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## Shaping the Agenda 2: Implications for Workplace Mediation Training, Standards and Practice in Ireland



Research Conducted by:  
Kennedy Institute Workplace Mediation Research Group  
Sponsored by: Mediators Institute of Ireland (MII)



## Foreword

Workplace conflict can be a destructive, damaging force which impacts upon individuals, teams and organisations. Mediation is one way of addressing such conflict, of turning it around to re-build relationships and of creating healthy working environments in which people can thrive. In 2015, the *Mediators' Institute of Ireland* commissioned research to assist in informing development of its policies and standards.

This challenge was accepted by the *Kennedy Institute Workplace Mediation Research Group (KIWMRG)*, the authors of this report and a highly talented and experienced group of mediation practitioners and researchers.

For the past 18 months, the **KIWMRG** team has carried out this research and has, in this report, come up with a set of implications arising from this research for the MII. These 36 implications address issues relating to training, standards and practice in relation to workplace mediation, and identify further significant gaps in research, particularly in the Irish context. The group has thus, in turn, set the MII a challenge in considering these implications and framing future training requirements, supporting practice and designing policy accordingly. The MII must also continue to support such research in order to begin to fill the gaps identified.

The Report and its sister report, *Shaping the Agenda 1*, give a fascinating insight into the world of workplace mediation in Ireland and abroad. It identifies key issues in relation to mediator skills, competencies and behaviours in this sector of mediation. Of enormous significance is the application of this research to the Irish context and specifically to the setting and maintenance of standards of training and practice in relation to workplace mediation. This work has put the MII, as the professional association for mediators in Ireland, in a position to build standards and policies on solid, detailed and considered research, which will only enhance the usefulness and robustness of such standards and policies.

As President of the Institute, I am delighted to take on this challenge and look forward to working further with the **KIWMRG** and to extending this initiative to other sectors of mediation. Research

projects such as this are essential for the recognition of mediation as an accessible and effective dispute resolution method. Together we can continue to raise awareness of the potential of mediation and thereby assist in resolving and transforming conflicts in the workplace and other areas in the future.

**Sabine Walsh**

**President, The Mediators' Institute of Ireland**

**September 2016**

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For further information on the work of the Research Group see [www.kiwmrg.ie](http://www.kiwmrg.ie).

## Section 1: Introduction and Context

### Section 1.1: Introduction

The aim of this project is two-fold:

- 🌀 To provide a comprehensive review of the international literature regarding the competencies, skills, and behaviours of effective workplace mediators and
- 🌀 To provide an analysis of the implications of this review for mediation practice, standards and training in Ireland.

The outcomes of the project are contained in two documents:

- 🌀 *Shaping the Agenda 1*: A literature review of the competencies, skills and behaviours of effective workplace mediators.
- 🌀 *Shaping the Agenda 2*: Implications for training, standards and practice of workplace mediation in Ireland.

It is not essential to read both documents in sequence. This document, *Shaping the Agenda 2*, has a practical and applied focus and can be read independently of *Shaping the Agenda 1*, the accompanying theoretical, reference document.

This report uses a parallel structure to *Shaping the Agenda 1*, so that the reader can easily refer back to that document where necessary. This report takes each section of the first document in turn and discusses the implications of the theory for practice.

### Section 1.2: Defining the Core Concepts

The Mediation Institute of Ireland (MII) provides the following definition of mediation:

‘Mediation is a process in which an independent, neutral Mediator assists two or more disputing parties in resolving the dispute in a collaborative, consensual manner.’

**The Mediators’ Institute of Ireland**

There is no universally accepted definition of *workplace* mediation. This report provides a definition of workplace mediation based on the review of international literature.

‘Workplace mediation 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, cited in *Shaping the Agenda 1***

**Implication 1:** The MII should adopt a specific definition of ‘workplace mediation’ such as the one provided in this report.

The authors have adopted definitions of competencies, skills and behaviours for the purpose of this project based on generic human resources literature.

**Implication 2:** The MII should review and adopt definitions of associated concepts for the workplace mediation context such as competencies, skills and behavior.

### Section 1.3: The Context of Workplace Mediation in Ireland

Workplace mediation services in Ireland are provided by the Workplace Relations Commission, private mediation providers (individuals & firms) and internal mediation schemes established in large public and private sector organisations.

There are concerns in relation to the legal provisions for mediation due to inconsistencies between the Workplace Relations Act (2015) and the Mediation Bill (2012) vis-à-vis the description of the mediation process.

The two specific questions that arise are:

- ② How can this apparent ambiguity be resolved?
- ② Which set of regulations and/or codes of practice should be adhered to?



**Implication 3:** The MII, as the professional organisation for mediators in Ireland, should lobby regulatory agents to address the inconsistencies and ambiguities between the Workplace Relations Act (2015) and the Mediation Bill (2012).

## Section 1.4: The Use of Workplace Mediation

There is little empirical evidence regarding the extent of use of workplace mediation in Ireland. However, there is an on-going doctoral study, being conducted by Kenny (2016), which will begin to address this gap.

**Implication 4:** Identified research currently underway will bring some clarity to the use and practice of workplace mediation in Ireland and identify further research gaps that need to be addressed.



## Section 2: The Benefits of Workplace Mediation

The literature informs us that workplace mediation offers significant benefits to both employee and organisation including:

- 🌀 High settlement rates, regardless of mediator style or orientation;
- 🌀 Improved relationships and enhanced performance.

These benefits are outlined in greater detail in Table 1 below.

**Table 1: The benefits of workplace mediation** (Source: Various – see *Shaping the Agenda 1*)

**The Benefits of Workplace Mediation:**

- 🌀 High settlement rates
- 🌀 Participant satisfaction with the process
- 🌀 Efficiency of the negotiation
- 🌀 Focus on real interests
- 🌀 More satisfying agreements
- 🌀 Improved relationships
- 🌀 Rebuilding damaged relationships
- 🌀 Promoting understanding & reconciliation
- 🌀 Improved morale
- 🌀 Enhanced performance
- 🌀 Positive organisational change
- 🌀 Quicker than other dispute resolution processes
- 🌀 Less expensive than other dispute resolution processes
- 🌀 Fewer cases progressing to investigation/litigation
- 🌀 Problem-solving culture
- 🌀 Enhanced emotional health of organisation
- 🌀 Reduced occupational stress
- 🌀 Can address a broad range of issues
- 🌀 Culturally sensitive
- 🌀 Improved conflict management capability

**Implication 5:** There are tangible benefits for all stakeholders in promoting a greater use of workplace mediation in Ireland for individual, group and collective conflict and dispute resolution.

## Section 3: The Importance of Context

The literature identifies **context** as an important factor in relation to both the use and effectiveness of mediation. Increased **employment regulation** and the corresponding 'legalisation' of workplace conflict are identified as influencing a move towards more innovative conflict management practices in the US. However, Irish studies indicate that this shift has not followed through to Ireland, despite the significant presence of US multinational organisations in this jurisdiction (Teague et al. 2015).

**Organisational size** is a factor in the use of mediation. Large organisations are more likely to adopt a structured approach to conflict management and to use mediation. Small firms are less likely to use mediation due to costs constraints and low levels of awareness.

**Culture, ethos** and **inherent attitudes** to the nature of the employment relationship can significantly influence organisational approaches to resolving workplace disputes. Hierarchical context and the **structure of organisations** affect perceptions of conflict and conflict behaviour.

Also **sectoral factors** influence the use of mediation, with greater use in the public sector than the private sector.

To be effective, the mediator must understand how their role fits within the organisation's relevant **policies and procedures**. Mediators should also have an understanding of the **process of change**, and an awareness of the context for participants during and after their engagement in mediation.

**Implication 6:** There is limited understanding of the specific impact of context in workplace mediation in Ireland.

**Implication 7:** Research needs to be undertaken to enable mediators and mediation advocates to have a better understanding of the impact of specific aspects of context on the use and effectiveness of mediation.

**Implication 8:** It is incumbent on mediators to ensure that they have a clear understanding of how their role fits within the organisational context, including organisational policies and procedures, and that their actions are consistent with those policies and procedures.



## Section 4: Mediator Style and Qualities

### Section 4.1: Introduction

In addressing the question ‘what makes an effective mediator?’, it is important to consider how mediator effectiveness is to be judged and how we should define a successful mediation process. Should mediator effectiveness be limited to the eventual outcome/agreement, or should it be examined in light of other factors such as, for example, participant satisfaction with the process?

**Implication 9:** The MII should clearly identify the criteria used to measure mediator effectiveness and the success of a mediation process. This might best be done in partnership with other stakeholders.

## Section 4.2: Mediator Styles

There is no consensus on the suitability of a specific set of mediation styles or strategies to particular disputes or contexts.

The most prominent mediation styles advanced in the literature are *facilitative*, *evaluative*, *settlement*, and *transformative*. In the facilitative style, mediators allow parties a high degree of autonomy to express their interests and needs in the hope that underlying compatibilities and compromises can be uncovered. In the evaluative style, the focus is on distributive justice and the mediator provides the parties with a realistic assessment of their negotiating positions in an attempt to reach a successful agreement. In the settlement style, the mediator attempts to bring the parties to a point of compromise through incremental bargaining. The key objectives of settlement mediation are service delivery and access to justice. The transformative style is based on the principles of empowerment – allowing the parties autonomy to find a resolution between them – and recognition, placing importance on acknowledging each other's interests, values, and point of view.

While there are commonalities among some of the mediation styles advanced, the degree of autonomy provided to the parties appears to be a key determinant of style preference. Determining the effectiveness of each style is difficult and depends on various factors including mediation setting, type of dispute, level of hostility between the parties and the mediator's profile and training background. While certain styles may be effective in certain situations, they may be detrimental in others. Indeed some authors propose the notion of 'stylistic eclecticism', where the mediator moves between styles during or between mediations.

**Implication 10:** Practicing mediators need to be well informed of the various mediation styles, including their associated advantages and disadvantages.

**Implication 11:** Organisations, such as the MII, responsible for standards and quality assurance in mediation, should take a clear position regarding the need for clarity around the various styles of mediation and the potential benefits of 'stylistic eclecticism'. At a minimum, all MII accredited training programmes should include skills development in identified, best-practice mediation interventions.

### Section 4.3: Personal Qualities of the Mediator

There are other factors to consider beyond the various styles and strategies employed by the mediator. One such factor is the personal qualities of the mediator.

There is a strong argument that training and substantive knowledge alone are not a true measurement of a mediator's future capability. Once mediators have mastered the basic skills and knowledge of mediation, the next stage of their development is their personal and professional growth.

An important personal quality identified as key to mediator effectiveness is ***emotional intelligence***, recognizing one's own feelings and those of others, and managing emotions well within oneself and amongst others. ***Empathy*** in the mediation context is defined as building party-to-party understanding and recognition. The personal qualities of the mediator are an important factor to consider in determining mediation effectiveness.

**Implication 12:** The MII should consider building on the existing elements of the Certified Mediator competencies to further develop identified key personal qualities of mediators.

**Implication 13:** The findings in relation to the personal qualities of the mediator should be addressed in CPD and training programmes.





## Section 5: Mediator Competencies, Skills, Knowledge and Behaviours

### Section 5.1: The Importance of Competency, Skills, Knowledge and Behaviours

**Competency** refers to the experience, behaviours and technical abilities required to carry out a specific role. In mediation, it is understood as the ability to use appropriate skills and knowledge to effectively assist parties in the prevention, management and/or resolution of their issues in a particular context.

Mediation is a delicate and complex process that may involve sensitive issues between vulnerable parties and so a competent mediator requires a high level of integrated skill, knowledge and awareness.



Mediation requires more than the mechanical application of skills. It requires an understanding of the nature of the process, underpinned by a sound theoretical basis and supported by a broad skills-base so that the mediator can effectively evaluate, assess and manage the process of mediation.

Mediator competence is observable and measurable.

**Implication 14:** The MII, as the accrediting body in Ireland, should ensure appropriate training standards and assessment of knowledge, skills and competencies on the part of the workplace mediator.

**Implication 15:** MII assessments should be reviewed to ensure they are sufficiently robust to effectively appraise the integrated knowledge, skills and competencies of the candidate.

## Section 5.2: Mediator Competencies, Skills & Knowledge

The literature identifies three aspects of mediator competence:

- ② Innate characteristics/personal qualities of the mediator
- ② Education and training
- ② Experience

As stated above, **emotional intelligence** and **self-awareness** on the part of the mediator are essential if they are to ensure a neutral process that serves the interests of all those involved.

This requires mediators to effectively manage their own biases and to understand the role of, and harness, emotions in mediation to enhance the process for the parties.

Relevant theory and research identifies specific skills and strategies – particularly in relation to ‘soft’ skills – and stresses the importance of experience and **continuous professional development** for mediators.

In relation to ‘local context’, the literature suggests specific knowledge areas are of benefit to workplace mediation including: organisation context; policies and procedures; relational dynamics; underlying

causes of conflict; and available employee resources. Some knowledge of employment law is also identified as helpful in rights-based disputes.

It is important that mediators possess a broad range of skills that they can appropriately apply, including process, relational and content skills.

Areas of training particular to workplace mediation include:

- 🌀 Mediation involving work groups
- 🌀 Supporting organisations in conflict prevention, engagement and resolution (the broader competence of building organisational resilience)
- 🌀 Forming and drafting agreements
- 🌀 Situation-based training specific to sensitive areas such as stress, bullying and harassment, substance abuse and mental health
- 🌀 Working with a co-mediator

**Implication 16:** Mediators should have a high level of self-awareness – including in relation to personal emotions and biases. To ensure this, emotional intelligence should be actively evaluated as part of any mediator assessment.

**Implication 17:** Mediators should be competent in the effective management of emotion ‘in the room’. Mediator training should include:

- 🌀 Developing emotional capacity
- 🌀 Understanding the role of emotion in mediation
- 🌀 Skills development in effectively managing emotion including:
  - Working constructively with participant emotional responses
  - Supporting emotional coherence in participants to mediation

**Implication 18:** Mediator training should include developing an understanding of context and the potential relevance and benefit of specific knowledge areas such as:

- 🌀 Employment legislation and codes of practice (for rights-based issues)

- 🌀 Organisational policies and procedures relevant to mediation and also support policies (EAP, etc.)
- 🌀 Managerial prerogative and constructive workplace behaviour
- 🌀 Equality and diversity, including knowledge of unconscious bias

**Implication 19:** Mediators should engage in ongoing reflective practice and skills development through, for example:

- 🌀 Participation in a peer group for ‘learning and sharing’
- 🌀 Engagement with a supervisor, particularly for recently qualified mediators or those returning to mediation
- 🌀 Maintaining a reflective journal during initial period of training/mediation to support reflection on emotional intelligence development
- 🌀 Ongoing CPD in mediation skills training

**Implication 20:** All mediators should understand the role of ethics in mediation: this is particularly important in workplace mediation where the mediator is employed by, or contracted by, the organisation. Mandatory mediation training, whether in-programme training or as CPD, should include consideration of:

- 🌀 Impartiality/’omnipartiality’
- 🌀 Neutrality
- 🌀 Confidentiality

### Section 5.3: Mediator Behaviours

The literature identifies a significant gap in understanding what it is that mediators actually do in practice and the impact of their behaviours in mediation. The lack of empirical evidence in relation to this has significant implications for quality assurance, regulation and training within the profession of mediation.

Mediator behaviour is context dependent, i.e. it is a function of the setting within which the mediation is taking place. While mediation may be portrayed as a standard process with sequential steps, in practice mediators must have the competence and capacity to adapt and respond to the particular situation. Table 2 below gives examples of a range of mediator behaviours.

**Table 2: Mediator behaviours cited in the literature** (Source: Various – see *Shaping the Agenda 1*)

| Mediator Behaviours Cited in the Literature      |   |
|--|---|
| 🌀 Explaining the process at the outset           | 🌀 Cooling (taking the heat out of communication)        |
| 🌀 Raising the issue of the goal at the outset    | 🌀 Highlighting areas of commonality                     |
| 🌀 Agreeing ground rules at the outset            | 🌀 Expressing one's own opinion                          |
| 🌀 Information gathering                          | 🌀 Making suggestions                                    |
| 🌀 Paraphrasing/summarising/reframing             | 🌀 Siding (selling one party's case to the other)        |
| 🌀 Clarifying                                     | 🌀 Asking one side to state other side's position        |
| 🌀 Naming the feelings expressed by a party       | 🌀 Pointing out the alternatives to a failed mediation   |
| 🌀 Pressing (urging either party)                 | 🌀 Referring to own experience                           |
| 🌀 Taking the side of either party                | 🌀 Critically evaluating the suggestions of either party |
| 🌀 Using positive reinforcement                   | 🌀 Criticising the behaviour of either party             |
| 🌀 Advising                                       | 🌀 Steering towards a preferred solution                 |
| 🌀 Using humour                                   | 🌀 Using best/worst case scenarios                       |
| 🌀 Empowering (handing back the issue to parties) | 🌀 Determining the order of issues to be addressed       |
| 🌀 Using silence                                  | 🌀 Refocusing the parties onto the issue in question     |
| 🌀 Allowing emotional outbursts                   | 🌀 Offering advice when asked                            |
| 🌀 Raising the issue of an unbalanced agreement   | 🌀 Raising legal issues relating to an agreement         |

**Section 4.1** dealt with the issue of mediator styles. Focusing on style leads to confusion due to inconsistencies and differing interpretations. Consequently, some academics have argued that an emphasis on mediator behaviour would be more useful in determining what mediators ‘actually do’ in the room and the impact of those actions on the disputants, process and outcomes. Also, in light of the purported principle of enablement and self-determination in mediation, clarity around mediator behaviour is essential if potential clients are to make an informed decision in relation to the ‘type’ of mediator they wish to engage.

**Implication 21:** Mediators should have the capacity to adapt their behaviours/style to the particular requirements of the given situation. The MII, as the accrediting organisation for mediators in Ireland, has a role in:

- ② Highlighting and/or facilitating a move in training from a ‘one size fits all’ approach to an eclectic focus for workplace mediation training. We do not suggest that training in relation to the different styles of mediation e.g. facilitative, transformative and evaluative be set aside, but rather that development of a more comprehensive range of skills and behaviours becomes the standard.
- ② Raising awareness of the benefits to organisations in using competent mediators, particularly in terms of risk management and consequences for the participants and organisational performance.
- ② Highlighting the need for the integration of knowledge, skills and behaviour in mediation training.
- ② Considering how best to evaluate and assess the demonstration of context-sensitive skills in MII approved mediator assessment processes.

**Implication 22:** Mediator style, approach and behaviour are inextricably linked, so it is incumbent on mediators to understand their ‘actual stylistic proclivities’ and the significance of their approach to the process.

**Implication 23:** Robust and focussed empirical research, particularly in relation to mediator behaviour, is essential for quality assurance, regulation and training of mediators including:

- ② Research to better understand practice realities and the implications in relation to conceptual theory and the application of theory in practice.
- ② Research that is contextual/situational and illustrates practice in action so that competencies and their impact on outcomes can be understood at a deeper level.













## Section 6: Mediation Outcomes

### Section 6.1: The Significance of Outcomes

Evaluation of the outcomes of mediation has been favourable, both nationally and internationally. Table 3 below presents a summary of the range of outcomes.

**Table 3: Workplace mediation outcomes** (Source: Various – see *Shaping the Agenda 1*)

| Workplace Mediation Outcomes  |   |
|---|---|
|    | Time savings  |
|    | Cost savings  |
|    | Higher rates of settlement than other forms of dispute resolution |
|    | Satisfaction with the process and outcomes                        |
|    | More sustainable agreements                                       |
|    | Restoring relationships   |
|    | Improved relationships  |
|    | Emotional insights for individuals                                |
|  | Organisational culture change                                     |
|  | Avoidance of formal procedures                                    |
|  | Lower levels of tribunal cases                                    |

In Ireland, the **Law Reform Commission** (2010:32) describes mediation as leading to ‘better results: higher satisfaction with process and outcomes, higher rates of settlement and greater adherence to settlement terms’. However, distinction needs to be made between short-term measures of success and the longer-term implications, including the sustainability of mediated agreements.

**Implication 24:** Research is needed to inform understanding regarding the durability of mediation agreements within an organisational setting. It is suggested that this should be a research priority.

**Implication 25:** The link between the specific skills used by a mediator and mediation outcomes needs to be explored and clarified. This represents a significant research gap.











## Section 6.2: The Range of Possible Outcomes

The literature refers to various measures of **mediation success**. However, no specific measure(s) has been identified as assessing the overall impact of mediation. Consequently further research is required in relation to this.

Intuitively, settlement rates seem important and research, both nationally and internationally, reports a high settlement rate for mediation. Eight factors (see Table 4 below) are identified as having an influence on mediation settlements. Some of these factors act as driving forces (DF) towards settlement, while others act as restraining forces (RF) against settlement. The balance of driving forces relative to restraining forces will determine whether or not settlement is reached.

**Table 4: Driving and restraining factors influencing settlement** (Source: Wall & Dunne, 2012)

| Driving and Restraining Factors   |                                   |
|---|-----------------------------------|
|  | Mediator resources (DF)           |
|  | Disputants' commitment (DF)       |
|  | Mediator's rank (DF)              |
|  | Visibility of the mediation (DF)  |
|  | Level of conflict (RF)            |
|  | Type of conflict (RF)             |
|  | Stage of conflict (RF)            |
|  | Relative power of disputants (RF) |

However, research demonstrates that, even if settlement is not reached in mediation, the mediation process can be beneficial, by facilitating changes in disputants' attitudes towards each other. Consequently, participants in the mediation process appear to manage their working relationship better

following their engagement in mediation. Research also suggests that employers are usually content with the outcomes of mediation.

**Implication 26:** The MII should initiate research to examine theoretical approaches to factors influencing settlement in mediation in the Irish context.

**Implication 27:** The MII might consider the possibility of tracking outcomes of workplace mediations carried out by MII mediators in order to provide tangible, objective measures.

### Section 6.3: Sustainable Outcomes

Only one longitudinal study on the long-term implications of the mediation process was identified: a study of the US Postal Service Redress Scheme. In general, research in the US, UK and Ireland suggests that mediation has positive outcomes in workplaces. Mediation improves employee relations and the organisational culture in workplaces and enhances managers' interest in undertaking training in order to manage conflict more effectively.

**Implication 28:** Further research is required in the Irish context to assess the short- and long-term outcomes of workplace mediation.

**Implication 29:** Empirical research is required into the return on investment by organisations in implementing mediation policies and practices.



## Section 7: Mediator Accreditation, Training, and Standards

The MII can draw upon comparative perspectives within the literature from Australia and the US to inform their role in further developing clear and effective accreditation, training and qualification requirements for workplace mediators.

**Implication 30:** The MII might consider, in light of the literature, collaborating with other mediation stakeholders in Ireland to review accreditation, training and qualification requirements.

## Section 7.1: Mediator Accreditation and Training

The merits or otherwise, of restricting entry to a mediator accreditation process to lawyers or other graduates are considered in the literature. Restricting entry in this way is not considered desirable as neither requirement is an accurate predictor of the kind of skills that are needed to be an effective mediator. Furthermore, to delimit applicants to an accreditation process in this way would limit diversity and growth in the field of mediation.

It has also been found that a pre-requisite of having a third-level degree to become an accredited mediator has no bearing on performance and could have a ‘chilling effect’ on the growth of mediation. The literature suggests that a diverse pool of individuals within the mediation community is beneficial.

In considering the required level of training for mediators, the literature strongly advocates the use of practical role plays and ‘apprenticeship’ mediation experience, in addition to traditional academic approaches such as lectures, readings and assignments. While performance testing is recommended, the literature does not detail how such testing might be carried out.

**Implication 31:** Doctoral research currently underway will provide an analysis of the current background and education of mediators who work in the workplace setting.

**Implication 32:** The MII should carry out a review of the entry requirements for mediator accreditation programmes in order to:

- ② Explore whether any explicit, or implicit, barriers are hindering entry into the MII accreditation process and the implications of this in relation to the development of mediation.
- ② Examine whether such barriers are appropriate.

**Implication 33:** Depending on the outcome of *Implication 32*, it may be necessary to examine how best to diversify the pool of individuals who apply for mediator accreditation.

**Implication 34:** The MII should outline recommended training areas for workplace mediators.

## Section 7.2: Qualification Requirements of Mediators

The literature describes how, in some mediation projects, a written assessment to check knowledge of mediation can be used prior to attending accredited programmes and/or becoming accredited. The emphasis of the MII assessments is understood to be primarily on skills.

**Implication 35:** Building on current MII assessment requirements in relation to written self-assessment (Certified Status level) and case presentation (Practitioner Status level), the MII should consider the desirability of introducing a written assessment of knowledge at Certified and/or Practitioner level. The MII could consider development of an e-assessment tool that would allow mediators to test their knowledge.

## Section 7.3: Mediator Accreditation in Australia and the United States

Efforts have been made in the United States of America (USA) and Australia to **standardise accreditation** of mediators in those countries, with varying degrees of success. Of particular relevance to the Irish context is the concerted approach of various mediation bodies and associations in Australia to create a nationwide mediator accreditation system, a national mediation standard and a national register of mediators.

**Implication 36:** Drawing upon the Australian model, collaboration between the MII and other mediation bodies (such as the College of Mediators in England), and other organisations active on the island of Ireland, should be evaluated. The possibility of an all-island mediator register, accreditation procedure and mediation standards for workplace mediators should be explored.





## Section 8: Conclusions of the Report

This section will summarise the findings of this project under the four headings of training, standards, practice and research gaps. Each sub-section will draw out the key considerations for mediators, professional bodies and researchers, in developing the field of workplace mediation in Ireland.

### Section 8.1: Training

The evidence presented in this report 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 MII-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 MII 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.

## Section 8.2: Standards

The MII plays a crucial role in the establishment and maintenance of mediation standards in Ireland. The international literature highlights a number of issues that the MII may wish to consider.

Definitions are important in ensuring a consistent understanding of what mediation actually involves. In view of this, the MII should consider revisiting its definition of mediation and other associated concepts such as competencies, skills and behaviours.

There is ambiguity in the regulatory framework for mediation in Ireland with differing descriptions of the mediation process. This is not helpful in ensuring standards. The MII should lobby the regulatory bodies so that there is common understanding and clarity in relation to what actually happens in mediation.

One of the key functions of the MII is 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, the MII should revisit its 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.

The MII should consider tracking the outcomes of mediations so that we begin to develop a nationwide database of empirical evidence in relation to workplace mediation in Ireland.

### Section 8.3: Practice

The international literature offers great potential for learning regarding 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.

### Section 8.4: 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. The *Kennedy Institute Workplace Mediation Research Group* ([www.kiwmrg.ie](http://www.kiwmrg.ie)) provides an ideal platform for addressing the research-practice gap.



Given that the literature contends that context is important, the project team firmly 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 inform policy and standards.

Mediation is being promoted at both organisational and national level in Ireland as an effective process of workplace dispute resolution, and yet the extent to which it is used seems to lag behind its purported potential. A recent article in *Industrial Relations News* (IRN 20 May 2016) argued that access to mediation in the newly formed Workplace Relations Commission has become more difficult despite the prominence of mediation in the Workplace Relations Act (2015), which forms the legal framework for the Commission. There needs to be an evaluation of the resources required to ensure mediation becomes more accessible in the WRC as it constitutes our primary public sector institution for dispute resolution.

Another priority area identified in this report is research into mediation outcomes. What proportion of mediations end in agreement? If agreement is reached, how durable are these agreements? What factors influence agreement? What outcomes (besides an agreement) form part of a 'successful' mediation?

A third priority is research into mediator behaviours. Given the ambiguity surrounding mediation styles, a more informative route would be to identify the mediator behaviours that help/hinder the process. The relevance of this research to training and standards and the overall development of workplace mediation in Ireland should not be underestimated.

## Conclusion

This report represents a sister document to *Shaping the Agenda 1*.

*Shaping the Agenda 1* presented a comprehensive review of the international literature on the competencies, skills and behaviours of effective workplace mediators. This document discusses the implications of themes from the literature for the MII, mediation practitioners and researchers in Ireland.

Mediation is an evolving profession. It is advocated by the Irish State, institutions, academics and organisations as a viable and effective process of dispute resolution and yet its potential has still to be realised in this jurisdiction. Our hope is that these two documents will help to inform the continuing development of the mediation profession in this country and will start to establish Ireland as an international hub for mediation research.

### The Kennedy Institute Workplace Mediation Research Group



**‘The most intense conflict, if overcome, leaves behind a sense of security and calm that is not easily disturbed.’**

**Carl Jung (1960)**

## Index of Implications:

**Implication 1:** The MII should adopt a specific definition of ‘workplace mediation’ such as the one provided in this report. *(Page 6)*

**Implication 2:** The MII should review and adopt definitions of associated concepts for the workplace mediation context such as competencies, skills and behavior. *(Page 6)*

**Implication 3:** The MII, as the professional organisation for mediators in Ireland, should lobby regulatory agents to address the inconsistencies and ambiguities between the Workplace Relations Act (2015) and the Mediation Bill (2012). *(Page 7)*

**Implication 4:** Identified research currently underway will bring some clarity to the use and practice of workplace mediation in Ireland and identify further research gaps that need to be addressed. *(Page 7)*

**Implication 5:** There are tangible benefits for all stakeholders in promoting a greater use of workplace mediation in Ireland for individual, group and collective conflict and dispute resolution. *(Page 9)*

**Implication 6:** There is limited understanding of the specific impact of context in workplace mediation in Ireland. *(Page 10)*

**Implication 7:** Research needs to be undertaken to enable mediators and mediation advocates to have a better understanding of the impact of specific aspects of context on the use and effectiveness of mediation. *(Page 10)*

**Implication 8:** It is incumbent on mediators to ensure that they have a clear understanding of how their role fits within the organisational context, including organisational policies and procedures, and that their actions are consistent with those policies and procedures. *(Page 10)*

**Implication 9:** The MII should clearly identify the criteria used to measure mediator effectiveness and the success of a mediation process. This might best be done in partnership with other stakeholders. *(Page 11)*

**Implication 10:** Practicing mediators need to be well informed of the various mediation styles, including their associated advantages and disadvantages. *(Page 12)*

**Implication 11:** Organisations, such as the MII, responsible for standards and quality assurance in mediation, should take a clear position regarding the need for clarity around the various styles of mediation and the potential benefits of 'stylistic eclecticism'. At a minimum, all MII accredited training programmes should include skills development in identified, best-practice mediation interventions. *(Page 12)*

**Implication 12:** The MII should consider building on the existing elements of the Certified Mediator competencies to further develop identified key personal qualities of mediators. *(Page 13)*

**Implication 13:** The findings in relation to the personal qualities of the mediator should be addressed in CPD and training programmes. *(Page 13)*

**Implication 14:** The MII, as the accrediting body in Ireland, should ensure appropriate training standards and assessment of knowledge, skills and competencies on the part of the workplace mediator. *(Page 15)*

**Implication 15:** MII assessments should be reviewed to ensure they are sufficiently robust to effectively appraise the integrated knowledge, skills and competencies of the candidate. *(Page 15)*

**Implication 16:** Mediators should have a high level of self-awareness – including in relation to personal emotions and biases. To ensure this, emotional intelligence should be actively evaluated as part of any mediator assessment. *(Page 16)*

**Implication 17:** Mediators should be competent in the effective management of emotion 'in the room'. Mediator training should include:

- 🌀 Developing emotional capacity
- 🌀 Understanding the role of emotion in mediation
- 🌀 Skills development in effectively managing emotion including:
  - Working constructively with participant emotional responses
  - Supporting emotional coherence in participants to mediation *(Page 16)*

**Implication 18:** Mediator training should include developing an understanding of context and the potential relevance and benefit of specific knowledge areas such as:

- 🌀 Employment legislation and codes of practice (for rights-based issues)
- 🌀 Organisational policies and procedures relevant to mediation and also support policies (EAP, etc.)
- 🌀 Managerial prerogative and constructive workplace behaviour
- 🌀 Equality and diversity, including knowledge of unconscious bias (*Page 16-17*)

**Implication 19:** Mediators should engage in ongoing reflective practice and skills development through, for example:

- 🌀 Participation in a peer group for ‘learning and sharing’
- 🌀 Engagement with a supervisor, particularly for recently qualified mediators or those returning to mediation
- 🌀 Maintaining a reflective journal during initial period of training/mediation to support reflection on emotional intelligence development
- 🌀 Ongoing CPD in mediation skills training (*Page 17*)

**Implication 20:** All mediators should understand the role of ethics in mediation: this is particularly important in workplace mediation where the mediator is employed by, or contracted by, the organisation. Mandatory mediation training, whether in-programme training or as CPD, should include consideration of:

- 🌀 Impartiality/’omnipartiality’
- 🌀 Neutrality
- 🌀 Confidentiality (*Page 17*)

**Implication 21:** Mediators should have the capacity to adapt their behaviours/style to the particular requirements of the given situation. The MII, as the accrediting organisation for mediators in Ireland, has a role in:

- ② Highlighting and/or facilitating a move in training from a 'one size fits all' approach to an eclectic focus for workplace mediation training. We do not suggest that training in relation to the different styles of mediation e.g. facilitative, transformative and evaluative be set aside, but rather that development of a more comprehensive range of skills and behaviours becomes the standard.
- ② Raising awareness of the benefits to organisations in using competent mediators, particularly in terms of risk management and consequences for the participants and organisational performance.
- ② Highlighting the need for the integration of knowledge, skills and behaviour in mediation training.
- ② Considering how best to evaluate and assess the demonstration of context-sensitive skills in MII approved mediator assessment processes. *(Page 19)*

**Implication 22:** Mediator style, approach and behaviour are inextricably linked, so it is incumbent on mediators to understand their 'actual stylistic proclivities' and the significance of their approach to the process. *(Page 19)*

**Implication 23:** Robust and focussed empirical research, particularly in relation to mediator behaviour, is essential for quality assurance, regulation and training of mediators including:

- ② Research to better understand practice realities and the implications in relation to conceptual theory and the application of theory in practice.
- ② Research that is contextual/situational and illustrates practice in action so that competencies and their impact on outcomes can be understood at a deeper level. *(Page 19-20)*

**Implication 24:** Research is needed to inform understanding regarding the durability of mediation agreements within an organisational setting. It is suggested that this should be a research priority. *(Page 22)*

**Implication 25:** The link between the specific skills used by a mediator and mediation outcomes needs to be explored and clarified. This represents a significant research gap. *(Page 22)*

**Implication 26:** The MII should initiate research to examine theoretical approaches to factors influencing settlement in mediation in the Irish context. *(Page 24)*

**Implication 27:** The MII might consider the possibility of tracking outcomes of workplace mediations carried out by MII mediators in order to provide tangible, objective measures. *(Page 24)*

**Implication 28:** Further research is required in the Irish context to assess the short- and long-term outcomes of workplace mediation. *(Page 24)*

**Implication 29:** Empirical research is required into the return on investment by organisations in implementing mediation policies and practices. *(Page 24)*

**Implication 30:** The MII might consider, in light of the literature, collaborating with other mediation stakeholders in Ireland to review accreditation, training and qualification requirements. *(Page 25)*

**Implication 31:** Doctoral research currently underway will provide an analysis of the current background and education of mediators who work in the workplace setting. *(Page 26)*

**Implication 32:** The MII should carry out a review of the entry requirements for mediator accreditation programmes in order to:

- ② Explore whether any explicit, or implicit, barriers are hindering entry into the MII accreditation process and the implications of this in relation to the development of mediation.
- ② Examine whether such barriers are appropriate. *(Page 26)*

**Implication 33:** Depending on the outcome of *Implication 32*, it may be necessary to examine how best to diversify the pool of individuals who apply for mediator accreditation. *(Page 26)*

**Implication 34:** The MII should outline recommended training areas for workplace mediators. *(Page 26)*

**Implication 35:** Building on current MII assessment requirements in relation to written self-assessment (Certified Status level) and case presentation (Practitioner Status level), the MII should consider the desirability of introducing a written assessment of knowledge at Certified and/or Practitioner level. The MII could consider development of an e-assessment tool that would allow mediators to test their knowledge. *(Page 27)*

**Implication 36:** Drawing upon the Australian model, collaboration between the MII and other mediation bodies (such as the College of Mediators in England), and other organisations active on the island of Ireland should be evaluated. The possibility of an all-island mediator register, accreditation procedure and mediation standards for workplace mediators should be explored. *(Page 27)*



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