 and this was subsequently revised and it is available on this website as Engineers Ireland Conciliation Procedure 2000. In addition to the above there is a second procedure, Engineers Ireland Conciliation Procedure 2007, specifically drafted to comply with Clause 13 of the New Public Sector Contracts introduced by the GCCC.

### Decisions

Conciliation is a process which is entered into on a voluntary basis by the parties which means the process can be broken off at any point and equally they are not obliged to accept any proposed or recommended settlement. It is a confidential process carried out on a without prejudice basis which means that communications, documents etc. produced as part of the Conciliation are inadmissible in subsequent proceedings. The process is normally carried out to fairly strict time limits set out in the contract or in the procedure and in addition the parties almost always pay their own costs of the Conciliation and share the Conciliator's fee and expenses. The parties are free to reject the Recommendation normally within a specified time frame but if they do not do so it becomes final and binding.

If settlement is not achieved the Conciliator will proceed to draft and issue a recommendation normally without reasons. Traditionally the approach adopted in such a recommendation, as set out in the Engineers Ireland Conciliation Procedure 2000, was the Conciliator's opinion as to how the parties can best dispose of the dispute between them and need not necessarily be based on any principles of common law or equity. The approach in the new Public Sector Contracts is radically different where the requirement is that the Recommendation is to be based on the parties rights and obligations under the contract.