

Mediation Country Report

Ireland

by
ADR Center

1) Definitions

What are the definitions for mediation and conciliation in the legal framework of your jurisdiction?

Mediation and conciliation are not part of the legal framework in Ireland, although are being increasingly used in family, employment and commercial disputes.

2) Legal Framework

- *What are the Statutes, procedural rules and case law that demonstrate how intertwined mediation is with the legal system in your jurisdiction?*
- *What is the protections provided to confidentiality of mediation proceedings under the law?*
- *Are the commercial contracts and mediation settlement agreements enforceable in your jurisdiction?*
- *Are the parties bound by terms of contracts that require mediation and is a settlement agreement they may reach enforceable?*

There is legislation in relation to the use of mediation – mainly in the Family Law area. Mediation has also been specifically provided for in the following Acts:-

Civil Liability and Courts Act;

Equal Status Act, 2000; the residential Tenancies Act, 2004;

Financial Services Authority of Ireland Act, 2004;

Civil Liability and Courts Act, 2004; Order 63A Rules of the Superior Courts (Commercial Court) 2004;

Disability Act, 2005;

Garda Ombudsman legislation.

As there is no legal framework or accreditation requirements for mediators, **confidentiality** of the procedure is only protected by the codes of ethics of the mediation bodies themselves.

3) Mediation Schemes and Providers

- *What is the basis and the procedure for court-annexed schemes?*
- *Who are the major mediation providers in your jurisdiction?*

The Civil Liability and Courts Act provided for Court to direct that a mediation conference be held and allowed the Court to appoint a Mediator where the parties hadn't agreed a Mediator. The Mediator must report back to the Court on the outcome of the mediation conference including a statement of the terms of any settlement or explaining why the mediation did not take place. If the court is satisfied that a party didn't attend the mediation conference they may penalize that party on costs. Effectively therefore mediation under this legislation is compulsory with a possible penalty on costs. Further the Mediator is bound to report to the Court on the mediation.

The Rules of the Superior Courts were amended in 2004 to provide for a Commercial division of the Court and in the legislation power was given to the Judge to adjourn a case for not more than 28 days to allow the parties to consider whether the matter should be referred to mediation, conciliation or arbitration. There is no duty to report back to the Court.

Apart from the **Family Mediation Service** which is the Government Service for Family Mediation there are 2 significant professional bodies:

The **Mediators' Institute of Ireland** - formed by family mediators with the aim and intention of maintaining high

standards in family mediation and joined by workplace Mediators and some commercial, community and restorative justice Mediators.

Irish Commercial Mediation Association - organisation whose aim it is to promote the use of commercial mediation – rather than Mediators. The Council consists of both Mediators and business people.

4) Regulation of Mediators

- *What training courses and accreditations are required for to be an accredited mediator in your jurisdiction?*
- *How many training hours are required for accreditation?*

There is no legislation regulating Mediators or mediation so any person without qualification or training may practice as a Mediator.

However, the **Mediators' Institute of Ireland** has revamped and reviewed all of its accreditation procedures, has agreed competencies for the different categories of members and has agreed a compulsory assessment process to achieve each level of practising mediator.

5) Uptake and Future Developments

- *What is the success rate of mediation? Please reference statistics, where available.*
- *Is there any potential future legislation, plans or court-annexed schemes? If so, please discuss in detail.*

The Law Reform Commission's Consultation Paper on Alternative Dispute Resolution was launched by the Hon Mr. Justice Peter Kelly, judge of the High Court on **July 30th, 2008**.

The Consultation Paper is part of the Commission's Third Programme of Law Reform 2008-2014, under which the Commission is committed to examining the main processes of alternative dispute resolution (ADR) and associated key principles and to exploring options for their reform. The Consultation Paper makes 50 provisional recommendations on ADR, in particular on mediation and conciliation.

The main recommendations in the Consultation Paper are that:

- There should be a general statutory framework that defines clearly what is meant by mediation (mainly facilitating agreement) and conciliation (facilitating agreement and sometimes also advising the parties about an agreed resolution);
- Mediation and conciliation should be seen as very different from litigation but should also be considered as part of a fully integrated civil justice system that includes litigation. Each process plays its appropriate role in meeting the needs of the parties involved and fundamental principles of justice;
- The key principles of mediation and conciliation should be set out, including their voluntary nature, the ability of the parties to control the process, the need for confidentiality, and the need for transparency and quality control of the process;
- A court should be able to enforce an agreement made at mediation or conciliation;
- The training and accreditation of mediators should be based on agreed international standards, building on existing accreditation structures already in place in Ireland.

6) Costs

What are the costs of mediation? Please assume that the duration of the procedure is one day for a dispute valued at 100.000 €.

Where the resolution process is provided through, for example, the courts or the Family Mediation Service, most or all of the financial cost is carried by the State. Where the resolution process involves private mediation, the cost is often shared by the parties involved and depends on the dispute and the mediator selected.

7) Mediation Advocacy Training

Training schemes and providers are outlined, including the distinction between mandatory and optional training, length of the training and percentages of lawyers who have completed the courses.

There is no mandatory training requirement currently in Ireland. Each mediation body tends to carry out the training designed to fit its standards.