

Barriers for Early Career Solicitors and Barristers and Increasing Diversity

Public consultation under section 34(1)(d) of the Legal Services Regulation Act 2015 Submission from the Mediators Institute of Ireland

June 28th 2021

The Mediators Institute of Ireland, “the MII”, is a professional membership body that was originally founded in 1992, to pursue excellence in the practice of mediation and has from the beginning aspired to set the highest standards for the profession. The MII currently represents approximately 644 members.

The Mediation Act 2017, which commenced in its entirety on the 1st of January 2018 has for the first time in Ireland created a statutory framework integrating mediation into the civil justice system. The Act applies to all forms of mediation practiced in the State except where specifically excluded from the scope of the Act under section 3.

Part 3 of the Act is a key section, introducing the idea of mediation as a first step for the vast majority of litigants at the earliest point before proceedings are issued, underpinning the public policy to achieve a greater uptake in mediation, resulting in the savings of cost and time in the resolution of these disputes. Sections 14 and 15 set out the obligations on practicing solicitors and barristers. Under section 14 practicing solicitors, before issuing proceedings, must advise the client to consider mediation as a means of resolving the dispute, must provide the client with information about mediation and names and addresses of mediators and must provide the client with information about the advantages and benefits of mediation. While practicing barristers currently have no existing obligation under the Act, section 15 does set out similar provisions which will apply when it is lawful for a barrister to issue proceedings on behalf of a client not represented by a solicitor, subject to future Regulations and any report under section 34(1) of the Legal Services Regulation Act 2015 to the extent that the report relates to the unification of the solicitor's profession and the barrister's profession.

The Act also emphasises the right of users of the service of mediation to seek legal advice during mediation ref s 7, and particularly before signing any agreement (mediation settlement) ref s 8. They may also ask their legal advisor to accompany them during mediation and be advised by their legal advisor. The Act therefore envisages that legal representatives and mediators would concurrently assist clients in mediation, supporting their right to self-determine. The Act describes mediators and legal advisors working collaboratively in a dispute resolution process.

Mediators work with clients on a wide range of civil disputes, from neighbour disputes, usually not intended to be legally-binding, to commercial disputes generally requiring a legally binding outcome. Many mediators come from a wide range of other professional backgrounds, and practice mediation in a myriad of models, which provides a broad and diverse service offering for potential users of the service. The MII acknowledges the importance of diversity in all professions and is aware of the need to attract culturally diverse practitioners into the profession to promote greater uptake of mediation by minority,

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and minority ethnic communities. It is in the public interest that there is diversity within the community of dispute resolution professionals so that we encompass the ethnicities, cultures and values of our service users. Diversity matters! It leads to the creation of better problem-solving models, bringing a multiplicity of perspectives, experiences, competencies and knowledge. It promotes inclusiveness and positive feelings from all citizens of Ireland about the rule-of-law and the benefits of harmonious social interactions.

We the MII support the objective to enable the legal professions to be more diverse.

A significant barrier to promoting diversity is the access to professional training to qualify as a solicitor or barrister. Such training is expensive, delivered by only by 2 providers since before the inception of the State, and exclusively Dublin-based. The LSRA has already proposed an appropriate solution, welcomed by the Minister for Justice, whereby there would be a statutory framework for the education of lawyers with a body tasked with setting and maintaining legal educational standards. The training then being “opened up” to educational providers at other third level institutions in Ireland. Competition among educational service providers would likely make the training more affordable and accessible for those who live outside of Dublin. Regarding the setting of training standards, we would welcome an opportunity to contribute to the development of mediation modules, as we have over the years developed a high standard of training for mediators. Providing new legal practitioners with sufficient knowledge of mediation will support the close working relationship of mediators and legal professionals as envisaged by the Act, and ensure that the public policy aim to bring mediation front and centre as a widely used dispute resolution forum.