

Workplace Mediation: Using Research to Shape the Agenda in Ireland

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Abstract

This chapter will outline the philosophy and approach of the **Kennedy Institute Workplace Mediation Research Group** (KIWMRG) in Ireland. The Group is comprised of a unique mix of academics, practitioners, and 'pracademics' whose *raison d'être* is to use research to address issues and challenges in the field of workplace mediation. Formed in 2015, the Group has already delivered two substantial research projects sponsored by the Mediators' Institute of Ireland (the MII) and the Financial Services Ombudsman, and a third is in progress. The aim of the Group is to ensure that workplace mediation practice in Ireland (and beyond) is informed by a body of solid empirical research. This chapter will draw on our projects completed to date to illustrate the value of research in informing policy and practice.

Keywords: Community of practice, co-operative enquiry, mediation, research, workplace.

1 Introduction

January 2015 heralded a significant event in the world of mediation research in Ireland. On a beautiful crisp winter's morning in the picturesque town of Maynooth County Kildare, a large gathering took place of mediation researchers and practitioners. This event was organised in the hope of addressing the frustrations felt by many at a lack of recent, reliable and relevant data on workplace mediation in Ireland. Despite, or perhaps because of, these frustrations there was a sense of purpose in the air, a feeling that a junction had been reached, and that real progress could be made.

Mediators from the four corners of Ireland met on that day to discuss a potential pathway into the future. Using breakout groups and workshops they focussed their combined problem-solving skills on reimagining the trajectory of workplace mediation in Ireland. What distilled out of that gathering has been a unique group that has begun to make inroads into what it set out to achieve

– the development of the theory and practice of workplace mediation in Ireland through a solid foundation of applied research.

Soon to celebrate its third anniversary, the group is deeply appreciative to Kevin Brown at Mediation International for the opportunity to pause and take stock of its remarkable story and to share it with others. It is our intention to develop friendships that nourish and give meaning to the work we all feel so honoured to be part of.

This chapter will firstly describe how, from humble beginnings this small group has had such remarkable success and has, in a short space of time, begun to transform the Irish workplace mediation landscape. From there it will describe the context of the group's formation against a background of a struggling workplace mediation sector in Ireland. The third part of the chapter will seek to demonstrate, by example, two exciting projects that have already advanced workplace mediation theory and practice in Ireland. The final part of the chapter will seek to plot the expected trajectory for the group and its potential relationship with the world community of mediation.

Part 1: Coming into being

1.1 Context

Prior to 2015, mediation in Ireland was confined to a small, dedicated community of practitioners, trainers and advocates, led in the main by the Mediators Institute of Ireland (The MII). Outside of this sphere of influence workplace mediation was not widely known, understood or appreciated. However for those within this community of knowledge, the field was well studied and understood, and those with first-hand knowledge and experience of workplace mediation were passionately committed to its advocacy. Drawing on significant internal resources, both in terms of professional experiences and international learnings, a clear picture of what was commonly understood as workplace mediation was formulated. It was determined that for the purposes of the emerging paradigm, new definitions would be required that addressed the question of “what is known”.

Thus in Ireland workplace mediation is now described as a process of alternative dispute resolution (ADR) and a part of organisational conflict management systems (CMS). It is

...a confidential and voluntary process whereby an independent mediator assists two or more individuals, work groups, or employers and trade unions experiencing conflict or a dispute to identify their issues and objectives, and explore how those objectives can be addressed with a view to reaching agreement. Kenny 2014

‘Progress is impossible without change, and those who cannot change their minds cannot change anything’, said Irish author and Nobel Prize winner George Bernard Shaw. Changing minds, or at the very least informing new thinking, was recognised as a key ‘first-step’ for the emerging movement. At this time in Ireland mediation was not a fully regulated profession, was under-utilised (and under-valued) by human resource departments and absent from statute books. One could appreciate, given the passion those in the community had for the practice, the desire for redress, for action and for progress.

The home of this effort to effect positive change in our understanding and application of workplace mediation in Ireland was provided by the Edward Kennedy Institute, a unique body developed by Peter Cassells at Maynooth University. The Edward Kennedy Institute was formed in 2011 to provide an educational framework for conflict intervention practices and proved an ideal nexus for these disparate voices, a catalyst by which strengths and resources could be counted, combined and strategically applied.

So it was that in January 2015, over eighty people came together at a research symposium organised and hosted by the recently formed Kennedy Institute Workplace Mediation Research Group. Its objectives were firstly to consider what is known about workplace mediation – both from national and international perspectives – and secondly to identify the important questions that will inform and support the continued development of the practice of workplace mediation in Ireland. The highly interactive conversation enabled a creative exploration of how the research agenda in relation to workplace mediation in Ireland could be progressed and how Ireland might be established as an international ‘hub’ for mediation research. The discussions identified a shared objective that research should shape the future of workplace mediation in Ireland, and

delivered an outline framework for a strategic plan. Key research areas and important research questions were identified through that initial, structured conversation.

The result of this gathering was the growth of the Kennedy Institute Workplace Mediation Research Group (KIWMRG) from a group of three researchers/practitioners to a group of 14. Its fortune and in so many ways the source of its remarkable success lay in the ethos and guiding principles established at its inception by those that wished it well and moreover its founders, Margaret Bouchier, Deirdre Curran and Treasa Kenny. Together they formed the nucleus of the KIWMRG and epitomised the synergy that would evolve into the wider group. Deirdre, Margaret and Treasa each bring a particular dimension, academic, practitioner and practitioner/academic (aka pracademic!) – to the centre of KIWMRG activities. Their passion, drive, integrity and commitment to principles of effective collaboration have inspired not only the wider KIWMRG group but also those with whom the group interacts, forming a signature of quality that has become the group's trademark.

Now comprising of researchers and practitioners drawn from a variety of workplace contexts, the KIWMRG provides a forum to explore important questions that will inform and support the continued development of workplace mediation in Ireland. Its members, now numbered at fourteen, are an eclectic mix of academics and practitioners.

The KIWMRG approach is to create and maintain a research-practice synergy. Not an easy alliance - but all the more valuable for both when the right balance is struck. In an ideal world, practitioners should be eager to read what is published in research journals, because what they find there should help to make them more effective in their work. Similarly, researchers should view dialogue with practitioners as opportunities to develop better research studies (McLeod, 2001:3).

I realized that without understanding the underlying theoretical principles of practice, we are merely skilled mechanics trying out one tool after another without understanding what tool would be appropriate to the task. Lang, 2000

It was, therefore, critical that research into workplace mediation would move beyond the more traditional research approach of a focus on theoretical development with limited direct links to

practice and where the practitioners are the ‘subject’ and practice is studied from the outside. The aim was to explore creative ways of identifying and addressing important issues through the collaboration of academics and practitioners in active research to enhance understanding so as to improve practice. This is in direct contrast to the traditional approach to research where publication in high ranking journals, which few practitioners read, is often the primary goal.

1.2 The Mission

The primary purpose of KIWMRG is to promote, develop and deliver research in relation to workplace mediation in Ireland. The role envisioned for the Group is a partnering and collaborative role with practicing mediators, academics, organisations and participants in mediation, to understand and enhance the use of workplace mediation. This informs the Group’s mission which is “to critically inform the continuing development of workplace mediation practice in Ireland through cooperative research”. It also informs the Group’s vision “to establish a centre of excellence in Ireland to enhance the credibility and application of workplace mediation through the synthesis of research and practice”.

Commitment to Operational Excellence

Both oversight and adherence to the highest standards are core KIWMRG values. An Advisory Group comprising six, conflict resolution experts including – Professor Alec Colvin (Cornell University US); Professor Bill Roche (University College Dublin); Ms Karen Erwin (former President of the MII); Dr Delma Sweeney (former Academic Director, Mediation & Conflict Intervention at the Kennedy Institute); Mr Michael Lang (US Mediator and educator) and Ms Caroline Jenkinson (Deputy Chair of the Irish Labour Court) – was established to provide guidance on issues of strategy, policy and ethics.

In addition, a Steering Committee was formed from the wider KIWMRG to direct the group’s activities according to its stated objectives. As part of its obligations in this respect, the KIWMRG fully subscribed to support, adhere to and commit to the highest levels of organisational governance in terms of operational and research activity. The group complies with international General Data Protection Regulation (GDPR) requirements and the Maynooth

University Research Policy. The Research Group does not operate for profit. Funding is only sourced to cover expenses incurred in conducting and disseminating the research.

1.3 A condensed ethos based on community and co-operation

As a 'community of practice' the KIWMRG adopts a unique approach to research - termed 'co-operative enquiry'. A 'community of practice' is a group of people who share a common concern, a set of problems, or interest in a topic and who come together to fulfil both individual and group goals. The process of co-operative inquiry requires an iterative cycling by a group of people between phases of reflection and action (Heron, 1996; Reason, 1994) whereby a group meets to explore an agreed area of human activity and develop research questions for exploration. Co-operative enquiry is a research methodology that is specifically suited to the research of an emerging field by academics and practitioners as it is a form of active research that involves working with others who share concerns and interests in relation to a topical area. The purpose is to develop new and creative ways of looking at the subject matter, and applying that enlightened perspective to practice in order to do things better.

Co-operative inquiry may seek to describe and explain some domain of experience, to explore practice within some domain with a view to effecting change. It may follow an explicit sequence of plan, act, observe, reflect, then re-plan, and/or it may take a more ad hoc, tacit approach to the interplay between action and reflection, allowing learning to emerge creatively as a response to the situation. (Heron, 1996: 45-47)

Cooperative inquiry is based on engaged and iterative processes of learning and development through research. Within KIWMRG the capacity of all members is enhanced by identifying and providing specific trainings – e.g. reviewing academic articles, developing library research skills, designing research strategies – and the use of online collaborative platforms and social media outlets such as LinkedIn, Twitter and ADR-related blogs.

Coaching has been a key component of the inquiry and development process, for example in relation to conducting a literature review, understanding research ethics, research methods and thematic data analysis. The experience and competence of individual members of the group has

been freely shared and has contributed to the development and publication of high quality research reports and reflective practice models. The supportive and non-hierarchical approach of the group is evident in the active encouragement of members to take part in presentations. There is also a writing circle which both encourages and supports individual members to write and to submit their articles for publication. Two members of the group have already taken on the challenge of PhD study and others are interested in such a path in the future.

A key element of the Group's cooperative inquiry approach is reflection by individuals as research projects are progressed, the intention being to encourage continuous learning from project to project. With each project, increasing emphasis is placed on finding the best and most effective way of encouraging and capturing reflective learning by members of the project team – from reflective journals, to e-reflection – to enhance and inform Group learning.

Part 2: The emergence of workplace mediation research in Ireland

The Irish research gap identified at the Maynooth 2015 Symposium was troubling for both policymakers and advocates alike. As noted above, there was little published academic research in relation to workplace mediation in Ireland and limited survey research by the professional body. The group looked to what is known internationally to assess what steps should be prioritised.

Although mediation has been practiced in workplace disputes in the US since the 1930s, academic and policy interest in its use is more recent and largely stems from dissatisfaction with conventional rights-based disputes procedures (Herrman et al., 2001). Mediation is organized and conducted relatively quickly with less management time taken up (Bingham and Pitts, 2002), while offering financial savings (Kressel, 2006; Goldberg, 2005) with costs estimated by some as five times lower than lengthy conventional procedures (Saundry et al., 2013).

The international interest in workplace mediation from practitioners, policymakers, and scholars, has grown significantly in recent years and there is some evidence of an upward trend in its use. Mediation has generally been seen as an antidote to a growing “problem” of embedded

organizational grievance cultures and the greater use of litigation to resolve individual employment disputes. The case for workplace mediation has been framed in terms of increasing the efficiency of conflict resolution while critics suggest that mediation essentially masks the coercive reality of work relations.

A comprehensive study of conflict management innovations in Ireland, undertaken by Teague et al. (2015), presents mediation as ‘an increasingly popular part of a systems approach’ to managing workplace disputes (2015:111). The Workplace Relations Act (2015) replaced four statutory dispute resolution bodies with a ‘single body of first instance’ – the Workplace Relations Commission (WRC). The existence of a separate Mediation Service within the WRC is a significant step in the development and promotion of workplace mediation in Ireland, finally giving workplace mediation a statutory foundation in this jurisdiction. While the Mediation Act 2017, recently enacted into Irish law, is more relevant to family and commercial issues, it adds significant breadth to the statutory framework of mediation in Ireland.

In line with codes of practice issued by the Health and Safety Authority and Equality Authority, many Irish workplaces now incorporate the option of mediation in their policies and procedures for addressing workplace conflict and disputes. Growing interest in workplace mediation in Ireland is also reflected in the establishment of internal mediation services across a range of organizations in Ireland including: Irish Rail; An Post; The ESB; Dublin Port; Dublin Bus; Teagasc; and The Courts Service (Teague et al, 2015:98). An internal mediation service also operates within the national Health and Social Care Service and we also have a Civil and Public Service Mediation Service (CPSMS).

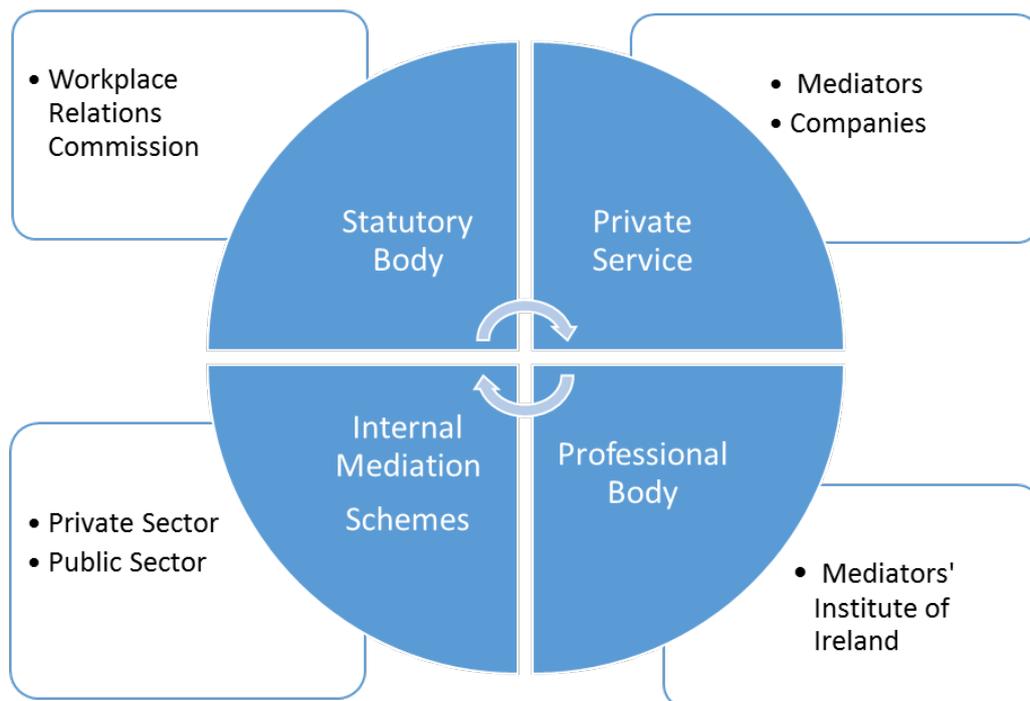


Figure 1: Workplace mediation provision in Ireland

The Mediators' Institute of Ireland (MII) is the professional association for mediators in the Republic of Ireland and Northern Ireland. The MII was established in 1992 to promote the practice of mediation and it provides a public list of accredited mediators on its website (www.themii.ie).

Part 3: KIWMRG Project #1: What makes an effective workplace mediator?

As the professional association for mediators, we are committed to promoting mediation as the process of choice for resolving conflicts in Ireland. Our members are drawn from all 32 counties and practice in a wide variety of different contexts. (Sabine Walsh, MII President)

The enthusiasm and energy displayed at the Maynooth symposium was not allowed to wane. Within a few weeks, the KIWMRG's maiden voyage into co-operative inquiry-based research had begun. An important prevailing question at the time related to the nature and types of skills

required by mediators in a workplace environment, a question of particular relevance to mediation training and practice standards. The Mediators Institute of Ireland (MII), the professional association for mediators in Ireland, is committed to raising standards through the continual development of best practice and through producing, maintaining and regulating mediators in Ireland. It was in this context that the MII commissioned the KIWMRG to produce a systematic review of the skills, behaviours and competencies of workplace mediators that could be used as a foundation for informing the Institute's strategy, policy, training and quality standards. The findings of the research project were published in September 2016 in twin reports entitled:

- 'Shaping the Agenda 1: Exploring the Competencies, Skills and Behaviours of Effective Workplace Mediators.'
- 'Shaping the Agenda 2: Implications for Workplace Mediation Training, Standards and Practice in Ireland.'

In keeping with KIWMRG philosophy these reports are free to download at www.kiwmrg.ie.

3.1 Project Methodology

Central to the core philosophy of the KIWMRG is its parity of esteem between academic and practitioner knowledge to the development of mediation. Its motto “Research informing practice, practice informing research” reflects this core concept. As a consequence, the Group operates on an egalitarian model and so, for example, at the outset of the MII project individual members were invited to express interest in project roles. A research team of nine members – academics and practitioners - was formed to conduct the research, led by Dr Deirdre Curran.

The project was comprised of two phases;

3.2 Phase One

This phase of the research comprised of a systematic review of published, academic literature and empirical research identified as relevant to the core questions being addressed. Each of the nine members of the research team took part in an initial search of literature available based on pre-defined geographical areas and established publication databases. This demonstrated the benefit of having a group of researchers working together towards a common goal as it enabled individuals to research in multiple locations and from multiple coordinated viewpoints. Following the initial identification of a body of academic and 'gray' literature, a template was designed so that the literature identified could be reviewed to a consistent standard identifying the key relevant elements. Sub-groups then wrote the individual sections of the first research report in which the literature reviewed was structured around the following themes:

- Benefits of mediation
- Importance of context
- Mediator style and qualities
- Mediator competencies, skills, knowledge and behaviours

Titled '**Shaping the Agenda 1**', this report outlines what is currently known about workplace mediation: its benefits, styles and strategies, its expected outcomes and training challenges. It also identifies an urgent requirement for Irish research in light of the increased promotion of mediation at state level in Ireland. The report outlines some international experiences of the difficulties faced in balancing high quality accreditation and regulation with innovation and growth.

3.3 Phase Two

The second phase of the project presented a detailed analysis of the implications of the literature for mediation training, standards and practice in Ireland generally, and for The MII in particular. Each of the core literature themes presented in *Shaping the Agenda 1* were systematically analysed to identify the implications for the Irish context. In total thirty-six implications were identified in *Shaping the Agenda 2* spanning the four categories summarised below;

3.3.1 Training

The evidence presented highlights aspects of mediator training that warrant consideration. Firstly, there is a responsibility on bodies such as the MII to continue to ensure standards in mediation training, so that accredited mediators have the capacity to effectively mediate and service-users can be confident that accredited mediators have the capacity to deliver. For the individual mediator, engaging in on-going reflective practice is essential to maintain effectiveness.

The literature suggests specific areas of knowledge essential in workplace mediation and these could be specified as required training content in accredited workplace mediation training programmes. This knowledge acquisition could be assessed through a written assessment component in training or the development of an e-assessment tool. Ethical issues in mediation should also be a required feature of training programmes.

Emotional intelligence features prominently in the literature. The mediator needs to be aware of their own emotional disposition, conscious of the emotions of others and have the skills to manage the emotions in the room. Such self-awareness and emotion-management skills should be incorporated into training and on-going CPD activities.

3.3.2 Standards

Bodies such as the MII play a crucial role in the establishment and maintenance of mediation standards. The international literature highlights a number of issues that such bodies may wish to consider.

Definitions are important in ensuring a consistent understanding of what mediation actually involves. In light of this, mediation bodies should consider revisiting their definitions of mediation and other associated concepts such as competencies, skills and behaviours.

It is important to establish criteria that can be used to evaluate both individual mediators and mediation training programmes for accreditation purposes. In light of the international literature, accreditation bodies should revisit their accreditation standards to ensure that the criteria used to evaluate mediators and mediation programmes are comprehensive, robust and informed by best, international practice. These criteria should facilitate access to the accredited mediation community by a diverse pool of mediators from different cultures and professional backgrounds.

3.3.3 Practice

The international literature offers great potential for learning in relation to workplace mediation practice. At a basic level, referring to the established benefits of mediation will assist in the promotion of this dispute resolution process.

At an individual level, mediators should take on board the best-practice guidance in the literature in order to improve their own practice. A broader awareness of different mediation styles can help develop the stylistic eclecticism that leads to better practice. A consistent theme throughout the literature is that a ‘one-size-fits-all’ approach to mediation has limited success, and training programmes should reflect this. While mediators may legitimately draw on a preferred style, they need to be able to adapt to what is most appropriate for the context of each individual dispute, based on a broad understanding of the options available.

Mediators need to be aware of the impact of context, both national and local, on themselves and on the participants. They need to be both adaptable and flexible to accommodate the contingencies of the context of the dispute. At a basic level, the mediator needs to understand how local policies and practices impact on the mediation process.

3.3.4 Research Gaps

While there is a large body of international research to draw from, this project highlights the lack of empirical research into workplace mediation in Ireland. Given that the literature contends that context is important, the project team believes that mediation practice in Ireland would be greatly enhanced by research conducted in this jurisdiction. Developing a body of solid empirical research would also enhance the credibility of the mediation profession in Ireland. It would provide evidence for what we think we know about workplace mediation, and it would also open up new perspectives and ideas. Most importantly, in the context of this report, it could also inform policy and standards.

The intention of the KIWMRG is that these two documents will inform the continuing development of workplace mediation in Ireland. The group is convinced that the lessons learned in this jurisdiction are transferable to the dispute resolution communities beyond our boundaries.

Part 4: KIWMRG Project #2: Building on success: addressing a fundamental question for statutory Dispute Resolution providers, balancing concepts of confidentiality and transparency in a quality ombudsman mediation service.

'The Commission acknowledges that the principle of confidentiality in mediation and conciliation is extremely complex. Each relationship and circumstance needs to be deconstructed and rules devised to deal with each different aspect.'

The Law Reform Commission, 2010:33

In the current climate of political uncertainty and increased regulation, balancing the interests of transparency and confidentiality in the delivery of a consumer-centered, statutory-based, dispute resolution services, presents particular challenges. The presenting issue for this research project is the challenge faced by the Irish Financial Services Ombudsman (FSO), a statutory-based service provider, in balancing these interests in its mediation service. The KIWMRG was commissioned to undertake the research.

4.1 Background

The Financial Services Ombudsman (FSO) is a statutory officer who deals independently with unresolved complaints from consumers arising from their individual dealings with financial service providers. Where a complaint about a financial service provider cannot be resolved through the Provider's own complaints process, the complainant may submit a complaint to the FSO which will seek to resolve the issue by facilitating or mediating agreement between the parties or, where this is not possible, will investigate and adjudicate the complaint and issue a legally-binding finding.

In February 2016, the FSO changed the manner in which it handles complaints by making mediation the default first step in its complaints handling processes. This deliberate shift in focus to 'implement the simplest, most efficient, proportionate and effective complaint resolution processes', resulted in an increase from 70 cases being closed in mediation in 2015, to 2,500 cases being closed in mediation in 2016. While the FSO was cognisant of the role of confidentiality in its mediation service, the increased volume of mediation cases necessitated a more strategic and planned approach to the gathering of information from this service. The FSO

invited the KIWMRG to submit a proposal that would address the practical dilemma faced by the FSO in balancing the requirements for confidentiality and transparency in its mediation service. The ensuing proposal was accepted and individual members of the KIWMRG were invited to express interest in the project. A team of seven members elected to proceed with the project co- led by Dr Deirdre Curran and Margaret Bouchier.

4.2 Brief

The presenting issue for this research project is the challenge faced by the FSO in balancing the requirements for confidentiality and transparency in its mediation service. Confidentiality is a core principle of mediation and is viewed in the literature as critical to the effectiveness of the process (Deason, 2001; Freedman and Prigoffs, 1986; Rasnic, 2004). In parallel, the FSO, as a public body, must ensure appropriate transparency of its mediation policies and practices in order to:

- Satisfy its public service remit, e.g. by identifying issues in relation to particular products or systemic practices
- Raise awareness and build confidence in its mediation service
- Ensure oversight and standards of its service
- Fulfil its statutory reporting requirements
- Enable learning for the FSO service, the industry and consumers
- Ensure against a power imbalance in terms of information held by organisations who are party to multiple cases in the FSO

The purpose of this research project was to explore how this tension between confidentiality and transparency can be resolved by drawing on both the theory presented in international literature and the practices adopted by comparable institutions in different jurisdictions. The aim of the project was to identify the key considerations in relation to the gathering and reporting of information by a state-appointed mediation service and to consider the implications for the strategic development of the FSO mediation service.

4.3 Methodology

This project was conducted over a period of nine months in 2017 and consisted of two phases. **Phase 1** involved a systematic review of the relevant literature from an extensive range of international sources using a tailored template focusing on the core concepts relevant to the project, and a desktop review of codes of practice, standards documents and other relevant information available online in relation to a sample of comparator organisations. **Phase 2** involved a review of seven organisational comparators, identified by the Research Team and the FSO, using a tailored questionnaire and interview schedule to draw out the required data. The data collected was then subjected to thematic analysis.

4.4 Phase 1 Outcomes

The theoretical element of Phase 1 involved an examination of the literature relevant to the research project brief. The Research Team sourced literature from a broad range of sources, spanning international geographic boundaries, in order to establish the academic foundations for the key concepts relevant to the project including: the role of the ombudsman and the principles and regulations associated with that role; the dispute resolution processes commonly adopted by ombudsmen in the course of their duties; and the core concepts of confidentiality and transparency as they apply to the mediation process and the role of the ombudsman. Threats to confidentiality and the boundaries of confidentiality receive particular attention in light of their potential to inform the project brief. Key themes emerging from the literature include:

- While confidentiality is an accepted core principle of mediation, the boundaries of confidentiality are fluid and subject to interpretation.
- Public bodies have a duty to be transparent. Clarity is required in relation to what is confidential, why, and from whom.
- Exceptions to confidentiality may be agreed in advance to enable a level of transparency.
- Policy and practice should be consistent and based on research.
- In balancing confidentiality and transparency, public bodies should have clear and cogent policies which seek to balance and accommodate these competing factors while allowing innovations such as mediation to flourish.

The desktop review involved an examination of relevant information available online in relation to a sample of comparator organisations. Particular focus was paid to documentation relating to confidentiality, and the conditions and parameters governing confidentiality. The preliminary review of comparator organisations highlighted four key issues including:

1. A broad range of exclusions to mediation confidentiality exist in practice.
2. Mediation service providers gather and use non-identifying information for administrative, educational and learning purposes.
3. Organisations with a public service remit are cognisant of their responsibility to disclose issues of public interest.
4. In line with the increased reach of Freedom of Information, there is evidence of a high level of accessibility to personal information and information about ombudsman service processes and functions.

4.5 Phase 2 Outcomes

The data collected in Phase 2 supports the contention in the literature that the boundaries of confidentiality are fluid in practice and this results in a 'dialectic tension' between confidentiality and transparency. This tension rests on two key questions:

- What does the Ombudsman need to be transparent about and why?
- What information pertaining to the ombudsman service needs to remain confidential and why?

The organisational review reveals that pragmatic solutions can be found to address the confidentiality-transparency tension while still delivering a quality mediation service. Specifically, confidentiality provisions and boundaries can be crafted and agreed in advance. The evidence presented demonstrates that various methods are employed to achieve this, including confidentiality agreements (verbal or written), consent letters, codes of practice and policies.

The organisations reviewed take a proactive and contingent approach to information gathering and reporting and this includes specifying the categories of data to be retained and/or published.

There is considerable variety in how ombudsman services are governed and operated. The core mediation tenets of independence and confidentiality are commonly upheld and confidentiality is universally agreed as essential to the informal process. However, in terms of the ombudsman services reviewed, while the role of mediator/DRO is independent of both parties, the requirement for 'fair' outcomes requires that the role is not neutral. In light of this, the ombudsman services tend towards a more evaluative and directive (conciliation-type) approach in the interest of expediency and fairness.

The role therefore can be interpreted in practice as independent but not necessarily neutral. The dichotomy of informality-formality seems to be a more valid descriptor of service provided than naming the process used (mediation, conciliation, investigation etc.). All of the organisations strive to resolve issues informally in the first instance, only moving to more formal investigative/adjudicative processes where the informal process does not deliver a successful outcome.

The empirical findings support the contention in the literature that threats to confidentiality are limited and can and should be prepared for in advance through risk management strategies. Breach of confidentiality should be considered a last resort in these circumstances and should be clearly documented in advance, and a process put in place to address such circumstances.

The organisations reviewed are cognisant of their obligations under Freedom of Information and Data Protection regulations – whether mandated or not – and the evidence suggests that this does not significantly impact their mediation services. As observed by one of the sample organisations, protection of client information is an essential aspect of the ombudsman service, whether subject to regulatory obligation or not.

At the time of writing, the final Research Report has been submitted to the FSO and further circulation is pending subject to feedback and debrief with the FSO.

Part 5 The next horizon for the KIWMRG - Informing change

The projects undertaken by KIWMRG to date are significant in terms of their contribution to research and to practice. As we have set out above, the research meets accepted academic standards. Significantly, both projects completed to date are informing the development of professional practice – the competences of workplace mediators for the MII and its members; and the approach of the FSO in balancing the need for confidentiality in its mediation service with the requirements for transparency.

Members of KIWMRG have been actively promoting cooperative research through participation in events including to regional groups of the Chartered Institute of Personnel Development (CIPD); at the annual conference of the MII; and at the annual conference of the Irish Academy of Management (IAM). We have also presented in person at the North West Dispute Resolution Conference (NWDRC) in Seattle, USA in 2016 and via a recorded presentation with Zoom-enabled question and answer session in 2017. This was particularly innovative in that Zoom video technology allowed for discussion between conference participants in Seattle with members of KIWMRG who were in three different counties in Ireland. Members of the group also presented at the 2016 World Mediation Conference in Madrid.

The work of the group continues with the latest project under development. Following an initial conversation at the launch of the MII research project findings in October 2016, a New Zealand academic approached the Group with a proposal for a joint, comparative study of statutory workplace mediation services in New Zealand and Ireland. Having developed a project brief, the KIWMRG and the New Zealand team have commenced the first stage of this project. An interesting aspect of this project is that the model developed is transferrable to comparative studies with other countries, providing a foundation for a broader, clearer and consistent understanding of the similarities and differences between countries in their provision of statutory workplace mediation services.

Establishing and normalizing ‘pracademic’ research

The approach adopted by KIWMRG is collaborative development through partnering between researchers, practitioners, organizations and service providers to further develop the field of workplace mediation and mediation more generally. From that crisp, cold January morning in 2015 to whatever the future has in store for the KIWMRG, the original strategy of a collaborative approach between academics, practitioners, students, employer bodies, trade unions, HR professionals and other stakeholders will prevail.

As a group of scholar practitioners or ‘pracademics’ (Susskind 2013), the KIWMRG aims to deliver research that is underpinned by academic credibility and professional relevance. This requires integrity and accuracy in the data collected, transferability or generalizability of the findings, and a keen understanding of the extent to which the relationships among various constructs provide a complete and accurate representation of mediation in the workplace.

The KIWMRG is driven by a passionate belief that mediation research is important because, as an emerging profession, mediation needs research to broaden its perspective, enhance its credibility, inform policy and practice, and to enhance its development as a profession by addressing critical questions.



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