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Mediation meets judges – FINAL fact sheet – WS2

The Court annexed mediation pilot scheme fact sheet aims to provide information about the experiences of mediation projects in Courts that have been developed during the project.

Description

Chambers Ireland has developed a **Business and Commercial Mediation Scheme** on a pilot basis. The scheme was launched by Chambers Ireland, the Mediator's Institute of Ireland, Chartered Institute of Arbitrators, the Law Society of Ireland and the Bar Council of Ireland. The initiative is also supported by the Courts Service of Ireland. The Scheme is supported by and promoted by the Courts Service of Ireland. However, due to the nature of the Courts Service structures and lack of administrative resources, it was discovered that it was not possible to have a court-annexed pilot scheme as was envisaged in the project at the outset. For such court-annexed scheme to exist, it was agreed, after research by the Clerks of the Circuit and High Court that significant reforms would need to be made to how cases are managed within the Irish courts system.

Additionally, while there are some Rules of Court in existence that empower judges to adjourn proceeding and refer parties to mediation, it was discovered after research and engagement with the Judiciary that in order for there to be any significant engagement with mediation, there would need to be legislation in place. The General Scheme of the Mediation Bill empowers judges to refer cases to mediation and adjourn proceedings so that parties can consider if mediation will help resolve their dispute. Until the Mediation Bill is enacted, it is unlikely that the Courts and Judiciary in Ireland will engage with a court-annexed mediation scheme.

Therefore, in order to meet the project requirements, it was agreed to establish a sort of hybrid mediation scheme/mediator's on call service, the **Business and Commercial Mediation Scheme**.

- Who is involved:
 - Which court (or judge/clerk)? Number of judges? (*initials will do in case privacy issues are raised*)
Circuit and High Courts of Ireland support and promote the Scheme
 - Name and contact person in the Court
 - Tom Ward, Clerk of the Circuit Court. Kevin O' Neill, Clerk to the High Court
 - Number of mediators involved in the or on call
 - MII, CI Arb Ireland and the Law Society each appointed **five mediators** each from their bodies to sit on a Panel of Mediators as part of the Business and Commercial Mediation Scheme
 - Name and contact details of concerned MmJ partner/Chamber
 - Emma Kerins or Mark O' Mahoney in Chambers Ireland. mediation@chambers.ie
 - Other (bar association, lawyer, mediation centres, mediators...)
 - Mediator's Institute of Ireland, Chartered Institute of Arbitrators Ireland, Law Society of Ireland, Bar Council of Ireland
- When did it start? Is there a date foreseen for review/evaluation?



- The Scheme was launched in September 2015. The Scheme will be in place until July 2016 (the end of the Courts 2015/2016 term). The Steering Committee will remain in place and the Business and Commercial Mediation will be reviewed after July 2016 to see what changes will need to be made and if the initiative will be continued
- What is the process?
 - Where/when is info about mediation communicated
 - Chambers Ireland have communicated information on mediation via our Chamber Network, monthly Bulletin, weekly news letter, regular articles in our quarterly magazine In Business, via promoted social media advertising, via our website and via the other partners involved in the Scheme. The Courts Service also have a stock of brochures on the Scheme available in the Courts in Dublin and nationally. The Clerks of the Circuit and High Court have also presented the Scheme to the Presidents of the Circuit and High Courts and have advised that such a Scheme/mediators on-call service exists should they wish to recommend to parties to consider mediation.
 - Who receives the info (lawyers, parties)
 - The Scheme is targeted primarily at parties and advising them to consider mediation as an alternative to litigation.
 - How is the communication made (individual meeting, permanence, group meetings, written...)?
 - Interested parties must get in touch with Chambers Ireland by phone or email to enquire about the mediation service. Such communications are then made to the Review Panel, who then discusses with the interested party if mediation is suitable for their case. If so, a mediator from the Panel is appointed and a mediation takes place
 - Is it an invitation or an order by the judge? (discretionary)
 - It has the potential to be made by the Judge but at the moment, no such referrals have been made
 - Is there a feedback given to the judge? (discretionary)
 - No
 - Are there statistics collected and how? (discretionary)
 - Statistics are collected by Chambers Ireland
- Where there any prerequisite? (such as trainings for the judges)
 - No
- Others

Evaluation of the scheme

- What works well/what is positive?



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- The most positive aspect of the initiative is the cross-party support (legal community, business community, Courts Service, mediators) for the Scheme and for increasing referrals to mediation in commercial cases. For there to be any success in the future it is vital that all stakeholders play a role in promoting and encouraging increased use of mediation. The high level of co-operation achieved between all groups has been a significant victory for the project in Ireland, particularly when it comes to sharing information, discussing best practices, deliberating on approaches to overcoming the difficulties being encountered in getting more judges and more businesses to consider mediation. It is our view that this relationship between all of the above groups will continue well into the future and will be instrumental in changing the culture of dispute resolution in Ireland when it comes to mediation.
- What are the difficulties
 - The primary difficulties, as noted at the outset, is the significant reform of the Irish Courts Service required for judges to engage with mediation in any meaningful way. While the Commercial Court (for disputes over €1 million) has had some success, in order for this success to be replicated for all types of commercial disputes (across High Court, Circuit Court etc), significant reforms to how the Courts.
 - Additionally, while Chambers Ireland has met directly with a number of judges throughout the project and our colleagues in the Courts Service of Ireland have briefed the Presidents of the High Court and Circuit Court on the initiative and the availability of the Business and Commercial Mediation Scheme should judges wish to refer parties to mediation, it has proven very difficult for us to get judges to promote the Scheme to parties. While we have had some success in developing good relationships with Judges as part of the project, it is generally quiet difficult to get time to meet with Judges due to the extremely busy schedules of Judges in Ireland. Protocol also dictates that contact often has to be made through the Courts Service administrators, which again makes it difficult to access Judges.
 - Last of all, Ireland's culture of using mediation to resolve disputes is still in the early developmental stages. We have found through the Scheme that it is very difficult to get businesses to consider mediation in the first instance, or even engage with mediation should be it recommended by the Courts. The legal profession can also be an obstacle to increasing the use of mediation as some solicitors continue to be reluctant to recommend mediation rather than arbitration or litigation.
 - In spite of these difficulties, it is our belief that the existence of the Business and Commercial Mediation Scheme will go a long way to helping to change the culture of dispute resolution in Ireland. However, this is likely to be a very slow process
- How many cases were referred to mediation?
 - None.



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- While the Scheme received interest (on social media, in newspapers etc), there has only been limited engagement so far by businesses. (See attached Excel Sheet).
- How many mediation were positively concluded (even partially)
 - None
- Number of cases that were concluded through negotiation (other than mediation) with or without lawyers' assistance
 - N/A
- Number of summons before the court (to mediate)
 - N/A
- Average number of parties
 - N/A
- Number of informative sessions organized by the mediation service
 - Launch of the Mediation Scheme in October with CI Arb, 8th October 2016
 - Presentation at the CI Arb Ireland Centenary Conference, 9th Oct 2016
 - Dublin Mediation Day, 20th November
 - Waterford Learn at Lunch Seminar to promote the Scheme. 25th February 2016
 - Tralee Chamber Mediation Briefing on the 2nd March 2016 (outside remit of the project)
 - Note: It is our objective to continue hosting mediation briefing sessions for mediation within the Irish Chamber Network after the project finishes.

Conclusion

- What is the future of this pilot scheme like?
 - The Business and Commercial Mediation Scheme will continue to exist long past the project finish date. The initial review date for the Scheme is the end of July 2016. It is our hope that the Scheme will remain in existence well after this date
- Suggestion for improvement?
 - The Mediation Bill in Ireland must be enacted
 - The Government must increase its commitment in using ADR and mediation to resolve disputes
 - Legal professionals must be better educated about the benefits of mediation for business so that they know to recommend it to their clients.
- What are you planning/able/ready to do to improve the service?
 - More mediation briefings in Chambers so that we can better educate business about the benefits of mediation. Our Waterford Chamber Learn at lunch was a huge success, with almost all attendees confirming that after attending the briefing they (businesses) would consider mediation in the future. Lawyers in attendance also noted that after the briefing they would be more likely to consider recommending mediation to clients.
Note: See attached survey responses for more information



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- Chambers Ireland will continue to meet with judges after the project finishes and will be meeting with the newly appointed President of the High Court Hon Justice Peter Kelly in the coming weeks to present the Scheme