

# Mediation is much cheaper than lawyers

**Karen Erwin**

Business should consider mediation as a speedy and cost-effective alternative to litigation, following publication of the Haran report and a landmark judgment by the Master of the High Court.

An expert group on legal costs chaired by Paul Haran has prescribed change and the Minister for Justice Michael McDowell has accepted its recommendations. More dramatically, the Master of the High Court has ordered a solicitor to reimburse his client for what he termed an unnecessary legal action and described this judgment as a wake-up call for solicitors.

Businesses, which have long borne the high costs of litigation, will welcome such developments and the hope that much-anticipated reform may finally be on the way. One aspect of the current debate on legal costs gaining increased attention is the role which alternative forms of dispute resolution can play.

Edmund Holohan, Master of the High Court, states in his judgment that spiralling costs may prompt the Oireachtas to legislate for alternative forms of dispute resolution. The Haran expert group recommends that mediation, as an alternative to litigation, should be considered as one means of keeping cases out of court.

What mediation involves, and how the process compares with litigation, is not widely understood. It is relatively underdeveloped as a way to resolve commercial disputes in Ireland, compared with other countries. There is a considerable body of international evidence which shows that it is a low-risk, high-impact option.

Mediation needs to be set in the context of the reality of how most businesses currently resolve contractual, employment, succession and other disputes. Litigation is the preferred route. Hundreds of such cases wind their way through the legal system each year. It is not unusual for a case to take three years to get to court - only for many to be settled on the steps of the court. It is not unusual either for the legal costs of such cases to climb into five, six and seven-figure sums. Cost is an issue for businesses, but it is not the only one. The adversarial nature of litigation places strains on the individuals involved, as well as on their colleagues and families. Litigation is a serious drain on management's time and a significant distraction from the task of managing a business. It puts an unproductive spotlight on past events, at the expense of future growth and prosperity. Win or lose, litigation can result in reputational damage for a business.

How does mediation differ and why should it be given serious consideration by businesses? Firstly, the approach is focused on moving forwards, not looking backwards.

"We are where we are, so how can we go forward from here?" - this is the pragmatic starting point for the mediation process. The approach requires the parties themselves to shape the resolution, rather than wait for a judge or an arbitrator to hand one down. Therefore, it has a better chance of becoming a lasting resolution to the dispute.

Mediation offers speed and simplicity. The parties can get to the mediation day in a matter of weeks, not years. It does not require lengthy preparation, witness statements and large binders of documents. Statements for a case are written in plain English, not legalese. It does not divert valuable management time and it is a confidential process.

Once the parties arrive at an agreement, it is written down, signed and then becomes binding. The parties can decide to involve lawyers or other advisers, but this is optional.

Costs are likely to be a fraction of an equivalent case that runs its full course through litigation.

Mediation is also a voluntary process - the parties agree to go into and stay in mediation.

Too good to be true? Not so. There is little research on mediation in Ireland, but evidence from other countries is compelling. In the UK, recent research among the members of the Centre for Effective Dispute Resolution shows an average settlement rate of 73 per cent.

Proposed reform of legal costs will heighten interest in mediation in the Republic. So too will increased awareness of the considerable benefits for businesses which use mediation instead of litigation.

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