

"What is the benefit to disputants of mediation,
for resolution of Civil and Commercial disputes
in Ireland?"

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ABSTRACT

This research considers the question:

“What is the benefit to disputants of mediation for resolution of Civil and Commercial disputes in Ireland?”

The research is of importance because mediation is a significant framework to aid conflict resolution. The model can be used speedily, cost effectively and confidentially to resolve disputes. This can be achieved in a voluntary manner, whilst enabling the relationship between the disputants to be protected during and after the mediation process. These factors are not perceived to be achieved through litigation, which is presently the most traditional and primary tool for resolving disputants' issues of the nature of this research.

Following a literature review, which encompassed internationally based mediation experiences, a number of detailed semi-structured interviews were held with legal practitioners involved in mediation in Ireland. The purpose was to elicit views on dispute resolution, primarily incorporating mediation and the contemporary experiences of litigation in this jurisdiction.

The research findings are broadly reflective of the literature review. However, the cited misgivings of mediation were generally not perceived to be as negative in this jurisdiction.

The research draws a conclusion that there are clear benefits to disputants using mediation in within the realm of the research limitations.

There is scope for implementation of several practices, covering a single mediation representative body for self-regulation, standardised training for mediators and promotion of mediation by appropriate agencies.

Further research is warranted, amongst other matters, on the effectiveness of mediation as a voluntary framework and enforceability of mediation agreements.

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CHAPTER 1 INTRODUCTION

1.1 Background to RESEARCH

“What is the benefit to disputants of mediation for resolution of Civil and Commercial disputes in Ireland?”.

This research question is posed, and if there is a significantly positive response to the question, the positive impact of mediation could be widespread.

Mediation in Ireland has the potential to foster highly significant cost and resource savings for public and private enterprise, and yet at no one's expense. Mediation, as a dispute resolution tool for Civil and Commercial conflict, operates in such a manner as to bring about early resolution to disputes. The adversarial (litigation) system in Ireland takes 515 days on average for a Commercial case to be heard and concluded (Finfact, 2011). Erickson, Bowen and Geoffrey (2006) maintain that, at mediation, parties can mutually agree on a suitable mediator within their own time. This illustrates that there is significant advantage in expediency with mediation, which benefits disputants in reaching a solution.

Currently in Ireland, at a macro level, litigation is the main channel for conflict resolution. Similar to other countries, the legal process is lengthy and costly. Christiansen (2010) purports that litigation is unending and expensive. The cost of litigation in Ireland is, in fact, considerably higher than European counterparts. Litigation costs in Ireland and Europe run at 27% and 13% respectively. This is illustrative of Ireland being over twice as costly as the European average. This issue has escalated to such an extent that the IMF/EU have placed pre-conditions on Ireland's bail out funding that it must implement legal costs savings (Committee of Public Accounts, 2011).

At a more micro level, it will be seen from this research that, at an organisational level, executive time is taken up on addressing and resolving serious litigation. This is a real distraction to business and internal resources. Christiansen (2010) holds that litigation is a drain on business leaders time, resources and staff. Allied to this, business to business conflict has the ability to temporarily or permanently damage business relationships. In contrast, agreements arising from mediation are on balance more probable to maintain longer lasting and harmonious relationships between

the parties concerned (European Parliament, 2008). This is of particular importance in a small open economy such as Ireland, this can impact organisations' abilities to find alternate business suppliers or partnerships.

1.2 Litigation and Mediation

The backdrop to the scenarios described above is that the challenge in Ireland has been that litigation has become the first port of call for conflict resolution. Disputing parties, through this process, tend to only significantly engage at the time of trial, or at least when large legal expenses have been incurred. There is no structured framework in place to facilitate parties seeking resolution. There is a perception of seeking justice or vindication through an adversarial Court hearing. However, the disputing parties lose control of the issue this way and are at the mercy, as it were, of the Court. There is evidence in mediation, where the mediator, liaising in plenary and private caucuses with the parties, works to craft a mutually beneficial solution, whereas a third party makes a decision in litigation matters (Erickson, Bowen and Geoffrey, 2006).

This research aims to consider the concept of mediation as a dispute resolution mechanism to assess the solutions it has to offer and how those solutions work. Part of the research involves reviewing how mediation operates in other countries and what has been the experience of mediation in those countries. The research reviews experiences European and Non-European States. It is illustrated how mediation has become effective when it is imposed upon parties. In some countries, this has been through contractual agreements between parties. Alternatively, it will be seen that mediation has become mandatory in some jurisdictions. For instance, in England, Commercial mediation's general success is contributable to reforms in Civil justice (Liebmann, 2000).

It will be seen that positive and successful outcomes are a probability with mediation, but a level of cases do not settle and progress to or continue through the adversarial process through to trial and Court adjudication. CEDR (2012) advise that in England, with 8,000 cases arising in Civil and

Commercial cases per annum, 70% of cases settle on the day, with a further 20% settling shortly afterwards.

Having examined what has been happening other countries, this paper assesses the litigation scenario in Ireland and if there is a suitable place for mediation. Daugherty Rasnic (2004) maintains that the Irish society is more litigious than American counterparts. The review continues to reflect on some of the issues pertaining to litigation, such as time delays and impingement on an individual's right to justice within a reasonable time form the outset of the dispute.

1.3 European Union

Recently, the European Union has paved the way for mediation with a Directive on cross-border mediation. Of significant importance is the inclusion in the Direction of reference to Member States voluntarily transposing similar arrangement to their respective internal systems. This can be seen as being highly supportive of mediation whilst still not imposing it on countries. Herbert et al (2011) cite the Directive as being the conduit behind the positive movement in Alternative Dispute Resolution in Europe, principally in the area of mediation. It may well be that to achieve the cost saving, efficiencies and maintenance of business relationships between aggrieved parties that it will be necessary to impose some type of mandatory level of mediation.

There is a prevalence and successful uptake of mediation in other EU and Non-EU countries. This issue being addressed in this research is to consider, notwithstanding these positive experiences in other jurisdictions, is to establish what upside or benefit there may be in Ireland, from the perspective of the disputant, of any effectiveness of resolution of disputes, both Civil and Commercial in nature, through the medium of mediation. Therefore, whilst mediation may be an effective resolution tool, the issue is to establish if, it at all, it may beneficial as a mechanil.2sm to disputants.

The review closes with an outlook on mediation in Ireland with a mediation draft Bill awaiting enactment. This has significant potential to bring mediation further to the forefront of dispute resolution in this jurisdiction, with positive consequences for all disputants.

1.4 Valuable Research

Mediation is used extensively in other jurisdictions, to the benefit of all stakeholders, which includes disputants. Specifically, there is evidence from other jurisdictions in this research of the benefits of mediation in the areas of time to resolution, cost and protecting harmonious relationships amongst the parties. It is therefore valuable to undertake research to establish how conflict is resolved in the Irish jurisdiction given the low level of mediation, how conflict has been managed through mediation in other jurisdictions, and what can be learned from those other jurisdictions. Any benefits from mediation in those jurisdictions are worthy of being replicated in Ireland so as to expand the level of choice of conflict resolution options open to disputants. Furthermore, any benefits established are also worthy of being published and promoted so that disputants may come to a fully informed decision of the dispute resolution method to be embarked up in advance commencing any such undertaking.

1.5 Importance of Research

Legal costs in Ireland are 50% greater than in other European Countries (Finfacts,2011). The severity of the situation is reflected in the fact that the International Monetary Fund/European Union Memorandum of Understanding determined that further loan drawdowns for the Irish Government were conditional on legal cost reform. It has also been identified that the restructuring the legal professions and the market for legal services in Ireland is core to Ireland's competitiveness reforms, and change is also mandated by the IMF (Committee of Public Accounts, 2011). This call to action generates a need for innovation, such as a different approach to conflict resolution, which is offered through the framework of mediation.

The speed of conflict resolution in Ireland is also tardy, taking 515 days on average to complete a Commercial litigation case (Finfacts, 2011). It is of importance to explore how this time delay could be reduced through mediation, which would benefit the stakeholders concerned, and the related legal costs which are seen to impact on Ireland's competitiveness.

1.6 Research Gap

There is research evidence referred to later of stating benefits of mediation, but not necessarily focusing on the benefits solely from the perspective of disputants on a global basis. Moreover, there is little material on the general experience of mediation in Ireland, let alone from the perspective of the disputant. This is therefore an area that warrants further investigation and research.

There are a number of stakeholders in the mediation framework, referred to later in this paper, who all stand to benefit at one level or another. In the final analysis, and central to the mediation process, is the disputant who ultimately seeks to potentially benefit from the mediation process through an efficient, transparent and low cost process.

1.7 Research Structure

Turning to the structure of the research approach, the research commences with a comprehensive literature review, starting with the underlying key drivers of conflict and conflict resolution, particularly how the latter is managed. The concept of Alternative Dispute Resolution is then introduced, as a mechanism to offer a range of guided solutions rather than the adversarial avenue of litigation. Negotiation as general tool is also considered in this context before turning to the prevalence and understanding of mediation in the international context, in both Non-European Union and European States. Backgrounds, trends and contrasts of mediation in these jurisdictions is considered so as to present a comprehensive insight to global prevailing practices. The culmination of these experiences provide a very informative backdrop to the level of presence of mediation in Ireland, bring the literature review to a close.

The research moves forward to review the significant research opportunity, problem and aims of the research, given the relative infancy of mediation in this jurisdiction. Following this, various methodologies for approach to the research are considered, leading to the research structure. The predominant research instrument is a qualitative approach through the implementation of semi-structured interviews, supported by a questionnaire.

Ethical considerations are considered in conjunction with the research, particularly taking cognisance of the confidential nature of mediation

itself, due respect for the information openly shared by the participants and the recording of the evidence with the use of digital voice technology. The limitations of research are also reviewed, notwithstanding the rich data elicited from a small sample.

The research then moves to findings and conclusions.

CHAPTER 2. LITERATURE REVIEW

From research identified, it is necessary to consider and review the relevant academic literature. This literature is dominated by several key themes. These themes are:

1. Conflict
2. Conflict resolution
3. Alternative Dispute Resolution
4. Negotiation
5. Mediation in the International context (Non- European Union)
6. Mediation in the European Union (EU) context
7. Summary of Mediation in the EU and Non-EU context
8. The Mediation Bill
9. Mediation in the context of Ireland
10. Summary of Ireland in the context of mediation in other EU and Non-EU countries

2.1 Conflict

The first theme to be considered and review is conflict. Conflict is an inevitability in all aspects of life (Swingle, 1989). This sentiment is also expressed by Philips and Cheston (1979) who comment on the inevitability of conflict in organisations. This view is further shared by Lipsky and Avgar (2010) who bring the observation a stage further by maintaining that conflict is actually inherent in organisations. Conflict is therefore prevalent in all aspects of society. However, Swingle (1989) is of the view that conflict is

not universally negative. The author expands on this point by maintaining that conflict that is uncontrolled is the real issue. These points are illustrative of conflict being acceptable if it is managed correctly.

Whilst from the findings above that conflict is effectively endemic in society, it is not necessarily overtly so. Conflict management is challenging as a significant amount of conflict remains latent, perhaps due to the inability of one party to communicate their perceptions to another Party (Willmott, cited in Ridley-Duff and Bennett 2011). Hence there is a need for comprehensive and effective conflict resolution.

Overall, conflict is prevalent in society, and in organisations particularly, whether it is clearly apparent or latent in its being. It is illustrated above that conflict it is not universally negative if it is controlled, conflict can remain if it is not resolved through effective communication. The resolution of conflict is considered in the theme that follows.

3.2 Conflict Resolution

The second theme to be studied is conflict resolution. Resolving conflict is complex. Bercovitch, Kremenyuk, and Zartman (cited in Babbitt and Hampson, 2011) advise that conflict resolution concerns "ideas, theories, and methods that can improve our understanding of conflict". This suggests that conflict resolution is multifaceted. Likewise, Swindle (1989) describes conflict resolution as a concept that is overloaded with multiple interpretations. Interestingly, he highlights conflict resolution as a process itself and that, separately, the actual techniques used to settle the conflict itself are categorised as the technology of conflict resolution. This overall complexity is compounded as the manner in which conflict itself is resolved can have a long term impact (Philips and Cheston, 1979). This point highlights the needs for an effective conflict resolution process.

The management of conflict resolution, in Commercial settings, is dependent on organisational culture and the desire for conflict resolution. The rationale business owner or manager has a vested incentive in resolution, regardless of whether the matter at issue has any merit or not (Dingwall, 2002). However, Lipsky and Avgar (2010) are of the view that most

organisations utilise a traditional conflict resolution approach to issues. They also advise that, in contrast, where advanced workplace practices prevail, more advanced methods of conflict management are likely to be in place. This alludes to the need for conflict resolution frameworks to be in place in Commercial settings, or that there is ease of access to such frameworks. There are a number of types of conflict resolution methods available, which are alluded to below.

Conflict resolution is therefore multi-faceted and the manner in which it is addressed can have long term effects. There is an incentive in a Commercial environment to resolve conflict but more sophisticated methods of conflict resolution are only more prevalent in advanced work places. These factors highlight the need for conflict to be managed effectively using contemporary and appropriate conflict resolution frameworks.

2.3 Alternative Dispute Resolution

Having considered the concept of litigation above, the next theme to be considered is Alternative Dispute Resolution (ADR). It will be seen from the definition of ADR below that it is recognised that there are substitutes to litigation for resolving conflict. To give context to the concept, an understanding of what ADR is required. One definition of ADR is as follows:

“range of procedures that serve[s] as [an] alternative[s] to litigation through the intercession and assistance of a neutral and impartial third party”

(Gregory and Cavanagh, 2008)

The definition highlights two central points: ADR is an alternative to litigation, and an unbiased party is involved to assist. Apart from litigation, there are a number of options for conflict resolution, collectively referred to as frameworks under the umbrella title of ADR (Fakih, 2012).

Fakih (2012) further states that, according to literature, there is no definite list of resolution types under the ADR banner as multiple processes and techniques are adopted as part of the resolution process; negotiation, conciliation, facilitation, arbitration and mediation, and a combination of

these, form ADR processes. Aliment (2009) shares this view, stating that ADR is dispute settlement by methods other than litigation, such as arbitration, mediation or mini-trial. Aliment (2009) differs from Fakh (2012) in not referring to negotiation discussed below, a very long standing form of conflict resolution.

2.4 ADR Advantages and Disadvantages

Fakh (2012) also sets out the advantages of ADR as being an increase in Court system efficiency (as more cases settle through ADR), ADR cases are before specialist knowledge intermediaries and time efficiency for the parties. He further cost efficiency and control over the process and outcome, confidentiality and relationship preservation between the parties.

Finally, Fakh (2012) also highlights the disadvantages as there being no mandatory elements to the process, lack of the neutral party's power, lack of ADR case precedents to predict future probability outcomes, lack of final agreement enforcement and potential inequality for small party 'underdogs'. The points both in favour and against are valid. However, the advantages appear to outweigh the disadvantages predominantly on speed, cost and confidentiality. There are also workarounds to the disadvantages.

Thus, ADR, as an alternative to litigation, is an umbrella title for a multi-disciplined and cross-functional group of dispute resolution methods, although there is no definitive number of methods appropriate to the task. Mediation is one of the disciplines within ADR and will be considered below. The benefits of ADR appear to outweigh the limitations, most of which are surmountable.

2.5 Mediation Defined

Mediation as a concept will be considered in more detail at a later point in this research. However, it is opportune at this point to take one definition of mediation to provide context for subsequent reference to the mediation as a framework throughout the remainder of this section.

Mediation is defined as follows:

"a facilitative and confidential process in which a mediator assists parties to a dispute to attempt by themselves, on a voluntary basis, to reach a mutually acceptable and voluntary agreement to resolve their dispute"

(Mediation Bill, 2012)

The definition incorporates a number of criteria. The process is facilitative, so that a neutral party chairs, enables and intervenes on discussions between disputants. The discussions are held in private and are subject to non-disclosure to anyone other than interest parties. The process is one which the parties come to of their own accord. There will be reference later in this research to jurisdictions have quasi-compulsory or compulsory mediation, but all other factors of the concept remain the same. This will be discussed later in this review.

2.6 Negotiation

As one tool within the Alternative Dispute Resolution framework, negotiation is the next theme being considered in this research. Negotiation is a method of conflict resolution directly between the parties, before resorting to any third party, such as the Court system through litigation or any other ADR system (Daughrey Rasnic 2004)

Yousefi, Hipel and Hegazy (2010) relate to the upside of negotiation with an increase in popularity as to overcome the shortcomings of litigation. They advise that the litigation shortcomings are cost, Court delays, lack of control amongst interest parties, and a hostile environment. Accordingly, negotiation improves all of these areas.

Manning and Robertson (2004) comment on the process of negotiation. They maintain that negotiation is inter-linked with the concepts of influencing and conflict-handling. Specifically, they refer to negotiation being a subset of influencing, which they define as attempting to get someone to do what they might not otherwise do. Finally, they maintain that negotiating is not a paradigm for all influence situations and that other methods of influencing and conflict management are likely to be more appropriate in contrasting environments and scenarios. The conclusion here is therefore that

negotiating is a form of influencing and not appropriate in more complex cases of dispute resolution.

An important element of negotiation as a process is added by Dobrijevic, Stanistic and Masic (2011) concerning power. Their view is that power is present at negotiations, that all negotiators want power which bestows benefit to one party over another and the advantage is seldom evenly distributed. Nierbenberg and Ross (cited in Dobrijevic, Stanistic and Masic (2011) highlight that the person holding the most power is the one to stands to gain the most or loose the least. This research suggests a clear downside to negotiation as a conflict resolution tool; it fosters an imbalance between the parties and where the outcome of a 'win-win' scenario is doubtful.

From this research there is evidence that negotiation brings several advantages over the litigation process. However, there appears to be lack of objectivity with the research process as it is a form of potentially undue influencing and is power based, bringing a lack of balance between the parties. It is also not a suitable resolution method in all cases, particularly as cases become more complex.

2.7 Mediation in the International Context

Turning to the broader view of conflict resolution in leading global markets, the theme of the international context is considered to achieve a sense of perspective on a global basis. As Ireland is a member of the European Union (EU), the prevalence of ADR in the EU will be considered. However, as the influences of ADR have come from non-EU activity, exploration of ADR in non-EU countries will be considered first.

2.7.1 International Influences on ADR

Regarding the roots of mediation, the beginning of mediation occurred in the United States of America (USA) between the 1960's and early 1970's (Jones, 2013). Gregory and Cavanagh (2007) offer the view that historically, notwithstanding ADR being cost beneficial to dispute resolution, it was

treated suspiciously historically and some of this sentiment continues to the present day. They add that acceptance over the last number of decades began in the USA and, more latterly, in the Britain. Daugherty Rasnic (2004) concurs by stating that the United States of America first commenced ADR on a large scale basis and developed the ADR system to a far greater extent than either Britain or Ireland. The time span of the initiation of ADR since the 1960's and the evolution of the framework worldwide in only the last number of years therefore seems to be indicative of entrenched views that adversarial systems and prolonged conflict are preferred scenarios. It is therefore beneficial to now consider mediation within the ADR framework for a number of countries, of varying sizes and population, across the world.

2.7.2 Mediation in Non-EU Countries

Mediation will now be explored in territorial areas to establish the context in which mediation operates. This is intended to provide a holistic view of mediation on a global basis and to give greater context to the Irish mediation landscape.

2.7.2.1 USA

In examining some of the features concerning the United States of America (USA), there was experience of dispute resolution expense issues, litigation delays and citizen alienation before introducing mandatory mediation in State and Federal Courts (Nolan-Haley, 2012). With litigation costs, this was perceived as a quantitative reason to push the mediation framework agenda (Goldberg and Shaw, 2010). With individual States forming their own laws, the evolution of mediation has been aided by adopting a uniform or model act protocol across States. Many States adopted the State-by-State version of the Uniform Mediation Act 2002, or a revised version of it (Daugherty Rasnic 2004). For example, in the State of Florida, the addition of contractual based pre-litigation mediation has the ability to transform business dispute resolution rather than wait on Court-ordered mediation (Christiansen, 2010).

Litigation in the USA as a dispute resolution method has therefore brought delays, cost and fragmented relationships. A States-wide alternative was

introduced which was adopted by many States with the intention of reducing costs.

2.7.2.2 Canada

Turning to a border country of USA, research shows that five of the ten provinces in Canada have introduced legislation to facilitate mediation (International Bar Association, 2013). It is helpful to consider the volume of mediation by looking at an example. The State-run Financial Services Commission of Ontario (FSCO) manages regulation for all financial services, and mediation. From 2007 to 2012, it received an unprecedented increase of ninety-nine percent in applications, bring their backlog to 29,142 in March 2012.

The table at fig.1 illustrates activity levels from 2007 to 2013 (April).

Number of Mediation Cases in Regulated Financial Services

Calendar Year	Applications Received	[4] Cases Closed	[1] Total Open Cases	[2] Cases Closed as Full Settlement	Cases Closed as Partial Settlement	Cases Closed as Failed	[3] Mediation Backlog
2007	14281	13107	4745	5074	1765	4658	2496
2008	16318	14026	7037	6370	1581	4576	3938
2009	20918	15446	12509	7947	1553	4542	9215
2010	27956	18351	22114	10579	1415	4997	17850
2011	36496	22631	35981	13898	1200	5991	29305
2012	28389	33856	30561	17755	1734	11744	17540
2013 (Jan.1 - April 30)	7,163	16,423	21,309	5,651	857	6,667	8,128

Fig.1 Source: FSCO

The table indicates the level of volume in one area of Commercial mediation. The FSCO has recognised the demand for mediation. The demand appears to be at such a magnitude that for future cases mediators are being appointed within days and backlogs are estimated to be cleared by autumn 2013.

There is a significant prevalence of State instigated mediation across Canada. The example illustrated highlights the volume of cases appropriate for and handled successfully through litigation. However, the statistics illustrated in the above table also clearly demonstrate that there is also a

high proportion of cases that do not settle through mediation in the financial services sector.

2.7.2.3 Australia

Mediation is the most widely used ADR mechanism in the Australian legal system (Jones, 2013). The instigation and development of mediation was greatly influenced by the USA, commencing in 1979. There followed Australian legislation in the 1990s to give effect to mediation through over one hundred legal statutes referencing mediation. Arising from these steps and the ensuing growth in cases for resolution, both government and private institutions have been established to manage ADR in the Commercial realm.

The Australian structures have continued to advance with quasi-compulsory mediation being implemented. Under recent legislation, namely the Civil Dispute Resolution Act 2011, cases assigned to the Federal Courts have to have been the subject of 'genuine steps to resolve a dispute' in advance of legal proceedings being filed. This process includes the use of ADR (Hanks, 2012).

Mediation is therefore very dominant in Australia through the legislature and support frameworks. The Judicial system clearly see a role for some type of ADR in dispute resolution as a substitute to litigation.

2.7.2.4 China

The introduction of mediation is relatively recent in China whereby frameworks were designed in 2002 but not implemented at that time. In 2010, legislation was passed, entitled the Peoples Mediation Law empowering a people' mediation committee to resolve day to day conflicts in local communities. Agreements reached through mediation are legally binding (Herbert et al, 2010). As an emerging economy, this structure compares favourably in principal with other first world countries. Also from this research, it is seen that mediation is only in its infancy in a formal framework. It is interesting to observe the implementation of mediation

committees to manage matters locally, which could well be beneficial given the physical breadth of the country and high population density.

2.7.2.5 Russia

Similar to the experience in China, there are recent developments in Russia, having enacted mediation legislation in 2010. This was instigated by and based on an international cross-border arbitration legislative protocol. As of 2009, there were a staggering twenty-five million cases outstanding (Herbert et al, 2011). This must place undue pressure on what appears to be an overburdened Court system. However, it equates to a ratio of approximately six cases per head of population, which is the same ratio backlog in Italy (referred to below). It is too early to establish what impact mediation will have on such a high volume of dispute resolution cases. However, it is a positive indicator to observe that mediation has been introduced at a State level and through the legislature.

2.7.2.6 Summary of Mediation in the International Context

ADR in the form of mediation is very well established in the USA, Canada and Australia. The driving force is predominantly the avoidance of high litigation costs and Court delays. There is a recurring feature of mediation being strongly encouraged by each government over resorting to litigation. In contrast, mediation as a form of ADR is at its infancy in Russia and China. However, in view of high volume of litigation cases, it is interesting to note mediation as being introduced as an aid to drive conflict resolution. It is also noted that all five countries cited introduced mediation in a formal framework through legislature. This is indicative of the respective governments holding the view that introducing mediation in a formal framework is an effective and worthwhile tool in dispute resolution.

2.8 Mediation in the European Union Context

The next theme to be considered is the prevalence or otherwise of mediation in EU member states. The spread of ADR across the Atlantic to EU environs was aided by globalisation (Gregory and Cavanagh YEAR). In 2008, the European Union (EU) gave legislative power to the "European Union Directive on Certain Aspects of Mediation in Civil and Commercial Matters" (the "Mediation Directive"). The legislation mainly concerned the area of cross-border mediation with a proviso that similar rules could be adopted domestically for each Member State. However, the directive is cited as the driving force behind the movement in ADR in Europe, principally in the area of mediation (Herbert et al, 2011).

As at 2010 within the 27 European Union Member States, 12 Member States have implemented statutory mediation domestically. A further three Member States have voluntary mediation frameworks in place and a further two have undescribed mediation in place. Of the ten remaining Member States, six have some form of ADR in place, while four Member States have no procedures in place. Overall, these statistics illustrate that with 23 of the 27 Member States having some method of domestic ADR. Mediation is the predominant form of ADR in the EU member states, with 17 of the 27 Member States operating Mediation. The statistics included Ireland having statutory mediation. However, the Mediation Bill in Ireland has not yet been enacted.

Figure 2 illustrates is a list of the status of each member state regarding the use of mediation.

Mediation participation in the E.U. (August 2010)

ADR Schemes in force (August 2010)	For domestic disputes
Austria	Mediation (statutory law)
Belgium	Mediation (statutory law)
Bulgaria	Mediation (statutory law)
Cyprus	n.a.
Czech Republic	Arbitration (statutory law)
Denmark	Mediation
Estonia	Conciliation (statutory law)
Finland	Arbitration
France	Mediation (statutory law)
Germany	Amicable settlement of disputes (statutory law)
Greece	Mediation
Hungary	Mediation (statutory law)
Ireland	Mediation (statutory law)
Italy	Mediation (statutory law)
Latvia	Conciliation (voluntary basis)
Lithuania	n.a.
Luxembourg	Arbitration (statutory law)
Malta	n.a.
Netherlands	Mediation (voluntary basis)
Poland	Mediation (statutory law)
Portugal	Mediation (statutory law)
Romania	n.a.
Slovenia	Mediation (statutory law)
Slovak Republic	Mediation (statutory law)
Spain	Mediation (statutory law)
Sweden	Mediation (voluntary basis)
UK	Mediation (voluntary basis)

Fig 2. Source: www.ec.europa.eu

The participation of 23 of the 27 Member States in domestic mediation at government level is illustrative of the value of the mediation process and the investment that each of the participating member states are prepared to make in the process.

2.8.1 Mediation in EU Member States

Of the 27 Member States of the European Union, mediation will be reviewed for three of the States. Mediation is reviewed below in England, where it now has a long standing prevalence, compared to Italy and Slovenia, which are considered firstly.

2.8.1.2 Italy

In recent years, and in respect to Civil matters, Italy experienced an average case completion rate of three and a half years, and up to ten years for final appeal. This would seem like an untenable position for all parties concerned, tying up time, money and cost. The subsequent and recent 2010 introduction of compulsory mediation dictates that disputes under a broad range of categories must be proceed to mediation before litigating to the Court adversarial process (Herbert et al, 2011). This presents potential for a step change in case resolution rates.

There, has however, been some backlash for the newly imposed regime. A form of Evaluative Mediation has been implemented whereby, by the Italian rules, the mediator is entitled to determine a decision even if one of the parties does not appear at the mediation. Mediators' fees appear to be low, with a scale fee of €40 for cases valued up to €1,000, thereby discouraging new mediator entrants to the profession. Employment law cases, for instance, are not being settled due to the unavailability of mediators (Hanks, 2012).

It is evident from this research that there were extensive delays with dispute resolution in the Italian jurisdiction which were inadequately addressed through the litigation process. A compulsory mediation process was subsequently introduced, indicative of a strong initiative to curb the large backlogs. However, there does not appear to be an adequate resource

infrastructure in place to cope with the demands from the mandatory nature of the framework.

2.8.1.3 Slovenia

In contrast to the Italian compulsory mediation process, Slovenia has a mediation process encompassed in its Court framework on an opt-in basis since 2009. This voluntary process has the advantage of flexibility and enabling participating parties who are engaging in the process to do so voluntarily, which may bring about positive results to dispute resolution (Herbert et al, 2011). This literature highlights how Member States can adopt the same principal of mediation, but still have the latitude to apply individual frameworks, the resulting mediation structures can be significantly different and have varying consequences for the ultimate aggrieved parties availing of the process.

2.8.1.4 England

The instigation of mediation in England was greatly influenced by the USA (Jones, 2013). Transformation in England towards mediation in Commercial cases has not been contractual based but rather judicially based; Commercial mediation's general success as a concept, rather than its take-up-rate, is contributable to reforms in Civil justice (Liebmann, 2000). The English Civil Procedure Rules (CPR) were broadened for the inclusion of guidelines that encourage parties to a dispute to consider some form of ADR before litigating and as a quasi-compulsory step. This encouragement is compounded by the Courts ultimately making unfavourable awards on the costs aspects of cases where parties either unreasonably refused to mediate or acted unreasonably during the mediation process (Hanks, 2012). As a consequence of these changes, the English Centre for Effective Dispute Resolution (CEDR) states that the Commercial mediation profession could save British business in excess of £1 billion a year in wasted management time, damaged relationships, lost productivity and legal fees (Law Reform Commission, 2008). This is illustrative of significant savings on parties' expenditure and resourcing.

Rt. Hon Kenneth Cole, Lord Chancellor and Secretary of State for Justice (2011), spoke of the economic imperative to reform the UK's Civil justice system as one factor weighing down their nation's competitiveness. His proposal at that time was for automation of small claims specifically to mediation and mediation awareness of higher valued cases. He referred at the same time to there being a "sustained push" on mediation and ADR as one of the ways to make dispute resolution quicker, easier, more affordable, less intimidating and help people avoid Court (Future of Litigation, 2011).

The availability of mediation is also promoted by Britain's Ministry of Justice. The Ministry has published details of mediation resolution areas on their website as an apparent endorsement of this dispute resolution method. The following is the list of areas concerned:

- housing issues
- business disputes
- small claims
- debt claims
- boundary disputes
- employment disputes
- contractual disputes
- personal injury and negligence claims, and
- Community disputes such as nuisance or harassment issues.

Turning to the current levels of reported mediation, in their 2012 audit report, CEDR estimate that 8,000 Civil and Commercial cases are arising per annum. This reflects a 15% increase on their 2010 audit. In tandem with these factors, they also quote resolution rates of 70% on the day of the mediation, with further 20% settling shortly thereafter. This gives an aggregate settlement rate of approximately 90%.

From the research above, it is illustrated that England owes its growing mediation culture to origins in the USA. The research here indicates that the UK has openly embraced mediation, legislating for it, with judicial

support on legal costs. Savings from mediation are significant, as is the effective settlement rate of almost 90%.

2.8.1.5 Summary of Mediation in the European Union

On reviewing mediation in the EU, the research reveals that ADR, including mediation, was significantly influenced from the USA. Following EU legislation on cross-border dispute resolution and the invitation to transpose the intention into domestic. Mediation has been adopted to varying degrees by Member States, bar four countries. The variations cover opt-in, such as Slovenia, to compulsory, as in the instance of Italy, where its well-intentioned apparently overly zealous system has been met with criticism.

Mediation is in its infancy for some Member States so there is no research readily attainable on success levels. By its very nature, mediation is a confidential process, and as a result objective statistical data is not always available to truly reflect activity levels and dispute resolution rates, experiences and satisfaction levels of interest parties. However, monitored cases in the UK show a settlement rate of 70% on the day of mediation.

There is a sufficient critical mass of UK cases to obtain research on data. The volume of cases to mediation is growing, settlement rates are high and the government has shown strong support of the process. This is partly due to linking dispute resolution with cost and competitiveness. The financial savings from Commercial cases alone to the business community are substantial.

2.9 Summary of EU and Non-EU Mediation Activity

A consolidation of research is covered here briefly as a continued theme to establish and overview of mediation globally. The research above demonstrates a consistency and replication of matters pertaining to mediation on a global scale. Cost factors and efficiency are recurring themes. There are overall features of Court systems incapable of providing dispute resolution through litigation at an efficiency rate near that for mediation. There is also reference to savings on time which would apply to gained efficiencies in business and Court systems to allow for more complex and unresolved cases to

be reasonably provided with an avenue for efficient settlement. Of significant importance, in consider the Irish context, is the UK's link of efficiencies in the judicial system, and Civil and Commercial cases pertaining to it, to having a contribution towards the country's competitiveness. This is an indication of how effective and power the potential impact of mediation can be on an economy, both directly and indirectly.

The research consistently illustrates mediation being prevalent where the process is government backed, with accompanying legislation and the support of the Judicial system. This gives a clear impression of a 'top-down' approach, with the necessary buy-in that is required for a large undertaking to take sufficient effect and gain momentum. In terms of acceptance at a societal level, the research is more indicative of mediation as a dispute resolution being embraced globally by 'early adopters' ,with a journey to travel before being embraced by so-called the 'laggards' at the opposite end of the scale of change and acceptance.

2.10 Mediation in the context of Ireland

The final theme to consider is the position vis-à-vis Ireland. There are a number of aspects to consider and reflection on the international landscape on mediation is also necessary. Firstly, currently there is no formal framework for mediation in Ireland. Available statistics, illustrated below, demonstrate that mediation in Ireland is in its infancy. There is potential for mediation to grow however.

2.10.1 Draft Legislation

A recent European Directive on cross-border Civil and Commercial mediation references there being nothing in the Directive preventing European Member States from applying the same mediation provisions to respective countries' internal dispute resolution processes (EU Parliament, 2008). The subsequently drafted Mediation Bill 2012 in Ireland is awaiting enactment. If the Bill concerned is enacted as drafted, legal advisers must advise Civil disputants of mediation before litigating (Justice Department, 2012).

There are twenty sections to the Draft General Scheme of Mediation Bill (2012), as set out in Appendix 1. The Bill is being progressed through various stages of standard legislative process prior to enacted, planned for late 2013.

The essence of the Bill, if enacted, is to effectively apply a professional code of practice to mediation, but, more importantly, put it on a statutory footing. Legal Counsel for a disputant will be obliged to inform their client of the concept of mediation as an alternative to litigation prior to legal proceedings commencing. Furthermore, it fundamentally empowers the Judicial system to suspend legal proceedings in deference to mediation. Moreover, in awarding costs, the Courts will take account of any party who unreasonably refused to mediate where it would otherwise be deemed to be appropriate. This emphasises the importance on costs and how they play a key factor in the cost of disputes in themselves.

The enactment of the draft Bill will, in principle, significantly progress the mediation agenda in Ireland. Awareness of the availability,

2.10.2 Commercial Cases for Mediation

Mr. Justice P. Kelly, President of the Commercial Court, Republic of Ireland, (cited Irish Times, 2013) advised that going to mediation makes "good common sense". He is further of the view that and it is no longer viewed as a sign of weakness that one of the disputants in an issue would seek mediation in a Commercial case. He also advised that the expenditure is much less than litigation, the process is flexible and owned by the parties, and, ultimately, is capable of producing results that no Court or arbitrator can. Kenny (cited Irish Times, 2013) also shares the view that that mediation saves money as well as time and business relationships.

The Irish Commercial Mediation Association (2013) published its finding from a survey amongst Irish practicing mediator. The findings are summarised in the table below. An analysis of the data is covered below.

Irish Commercial Mediation Association Survey 2013

Subject	Survey findings
Volume of mediation in Ireland	<p>1. 18 cases were resolved by mediation in 2003.</p> <p>2. 133 cases were resolved by mediation in 2012. The unreported cases, or unidentified cases, may bring case resolution number closer to a range of 250 to 300.</p>
Settlement rates	<ul style="list-style-type: none"> ▪ Year 2006: 70% ▪ Year 2007: 67% ▪ Year 2008: 70%
Cost savings	<p>Cost savings are estimated at 65% of the total potential cost for the cases settled.</p>
Legal Practitioners perception	<ul style="list-style-type: none"> ▪ Knowledge <ul style="list-style-type: none"> ○ Lack of awareness of mediation ○ Lack of Knowledge of mediation ▪ Costs <ul style="list-style-type: none"> ○ Protecting their fee income from litigation

	<ul style="list-style-type: none"> o Courts not awarding costs of mediation o Another layer of wasted costs ▪ Mediation process <ul style="list-style-type: none"> o Not a legally binding agreement o Using mediation is perceived as a sign of weakness o Another layer o Failure of the legal representatives to take proper ownership of the process ▪ Familiarity with the adversarial system as being the norm ▪ Dismissing mediation as being 'soft law'
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Fig.3 Source: ICMA

2.10.3 Volume and Settlement Rates in the Survey

The volume levels cited in the above survey are very low to date and do not provide a critical mass of data for in-depth analysis. However, the data illustrates the current level of mediation and the significant increase since 2003. Unreported cases, naturally, cannot be analysed.

There is insufficient evidence in the survey to establish whether the above settlement rates constitute cases that settled on the day of mediation or within a short period after mediation. If the case is the former, the settlement rate is the same as that of the UK (quoted above). If the latter

is the case, the rates are 20% lower on average than the UK. However, there is a critical mass of 8,000 cases annually in the UK compared to the 133 quoted in Ireland for 2012. This low volume in Ireland may not be representative of the potential settlement rate and could therefore well skew the statistics.

2.10.4 Cost Saving and Legal Practitioners Perception in the Survey

The cost saving of 65% in the survey is an important statistic and substantial in itself. However, the monetary equivalent of this saving is unavailable and which, if available, would allow comparison with the data from other countries.

The cost savings are advantageous to disputants, but of concern to legal practitioners. The survey results illustrate their concerns over cost reductions carving into their professional fee income. However, if more cases come through to mediation there may be sufficient volume and quick cash flow to make up for the long tailed litigation yielding higher fees. Some disputants may be encouraged to seek mediation dispute resolution where they would not have done so beforehand due to potentially prohibitive fees.

2.10.5 Cost savings of mediation

There are also similarities between Europe and the United States of America on the cost of dispute resolution. Whereas legal costs in Ireland can run at 27% of settlement awards, compared to 13% in Europe (Finfacts, 2011). In contrast, mediation has equivalent costs running at only at 3% of Damages in Ireland (Finfacts, 2011). Similar to the experience in England, this illustrates a substantial saving for disputants in this jurisdiction. This aspect of legal fee differentials between Ireland and other European countries is compounded with the IMF/EU Memorandum of Understanding requirement of the Irish Government, compelling Ireland to address legal fees as a pre-condition on further loan drawdown and to implement the recommendations of the Legal Costs. Such is the importance of the high level of legal fees that it, as part of legal reform in Ireland, is a central

feature of the competitive reforms necessary for the State under the IMF/EU Memorandum of Understanding.

2.10.6 Case duration

Kenny (cited Irish Times, 2013) advises that mediation saves time. He also advised that 43% of lawyers surveyed advised that their clients were worried about the time to Court delays. The adversarial (litigation) system in Ireland currently takes 515 days on average for a Commercial case to be heard in (Finfact, 2011). In contrast to this, in mediation, the parties mutually agree on a suitable mediator within their own time, in non Court-ordered mediation (Erickson, Bowen and Geoffrey, 2006). This is further evidenced by the study that mediation is capable of taking place within a number of days of a dispute arising (Picard,2002). This indicates that mediation is a faster process for the parties than traditional litigation, and so is more advantageous to the disputants.

2.10.7 Relationship Management

The sentiment of the voluntary nature of mediation encapsulated earlier in this research on mediation is also linked to the future relationship between the disputants. This is reflected in the following comment:

“Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties.”

(European Parliament,2008)

Adding to this concept of preserving relationships, it is possible even in cases of strong conflict, entrenched positions and hopelessness to reach full or partial agreement (Johnson, 2012). Research also reveals that once the mediator establishes the impediments to agreement, the mediator can try to devise effective ways to address them (Johnson, 2012). It can be concluded from these views that by identifying the blockages to dispute resolution that successful outcomes or progress can be made even with significantly acrimonious issues.

2.10.8 Mediation versus Litigation

Comparing the process method of mediation as an alternate dispute resolution method to traditional litigation by trial, research shows differences in process and benefit between these two frameworks. The litigation model is expensive, unending, and a drain on business leaders time, resources and staff (Christiansen, 2010). There is also testimony that in the United States of America, in a litigious era, Courts have been overloaded leading to injustice through being unreasonably delayed (Erickson, Bowen and Geoffrey, 2006). Delay is also evident in Western Europe. For example, Italy has a six million Civil case backlog in its Court system (Nolan-Haley, 2012). From this it can be seen that litigation as a process can be protracted, labour intensive and can impede the right to justice overall.

The differences between mediation and litigation by trial are further illustrated as the mediator, holding plenary sessions and liaising between private caucuses for each party, works to craft a solution to satisfy both parties, without a third party decision maker as with litigation (Erickson, Bowen and Geoffrey, 2006). The sentiment on decision making is also encapsulated in the view that combined all party participation and self-decision making features are core values and distinguishing criteria of mediation which must be maintained if not to otherwise become like other more arbitrary processes (Nolan-Haley, 2012). These views suggest that parties to the mediation process maintain control of the decision making process to thereby create an outcome to their mutual satisfaction.

2.10.9 An informed society

Daugherty Rasnic (2004) maintains that Irish society is more litigious than American counterparts, and the most litigious country in Europe. She adds that Ireland is second to the USA in having the greatest number of lawyers per capita. There is a need therefore to inform society at large of the benefits of mediation in dispute resolution as litigation is not always necessary to resolve disputes. Allied to this is the concept that the pending legislation in Ireland on mediation, referred to earlier, will only be effective if there is awareness of the benefits of this dispute resolution

framework (Joint Committee on Justice, Defence and Equality, 2012). A cultural shift in Irish society may be required to reduce litigation levels. However, there is no data available for this research to establish how many cases are pursued out of a point of principle. Such cases may well be suited to resolution through mediation.

2.10.10 Summary of Mediation in the Context of Ireland

There is currently no formal or legal framework for mediation in Ireland. Legislation is imminent. The Commercial Court in Ireland has endorsed this legislation and is highly supportive of mediation. Mediation in Ireland is also at its infancy. Reported cases numbers are extremely low, but settlement rates are on par with other countries. The cost savings in Ireland are considerable but mediation shows indications of not being embraced by legal practitioners at this point in time. However, long Court delays are capable of being significantly reduced. Overall, mediation illustrates advantages over litigation in comparison studies. Public awareness of mediation in a litigious society will be required to sufficiently promote the virtues of mediation, particularly when clients are seeking legal advice from any hesitant legal advisors on the opportunities of and transition towards mediation.

2.11 Summary of Mediation in the Context of Ireland and other EU and Non-EU Countries

The theme of this section is to bring together the research from the earlier sections and distill some of the more pertinent research as an aid to establishing an opportunity for research. The researched literature prevailing on the subject matter for EU and Non-EU countries is now compared with the literature researched for the context in Ireland. In as much as there are common themes vis-a-vis the comparison of EU and Non-EU jurisdictions, so too is the case when comparing both of these jurisdictions with Ireland. Cost and efficiency are, again, recurring themes in these comparisons. The driving forces for the other two main geographic areas (EU and Non-EU jurisdictions) are to drive down legal costs and make the dispute resolution process faster and more accessible. This requirement is mirrored

in Ireland, as is the fact that mediation is being founded on legislative powers supported by the respective government and Judicial system.

The benefits of mediation for Civil and Commercial cases, are similar in all jurisdictions and equally transferrable conceptually from other jurisdictions to Ireland. That is, the benefits that are enjoyed in other mediation participating jurisdictions can likewise be realised and capitalised upon in Ireland. There is ample evidence in this research to illustrate that Ireland can reap the rewards from mediation alongside the existing adversarial system.

There are some potential misgivings with mediation in Ireland. Some of these points include the question of whether mediation is simply another layer in the process, the impact on fees for the legal profession themselves, and whether they will row in behind and objectively support the mediation agenda to foster embedding the process successfully.

2.12 Summary of Literature Review

Through the course of this literature review, it has been illustrated that conflict, remaining unresolved through lack of effective communication, is problematic. Confliction resolution, in itself, is multifaceted, but, if unsuccessful, can have long term effects. Hence, there is a need for appropriate conflict resolution frameworks. Alternative Dispute Resolution offers such frameworks as options over adversarial litigation, introducing the concept of mediation. Accordingly, with the complexities of conflict and conflict resolution, mediation has been showed to have a distinct role as a tool to bring about a settlement to such matters.

When reviewing mediation internationally, it was discovered that mediation is well established predominantly in the English-speaking Non-European Union countries, with it becoming prevalent in other largely populated nations such as Russia and China. The reasons for mediation being established in those jurisdictions - predominantly speed and cost - was mirrored in European Union countries. Mediation in these latter regions was influenced from the United States of America.

Indeed, such was the extent of the influence that European Legislation was introduced to impose statutory structures for mediation frameworks. The legislative effect has created a strong footprint across European Union member States, with Ireland imminently following suit with statutory legislation in this regard. In the interim, available mediation statistical data is minimal yet encouraging in terms of success rates. Mediation is also endorsed by Commercial and Civil Courts.

2.13 Conclusion of Literature Review

It is evidenced from the summary above that mediation is a continually emerging tool in dispute resolution of Civil and Commercial cases. It can be concluded therefore that, as mediation embeds further in individual jurisdictions and spreads to new jurisdictions, that it is a valuable tool that brings benefit to the various stakeholders. What remains is to further explore a more concise benefit from the perspective of the disputants, and this will be examined in detail in this research paper.

CHAPTER 3. METHODOLOGY

This section considers a number of heading on the subject of methodology.

The flow chart below illustrates a high level representation of the sequencing of events to be followed through the overall research, commencing with rationale and concluding with research positioning.

Flow Chart

Research Problem
Research Aims
Research Objectives
Research Philosophy
Consideration of Research Methods/Approach
Method and Rationale for Investigation
Methodology Structure
Data Collection
Data Analysis
Ethical Considerations & Limitations
Findings, Conclusions,
Further Research

Fig. 4

Each of the topics in the flow chart will be covered sequentially as the research is framed, collated and unfolded in ultimate findings and conclusions, recommendations and further research.

3.1 Research Question

There are a number of stakeholders in the mediation framework: Government and appropriate Government Departments, the Judicial system, the Legal Profession, Mediating Bodies, Mediators and Disputants. All parties, bar the latter, have a continuous vested interest in the mediation agenda. Their respective long term interests remain regardless of the numerous transient disputants that pass through the process and that each of those stakeholders are required to serve. This research illustrates the traditional and alternative dispute resolution methods, being litigation and any one of a number of ADR methods respectively. A central point on dispute resolution on dispute resolution is to take cognizance of how well served the disputant is by the most commonly used and available channels for dispute resolution. Arguably, the ultimate potential benefit stands to be for the disputant, being the generally uninformed client, who may only have the mediation experience once in a lifetime.

Research to date for this review has focused on key permanent stakeholders to the mediation process. However, there is a hiatus in disputant perceptions of the mediation process from end to end. If the essential aim is for the disputant to be advantaged by and benefit from the process of mediation, then there is a need for a greater understanding of what that benefit is for the disputant concerned. This factor presents an opportunity for further research and drives the kernel for the research question. This is explored further in the next section.

3.2 Research issue

As a consequence of the research, the research question is the following:

“What is the benefit to disputants of mediation for resolution of Civil and Commercial disputes in Ireland?”

The research question is considered here in more detail as to what the research question means and what are the objectives of the research.

Mediation is purported to be more beneficial as a dispute resolution method than other conflict resolution methods. The literature review indicates a

significant amount of benefits arising from the use of mediation. The need arises in the review to establish what are the benefits are for disputants in 3.2Ireland.

A definition of mediation is generic to the term mediation itself. There are several forms of mediation style. The dissertation will explore the use of the style of research and what is the rationale for selecting that option.

Evidence indicates that mediation is a successful channel for dispute resolution over the traditional method of litigation. This will be considered in more detail and with a view to obtaining quantitative data to support qualitative research on success metrics.

The research constraints are related to the research of Civil and Commercial disputes as there are a number of other broad headings under which mediation can be conducted. As the research continues, the focus may be concentrated more on Commercial mediation. Any changes will be appropriately reflected in the research problem question.

Mediation is very prevalent in the United States of America and parts of Western Europe. Mediation, Civil and Commercial types, are in operation in Ireland. There are a number of professional bodies offering mediation services in these areas in Ireland. The author's interest is founded in the formal introduction of legislation to underpin the concept of mediation as an important additional tool and choice in dispute resolution.

The disputants will be central to the research as much research centres on other stakeholders and the process of mediation itself.

3.3 Research Aims

The aim of the research are to establish views on the mediation process, ultimately from a disputant perspective, and based on information from the literature review, to establish what benefit could arise in using mediation in certain disputes (namely Civil and Commercial). As the overall research is disputant-centered, the opportunity arises to seek and gain understanding of a small number of related criteria that would be important to a disputants.

Specifically, there are a number of aims involved with the research under review. These are as follows:

- To explore how the mediation experience in Ireland could be benchmarked against broad research, including internationally based experiences.
- To establish in what way mediation is an alternative to litigation, to the advantage of the disputant.

It is intended that the aims will be met through the achievements of the objectives set out below.

3.4 Research Objectives

The objectives and purpose of each objective are listed below. The focus is centred around the disputants, but legal representatives are in a position to address each of the scenarios.

1. Identify if there are drawbacks with litigation as a traditional conflict resolution tool
2. Establish if there is any validity to purported attributes of mediation, being speed, cost and relationship maintenance.
3. Identify if there are any ways that a disputant may gain from availing of mediation.

3.5 Research Philosophy

The context of this section is to frame the author's philosophical approach in conjunction with this research. Philosophy, in the first instance, is concerned with the development of knowledge and, furthermore, the nature of the knowledge concerned (Saunders, Lewis and Thornhill, 2009)

Two major philosophical traditions, or paradigms, pertain in the research theory of social scientists; these are positivist and interpretivist. Both

traditions are grounded in differing assumptions about the nature of reality, which is viewed in two distinctly different ways (Williamson, 2006).

3.5.1 Positivism

In considering positivism first, one definition is as follows:

“Positivism is an epistemological position that advocates the application of the methods of the natural sciences to the study of social reality and beyond”

(Bryman and Bell, 2007)

The key features of this philosophy surrounds what objectivity and measurement underpinned by what can be observed and experienced. This presents a leaning towards quantitative data.

Furthermore, positivism lends itself to a deductive style of research, relying on moving from theory to data, selecting sufficiently sized samples so as to generalise conclusions, and using a highly structured and independently positioned approach.

3.5.2 Interpretivism

Turning to interpretivism, it is a paradigm that developed due to criticisms of positivism (Collis and Hussey, 2009) this is described as being the following concept to be advocated

“to understand the differences between humans in our role as social actors. This emphasizes the difference between conducting research among people rather than objects”

(Saunders, Lewis and Thornhill, 2009)

This philosophical stance is related to the meanings and experiences of human beings (Williamson, 2006). It also lends itself to an inductive style of reasoning, subjectivity, embracing a more flexible structure enabling change

as the research develops with the author being part of the research process and with a lesser emphasis on the need to generalise.

The two paradigms are underpinned by a range of assumptions. This research is framed by three assumptions, namely the axiological, epistemological and ontological assumptions. Each of these are now reviewed from the perspective of this research to illustrate the research position concerned.

3.5.3 Research position

This research is grounded from the perspectives of being a positivist and interpretivist, with a leaning towards the latter, and evidence by semi-structured interviews creating a greater level of qualitative than quantitative data.

3.5.4 Axiological Position

The subject matter of this paper relates to social sciences which is relevant to the axiological position, which concerns the role of values. In order to undertake the research given the nature of the topic, the author is adopting an interpretivist approach. In order to elicit the experience of practitioners in the area of mediation, the author has engaged with these individuals on a one-to-one basis, thereby becoming involved with the process. Rather than upholding an unrealistic view for the author that the research process is devoid of values, the author perceives that research of this nature is weighted with values and the prevalence of bias exists within this process.

3.5.5 Epistemological Position

From an epistemological perspective, concerning what is accepted as valid knowledge, the author adopts a interpretivist view. This is on the basis that research methods adopted involved a proximity to the knowledge and data source and the subsequent need to draw inferences from subjective data elicited through semi-structured interview.

3.5.6 Ontological Position

Considering the ontological position regarding the nature of reality, the author's view is that there is more than one reality. Accordingly, the author adopts an interpretivist belief in that each individual has their own sense of reality. This being the case, there are multiple realities in existence.

3.6 Consideration of Research Methods & Approach Correlated to this Research Issue

Consideration was given to the research methods most approach to the research subject. The use of research methods for this research are influenced by the access to and availability of data. Substantive evidence with a sufficient sample is preferred with the quantitative research approach. Sufficient indicators capable of being devised in order to measure the concept concerned are needed. The reliability and consistency of objective data is important with quantitative research, as is a manner in which to question the validity of available data.

Moreover, care needs to be exercised in administering research instruments such as self-completion questionnaires in order to elicit sufficient subjective views on the part of the participants. The Likert scale can be used in conjunction with questionnaire type modelling. This can have a positive effect on reducing data error rates. A sufficient volume of data may benefit from a data analysis software package, such as SPSS.

Sampling is required for this research to gain a representative view of the population concerned with the subject matter. Whilst a representative sample is needed, a non-probability sample would be best suited as selected participants will need to be approached to elicit research data. This is more likely to increase the response rate. The sample size is considered taking cognisance of the availability of the representative sample.

Structured interviews are also appropriate for the research concerned. Questioning can be based on semi-structured interviews. Questions may cover a range of open, closed and fixed-choice questions. Appropriate use of coding may take place to transform the data into numbers so as to apply quantitative analysis of the data.

The method of structured behaviour so as to observe the behaviour of individuals in a real life situation is considered. This would allow observation of individuals and interaction between individuals. This would best occur on a number of occasions so as to create a sufficient sample to draw substantial conclusions.

Qualitative research is also appropriate for this research, with a stronger emphasis on words rather than numbers. An auditing type approach is required for dependability of the data. Interviews can be carried out on a one to one basis or in focus groups, depending on the numbers of participants available.

3.7 Method and Rationale for Investigation Methods and Techniques Selected

3.7.1 Context

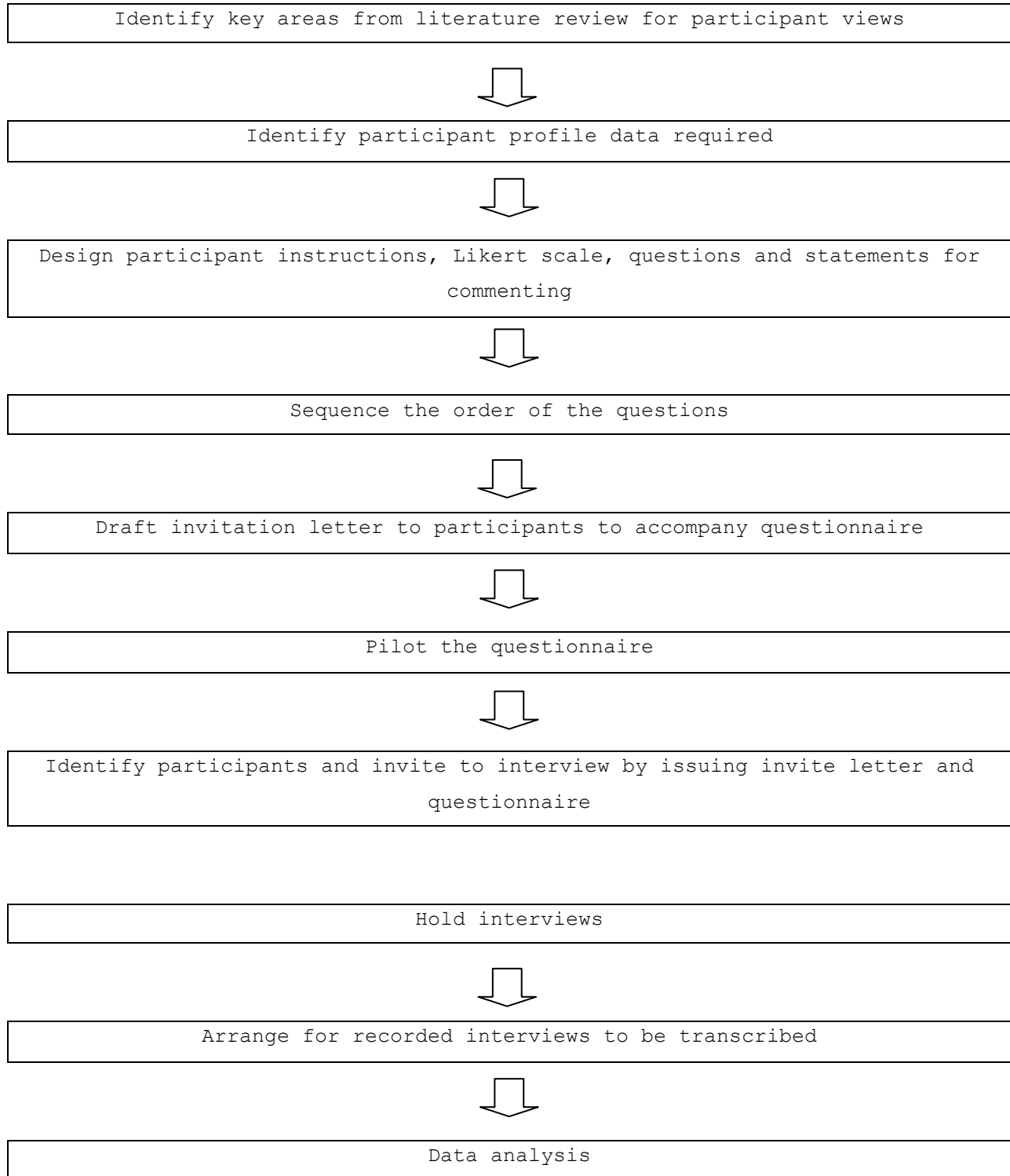
In the first instance, the subject matter relates to mediation, which by the very nature of maintaining the integrity of it as a framework in itself, necessitates complete confidentiality and discretion. This arises in both instances of cases that have been mediated and future cases potentially to be mediated; if the principles of confidentiality and discretion are compromised either at global, national or local levels, then the integrity of the mediation as a process could be potentially jeopardised. Accordingly, data statistics are on the concept of mediation, trends and dispute types are not freely available.

Due to the necessary discreteness of mediation data at large, there is a lack of substantive evidence to measure, as is required with the quantitative research approach. There appears to be insufficient indicators capable of being devised in order to measure the concept concerned. The reliability and consistency of objective data is also questionable as there is no control over centrally reporting private mediation settlements. In essence, there is no manner to question the validity of available data. Moreover, too strong an emphasis on administering research instruments such as self-completion questionnaires may not elicit sufficient subjective views on the part of the participants.

Given the challenging context referred to immediately above, the methods adopted in the research are detailed below.

3.7.2 Methodology Structure

A structured method was adopted to investigate the research issue. The sequencing of the method is set out in diagram below.



The diagram above commences with key areas from the literature review to be researched in relation to the research problem outlined earlier. It illustrates how the research will be developed from that stage, to interview design and implementation and followed by the process of data analysis. These areas are discussed in detail below.

3.7.3 Opening Questionnaire Questions

The opening two fixed answer questions are effective in determining objectively the numeric exposure of participants to the mediation process and in what role they played a part in the mediation process. These two questions will frame the expertise of the participants both in terms of the volume of their exposure to mediation, the diversity of the representation and an implication of the perceived balance of their view by which role they filled in the mediation process.

3.7.4 Remaining Questionnaire

The key literature areas, covering a range of matters on the subject matter, required to be transposed to the questionnaire in the form of statements for commenting by interview participants.

The questionnaire needed to be set to elicit two response types against each research statement. For the first response type, a Likert scale was required as illustrated in figure 5 below.

A	Strongly disagree
B	Moderately disagree
C	Neither agree nor disagree
D	Moderately Agree
E	Strongly Agree

Fig. 5 Likert Scale for Research Questionnaire

The purpose of the initial question is to frame the participant's general view on the matter and to elicit a specific view on the research statement. The Likert scale answers for each participant could then be objectively compared for subject data analysis. Once a participant selected an initial response from the Likert scale, the participant was requested to give a reason to their selection. This then enabled the participant to freely share their view, in detail, as to the view behind their initial answer. The format of the semi-structured interview would facilitate participants being asked for clarification or expansion of their 'reason' answer, as deemed appropriate. This format also afforded the research the opportunity to seek further information on answers and on points of particular research interest. The interviews were planned to be in-depth and comprehensive.

The mediation statements transposed to the questionnaire were best being sequenced to give a logical flow, from the background of conflict to contemporary momentum of mediation in Ireland. This was designed in order to enable to participant to develop on their thinking as the interview progressed. The research statement sources from the literature are cross-referenced (Appendix x)

A participant invitation letter to interview required drafting, giving full context of the research and requirement (Appendix

3.8 Correlation between Methodological Approach for this Research and Previous Research

In general, on reviewing previous research, there has been a predominance of qualitative research in the field of mediation and related topics. The research gleaned to establish the international status of research is largely qualitative in nature, with a high emphasis on referencing previous research. The qualitative nature of previous research is evidenced in reporting on behavioural citations describing the success or otherwise of mediation at local, national and international levels.

There is a dearth of quantitative evidence, perhaps due to the confidential nature of mediation and a purported number of unreported cases. There are recurring theme centres around success rates of mediation, directly at mediation or closely after the formal process closes.

There is also a quantitative element applied to data that would originally be deemed to be qualitative in nature, referenced earlier as observation of behaviours of individuals at mediation type forums.

The nature of the methodology in this paper is closely aligned to the methodology trends identified in previous research. This research is a combination of quantitative data, part objective based on factual evidence, and part based on analysis of subjective answering to closed questions. As with previous research, the preponderance of data in this research emanates from qualitative data.

3.9 Pilot

A pilot was undertaken with a Human Resources practitioner, with generalised conflict resolution skills, to test the comprehension of the invitation letter, questionnaire flow and comprehension. Finally, the pilot included a pilot interview with the individual concerned in a virtual live setting, including the use of Dictaphone recording, probing questioning in the semi-interview format, timing and managing the interview process, whilst being cognisant of the concept of impartiality and seeking to achieve a lack of bias, whilst appropriately maintaining rapport.

Participants were identified who have experience of the mediation process. The most common areas of mediation for Civil and Commercial disputes is in the legal realm. A number of individuals in this arena with experience of mediation were identified and invited for interview. A mix of practicing solicitors and barristers was selected to give a diverse view and range of opinions.

3.10 Interviews

The interviews were held at the workplace or home of the participants. An important aspect of the interview environment was to secure physical surrounding where preferably no interruption by a third party or event would arise in order to maintain focus on the interview at hand. All interviews were held on a one-to-one basis.

The interviews were recorded by means of a Dictaphone or mobile phone. The recording apparatus was placed on the table between the participant and author for the best voice pick up and sound recording possible. The participants were all familiar with being in environments of evidence taking. All participants affirmed at having no issue over the interview being recorded. On occasion, there were interruptions to the meeting through the intervention of a third party, by phone or in person. These interruptions momentarily suspended the interview which was resumed as quickly as possible. There was no discernable manner in which to identify any contamination to the interview process by virtue of the interview being recorded.

3.11 Sample for Research

The intention of the research was to identify and conduct research interviews with a number of individuals with experience of the research process. This covers individuals who were disputants, representing a disputant or acting in the capacity of mediator.

As referenced earlier, as mediation is in its relative infancy in Civil and Commercial cases, case management tends to be in the realm of the legal profession, particularly as this type of mediation arise after litigation has commenced and before the Trial date.

Three practicing solicitors and one practicing barrister (Senior Counsel) were identified for in-depth interview. The individuals were sourced from social and business networks. All of the individuals were known to the author prior to the research being undertaken.

These individuals were selected due to their known participation in mediation as either representing disputants or acting in the role of mediator. In either or both of these scenarios, each participant presented as an expert in the field. Importantly, these practitioners work in mixed practices, dealing with a variety of unrelated dispute types, and are also involved in the adversarial framework of litigation. They were therefore in a position bring what may be perceived as balanced views.

The interviews are made up of one Senior Counsel, being a practicing mediator CEDR qualified and Commercial Court practitioner, a Civil and Commercial

practicing solicitor and CEDR qualified mediator, and two practicing Civil and Commercial litigation solicitors. All of these individuals willingly agreed to participate in the research interview. However, due to unforeseen work commitments which came to light, a fifth the individual, Senior Counsel was no longer able to commit to the research undertaking.

Some mediators act as non-legally qualified practitioners in the field of Civil and Commercial mediation. However, from the author's knowledge these individuals are sole practitioners in the field and may there have a bias in favour of mediation. Accordingly, this group was not approached.

Efforts were made to interview a disputant. However, the disputant was bound by the confidentiality clause of mediation not to discuss the case, particularly as the standard format for interview was through recording and hard copy transcribes would be available. This was notwithstanding the anonymity of the process.

The author endeavour to achieve a gender balance in seeking participants to achieve an overall representative view. The participant panel consists of x males and one female.

3.12 Data Collection

3.12.1 Manner of Interview Questioning

The author approached the interview format of each interview in the same manner, as had been trialled successfully in the pilot. The author provided the participant with a copy of the questionnaire if they were not already in possession of a copy in the room where the interview took place (all participants received a copy of the questionnaire in advance of the interview).

The author read out a question, sequentially, inviting the participant to select from the Likert scale. For questions one, no discussion was necessitated or valuable as the objective data was collated by selecting one answer. For question two, the participant could potentially select three answers from the fixed set. However, no interpretation or explanation was required of the participant for their response to question two.

For the remaining questions, numbered three to fifteen, the author read a question aloud to the participant, immediately thereafter asking the participant for their choice of answer on the Likert scale. There were occasions when the participant selected two choices.

After the participant selected their answer on the Likert scale, the author prompted the participant on what was the reason for their response. Participants, perhaps due to their expertise in the subject matter, voluntarily gave comprehensive answers, without an absolute need to seek clarification on points articulated. In each interview, where the author noted a salient concept within an answers which would be beneficial to gain greater research knowledge on, the author waited for the participant to finish the overall answer; the author then highlighted the salient point of interest to the participant, requesting that the participant would expand on the point concerned.

3.12.2 Research Instrument and Research Questions Posed

The research instrument comprised of a combined questionnaire (Appendix 2) and interview schedule, which incorporated a semi-structured interview format.

The opening of the interview comprised of the two questions using a Likert scale.

3.12.2.1 Question 1

The purpose of the first question was to establish the level of familiarity of the participant with the mediation process. The scale below was used.

- | |
|----------------|
| (a) 1 |
| (b) 2 – 5 |
| (c) 6 – 15 |
| (d) 16 – 25 |
| (e) 26 or more |

Data analysis would be used based on the answers.

3.12.2.3 Question 2

The second question was to establish the capacity in which the participant acted in the course of mediations. The scale below was used for the purposes of eliciting the information required

A	Always representing a disputant
B	Sometimes representing a disputant
C	Always acting as a mediator
D	Sometimes acting as a mediator
E	A Disputant

Fig. 6 Likert Scale for Research Questionnaire

Similar to the capability with data from question one, question number two had answers capable of being compared across the sample.

3.12.2.3 Statements 3-15

The remainder of the questionnaire comprised of thirteen statements transposed from the literature review. The statements covered the themes, in a sequential order, illustrated at fig 7.

Statement number	Topic	Topic detail
Nos. 3-4	Conflict	Resolution & Approaches
Nos. 5-6	Alternative Dispute Resolution	Advantages and Disadvantages
Nos.7-9	Mediation	Accessibility; Relationships; Difficult cases
No.10 & 12	Litigation	Shortcomings and instigator of mediation
No.11	Power	Balance at negotiation
No.13-15	Mediation	Advantages; Legislation; Benefits

Fig 7 Research themes

Key themes related to the subject matter were identified. It was identified that undertaking research around these themes, which in their totality are key representative elements related to concept and benefit, or otherwise, of mediation, would be a conduit for unearthing research to address and assist in answering the research question. Each research statement is cross referenced a the table (Appendix 3).

Participants were asked to provide their view on each of the statements, giving answers per the Likert scale at fig. 8 below.

A	Strongly disagree
B	Moderately disagree
C	Neither agree nor disagree
D	Moderately Agree
E	Strongly Agree

Fig. 8 Likert Scale

Participants were requested to select one of the options. Participants has the option to choose two answers if they so wished should two answers more accurately reflect their views.

3.13 Semi-structured Interviewing

Directly after selecting each choice per answer, participants were asked to provide the reason for their answers. Where necessary, there were asked for clarification on points. They were also asked to expand any salient point that they had made but had not developed and which would be beneficial to the examination of the literature.

3.14 Recording and Use of Recorded Material

The first recording was recorded on a hand held Dictaphone, using standard magnetic tapes. As such recording methods have generally been superseded by digital voice recording appliances for enhanced recording quality, and iPhone was used for the second recording. This recording was transferred to a Commercial digital voice recorder and then transcribed. The subsequent recordings were managed and transcribed in the same way.

Recorded interviews spanned from 30 minutes to 45 minutes, with three being approximately 30 minutes in duration. The total recorded time across the four interviews was circa 135 minutes. Two of the interviews were interrupted, one by a phone call, and the other by a participant's child. The recordings were

stopped on both occasions and recommenced "mid answer" on both occasions instantaneously after the interruption.

The author availed of a professional transcriber to transcribe the recordings for speed and efficiency. The author gave transcribing instructions to the transcriber on the layout format for each interview recording transcribed. For the purpose of identity and to maintain the anonymity of each participant, the transcribed document for each participants coded them with the letter "I" for the participant and "R" for author. The anonymity of the participants was maintained from the transcriber.

The transcribed documents, printed to hard copy A4 in single line spacing with a new line for each person speaking, cover 11 pages, 17 pages, 19 pages and 12 pages for interviews one to four respectively, totalling 59 pages of verbatim data. A sample of the transcription for participants 1 replicated (Appendix 5).

The recordings have been retained with an undertaking to the participants that that the data will be erased once the formal educational-oriented aspect has been brought to a close.

3.15 Data Analysis

The data was managed in series of steps so as to analyse it. Firstly, interview recordings were immediately transcribed. Hard copies were made of each transcribed interview.

3.15.1 Quantitative Data

Whilst awaiting the transcribed documents, the objective answers elicited to the closed questions from 1 to 15 were segmented into three areas on an Excel spreadsheet. The segmentation was three-fold: Question 1, Question 2 and lastly a combination of data from Questions 3 to 15. A matrix was devised for each of these segments. For Questions 1 and 2, the horizontal line represented each interview and the horizontal line represented each possible

solution. The fields were populated with a numerical representation of the number one for each participant selection of answer against each option. The amounts were totalled, giving an overall result across all participants for comparison at a later point.

For the final segment of objective data, covering research statements 3 to 15, a matrix was devised to capture the possible answers or solutions on the horizontal line; the questions/statements were placed on the horizontal line. The fields were then populated to illustrate how many interviews selected each choice within the Likert scale. On occasion, interviews selected two options within the answer option. This fact was captured in the matrix by denoting both answers, thereby the answers given at some research statements exceeded the number of sample participants. This, however, maintained the integrity of both the answer given and the process itself.

3.15.2 Qualitative Data

As each hard copy interview transcribed document was read through, salient points were highlighted with a highlighter marker and a word for coding was inserted in the margin. This was done across all the documents. The coding for each question was then transferred to a mind map. This coding was then bundled into overall themes on a mind map for each research statement. Relationships between material in each question was expanded upon for each question and so across all the questions to draw on for findings arising subsequently in the dissertation.

3.15.3 Output

The output from the matrices and coding, theming and correlation generally from the interviews was distilled into personal notes as a roadmap to draw on for reaching findings on the research.

3.16 Ethical Considerations

There are a number of ethical considerations in the compilation of this research. Each of these are considered below.

3.16.1 Willingness to Participation

Participants must be requested to attend interview on a voluntary basis without and undue pressure, coercion or promise of any undertakings on the part of the author.

3.16.2 Informed Consent

Participants need to be fully informed about the extent and context of the research, the part they are being asked to participate in, how the interview will be managed, and how will data related to them be used and protected. This requires adequate disclosure on the part of the author. It particularly arises in the form of recorded interviews. Participants should be fully provided with appropriate information in order to make an informed decision on whether or not to participate and to provide informed consent.

3.16.3 Risk to Anonymity of Stakeholders

In the process of qualitative research, there is potential for participants to disclose, inadvertently or otherwise, names of mediated parties or particulars which may lead to the identification of other stakeholders in private agreements, such as mediated parties. The author must manage the boundaries in this regard if there is a likelihood of a breach on the part of the participants. Likewise, the author must not compromise participants in an attempt to elicit information which should not be disclosed.

3.16.4 Anonymity and Confidentiality

Giving a commitment of anonymity and to participants is of utmost importance. Such an undertaking should provide sufficient comfort for participants to both participate and to fully engage with the process. There is an obligation

on the research to honour that commitment at every stage of the research process, particularly where there is potential to share experiences with participants between one interview and another. It also arises if assistance from other parties is sought during the research. A reasonable balance must be struck regarding any undertakings on confidentiality as, with qualitative research, verbatim quotations from participants will be included in the research findings.

3.16.5 Quality and Integrity of Research

The author must accurately reflect the research data at all stages of the process. This is to ensure that the information purported is portrayed in such a manner as to maintain the integrity of the original research or data, and to reference source material appropriately.

3.16.6 Closing

The ethical considerations were borne in mind throughout the entire undertaking of this research. Advance awareness of the potential issues, through research and reflection, ensured that, to the best of the authors knowledge, the integrity of the process was maintained in the areas alluded to in this section.

3.17 Limitations

There are a number of limitations that arise by virtue of this research. The limitations are listed below.

3.17.1 The Sample Size

The sample size is low and therefore a number of findings and conclusions are made based on a small amount of data which, by the nature of its size, be insufficient to be representative of the general sense of the subject. The sample is low as the research only had access to a number of practitioners with sufficient experience in this field; there is a body of qualified mediators but without any professional experience of the practice of

mediation. Due to the small sample, the findings and conclusions, based partly on the research, may not be representative of mediation had a larger sample been possible. With the development of mediation in Ireland, further research at a point in time in the future is likely to be possible using a wider sample.

3.17.2 Participant Personal views

Each participant in the research proffered views and opinions which are personal to them. This personalisation arises as, by the nature of the framework of a semi-structured interview in itself, the participant provides subjective views. Participant views are therefore not necessarily representative of the general body of mediator and yet form an input into the findings and conclusions. There is no manner in which to identify the reliability or otherwise of participants statements.

3.17.3 Availability of data

There is a lack of available quantitative and qualitative data on mediation in Ireland. This is due to the confidential nature of the process, an apparent number of unreported cases and the low prevalence of mediation in Ireland. This is no method available to access greater data, particularly as mediation is not regulated in Ireland, nor is there a single recognised representative body on the subject matter. Whilst that statistical data available in Ireland is limited, and is similar to other jurisdictions, the limited data may lead to non-representative findings and conclusions. If mediation develops in Ireland, further statistical data should emerge and be useful for further research studies.

3.17.4 Lack of Previous Research

There is little evidence of published research on mediation in this jurisdiction. This is seemingly due to the relatively new introduction of mediation in Civil and Commercial cases in Ireland. There is therefore no recognised body of research from which to draw comparisons of previous experience, evidence or trends. This serves as a need for further research on the subject matter, particularly on the benefits and constraints of mediation when compared to other conflict resolution frameworks.

3.17.5 General Constraints

There is a limited timespan within which to undertake this research, and a limitation of 20,000 words to cover all the requisite issues and associated structures. A single resource is only available together with cost constraints. Whilst the limitations did not compromise the integrity of the research undertaken, the reach to which the research could be extended was curtailed by virtue of these constraints.

CHAPTER 4. FINDINGS

4.1 Introduction

Findings from the research undertakings are set out below, commencing with quantitative data.

4.2 Quantitative Data

Through the semi-structured interviews a number of questions were asked with closed questions to elicit information that would net answers to a single position. The results of these are illustrated below.

4.3 Participant Frequency at Mediation

The intention of this question is to establish the exposure of participants to the mediation process to gain some insight into direct knowledge of the process. However, if an interview has not been in the process of mediation, it could not be concluded that that individual had any biased views towards the process; the meaning derived from this was simply that the individual had not been at that type of dispute resolution forum. The objectives findings are illustrated in fig. 9 below

Occasions	Participant 1	Participant 2	Participant 3	Participant 4	Totals
1					0
2 to 5					0
6 to 15	1	1	1	1	4
16 to 25					0
25 or more					0

Fig 9. Question 1 results

It is evident from the findings that each interview has been present at multiple mediations, ranging from a minimum of six but not more than fifteen. This leaves the participants well placed to proffer views on the subject. There is a range of exposure to the process. From this it can be deduced that there are varying levels of expertise with the mediation process. However, no conclusions can be reached from this over the competency level of any of the participants.

4.4 Participants Roles at Mediation

The intention of the question was to establish from which perspective or role participants were exposed to mediation. An inference may be drawn if a participant always represented one position on numerous occasions; this could be evidenced from combining participant data from Questions 1 and 2.

Role	Participant 1	Participant 2	Participant 3	Participant 4	Totals
Always representing a disputant			1	1	2
Sometimes representing a disputant	1	1			2
Always acting as a mediator	0	0	0	0	0
Sometimes acting as mediator	1	1	0	0	2
A disputant	0	0	0	0	0
Total					6

Figure 10 Results on Question 2

However, it is evidenced from the data that two individuals have only experience of representing a disputant, whereas the two remaining individuals have experience of also fulfilling the role of mediator. However, that fact

does not necessarily put that latter pairing in a more informed position than the other pairing.

4.5 Quantitative data on Research Statements Nos.3 to 15

The results of the closed questions on the Likert scale presented to participants at the start of each research question are presented in figure 11 and 12 below. The full extent of views against each research statement are analysed below in a combined manner with the verbatim data. The Likert Scale used is referred to earlier at figure x.

The findings of the closed questions in this section are firstly represented in figure 8 below.

Combined Responses

The combined responses are illustrated in figure x below. This shows the combined selected choices against each closed answers, lettered a to e on the Likert scale. A subject matter narrative abbreviation appears for explanatory purposes. Participants on occasion selected more than one answer, and this is reflected in the column entitled 'choices'.

No.	Topic	A	B	C	D	E	Choices
3	Conflict				1	3	4
4	Conflict Resolution		1		2	1	4
5	ADR Advantages				3	1	4
6	ADR Disadvantages	1	1	1	2	1	6
7	Mediation Expediency	1	1	1	1		4
8	Voluntary; Relationship sustainability				1	3	4
9	Complex issues			1		3	4
10	Litigation Shortcomings				1	3	4
11	Power at negotiations	1		2	2		5
12	Mediation catalyst				3	1	4
13	Mediation advantages		1			3	4
14	Mediation awareness				2	2	4
15	Mediation beneficial?					4	4

Figure 11 Responses to statements 3 - 15 by topic.

Briefly considering the quantitative data collectively at figure 11, the interviews share the same view on only one out of twelve research statements (No.15). There are seven research statements where three of the participants share the same view (research statements Nos.3,5,9,10,12 and 13). Combining these two statistics (the single unanimous view and views shared by three participants), there are views on eight of the twelve statements that either all or the majority hold the same view on.

There are a further two research statements (No.11 and No. 14)where two pairings have selected answers adjacent to one another, indicating that views

at not very dissimilar. Finally, regarding the two remaining of the twelve statement (No.6 and No.7), there is a significant divergence of views.

There are two research statements where participants selected two answers.

Two participants selected two responses on one occasion (No. 6) and one participant choice two responses on another occasion (No. 11).

Individual Responses

Individual responses are capture in figure 12 below. The horizontal axis captures the interviews and the vertical axis captures the research statement numbers. The matrix is populated with interviews responses. The column entitled 'differential' captured the gap between the most opposing answers for each research statement; this is captured in a numerical form.

	1	2	3	4	differential
3	e	e	e	d	-1
4	b	d	e	d	-2
5	d	d	d	c	-1
6	d-e	a-b	c	d	-5
7	d	c	a	b	-4
8	e	e	e	d	-1
9	e	c	e	e	-3
10	e	e	e	d	-1
11	a&d	c	d	c	-4
12	d	d	e	d	-1
13	e	e	e	b	-3
14	d	d	e	e	-1
15	e	e	e	e	0

Figure 12 Reponses to statement 3 - 15 by participant

Figure x illustrates the extent or otherwise of the divergence of views between participants. The most significant divergences arise in four instances (Nos. 6,7,8,11). The model was also devised to identify any distortion by particular participants, notwithstanding the veracity and integrity of their responses. There are three occasions where a single participant has a view more at variance than the other three participants (Nos. 4, 9 and 13). The matrix demonstrates that there is no distortion of data by virtue of the views of any one participants.

4.6 Summary of Quantitative Data

The findings of the collective quantitative data is that the participants have had significant experience of mediation from being present at mediations. Their experience come from all of them having represented disputants, and two having been the mediators also. Finally, the majority of interviews share the same views on mediation statements, illustrating a cohesive body of thinking on the subject matter. Views are relatively balanced with no distortion arising due to singular views of any one participant.

4.7 Qualitative Data

The twelve research statements are considered individually below, in turn, and provide quantitate and qualitative observations.

All direct quotes from participants are demonstrated in inverted commas and therefore repeated reference to the source being from an interview is obviated in this section.

4.7.1 Research Statements

Research Statement 3: The manner in which conflict is resolved can have long term impact.

Likert scale:

Three participants strongly agree with the statement and one moderately agrees. This indicates that the majority share the view that the management of conflict can have elongated effect.

Findings:

The themes emerging across the interviews covered litigation, mediation and its framework as means for disputants to exchange views and, finally, the effect on relations.

Management of conflict can leave a "lasting legacy" and "protracted litigation" can have long lasting effects, in views of interviews. The research reveals an overall sentiment that litigation is a decision making process, outside the control of the parties, and does address all issues. It is further articulated that the litigation process does not get to "the actual nub of the issue" and people do not necessarily get "a fair hearing" through that process and are, therefore, "sometimes left without a sense of closure". Another participant reference the adversarial litigation system as being a situation for a "blame game". In Commercial cases of litigation, one a view was expressed that the parties will "never have a relationship again". The participant that with mediation, "in Commercial disputes, it's probably the only method to try to keep an ongoing relationship". One participant closed off on their commenting on this matter that with mediation, whilst even a disputant may not achieve what they originally wanted, but obtain what they actually needed, then they will always have always be a better relationship between the parties afterwards.

Most participants covered common themes of their own accord related to the concept of the consequences of managing conflict. There was substantial material proffered favouring mediation as a conflict resolution framework, even though this was not alluded to in the research question. The essence of this was that litigation, as an adversarial method, leaves disputants

dissatisfied with the process with potential disharmony prevailing with the other disputant(s).The verbatim comments are reflective of the Likert scale scorings.

Findings and Literature Review:

The above findings are consistent with the research statement propositioned in this instance. The responses elicited and captured above are also generally aligned with other research in the literature review which alluded to the shortcomings of litigation, also covered at research statement number ten and with research statement number eight on sustainable relationships.

Importance of Findings:

Overall, the responses here demonstrate that mediation, as a dispute resolution framework, has an offering over and above litigation, in terms of presenting disputants with and the opportunity to achieve more holistically than through litigation, and to preserve relationships after conclusion, which can be critical in Commercial settings.

Statement 4: Most organisations utilise a traditional conflict resolution (adversarial) approach to issues.

Likert scale:

Two participants strongly agree, one moderately agrees and one moderately disagrees. Most agree to some extent with the statement's sentiment, whilst one does not, somewhat.

Findings:

Research from participants covered the rationale for litigious behaviours, shift in perspectives and solutions, and the evolution of mediation and introduction of it as an option within some problem solving.

Views were expressed over the continuing method of litigation for external (non-workplace) issues as a first port of call. The research showed that this pattern stems from client, solicitor and counsel (barrister) agendas. The research revealed this arises from the client wanting to see their case in

print in legal proceedings to have their case stated, encouraged by solicitors with a "sue" mentality, underpinned by tradition, comfort zone and barristers simply drafting proceedings without any other solutions. Some legal practitioners' actions to litigate only are fees driven.

Research also revealed a shift to a new way of approaching some areas, such as workplace disputes, which are now being managed more internally, and with the use of independent mediators. This move is seen to be driven by Human Resources (HR) Department as it was seen that "the likes of Human Resources is an area that's a legal minefield in some respects".

Externally, research views were expressed that the Judicial system, particularly in the Commercial Court, is strongly advocating mediation in the middle of the litigation process. There is also a shift in legal contract wordings to substitute arbitration clauses (necessitating legally binding quasi-judicial hearings) with mediation clauses.

Findings and Literature Review:

Two participants opined that there is a tangible shift towards alternative dispute resolution mechanisms, predominantly towards mediation. This is contrary to the research statement under review. However, there is other literature in the earlier research illustrating how well mediation has been embraced alongside litigation. Other participant opinion was in agreement with the research statement for non-workplace issues being litigated. One view given as the reason for this is the lack of representative bodies, such as the Law Society and Government agencies, promoting awareness of mediation as a tool for conflict resolution.

One participant, acting as mediator and dispute representative, is of the view that within the last five years communication about mediation has increased, and many people are moving into mediation as an expanding business in itself. This is indicative of there being a sufficient demand for it in Ireland.

Importance of Findings:

It was established that there are indications of shifts in practices taking place with contractual clauses now including mediation wordings. From internal organisational perspectives on Civil matters, there is a move towards employee conflict at every level being resolved through intermediaries using mediation. There is championed by HR Departments, who can influence locally. In contrast, there appears to be a gap in promotion and awareness in both the legal and public domains on the availability and application of mediation.

Statement 5: The advantages of Alternative Dispute Resolution, of which mediation is one method, are: an increase in Court system efficiency, heard by specialist knowledge intermediaries and time efficient for the parties.

Likert scale:

Three participants moderately agreed with the research statement, and one strongly agreed with it.

Findings:

Themes arising cover the areas of mediator specialism, efficiency, cost and additional points on the benefits and challenges from a disputant perspective.

There were different views expressed on the point of specialism. On technical issues, there was a view that specialists are an advantage, even over the Judicial system who have generalist knowledge in the main. A view was held that non-legal practitioners should mediate in non-technical cases to present a practical solution without the influence of legally grounded constraints.

Different views were expressed on the cost of mediation. Some participants were of the view that it is cost effective. Other views were that the cost of mediation itself through mediators' fees, between €7,500 and €10,000 for a one day case are high if the case does not resolve.

The process was seen as time efficient.

Challenges arise if the mediator allows factual evidence to be gleaned at the mediation which, if unresolved, leaves parties know the caliber of opponent

witnesses, evidence and the ability to raise legal discoveries based at so-called confidential mediation. However, the participant was also of the view that parties are entering mediation with the genuine intent to resolve in the first instance.

Findings and Literature Review:

The research is in partly in line with the literature review research material. There was a divergence of views of cost in comparison to the literature generally, and it will be seen that it is time efficient in comparison to litigation, but mediation cannot necessarily happen at any time. There was also disagreement with the view that specialist knowledge is an advantage a particular skillset is not always required.

Importance of Findings:

It was important to glean that mediation can foster the right to natural justice in having a grievance heard which may otherwise be effectively denied through prohibitive litigation costs.

The use of non-legal mediators operating in a mediation environment generally managed by the legal profession is an interesting and encouraging view to open up the objectivity of the mediation arena.

There would be concerns for the effectiveness of mediation if it became more main stream but became a barrier to success if it was used as forum for a 'sounding out and flushing out' the opponents, without there being a genuine appetite for resolution at mediation.

Statement 6:The disadvantages of Alternative Dispute Resolution, of which mediation is one method, are there being: no mandatory elements to the process, lack of the neutral party's power, lack of Alternative Dispute Resolution, case precedents to predict future probability outcomes, lack of final agreement enforcement and potential inequality for small party 'underdogs'

Likert scale:

There is a spread across all the available answers, with two participants choosing between two answers.

Findings:

Notwithstanding the range of answers, with two individuals moderately agreeing, most of the verbatim evidence is in disagreement with the research statement. There were a range of views provided against the number of elements contained in this research statement.

Views were aired that the lack of a mandatory process is, in fact, an advantage and the whole voluntary nature of mediation is one of its strong advantages, giving the disputants the freedom to resolve without limitations.

There was also disagreement with lack of the mediator's power, with views being expressed that the mediator is to facilitate and steer rather than to solve.

There was large scale disagreement over the lack of precedents on the basis that there is no need for precedents, there is no "tainting" of the mediator's views, mediations are "tailored" for each case, and that each mediation is "fact sensitive".

Lack of enforceability invoked views of the capability to create legally binding agreements at arbitration which are, in fact, subsequently enforceable at law or the ability to sue on foot of the mediation agreement. One view was that the enforceability concept presents a gap in mediation that needs to be addressed somehow.

One view on the small party underdogs was that mediation is being "hijacked" by the number of attendees, with mediations being 'lawyered up' with solicitor, senior and junior counsel - on both sides - and a team of professional witnesses. Another view was that in this situation it will be "tough" in any event at mediation as the small party underdog.

Findings and Literature Review:

There was considerable conflict between the literature review and the research findings. This may be indicative of cultural differences and ways of working in this jurisdiction.

Importance of Findings:

These findings challenge the purported misgivings of mediation. In effect, the findings dilute the negative aspects of mediation, lending it as a more favorable framework than research suggests.

Statement 7: Mediation is capable of taking place within a number of days of a dispute arising.

Likert scale:

There is a diverse range of response, ranging from moderately agreeing to strongly disagreeing.

Findings:

A variety of views were expressed covering preparedness, prematurity, availability and blame culture.

One view expressed was that it depends on the circumstances and it is possible in Civil disputes within the workplace. Most views were leaning on it being impractical and not favouring it as a preference rather than as a possibility. Allowing time allows the parties to "get to a position of being slightly less entrenched" and getting into "resolving mode". Allied to this was the view that an early mediation would certainly not be "anything of any great substance".

Other views related to the availability of the parties, legal team but, in particular the professional witnesses as expert. Another view related to having " a great blame culture in Ireland; if anything goes wrong, we are unlikely to sit around the table and resolve it".

Findings and Literature Review:

The general consensus is that whilst the literature portrays the immediacy of mediation, in reality there is a way to go before even willing disputants can meet. This is contrary to the literature.

Importance of Findings:

It is recognized in the theory to be able to arrange mediation at short notice and at the early stages of a dispute. However, there must be cognisance of both the parties needing to prepare their respective cases and to create an opportune time in the future to accommodate the availability of all stakeholders to be present at mediation.

Statement 8: Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties.

Likert scale:

The responses are similar, with all participants strongly agreeing with the statement on the voluntary nature of mediation and relationship harmony. This should correspond with a similar theme of verbatim statements.

Findings:

Views expressed centered on power, forcibility, cathartic effects, leveraging and relationships.

Power and the voluntary nature of mediation were expressed. The sentiment were that if parties entered mediation freely, they effectively had ownership of the settlement, personalising it and would "stick with it" because they were pleased with the outcome. Whilst it may be counter-intuitite to anticipate that forced mediations, through judicial direction, would not settle due to lack of willingness, this is not the case. This is based on the premise that, in any event, most cases settle without judicial intervention. So, a mediator may be able to engage the parties under these circumstances

and settle rather than parties using it as a "rubber stamping exercise" to get back into Court.

One view held was that there is leverage capable through mediation, by conceding on one point to gain advantage on another, such as in a Commercial case to secure future contractual business and maintain the relationship. Allied to this was another view on expressed was that Commercial relationships are unlikely to be maintained unless one party is dependent on the other into the future. One participant put it in this way regarding sustaining relationships: "if there is any framework to continue into the future, it's mediation; litigation, not a chance".

Another view held was that disputants, due to ego, resort to a 'needs and wants' position, becoming entrenched and then "painting themselves into a corner" where "saving face" can then be difficult. A skillful negotiator can manage this, through the cathartic effect of mediation, get disputants to "park" their emotional blockage and deal with the business at hand.

Findings and Literature Review:

There is consistency between the findings and literature review. The matter of enforceability may vary between jurisdictions dependent on local laws and mediation agreement clauses.

Importance of Findings:

The cathartic effect of mediation is an important finding, and not to be underestimated in terms of its value.

Statement 9: In mediation, it is possible even in cases of strong conflict, entrenched positions and hopelessness to reach full or partial agreement.

Likert scale:

Three participant strongly agree, while one chose to neither agree nor disagree. The verbatim reports would be expected to have a level of consistency across them.

Findings:

Views from interviews covered the potential of mediation, conflicts and mediators.

One participant advised " I would have seen incredibly entrenched positions, where, the fact that they were even participating, somewhere in their psych, they wanted to resolve matters, because it is a voluntary process". Another view was that if disputants are "still talking, if you're still meeting, if you're still "thrashing it out", then you've got a chance of doing something". Another participant advised of being in mediations where there was "huge personal conflict" outside of the issue being litigated, and resolution was still reached. One participant advised " it does succeed more often than people might think, even when parties are originally entrenched".

Yet another view was that it is not always possible to resolve cases where "people, rightly in some instances, for whom mediation isn't going to work, because they want everything, and they are entitled to everything, and the other side wont give it to them, and they go to Court". A view was also expressed that some cases are simply not suited to mediation, or because of the nature of the parties to the dispute.

A view expressed by another participant is that in many examples where cases seemed unresolvable, something happens, and it can change. This, in the participant's opinion is down to an effective and progressive mediator, orchestrating the mediation to address the harder issues, get movement on less transient issues, and leveraging off that to resolve the main issues. Another interview put it that "mediators are not miracle workers, and they shouldn't hold themselves out as such either"

Findings and Literature Review:

There was strong agreement in the findings with the literature review, which goes to the root of why mediation is a need in t

Importance of Findings:

The possibility alone of bringing acrimonious parties together in the first instance is importance. Secondly, the capability of reaching agreement, given such a backdrop, is very important and goes to the root of the purpose of mediation.

Statement 10: Litigation shortcomings are: cost, Court delays, lack of control amongst interest parties and a hostile environment.

Likert scale: three participants strongly agreed and one moderately agreed. There is consensus of agreement amongst all the participants, with the majority being in strong agreement on the short comings of litigation.

Findings: the views of participants were in agreement with the statement, bar one. Views expressed were that costs often outweigh the value of the settlement. The lack of decision making through handing over control to the Court can result in there being no relationship afterwards due to an "incredibly hostile environment".

Another view held is that litigation is very costly and can leave the unsuccessful party "very bruised, battered, disappointed, angry and vengeful". This results partly from the public nature of litigation.

One participant advised that Ireland is very litigious due to "the makeup of Ireland and the Irish people". A view was expressed to avoid litigation at all costs, its daunting, and "horrendous" for the individual. Accordingly, the participant believes that there is room for two systems, with Alternative Dispute Resolution "in its infancy" and more efficiency to be gained in the judicial process of litigation.

An alternate view was that parties can get their litigation cases to Court quickly if there is a willingness on both sides to do so.

Findings and Literature Review:

There is a strong consistency between the findings and the literature.

Importance of Findings:

The cultural make of Ireland and ways of working, whilst unique to this country, still show similarities with other jurisdictions. Considering the verification of the findings, there is a greater need to find alternatives to litigation and use these, such as mediation, in tandem with litigation to benefit disputants.

Statement 11: Power is present at negotiations; all negotiators want power which bestows benefit to one party over another and the advantage is seldom evenly distributed.

Likert scale:

There is a difference of views, although the differences are not that very dissimilar. Two participants neither agree nor disagree and two moderately agree. One interview selected two answers, one against the first phrase of the statement and another against the second phrase.

Findings:

Views covered the existence of power, and how it can be managed.

Views were expressed that an imbalance of power can arise where one disputant has the funds to retain multiple experts over the disputant. One view is that the mediator's role is to manage and diffuse any imbalances in power. Furthermore, if disputants opine that they are being listened to equally at mediation, this is also very beneficial, and which does not happen with litigation.

Findings and Literature Review:

There were varying views to the literature. The presence of power at mediation was recognised in a similar way to the concept in the literature. The literature did not reflect the part of the mediator to play a leading role in managing power from a facilitative perspective.

Importance of Findings:

The importance of power is to recognise that the mediator must manage it effectively at mediation in order to bring balance and equity to each disputant.

Statement 12: With the level of litigation costs, this was perceived as a quantitative reason to push the mediation framework agenda.

Likert scale:

There is general consensus to this research statement, with three participants moderately agreeing and one strongly agreeing. All are therefore in general agreement.

Findings:

There were a range of views covering cost, procedural transformation, and mediation not being a cure for all ills.

Participants had differing views. One was that the Judicial system came around full circle to embracing mediation and providing for it in the Court Rules. Another view is that there was a perception that mediation was "the way to go" due to Court delays and the cost of going to trial.

There was a view that mediation is not a free service, unlike the public Court systems. Accordingly, mediation will not suit every case, since mediation currently arises in many Civil and Commercial cases after litigation, and mediators' costs in addition may be prohibitive.

Findings and Literature Review:

There was some variance between the findings and literature review. This seems to be based on the fact that the participants have had long standing experience of mediation and have used it alongside litigation for some time.

Importance of Findings:

It is of interest to note the underlying theme simply implies that Ireland may be following other jurisdictions with using mediation.

Statement 13: The advantages of mediation appear to outweigh the disadvantages, predominantly on: speed, cost and confidentiality.

Likert scale: three participants strongly agreed with this research statement, presenting the majority view. One participant moderately disagreed with the statement.

Findings:

On confidentiality, there was agreement in "not washing dirty linen in public" particularly on sensitive issues, or where relationships could be maintained.

One view was agreement on speed of mediation, but not on costs in certain dispute type, due to the full legal team for each side attending with expert witnesses. However, the view was also expressed that only the representing solicitor and client should be present up to a certain case value and complexity, thereby substantially reducing cost. One area of Civil disputes deemed to be highly appropriate to mediation is family law.

Findings and Literature Review:

There was significant consensus between the two sources.

Importance of Findings:

The findings reinforce the attributes of mediation so what is happening in practice matches the research and theory.

Statement 14: The pending legislation in Ireland on mediation (Mediation Bill, 2012) will only be effective if there is awareness of the benefits of this dispute resolution framework.

Likert scale: two participants strongly agreed with this statement and two moderately agreed with it. Overall there was definitely consensus of agreement, but of differing degrees of definity.

Findings: Views varied across the usage of mediation currently, resistance to change and an awareness agenda.

One participant expressed a view there is already a prevalence of mediation in Ireland and a huge move towards it, so that it is happening already. A contrasting view is that it will take time for people to see a different way of doing things, that it takes time to change perception and embracing alternatives. A participant advised that provision under Civil legislation has prevailed since 2004 to appoint a mediator during litigation but that this has "not caught on". Another view is that legal practitioners opine that greater fees are earned from litigation, and so will push this agenda over mediation. Education is required to push the agenda, taking the natural reluctance of lawyers, in the view of one participant. Allied to this, a view was given that awareness is required if people are to be made aware of their rights.

Findings and Literature Review:

There is broad consistency with the literature review.

Importance of Findings:

The significance of the pending legislation may only be realised when the legislation is enacted.

Statement 15: There is a benefit to disputants of mediation for resolution of Civil and Commercial disputes in Ireland.

Likert scale:

There was unanimous agreement over this statement, with all participants strongly agreeing. This is the only statement where there was a full consensus of agreement.

Findings:

Findings cover excessive representation, expeditious, confidentiality, catharsis, cheaper

One view was that there are definite benefits in Commercial disputes, but with a concern that the process will get "hijacked" with disputants being represented at mediation by a solicitor and two barristers on each side, thus defeating the cathartic effect of mediation. It was also said that the process is expeditious, confidential, and manages long term relationships. It is also a means of disputants getting resolution without having to give evidence, with success rates in the region of 70% in one case.

One individual stated about mediation "its everything I would suggest for a client to do".

Importance of Findings:

Consensus amongst the participants is encouraging on this key note. The sense of benefits to the disputants are very strong.

4.8 Key Findings

A number of key findings arise from the research. The key findings emanate from multiple sources within the findings above, as themes have emerged from different research statement enquiries.

Litigation

It was established during the research that Ireland is a litigious country litigation can have a last effect on parties to disputes. As a conflict resolution method, where control is outside the hands of the disputants in a hostile environment, it does not necessarily address all issues for each disputant, leaving grievances prevailing, and a lack of closure. This arises as the litigation process is more of a 'blame game' than a holistic resolution mechanism. Accordingly, relationships between disputants can be tarnished after the process. Furthermore, the cost of litigation can be prohibitive, thereby effectively denying the right of a disputant to seek redress.

Voluntary Process

Views were expressed about the advantage of mediation being a voluntary process. The fact that there is no mandatory element to it was seen, overall, as an advantage, leaving the disputes the freedom to resolve within unhindered framework. The voluntary nature also empowered the disputants, bestowing a sense of ownership in a bespoke setting, acting as an inducement to reach agreement.

Relationship Management

Mediation is illustrated as being process to foster harmonious relationships between disputants after the conflict is resolved. A view was expressed that this may only occur in Commercial cases where there is a dependency on the relationship in the future.

Confidentiality

Confidentiality are maintained through the mediation process. Privacy of issues is maintained, particularly on any matters which may be sensitive. This is seen as an enabler for disputants to proceed with their grievances and have conflicts resolved without external repercussions.

Accessibility

There are no barriers to entering mediation, which can be entered into quickly, dependent on the readiness of the parties. The efficiency of the framework of mediation was also seen as an advantage.

Success

The findings illustrated success through mediation on a number of counts. **It is** possible to enter into mediation where views are entrenched, and still result in a resolution. The process is a win-win for the disputants, as disputants can enter the process and conclude whilst 'saving face'. Finally, the probability of resolving a dispute is relatively high, with success rates of 70% prevailing.

Embracing Mediation

There is evidence of mediation is being accepted in Ireland. Court procedures have been applied to permit mediation, areas of the Judicial system, such as the Commercial Court, encourage mediation, and there is commentary of their being a huge move towards it. This is apart from pending legislation on mediation itself in Ireland. resistance to change

Risk to Mediation

There is evidence of a resistance amongst some quarters of the legal fraternity to mediate. This seems to stem from a traditional conflict resolution mechanism in Ireland of litigation, fuelled in some respects by a drive to protect the level of legal costs billable through that medium. Pertinent representative agencies do not seem to be promoting mediation amongst within the legal profession. Disputants may therefore not be provided with the option of mediation.

There is a risk of the process of mediation being hijacked by representative parties. This arises from the number of representatives and professional experts appearing for each disputant, and adding to the cost of the mediation forum. Prohibitive costs are then more closely aligned with litigation.

Finally, there is lack of awareness with the public at large regarding the framework of mediation. The public need to be in a position to make informed choices of their own accord when address options for broaching conflict.

The findings will be reflected in the next chapter on conclusions.

CHAPTER 5. CONCLUSIONS

The purpose of this research surrounds the author's research question: what is the benefit to disputants of mediation for resolution of Civil and Commercial disputes in Ireland?

5.1 Summary Conclusions

Research was undertaken. A number of findings were made. A summary of the findings in relation to each of the research statements is described below under subheadings (fig 7) that both group and address similar themes all covered by the research statements.

Conflict, Conflict Resolution and Litigation Shortcomings

Regarding conflict, the litigious fabric of Ireland is left with a hostile environment within which to resolve Civil and Commercial disputes. With a 'blame game' resolution culture, privacy and personal closure are not by-products of litigation, and previously harmonious relationships between disputant can diminish afterwards.

In relation to conflict resolution, internal disputes within the workplace may be resolved through mediation. However, external disputes continue to be managed en masse through the adversarial process of litigation, despite the availability and limited promotion the alternative, mediation.

Litigation shortcomings include high legal cost, which is capable of outweighing the settlement, and poor efficiency prevail. The adversarial system is capable of being in tandem with another resolution method, namely mediation.

ADR Advantages and Disadvantages

Regarding advantages, Mediators need not be subject matter specialist in all cases, but expertise may be beneficial in technical cases. Mediations need to be managed effectively so that confidential evidence is not used by opponents if there is an unsuccessful mediation. Mediators' fees can be costly relative to an unsuccessful mediation with future litigation costs to be incurred. Mediation, in itself, is seen as time efficient.

Some purported disadvantages are seen as positive factors, such as lack of a mandatory process enabling the freedom for resolution. Likewise, rather than lack of a mediator's power, it was seen that the role is facilitation rather than solution based, and lack of precedents are a positive. Differing views prevail on mediation agreement enforceability.

Mediation Expediency and Catalyst

The theory of mediation expediency being advantageous is balanced by the view that premature mediation may be fruitless.

Whilst it was argued that litigation may have been mediation's catalyst, in any event it was seen as the way forward, being embraced by at least part of the Judicial system. It is recognised that mediation may not suit every set of circumstances.

Voluntary, Relationship Sustainability, and Complex Issues

The voluntary nature of mediation entices disputants to stick with the process. It is effective even if disputants are somewhat reluctant, as the mediator had an opportunity to engage the disputants.

Commercial relationships are sustainable after mediation, particularly if a there is dependency on one side. Mediation is a vehicle for people to save face and resolve issues.

Mediation is seen as a means to resolve complex cases with entrenched positions, as long as disputants are still engaging with the process.

Power, Mediation Advantages and Awareness

Research reveals there can be an imbalance of power, through the makeup of the disputants' teams. However, the mediators' role is to manage a perceived imbalance through dialogue.

Mediation advantages include confidentiality, speed and cost in certain circumstances.

With awareness, it is revealed that there is a resistance to change by some interest parties regarding mediation in tandem with litigation,

notwithstanding the reported successful use of mediation when used in Ireland.

Mediation Benefits

There is strong agreement through research on benefits of mediation covering its expeditious, cathartic and cost effective nature, despite concerns of the process being overloaded with unnecessary representatives and experts. The success rates of mediation are also highlighted, reaching 70%.

5.2 Findings and Research Questions

Throughout the range of findings there is rich evidence to draw upon to answer the research question. The benefits for disputants have been highlighted throughout the findings and so will not be repeated in this section. To highlight a few, benefits include speed, confidentiality, cost saving, relationship building, capability of dealing with complex or entrenched issues, and freedom within the voluntary nature of the process.

5.3 Findings and Literature Review

Many of the findings uphold the literature review, marking the positives of mediation. One area that was open to different views was cost, where savings arise in some scenarios more than others.

A number of the purported negatives of mediation cited in the literature review were overturned by research in this jurisdiction. This may well be indicative of the culture of society and ways of working in Ireland.

5.4 Deficiencies in Literature Review

The literature is highly populated with qualitative data on the subject matter. However, it is more devoid of quantitative matter. There is a need for greater literature on data which could be used to identify trends, data mining capability and gaps for improvement.

5.5 Research and Research Aims & Objectives

Recalling the aims and objectives, the aims were benchmarking mediation in Ireland against broader based experiences and its advantage to a disputant

over litigation. The objectives covered discovering litigation drawbacks, any validity to mediation attributes and any disputant gains from mediation.

The findings of the research encapsulated the aims and objectives, as illustrated in the findings above.

5.6 Limitations to Research

This research is limited by the following factors:

- Sample size

The sample size is small. The information gleaned was extrapolated to give a representative response to an international literature review. The views of four individuals may be insufficient to base findings on for this research. It was not possible to access further interview candidates.

- Representative sample

The research focused on the benefits to disputants. Interviews were carried out with mediators and representatives of disputants. Whilst attempts were made to interview at least one disputant, this was not possible. A disputant's views on the experience and benefits, or otherwise, of mediation is inaccessible. It is taken that the views of the mediators and legal practitioners equitably reflect the views of disputants as an interest group.

- Data availability

It was anticipated that a quantitative survey would garner sufficient information due to both the relative infancy of mediation in Ireland and the confidential nature of mediation leading to non-disclosure of data.

Implications for Practice

- Awareness: Public awareness programmes should be undertaken by the appropriate State Agency and representative bodies of the legal profession and mediators. This is to bring about an informed society about the framework of mediation and how it may be used if called upon.
- Training: National minimum competency and assessment standards need to be set to ensure sufficient levels of overall professionalism by mediators.
- Single Self-Regulation Body: a single body should be set up where mediators must register and undertake continuous professional development to maintain standards.

Closing

Mediation brings with it many dimensions, attributes and imperfections. It is gaining momentum in Ireland as a vehicle for dialogue, to diffuse conflict and facilitate shared solutions. It presents as a framework which has shown the ability to work well with high success rates. The benefit to the State on cost and to society at large as another option to consider is evident from this research.

The author's aspiration prevails that all disputants may have an informed choice on experiencing the wealth of benefits that mediation advances.

Next Steps/Future Research possibilities

- Further research will need to be carried out to establish if such voluntary frameworks are simply bypassed by one or more disputants in a disagreement.
- Any impact from the imminent legislation should be investigated to establish practices changes and any changes to the uptake in mediations as a direct result of the legislation.

- Any issues arising with enforceability of mediation agreements which may otherwise compromise the integrity of the process should be investigated.

- Further research could be undertaken into establishing further quantitative data on the mediation experience in Ireland.

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www.uncitral.org

Appendices

Appendix 1

Head

1. Short title and commencement
2. Interpretation
3. Scope and application
4. Duty on solicitor to provide information and advice on mediation
5. Duty of barrister in relation to mediation
6. Mediation conditions
7. Role of mediator
8. Duty on mediator to provide information on training etc.
9. Codes of practice
10. Confidentiality of mediation communications
11. Enforceability of mediation agreements
12. Court support for mediation alternative
13. Submission of mediator's report to Court
14. Effect of mediation on limitation and prescription periods
15. Staying of Court proceedings arising from mediation clause
16. Fees and costs
17. Factors to be considered in awarding costs
18. Involvement of child or dependents in family law mediation
19. Liability for Civil damages
20. Amendment of Civil Liability and Courts Act 2004

Mediation Bill (2012)

Semi-Structured Interview Questionnaire

- 1) Using the ranges below, how many times approximately have you participated in mediation?
(f) 1 (b) 2 – 5 (c) 6 – 15 (d) 16 – 25 (e) 26 or more
- 2) Describe your interest(s) in attending the mediations (referred to question 1) from these choices:
 - (a) Always representing a disputant
 - (b) Sometimes representing a disputant
 - (c) Always acting as a mediator
 - (d) Sometimes acting as a mediator
 - (e) A disputant

There are 9 statements below, numbered 3) to 15).

Please give a response to each statement using one of the following *fixed answers*:

- (a) Strongly disagree**
- (b) Moderately disagree**
- (c) Neither agree nor disagree**
- (d) Moderately agree**
- (e) Strongly agree**

Please give a short *reason* for your choice of answer to each statement.

- 3) The manner in which conflict is resolved can have long term impact.
- 4) Most organisations utilise a traditional conflict resolution (adversarial) approach to issues.
- 5) The advantages of Alternative Dispute Resolution*, of which mediation is one method, are: an increase in Court system efficiency, heard by specialist knowledge intermediaries and time efficient for the parties.
- 6) The disadvantages of Alternative Dispute Resolution, of which mediation is one method, are there being: no mandatory elements to the process, lack of the neutral party's power, lack of Alternative Dispute Resolution, case precedents to predict future probability outcomes, lack of final agreement enforcement and potential inequality for small party 'underdogs'
- 7) Mediation is capable of taking place within a number of days of a dispute arising.

- 8) Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties.
- 9) In mediation, it is possible even in cases of strong conflict, entrenched positions and hopelessness to reach full or partial agreement.
- 10) Litigation shortcomings are: cost, Court delays, lack of control amongst interest parties and a hostile environment.
- 11) Power is present at negotiations; all negotiators want power which bestows benefit to one party over another and the advantage is seldom evenly distributed.
- 12) With the level of litigation costs, this was perceived as a quantitative reason to push the mediation framework agenda.
- 13) The advantages of mediation appear to outweigh the disadvantages, predominantly on: speed, cost and confidentiality.
- 14) The pending legislation in Ireland on mediation (Mediation Bill, 2012) will only be effective if there is awareness of the benefits of this dispute resolution framework.
- 15) There is a benefit to disputants of mediation for resolution of Civil and Commercial disputes in Ireland.

*defined as a "range of procedures that serve(s) as (an) *alternative(s) to litigation* through the intercession and assistance of a neutral and impartial third party.

Appendix 3 Research Statement Cross reference

Statement No.	Source	Page
3	Philips and Cheston, 1979	
4	Lipsky and Avgar, 2010	
5	Fakih, 2012	
6	Fakih,2012	
7	Picard, 2002	
8	European Parliament, 2008	
9	Johnson, 2012	
10	Rasnic, Carol Daugherty, 2007	
11	Yousefi, Hipel and Hegazy,2010	
12	Goldberg and Shaw, 2012	
13	Fakih, 2012	
14	Joint Committee on Justice, Defence and Equality,2012	
15	Research Question	

Appendix 4 Invitation Letter

Dear [name]

I am a final year student undertaking an MBA programme at the National College of Ireland, Dublin. As part of my studies, I am carrying out academic work in the form of a research study in the area of mediation.

My aim is to conduct a study exploring mediation as a resolution for Civil and Commercial disputes in Ireland and to consider what is the benefit to disputants of that process. I am undertaking the study as mediation is a relatively new and evolving area in Ireland and which is supported by legislation at various levels. My research aims to study the experience in some non-EU and EU countries and learn from those experiences on how the benefits of mediation may be simulated in Ireland, in addition to research areas of mediation in Ireland.

As part of the research, I am undertaking interviews with those with experience of the mediation process. My intention is to obtain responses and views literature on mediation produced by subject matter specialists and to establish any correlation or otherwise between the literature theory and the reality of mediation and the mediation experience in practice.

Given your first-hand experience with mediation, you have been selected as a participant who could add value to the research from the knowledge of your mediation experience. You can be assured of the anonymity of any views that you share. Accordingly, you will not be identified or identifiable from the presentation of the author's output. Naturally, your participation in the research is entirely voluntary.

I propose to conduct this study by means of a semi-structured, one-to-one, face-to-face interview. In order to capture the full integrity of participants' responses, it is planned to record the interviews by dictaphone, to be transcribed afterwards. The recordings will be erased once the educational body concerned has fully completed the deliberations process on the writers research output. Alternatively, an interview by telephone may be undertaken whereby the writer will take handwritten notes. It is anticipated that the interview session will last no more than 45 minutes.

I have enclosed a copy of the interview questionnaire so that you have an advance copy of the material being covered and the manner in which your responses are planned to be elicited and recorded.

I would be most grateful if you would agree to participate in the study concerned.

Should you require any further information on any aspect of the study or planned research, please contact me.

I look forward to hearing from you

Yours sincerely

Michael Lee

Appendix 5

INTERVIEW NO. 1

Tape SC2

- R: So if we go to the first one - How many times approximately have you attended mediation?
- I: Probably 5 to 15
- R: Okay, that's great, okay, then what was your interest in attending the mediations referred to in the previous question and you will see your options there.
- I: Am I only allowed one option?
- R: No you can go for more than one, if you like.
- I: Okay, so I sometimes, was acting as Mediator.
- R: Okay
- I: Sometimes representing a disputant.
- R: Oh great, yep
- I: Yeah probably both of those, so Mediator and representing a party.
- R: Yeah, that's great, okay and then No. 3 - The manner in which conflict is resolved can be, can have long term impact so then the responses are do you strongly disagree, moderately, neither agree or disagree, moderately and strongly agree, what would be your view around that?
- I: I would strongly agree.
- R: Okay and any reasons for that?
- I: Well obviously having as a Lawyer, seen the effect of protracted litigation which even if it resolves in a settlement, the process has such an effect on parties I think, that the... and seeing how it works in a mediation issue and how much that can be so different, I think no matter what they end up with, litigation because of the manner in which it is resolved, actually often has a very long term effect on the parties that they don't see the settlement,

actually, the process has affected them more than the actual nub of the issue, whereas mediation, because there is that personal issue to it, I think definitely, even if they don't all end up with what they originally thought they wanted, and they end up only with what