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THE EFFECTIVENESS OF THE WORKPLACE RELATIONS COMMISSION MEDIATION SERVICE IN IRELAND

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Dissertation submitted in partial fulfilment of the requirements to obtain the degree of Master of Arts in Dispute Resolution at Independent College Dublin, May of 2021

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ABSTRACT

The following document seeks to describe and evaluate the effectiveness of the mediation service offered by the independent body in Ireland, known as Workplace relations commission (WRC). This was performed considering the established legislation that gives structure to the body and it´s service, as well as the relevant literature in the matter, reports from the WRC and a conceptualization of "effectiveness". Utilizing a mixed methodology, compressed by a survey containing both open and close-end questions, we collected and analysed data regarding the purported level of effectiveness of the mediation service, according to key players whom by the nature of their occupation, have experience in the aforementioned. The gathered views of participants contrasted with the literature, lead to conclude that the WRC mediation service is seldomly used and that there is a preference for other ADR methods.

INTRODUCTION

The purpose of the following paper is an attempt to evaluate the effectiveness of the mediation service provided by the Workplace Relations Commission (WRC), according to key players and experts in the field, including solicitors, barristers, and accredited mediators. This was performed in accordance with the proposed by Borgatti, in which for our purported goal we needed to identify an influential group in the structure of ADR in Ireland (Borgatti, 2006) and specifically, for the evaluation of the WRC mediation service; so that it is determined whether this service capitalizes the resources destined to it, by providing a viable solution to workplace disputes. This has been done considering the offered mediation by the WRC, as well as an analysis of the views in relation to the perceived level of effectiveness that the utilization and close contact with the subject and the ADR strategy, has brought to the experiences of these key players. The evaluation has been performed with mixed methods, and data collected through questionnaires with close and open-end questions that represent and convey the insights of the expertise in the subject.

The focus of the research regards the form in which the Workplace Relations Commission mediation service is offered, the analysis of the gathered views, and an assessment and a potential determination of the effectiveness of such service.

In the first section we review the theories and concepts that will function as a foundational basis for this document; posteriorly, in the first chapter we provide a description of the Workplace Relations Commission Mediation service from the gathered from their respective annual reports and Brochures.

In our second chapter we have included the pertinent discussion and evaluations established by academics in the subject of ADR in Ireland. In a subsequent chapter we discuss certain traits of mediation as an ADR strategy that may be attractive for disputants and conversely, a concept for the purposes of analysing the effectiveness under a specific perspective that is pertinent and

"*adhoc*" for the background of this present research.

In spite of efforts performed to give form to a uniform definition of effectiveness (Beck, 2004) of ADR processes that consider another aspect besides settlement and speed of the process (Dunne, 2012); (Tanul, 2013), as well as the impossibility to determine if the outcomes of this service have endured and the lengthiness of these; the results display that WRC mediation is rarely a used ADR method for employers, and has little use among employees, since there is an absence of trust in the process; along with this, disputants in those instances usually prefer adjudication or other dispute resolution methods as an ailment for their conflicts.

Aims and Objectives

As the discipline of dispute resolution attempts to strive and pursuit the dissolution of conflicts, this also may imply that the subject put is efforts into finding viable and pragmatic alternatives in doing the aforementioned. Thus, the reason of this project, the motivating causes of it, is to practically address the current strategies of the discipline.

The aim of this study is to evaluate the effectiveness of the Mediation Service provided by the Workplace Relations Commission in Dublin, Ireland; according to Key actors, who have, by their credentials and level of expertise, the required criteria to critically evaluate these characteristics; nevertheless, their distinction will lay on their diverse backgrounds within the field of their professional praxis.

This present paper seeks to answer the following question: How effective is The Workplace Relations Commission Mediation according to key actors? correspondingly; is it an often-recurred option among people who want to solve disputes within the Workplace?

With the aim of answering these interrogates, we will recur to the perspectives and insights of individuals who, in function of their respective occupations, even though their correspondent backgrounds may be diverse. This will have as a premise the assumption that a certain level of proficiency is needed to response these questions accurately, from an inside perspective.

The Main objective of this research:

- Determine the effectiveness of the Workplace Mediation Service provided by the workplace relations commission in Dublin, Ireland; according to professional practitioners of diverse fields of study who converged in being familiarized with this program.

Secondarily:

- Describe the Workplace Relations Commission Mediation service program.

- Evaluate the effectiveness of the Workplace Mediation Service according to key actors.
- Analyse the results of the views, garnered through questionnaires, and surveys regarding this program.

According to O'Sullivan et al. *"research methodology as the steps researchers use to collect and analyse data. These steps include deciding when and how often to collect data; developing or selecting measures for each variable; identifying a sample or test population; choosing a strategy for contacting subjects; planning the data analysis; and presenting the findings"*. (O'Sullivan E, 2007).

Furthermore, as Byrne and Humble (2007) proposed; "*mixed method design incorporates techniques from qualitative and quantitative methods to answers research questions"*; and since "*every method has limitations and the use of mixed methods can help neutralize these, as well as the strengths of every approach can complement each other"* (Byrne, 2007).

In contrast with the previous, among the disadvantages that Mcmillan and Schumacher list we find *"the researcher's need to be proficient and competent in both qualitative and quantitative methods (a connoisseur of methods). The second disadvantage is the high demand of time and resources that mixed methods require. The last refers to a tendency to use mixed methods labels liberally to studies that only mix methods superficially* (McMillan, 2006).

Since we seek to evaluate the effectiveness of the mediation service provided by the Workplace Relations Commission; correspondingly, how often, how viable and practical it is as an ADR strategy, what provides us with an accurate depiction of the reality we regarded individuals that in virtue of their occupation, have the status of "Key players".

Therefore, for the aim of this paper, key players are considered as: Barristers, Lawyers. Solicitors, academics, and accredited mediators that in function of their occupation, have close contact and a broad understanding and knowledge of the Workplace Relations Commission mediation service. The previous is, as Borgatti expressed "*based on measuring explicitly the contribution of a set of actors the cohesion of a network* (Borgatti, 2006)

As a data collection instrument, we used a survey/ questionnaire format directed to them

through their working email, with the help of google surveys, the same application that will provide with the proof of the primary research and the consent form, the mandatory requisite that enable participants to engage in the survey.

In contrast with the aforementioned reasons, a clear disadvantage was finding a representative and significant sample; this due to time constraints and reaching limitations (disregarding the conditions of social distancing).

Furthermore, as Axinn and Pearce claim *"many of the concerns of surveys apply to qualitative interviewing, being one of these the possibility that the interviewer might influence the answers submitted by the respondents"* yet not to be confused with "In depth interviews" (Axinn & Pearce, 2006).

Nonetheless, in this case there was not a direct approach or intervention with the subjects as the mentioned authors suggest when it comes to "In depth interviews".

Along with this, according to the previous, *"less structured interviewing offer flexibility and more opportunity for new respondents to introduce more topics from surveys."* (Axinn & Pearce, 2006). As performed, in the applied surveys the interviewer was not involved at all with the subjects, nevertheless it aimed to lay out reasoning that might be useful for future references.

In accordance *" summarizing data is the step more clearly linked to the distinction between qualitative and quantitative methods; if we code data into numbers and analyse these with statistical methods, we often describe these procedures as quantitative, if we leave data in form of a text and interpret the text, we often describe this as qualitative."* Definition that was ad hoc in the survey for the purposes of this research. (Axinn & Pearce, 2006).

Regarding the data gathered, "*the primary data is the original data collected for the research objectives*" of this paper. From the previous, this comprehends the questions of our surveys, which is compressed of both qualitative and quantitative data; being this, in accordance, "*the*

understandings of the complexity, details and context of the research subject" and the *"data described numerically"* (Hox & Boeije, 2005).

In terms the sample, we have applied Judgement sample or also known as purposeful sample, since it is a rather common technique. According to Marshall, in this sampling *"The researcher actively selects the most productive sample to answer the research question".* This is especially convenient in the present paper, since the selected group shares the characteristic of expertise and experience among the field; in this specific case we have chosen subjects who *"have specific experiences and/or both subjects with special expertise"* (Marshall, 1996;) Although, one main disadvantage of this, is the potential lack of responses due to the limited accessibility, the irrelevance to this dissertation in relation to their work load and specificity of the target group.

Furthermore, from a perspective that is pertinent to the Alternative dispute resolution discipline, there is an imperative need of dissolve conflicts effectively in order to consider that these strategies are successfully; thus an evidence based practice is deemed as the ideal, since as Kumar manifests, this "*is the delivery of services based upon their research evidence about their effectiveness*" and "*this approach encourages professionals to use evidence regarding the effectiveness of an intervention in conjunction with the characteristics and circumstances of a client to determine the appropriateness of this*" (Kumar, 2011, pp. 3,4). This is paramount in choosing the adequate methods. In accordance with the previously stated, there is a necessity for ADR mechanisms to be positive, worthwhile, and productive in terms of creating valuable solutions for their users; as well as to be as honed as possible, to be constructive and provide resources for their purported goal.

The ontology that prevails in this paper is considered relativist since it addresses subjectivities and experiences not regarding them as absolutes; or as Hughly & Sayward consider "*it will be impossible for one person to make an assertion contradictory to the assertion of another person*

and both assertions be correct" (Hugly & Sayward, 1987). This since the collection of the data (when applicable) will regard a perceived level of effectiveness of the mediation service provided by the Work Relations Commission, according to the user experience and level of proficiency in the related discipline. As opposed to this, a realism ontology would not be suitable for the purpose of this research since it would require a previously established measurement instrument that would address an objective aspect of this conflict management strategy.

The EMIC, approach is also deemed as adequate since "this approach investigates how people think…" (Kottak, 2006) therefore this only considers the views of the cohort in relation to their experience using the WRC mediation Service.

For this research, we have chosen an inductive approach, establishing premises and mentioning previous discussions in the literature review. The group of key players have been selected to function as a starting point for potential future debates on, whether or not workplace mediation is suited for every type of labour conflict. Contrarily, a deductive approach is more suited to test a hypothesis through a specific group and the research design. (Wilson, 2010)

In order to manage to reach and contact the subject study members, the strategy we have chosen is the survey yet with a set of questions that resemble more a questionnaire, since the content of their answers is required to be regarded as a part of a mixed methodology. In addition, the conducted survey/questionnaire compresses an option in which answers can be submitted attributing a certain degree of effectiveness about the quality of the service if this was used.

As previously discussed, the chosen method of this research is mixed as it is pertinent to collect data in relation of, just to mention a few whether the subjects have appeared before the WRC (quantitative) as well as their perceived level of effectiveness and pragmatism. In contrast, a mono method would only consider one aspect of the data, either qualitative or quantitative, and although it may require less time and perhaps resources, it is not regarded as the adequate for

these research questions.

A Cross-sectional research was performed, so that we were able to measure the outcome and the exposures in the study participants at the same time. In addition, a longitudinal study is not feasible due to the time constraints imposed to this paper. (Setia, 2016).

Introduction

For a practical assessment of the inherent concepts of this paper, we have abstained of utilizing the words "*dispute*" and *"conflict"* in a distinctive, mutually exclusive manner; even though several authors insist on making a distinction. For that, we will be using both "dispute" and "conflict" in an interchangeably way.

In order to represent the underpinning conceptions, we have to recur to the works performed not only regarding mediation as an ADR strategy on its own,

For some academics, it is a matter of dimension and extension. For Moffit and Bordone *"most observers would agree that conflict implies a broader impact that the one implicated in the semantic of dispute; conflicts are often perceived as broader, deeper and more systematic*" (Michael L. Moffitt, 2012).

Moreover, there are a myriad of disciplines that contribute to the ways in which we confront and resolve disputes, each one of them provides a new perspective of which we can benefit from. "*one of the main attractions of ADR its interdisciplinary nature" "established academic disciplines such as economics, psychology, sociology and law have each contributed to our understanding of dispute resolution"* (Michael L. Moffitt, 2012).

The instruments and methods employed by such areas, fall under the umbrella of what we have over the past decades know as Alternative Dispute Resolution (ADR).

In addition to this, as an antecedent from the *Harvard Law Review, 99(3), Alternative Dispute Resolution: Panacea or Anathema? "The ADR idea was seen as nothing more than a hobbyhorse for a few offbeat scholars; yet with the rise of public complaints about the inefficiencies and injustices of our traditional court systems, ADR is no longer the reputation of a cult movement."* (Edwards, 1986, pp. 668,683). From the following assertion we can infer that, a few decades ago ADR was not regarded as it is today; naturally being so, since every

branch within the social sciences continues to show an exponential growth due to the ever-changing demands of society.

Moreover, Stipanowich has considered that a “quiet revolution” has occurred surrounding the ADR discipline, and this “*has resulted in many changes in the environment of court litigation, including the evolution of a wide range of process tools aimed at managing conflict.”* He also asserts that *“There is substantial evidence that mediation and other ADR approaches can result in enhanced satisfaction, reduced dispute resolution costs, shorter disposition times, improved compliance with a settlement, and other benefits in some contexts. Much, however, hinges on the nature of the program and the participants, and there is still much to learn—and decide—about the role of ADR in the public justice system.*” The previous addresses a breakthrough change in the instruments that dissolving disputes can benefit from; as well as a circumstance of capitalization of the subjects and currents trends within the justice imparting system. (Stipanowich, 2004).

Nevertheless, conversely, some proponents argue that Alternative dispute resolution systems are an “old tale told again, and that among these ADR strategies mediation is the one with a better reputation, since in the case that it does not produces satisfactory outcome, parties may still recur to a conventional litigation process.

Similarly, since at a pre court mediation process, in which parties cannot reach an agreement, they would have another opportunity to return to court for the settlement; and this could be a reason why legislatures and courts do not feel an urge for regulating mediation thoroughly. This also could be a cause for an obscurity in measuring the outcomes of mediation programs. (Hensler, 2003).

Furthermore, Edwards also asserts that *“Every new ADR system should include a formal program for self-appraisal and some type of "sunset" arrangement to ensure that the system is evaluated after a reasonable time before becoming permanently established.”* (Edwards,

1986). Along with this, in 1997, the Chief of Justice of Hong Kong appointed the Working Group to consider a pilot scheme for the introduction of mediation into family law litigation in the region and, among their posterior recommendations, they included the implementation of a three year pilot scheme to test the effectiveness of mediation in resolving matrimonial disputes (Working Group, Hong Kong, 1999). Therefore, it is considered relevant to design evaluation methods from an outsourcing perspective since they are more likely to address flaws and point of improvement.

Alternative dispute resolution or adequate dispute resolution?

The present concept is paramount for the aim of this paper, as one of the institutions evaluated, which is Workplace Mediation, is contained within a system or scheme that has been denominated Alternative Dispute Resolution. This subject is composed of diverse strategies and techniques. For this notion, there has been debate of whether it should be called Alternative Dispute Resolution or "Appropriate Dispute Resolution" as Carrie Menkel-Meadow addresses; because it compresses a pluralism of processes due to the intricacies derived from the diverse scenarios of the disputants, in which there is not a legal measure that could solve every one of these. (Menkel-Meadow, 2015).

As Lipsky and Seeber have defined more concretely "*ADR as the use of any form of mediation or arbitration as a substitute for the public judicial or administrative process available to resolve a dispute"* (Lipsky & Seeber, 2000).

Additionally, Ruth Raisfeld asserts *"In a broad sense, alternative dispute resolution, or ADR, refers to a range of options for resolving conflict, typically with the intervention of a trained third-party professional whom both sides to the conflict view as neutral. ADR is used to resolve threatened and/or pending litigation involving domestic relations, commercial matters, employment relations, construction, energy, securities, environment, as well as community*

disputes involving neighbours, small businesses, landlord-tenant, etc. However, it is particularly well-suited to the employment arena which is governed by a panoply of federal, state, and local regulations, as well as having unique codes of conduct and practices which apply to each workplace". (Raisfeld, 2007)

For Robert Mnookin, alternative dispute resolution is "*a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts." Is it usually thought that it encompasses mediation and arbitration with other several hybrid techniques without utilizing formal adjudication or recurring to traditional litigation. Their proponents have addressed benefits such as reduction of the transaction costs of dispute resolution since ADR strategies may be cheaper and faster than ordinary judicial proceedings"*. (Mnookin, 1998)

Nevertheless, Hensler differs from the last portion of R.Mnookin definition, claiming that *"there is little evidence that neighbourhood justice centres have reduced urban social violence, that Alternative dispute resolution within the courts have reduced the average time of civil lawsuit procedures and that ADR outside the court has reduced the transaction costs of resolving conflicts that would have never gone to trial either way".* Along with the contained above, she also expresses that among the few empirical observations of mediation, there could be less that meets the eye, as well as a resemblance to a court hearing, however with a privately paid mediator to function as a neutral third party, as opposed to a publicly paid judge. (Hensler, 2003)

This implies that, despite the latest several efforts within political agendas to implement ADR mechanisms in the legislation and overall dispute management, there are several critics that remain sceptical to the purported benefits of ADR strategies.

Mediation

According to Kyle Beardsley "*there are three necessary components of mediation: 1. the*

mutually permitted third party intervention. 2. Third party reliance on non-violent tactics. 3. An absence of authority for a third party to make a non-binding resolution. These three criteria help to distinguish mediation from other third-party conflict management techniques" (Beardsley, 2011).

In addition to this, Mnookin addresses that the function of a mediator *"unlike an arbitrator or judge has no authority to impose a resolution on the parties. Instead, the mediator's goal is to facilitate negotiation and help the parties themselves to reach a mutually acceptable settlement of their own dispute. Mediation is typically a voluntary process where the parties themselves may choose the person who will act as the outside facilitator."* (Mnookin, 1998).

However, for the previous definition Beardsley mentions that facilitation could be considered as a style or way in which mediation is performed, instead of considering it as a whole new ADR strategy or as some authors propose "facilitative mediation" (Beardsley, 2011)

Moreover, as Raisfeld claims*; "A trained neutral third party is selected by the parties (or appointed by a tribunal) to assist the parties in resolving their dispute. The success of mediation lies in the ability of the mediator to focus all parties on the origins, underlying issues, and potential resolution of the dispute in one (or more) concentrated meeting, during which the mediator can help all involved construct reasonable proposals, provide "reality testing" of the strengths and weaknesses of their competing demands, and provide an occasion for "venting" while tempering emotional and ego-driven commentary and reactions. The hallmark of mediation is that the mediator meets with both sides, in joint and separate caucuses, and guides the parties through exchange of information and exploration of interests and positions in a confidential setting with the goal of enabling the parties to reach agreement themselves."* (Raisfeld, 2007). Regarding the previous, it compresses several aspects of the attractive characteristics of mediation, such as the "facilitative" aspect of the role of the mediator, as well as addressing the favourable and pitfalls of the potential decisions the parties can make.

Furthermore, in his 1998 work "Alternative Dispute Resolution", R. Mnookin also depicts extensively several aspects and approaches of the mediators; he considers that *"the practice of mediators is versatile and diverse, depending on the approach and style of mediation, since some encourage the participation of lawyers, while others aim to minimize their participation to keep the spotlight on the parties themselves. Some others focus the process primarily on the strengths and weaknesses of each party's legal positions; others, primarily on the underlying interests and needs of the parties, avoiding discussion of the legal merits. Some mediators evaluate the legal merits of each party's positions, and willingly express a view of the probable outcome in court. Others avoid evaluation, and instead see their role as facilitation, helping the parties generate creative options that serve underlying interests. Many mediators are eclectic, and engage in activities that both help the parties to understand the opportunities and risks of pursuing their litigation and also probe their underlying interests to see if there are value-creating options that may be quite unrelated to what a court might do"* (Mnookin, 1998).

Additionally, regarding a theory that underpins the relevance of key players there has been a debate about the relevance of such, or as Mitchell, Agle & Wood address "Key stakeholders"; in accordance, they have "*briefly examined the major organizational theories"* and contributed with *"three crucial variables—power, legitimacy, and urgency—as identifiers of stakeholder classes".* (Mitchell, et al., 1997)

In this chapter we will discuss the body of the Workplace Relations Commission and the mediation service offered by such, as well as the acts that originate and give structure to them. On a side note, it is worth mentioning that, the mediation act 2017 in its part 1, section 3 referring to the scope says: "*(1) This Act shall not apply to:…… (b) a dispute that falls under the functions of, or is being investigated by, the Workplace Relations Commission, including a dispute being dealt with under Part 4 of the Workplace Relations Act 2015 , whether by a mediation officer appointed under section 38 of that Act or otherwise;"* (Oireachtas, 2017), nevertheless, on a personal interpretation we will consider that this legal precept does not limit its range of application unless it is of specific interest on a determined case.

In addition to this, it is notable that as opposed to other countries, for example England and the United Kingdom in where the government offers only the contacts of private mediators (Kingdom, 2021); in the Republic of Ireland mediation is offered by an independent governmental body such as the WRC without a cost and they designate an accredited third party to mediate the dispute (Commission, Workplace Relations, 2020). Mediation is also offered by number of private mediators, although not as pronounced as in the UK model.

1.1 Workplace Relations Commission and the Workplace relations act 2015

The Workplace Relations Commission (referred as WRC from now on in this paper) is an independent organism that is the successor of the National Employment Rights Authority (NERA), Equality Tribunal (ET), Labour Relations Commission (LRC), Rights Commissioners Service (RCS), and the first instance (Complaints and Referrals) functions of the Employment Appeals Tribunal (EAT). This statutory body originates from the *Workplace Relations Act of 2015* and is responsible for promoting and encouraging good relationships within the workplace, as well as reviewing the compliance with the relevant legislation

regarding the matter. (Commission, Workplace Relations, 2020)

Further in this paper, we will refer to the Labour Relations Commissions, since it has had more review from academics; and this will enable us to establish a foundation for a pertinent discussion regarding our research questions.

The Workplace Relations Act of 2015 established the structure and functioning of the WRC, the dissolution of the antecedent bodies, and the appealing body which is the Labour Court; It also contains the transferal of the functions of the Director of the Equality Tribunal to the commission; and matters of its own regulation (Oireachtas, 2015).

Also, this legislation establishes functions and attributions of the WRC in its Part 2, Point 11, as it follows:

> ***"11.*** *(1) The Commission shall, in addition to the other functions conferred on it by this Act—*
>
> *(a) promote the improvement of workplace relations, and maintenance of good workplace relations,*
>
> *(b) promote and encourage compliance with relevant enactments,*
>
> *(c) provide guidance in relation to compliance with codes of practice approved under section 20 ,*
>
> *(d) conduct reviews of, and monitor developments as respects, workplace relations,*
>
> *(e) conduct or commission research into matters pertaining to workplace relations,*
>
> *(f) provide advice, information and the findings of research conducted by the Commission to joint labour committees and joint industrial councils,*
>
> *(g) advise and apprise the Minister in relation to the application of, and compliance with, relevant enactments,*
>
> *(h) provide information to members of the public in relation to employment enactments (other than the Act of 1998), and*

(i) attend meetings outside the State relating to employment law matters and industrial and workplace relations upon the request of the Minister.

(2) The Commission may provide such advice as it considers appropriate on any matter relating to workplace relations to—

(a) employers or representative bodies or associations of employers, or

(b) employees, trade unions or excepted bodies,

whether or not it has received a request in that behalf from any such person.

(3) Subject to this Act, the Commission shall be independent in the performance of its functions.

(4) The Commission shall have all such powers as are necessary or expedient for the performance of its functions.

(5) The Commission shall perform its functions through or by the Director General or any member of the staff of the Commission duly authorised in that behalf by the Director General." (Oireachtas, 2015)

From the previous, we gather that this body is Ad hoc for workplaces disputes and especially proper functioning of the relations of the several subjects involved in the scheme of work performance, such as employees, employers, associations, trade unions etc.

1.2 Workplace Mediation

According to their annual report of 2019, the WRC *"provides two distinct forms of mediation; pre-adjudication mediation (by telephone and face-to-face) to assist the resolution of specific complaints referred to the WRC and workplace mediation to resolve ongoing interpersonal issues between persons or groups of persons*". In their pre adjudication mediation; as its self-explanatory name implies, after a complaint has been filed but before an adjudication process. The parties, by evaluating potential options with such flexibility that would not be possible to choose at the time of being in an adjudication hearing; reducing the costs and time expenses that would be normally used in a full process. In workplace mediation it is more likely to suit

individual or small groups disputes derived from the friction of workplace relation and interactions. This service has been also denominated as Early Resolution Service. (Commission, Workplace Relations, 2019).

Opposed to what Beardsley considers; and in accordance with their 2019 annual report; the WRC has a facilitation service which is composed of *"intensive, extended activities outside what would normally be considered traditional conciliation, with the aim of work through issues of mutual concern; for example, workplace change or where difficult industrial relations had developed".* (Commission, Workplace Relations, 2019)

From the Mediation Act 2017 *"mediation means a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute"* (Oireachtas, 2017).

The procedure is strictly confidential and enables employers and employees that are involved in a conflict of interests between each other, to work towards reaching a solution with the help of a mutually determined third party, which in this case is called a mediator. (Commission, Workplace Relations, 2020)

The objective of the mediator is, ideally, to collaborate with the parts towards finding an alternative that best suits both.

Even though, there is a private predominance of Mediation in Ireland by the Mediators Institute of Ireland; the public domain of the Workplace mediations remains within the Workplace Relations Commission; (Curran, 2015, p. 178).

The Workplace Relations Commission provides a mediation service for employees and employers.

Among the situations that can be solved by the Workplace mediation we find:

- *Where there are personal differences or people have problems working together*
- *Where a working relationship has broken down*

- *Where issues have arisen from a grievance and disciplinary procedure*
- *Where there are industrial relations issues that have not been referred through statutory dispute resolution processes.* (Board, 2017)

The focus aspect is that every part should have an equal opportunity to be heard and considered for the outcome. Joint appointment or in conjunct may vary and they depend on the case; yet flexibility is a characteristic trait. (Board, 2017)

1.3 The Mediation Act 2017

This document is the Irish legislation and the "*Act with the aim of facilitating the settlement of disputes by mediation", it* also specifies *"the principles and the arrangements applicable to mediation;* it imbues mediation "as an *alternative to the institution of civil proceedings or to the continuation of civil proceedings that have been instituted; establishes the codes of practice to which mediators may abide by*; and provides for *"the recognition of a body as the Mediation Council of Ireland", among others.* (Oireachtas, 2017).

By the previous content from the mediation act we can presume the following:

Even though, proceedings may have been issued in regards of the dispute, this shall not prevent the parties of engaging in mediation at any time prior to the resolution of the dispute.

The mediator has the obligation to provide documents that legitimize its role before the parties and display their qualifications, as well their training and professional experience in the areas, also they should go through continuous education to maintain a high-quality standard since the matter of dispute cannot be trusted to any person that wishes to participate.

In any case they should also provide a copy of the code of conduct to which they subscribe

There are several institutions in Ireland that provide training for mediators such as: The

Mediators Institute, The Institute of Public Administration, The College of Management and Information Technologies, The Mediation foundation of Ireland, Griffith College, Consensus Mediation, and Hibernian Courses just to name a few; yet the mediation act does not establish a determined qualification to obtain.

The only addressed matter for the mediators goes as it follows:

"mediator" means a person appointed under an agreement to mediate to assist the parties to the agreement to reach a mutually acceptable agreement to resolve the dispute the subject of the agreement; (Oireachtas, 2017).

Finally, as the act only excludes the application of this document to the procedures garnered from the arbitration act, the scope of the mediation act also applies to the possible workplace disputes.

1.4 Workplace mediation provided by the WRC.

The Workplace Relations Commission offers mediation as a confidential, private, and efficient method to assist in the reaching of a mutually acceptable agreement or outcome of disputes originated from the workplace interaction; in this way, claimants can avoid the resource depleting judicial adjudication.

The mediation service is provided by a cross-divisional team of trained professional mediation officers and is free to all users. (Commission, Workplace Relations, 2020)

The WRC provides mediation as follows:

"*The mediation service affords employees appropriate access to its mediation service in circumstances where assistance is sought in respect of claims of infringements to employment*

rights; it also provides access to the public in respect of claims involving unequal treatment and discrimination claims in the civil and public service. This form of mediation seeks to arrive at a solution through an agreement between the parties, rather than through an investigation or hearing or formal decision where a formal complaint has been lodged with the WRC for Adjudication." (Commission, Workplace Relations, 2020).

Essentially, the WRC mediation enables their users to solve, among others, internal workplace conflicts such as the following (this list is not limitative):

- *Interpersonal differences, conflicts, difficulties in working together*
- *Breakdown in a working relationship*
- *Issues arising from a grievance and disciplinary procedure (particularly before a matter becomes a disciplinary issue)*
- *Mediation is included as a voluntary stage in some grievance or dignity at work procedures and the WRC is nominated as the provider of a mediation service in some organisations. The WRC is available to discuss a similar arrangement with other public bodies or private companies.* (Commission, Workplace Relations, 2020)

Generally, the WRC provides a very comprehensive series of steps to follow in their website, in order to access their mediation service; yet, at the citizens information website, they assert a more detailed walkthrough in which they contain some aspects to be considered such as the case on matters regarding unequal treatment and employment rights in which "*parties can arrive at a solution through agreement rather than through an investigation or hearing or formal decision."* (Citizens Information Board, 2020).

1.5 Annual reports of the WRC.

Since its inception, the WRC has released a series of reports for the purpose of providing transparency to their ministrations, inherent to their functions. Within these documents, this independent body has represented a percentage of their provided as well as their successful

processes derived from their services. The results that these official documents offer, might shed light on the potential eventuality of growth and development of this particular ADR mechanism in Ireland.

In 2015, they only considered the period between October and December. The early resolution service offered mediation in 210 selected cases. From those, 96 cases were resolved with ERS assistance; although, they also address that some of these cases were selected prior to the month of October 2015. As a result, these dealings were not required to go through their adjudication hearings to be resolved. *"On average, approximately 40% of cases referred to mediation were resolved through this service offering"* the fact that a selection prior to the determined period was regarded might be due to the recent starting activity of the Commission. (Commission, Workplace Relations, 2015).

The following year there were 69 pre-adjudications mediation cases, according to the WRC 2016 annual report, "63% were settled or withdrawn"; yet they don't establish what is the average of them being resolved, they just add both values as "settled or withdrawn".

Moreover, this also occurs regarding the Early Resolution Service, since according to the document in mention: *"cases resolved or withdrawn totalled 321, representing just under 50%"*. In addition, as for Workplace Mediation concerns, *"there were 37 requests for this service during 2016 of which 70 per cent were resolved, 14 per cent were withdrawn, and the remaining were still in process"*. (Workplace Relations Commission, 2016). This clearly addresses an undistinguished status between settled and withdrawn, as well as a low practice of both Pre-adjudication and Workplace mediation, probably due to a still unknown by that time, mediation service, and an undeveloped ADR culture within Ireland.

In contrast with the previous, by the year of 2017 the WRC "saw *the effect of triaging some 220 complaints away from the Adjudication Service, 197 face-to-face mediations were delivered and 376 telephone mediations. The face-to face mediation total represented an 185%*

increase over 2016. These mediation formats achieved a combined settlement rate of 46% across the year. The delivery of 'workplace' mediation services also saw an increase in requests for assistance of 50% over 2016 with 70 cases processed and provided. (Workplace Relations Commission, 2017). As the WRC asserts in this report, the percentage of success among the diverse mediation modalities was of 46%.

Additionally, in 2018 the pre-adjudication mediation had 1,844 performed interventions. 603 of these were as face to-face mediation and 1,241 were dealt with by telephone. According to the Annual report of this year, *"almost two-thirds of cases (64%) where parties engaged with mediation were resolved at this stage"*. From the following we see that the engagement of disputants in the offered modalities of the mediation service, had a significant increase, as well as a relevant rise in the satisfactory resolution percentage of such. There was also a minor increment in the demand for workplace mediation *"with a total of 81 requests - an increase of 16% on the previous year - and the third year of growth since the WRC was established in October 2015"*. (Workplace Relations Commission, 2018).

In their final report emitted to this date, the WRC had some 2,000 interventions throughout 2019. Nevertheless, these were only either offers of mediation and revision of complaints from the following, 1024 escalated to a full mediation process, from which 25% were face to face and 75% were by telephone. In accordance with their document, a rate of 45% of these were diffused prior to an adjudication process, whether via mediation or previous to this. *A total of 77 workplace mediations took place during 2019.* (Commission, Workplace Relations, 2019).

CHAPTER 2: ADR IN THE REPUBLIC OF IRELAND

With the advent of ADR strategies and conflict management systems that originated in the USA, as well as the literature that analyzed this; one of the core topics was the recent implementation of these mechanisms across large-scale and multinational companies and firms within the USA in the early years of the new millennium. Consequently, along with diverse nations the Republic of Ireland had a response among academics from the relevant disciplines in relation to the development of this matter.

To fulfil the objective of comparing, contrasting, and analyzing this back then, brand-new phenomenon, Teague, Roche and Hann elaborated a survey with the goal to evaluate "*the incidence, antecedents and effects of conflict resolution practices*". In their article found in Economic and Industrial Democracy 33 (4), they sought to dissipate the remaining "*uncertainty about whether this development is peculiar to the USA or whether it marks a more systemic shift in the way workplace conflict is addressed in organizations*". (Teague, et al., 2011).

This article establishes a relevant discussion relevant for the aim of this paper, which is according to them: *"the debate about the importance of workplace ADR, examining the extent to which organizations based in Ireland have adopted ADR practices to address individual and group-based work problems. It also assesses the factors that influence the diffusion of ADR"* (Teague, et al., 2011).

In addition, the 2008 Irish survey clearly displayed that ADR systems in the republic were not as contributively systemic, nor structured and widespread as the ones adopted by USA companies and firms; notwithstanding the previous, this may be since Irish employers receive fewer financial incentives for the implementation of conflict management strategies, in comparison with their American counterparts. Another relevant fact showed by this survey, is the prevalence of incidence for ADR concerning collective interests, in comparison with

dispute resolution mechanisms that are mainly based on individual interests (Teague, et al., 2020). (Teague, et al., 2011).

However, as Curran asserts *"the confidential nature of the process makes access difficult. Even if the parties agree to allow access to the researcher, their presence may alter the dynamic and affect the parties' experience of the process and its outcomes"*. She also considers that whilst mediation is covered in the work (of Teague & Roche) *"their focus is on whether organisations use mediation or not, rather than exploring the process in detail."* (Curran, 2015)

ADR in contrast.

As a comparative basis point, from the work of Lipsky and Seeber contained in the Journal of Alternative Dispute Resolution in employment entitled *"Resolving workplace disputes in the United States: The growth of Alternative Dispute Resolution in employment Relations"* we gather the following:

"In 1997 we conducted a survey of the Fortune 1000—the 1000 largest corporations-based in the U.S.—to gather data on their use of ADR We asked respondents about their experiences not just with the commonly applied forms of ADR—mediation and arbitration—but also with other processes and techniques that we suspected were less widely used…." (Lipsky & Seeber, 2000).

Further, in that article they address that *"nearly all our respondents reported some experience with ADR They overwhelmingly reported having used mediation (88 percent) and arbitration (80 percent) at least once during the three-year period preceding the survey. Respondents also had a significant range of experience with other forms of ADR. More than 20 percent said they had used mediation-arbitration ("med-arb"), mini-trials, fact-finding, or employee in-house grievance procedures in the past three years"* (Lipsky & Seeber, 2000).

The stated above is exemplary in representing the advent of ADR in the USA in the early years

of the new millennium.

In contrast with the following, according to Robinson, Pearlstein and Mayer address *"Few prescriptive programs— even for the incremental establishment of conflict management systems— have emerged from Ireland's conflict resolution agencies".* (Robinson, et al., 2005). The previously exposed would suggest that, in comparison with their North American counterparts, Ireland ADR systems within local corporations are yet to be developed. This might be since US organizations are typically found overseas and more generally widespread than Irish companies. Also, since very few individual disputes are being referred to any ADR mechanism within the WRC services, except for adjudication; that appealing's derived from the Labour court in relation to ADR services from WRC have had the aftermath of forcing this independent body to reconstruct their decisions; that very few firms outside the WRC utilize independent expertise to dissolve dispute within the workplace.

Labour Relations Commissions currently known as Workplace Relations Commission.

From a co-authorship work from Paul Teague, William Roche and collaborators; several focus groups were performed as a part of their 2020 research which accordingly "*uncovered considerable scepticism in the Labour Relations Committee (LRC)/WRC toward some of the prevailing organizational-level ADR innovations".* Furthermore*, "participants reported that the state body was sometimes faced with picking up the pieces when these had been ineffective or had backfired. The Labour Court has confined its own use of ADR to ad hoc exercises in facilitation in a small number of disputes. While the Court sometimes admonishes employers and unions to improve industrial relations, it has avoided offering any prescriptive templates for how this might be accomplished."* (Teague, et al., 2020) The previously mentioned might also suggest that the current WRC mediation service is among these ADR practices that does not have a foundational standard that enables its functioning as a conflict management,

analogically with the North American companies counterparts.

Additionally, in this same paper they assert that *"The Mediation Act 2017 seeks to encourage the wider use of ADR in legal disputes in Ireland. It obliges in-house counsel, as it does all lawyers, to advise their clients (firms) on the availability and possible advantages of ADR. Following precedent, disputes within the purview of the WRC are excluded from the scope of the Act. It seems unlikely, therefore, that in-house counsel will feel obliged to advise firms to offer mediation or facilitation in disputes covered by standard procedures that make provision for onward referral of unresolved conflict to the WRC. Such an outcome cannot be discounted, however, in non-union firms in which procedures typically contain no such external step"* (Teague, et al., 2020).

Moreover, and regarding the previously stated, we make a further reference regarding the scope of the mediation act in the following chapter: notwithstanding this, there is an implication in relation to the level recurrence and availability to use mediation as an ADR mechanism even within in the pertinent legislation. In other words, it might be the very same mediation act of 2017 that redirects the focus of disputants outside the WRC, towards a standard proceeding whether its litigation or adjudication, despite the fact that in use of their faculties and functioning; the court may "*on the application of a party involved in proceedings, or of its own motion where it considers it appropriate having regard to all the circumstances of the case: (a) invite the parties to the proceedings to consider mediation as a means of attempting to resolve the dispute the subject of the proceedings; (b) provide the parties to the proceedings with information about the benefits of mediation to settle the dispute the subject of the proceedings."*[1]

Along with this, according to a survey performed in 2011 as a part of a research assessing the wide spread of ADR within Irish organizations, in response to the growth and implementation

[1] http://www.irishstatutebook.ie/eli/2017/act/27/section/16/enacted/en/html#sec16

of this discipline in several companies in the USA *"Only a minority of establishments (16.3 percent of firms) use independent experts to resolve conflicts involving individual employees. Some firms seek to ensure that a level of procedural justice is built into grievance and disciplinary procedures by providing employees with the option of using employer-designated employee advocates as a form of representation.* (Teague, et al., 2011).

This research also stated that the *"normal course for resolving collective disputes that prove incapable of resolution within firms is to involve the Labour Relations Commission, which seeks to conciliate the parties, or the Labour Court, which typically issues non-binding recommendations in disputes referred onwards for adjudication by the Labour Relations Commission".* However, in their conclusion they addressed that "*The incidence of ADR practices for managing conflict involving individuals is by any standards very low or modest".*

This was questionnaire in its draft version was performed in two focus groups conformed by *"senior member of the (back then) Labour Relations Commission, the main public dispute resolution agency in the Republic of Ireland, the other of senior HR practitioners from a range of Irish companies".* (Teague, et al., 2011).

Contrastingly, Curran asserts that "*mediators in these institutions have been trained by a small number of external providers advocating a facilitative/problem-solving style. Professional training coupled with 'instinct' and experience is perceived by the mediators to inform their approach"* (Curran, 2015).

Effectiveness in the mediation process.

A rather obvious obstacle within this research paper, is to be able to successfully address the concept of effectiveness, contrasted with the ADR strategy that is mediation: since it may contain several factors that could misinterpreted and misrepresent an accurate definition of the term.

Among the diverse literature that analyses the spectrum of effectiveness in the ADR context, we find some that authors such Ury, Brett and Goldberg, manifest certain criteria they had in negotiation processes; to consider an ADR program as successful or effective, these are: cost of transaction, outcome satisfaction, the impact on the relationships, and the endurance of the agreement over time. (William Ury, 1988). Notwithstanding the previous, there have been several attempts to start establishing a "framework that allows comparative analysis" (Beck, 2004) regarding effectiveness and success in engaging in ADR practices.

With this being expressed, it is imperative to establish within the theoretical framework of this work, what is the definition of the word "effectiveness" for the purpose of this assessment.

2.1 Defining effectiveness.

Firstly, due to a lack of a uniform definition or a consensus among researchers, in which an appropriate term of effectiveness can be applied to a multiplicity of contexts and disciplines, we will begin by constraining to the definition of the word found in the Cambridge dictionary in its UK version, which addresses effectiveness as *"the degree to which something is effective*" yet a more appropriate definition according to our discipline, we find in this same text, is *"the ability to be successful and produce the intended results"*; (Cambridge University Press, 2021)

Additionally, as Tanul considers a "*successful mediation is the one where the parties do not return to you or anyone else with the same problem. Perhaps the clearest concrete indication of a mediation success is effectiveness. Effectiveness is a measure of the achieved results, change or behavioral transformation, Hence, for mediation to be considered successful, it must have some effects on the conflict, such as moving from violent to non-violent behavior, signing an agreement, accepting a ceasefire or settlement, in the case of armed conflict"* (Tanul, 2013). Along with this, another factor that has a direct impact in the cost, is the significant low

lengthiness in comparison with traditional litigation procedure, which is also a trait that makes mediation an attractive method. (Law Reform Commission, 2010).

As expressed above, most of ADR programs limit their assessments of effectiveness to the level of settlement of the dispute. Despite the practicality of this, for evaluation purposes, this approach could encourage ADR practices to focus only on settlement, instead of considering relevant factors such as: level of disputant's satisfaction, the nature of the agreement, lasting and durability of the agreement and potential betterment of relations between disputants. In terms of considering an ADR process "effective", in 1998 The Australian Law Reform Commission proposed that "*the process should ensure, or at least, encourage a high degree of compliance with the outcome', there should be no need to resort to another forum or process in order to finalise the dispute and should promote certainty in the law"*. Notwithstanding the aforementioned *"the preferred definition of effectiveness tends to dictate the way in which the effectiveness is likely to be measured. ADR program evaluations tend to measure settlement rates"* (Australian Dispute Resolution Advisory Council, 2019).

However, our definition has been based on the purported benefits that according to the WRC addresses in their mediation section, and the including pertinent documents available there.[2]

From the brochure of the Workplace Relations Mediations, we encounter a section in their brochure offering the service that mentions the following:

"*Why choose mediation?*

1. Speed: Reaching a settlement through Mediation is quicker, cheaper, and less stressful for all concerned, than proceeding to an Adjudication.

2. Cost: Mediation cuts the cost for both, the complainant and respondent, as it reduces the amount of time and expense associated with protracted conflict.

3. Confidential Process: Mediation is a completely voluntary and confidential process. The

[2] https://www.workplacerelations.ie/en/what-we-do/industrial%20relations/mediation_services/

independent mediator discusses the issues with both parties in order to help them reach a better understanding of each other's position and underlying interests. Without taking sides, the mediator will encourage the parties to come to an agreement that is acceptable to both sides.
4. Control: The outcome of the Mediation process remains in the control of the parties. Therefore, any agreement reached must be acceptable to both sides.
5. Legally Binding: The agreement reached through Mediation is legally binding, and can be enforced through the Courts." (Commission, Workplace Relations, 2020).

From the following points, we can begin identifying several elements in a way that enables us to create our own concept of effectiveness for the purpose of this paper, specifically contrasted with the Workplace Relations Commission Brochure. These components leave us with several interrogates in regard to each one of these elements, which are the following:

- Speed and resource efficient: is this service really less stressful, cheaper and faster than an adjudication program?
- Costs significantly less for both sides: does this considerably reduces the expenses for both parties?
- Confidential and voluntary: to what extent is this accurate?
- Agreeable by both parts: what is the degree of control of the parts?
- Can be enforced through courts: how easy is to do so?

In regards of the component of speed, Wall and Dunne consider that *"most European countries have seen the benefit of mediation as an alternative to the courts, which have become bogged down with an increase in litigation. In these countries, disputants often realize the benefit of the speed and frequent agreements that can result from using mediation; therefore, they frequently utilize the process."* (Dunne, 2012, p. 217).

Additionally, in the commercial area there has been documented cases that are exemplary in terms of regarding time as a resource that need to be considered for the efficiency and therefore,

effectiveness. Such is the case of the claim submitted to the Commercial court (High court) by an Irish folk group called The Dubliners and admitted by Kelly J. on Monday 13 November 2006, versus EMI Records (Ireland) Ltd., in which *"The Group had sued EMI over its promotion and selling of its CD Box Set. The dispute concerned copyright over seven songs featured in the Box Set collection. On the 14th November 2006, the case appeared again before Kelly J. The Dubliners sought injunctions against EMI who proposed that the dispute be referred to mediation. The case was adjourned for hearing to 21 November 2006, unless the parties agreed in the meantime to go to mediation. On the 16th November 2006 the parties informed the Court that the case had been settled following mediation."* This established a standard and a time record since *"it had been admitted into the Commercial List, had gone to mediation on the following day and had been settled two days later."* (Commission, Law Reform, 2008) This makes special reference to the necessity of a speedy ailment to conflicts arising for them to be considered effectively solved, to the value that can be attributed to the resource of time efficiency in a dispute resolution process.

Nevertheless, in certain contexts and disregarding the effectiveness of such; "*mediation takes time and can be expensive; therefore, it can be viewed as an "add on" to current systems for dispute resolution"* (Goldfein, 2006) and as previously mentioned, in countries like England and the UK mediation is mostly offered by the private sector, contributing to the idea that mediation it does represent an expense to the parties; yet, this same factor could turn mediation offered by a public body such as the Workplace Relations Commission, an attractive feat.

In terms of confidentiality and regarding a rule that the communications within a mediation process cannot be used on a potential posterior litigation procedure; this may only apply to mediators as published by the Hong Kong Faculty of Law in their research paper number 5 of 2012 *"the EU Mediation Directive only established a privilege for mediators to refuse to testify in subsequent adjudicative proceedings. Unfortunately, it says nothing about the*

confidentiality conferred by the without prejudice rule." (Koo, 2012).

Although, this might need a second consideration, since this loophole might represent a deterrent for the parties to have a transparent process, and even more; to be able to express their interests in an honest way within the mediation sessions. The privacy is usually an attractive characteristic and as Agapiou and Clark assert *"it can be argued that the lack of a definition about what a confidential mediation process entails or indeed when confidentiality will apply as part of that process, reduces certainty for the parties, and therefore may of itself undermine the likelihood of the process being considered successful"* (Agapiou & Clark, 2018) this implies that without confidentiality mediation itself would not be as appealing and practical as it is for their potential users.

As for reviewing the characteristic of control regards, in which parties are in charge of the outcome, which also contains a high degree of willingness in this; from the WRC website we gather the following: "*Applications for mediation should ideally be made on a joint basis. The process will work best when all parties have a desire for resolution and have jointly agreed that mediation is the best means to secure that resolution."* (Commission, Workplace Relations, 2020). For this we can infer that this service positively imbues the parties in control, whether is their face to face or via telephone modality, making this a potential viable and pragmatic attribute of the service.

In addition, regarding enforceability, the WRC in their website offer a form in the circumstances of *"requesting and seeking through the Commission, District Court enforcement of a decision of an adjudication officer or a decision of the labour court on an appeal against a decision of an adjudication officer"* (Commission, Workplace Relations, 2020). Nevertheless, it does not contain or mentions anything in the case of non-compliance of a mediation agreement reached through their service. Similarly, Citizens Information only contains enforcement via adjudication, but there is not a specific addressing of the compliance

of a mediation agreement (Board, 2017). Conceivably, this is done due to the voluntary nature of Mediation; whereas the enforcement in cases where an adjudication officer is required implies the unwillingness from one of the parties to comply with an obligation derived from a labour relation.

2.2 An adequate definition.

From the previously stated attributes, after gathered them all and creating a whole parameter to gauge these, in contrast with the reviewed program does not seem to suit our research question, which is *"is the WRC mediation an often-recurred option among people who want to solve disputes within the Workplace?",* therefore we require considering certain diverse traits to assess such matter.

For the purpose of establishing axioms in regard to the effectiveness, we will compress the three following traits for a convenient concept that serves the purpose of our research questions. The characteristics are as follows:

- Practicality: defined as the quality or status of being feasible; *the quality of being able to provide effective solutions to problems* but more specifically in this case*: the possibility of being put into practice* (Cambridge University Press, 2021), which lead us to the question : do people actually engage in mediation in order to solve their workplace disputes? And if so, in which proportion? What is the average of people that are willing to use the Workplace relations commission mediation service?
- Viability: the ability to perform successfully, *the degree of chance that something will succeed* (Cambridge University Press, 2021) which gives us the doubt of: does mediation actually resolves the average workplace dispute? If not, why it fails to do so? Is it due to a possible more attractive option for this purpose?
- Plea: For the purpose of this paper, this vocal will refer to the actual utilization of the WRC mediation service*;* in its literality, according to the Cambridge Dictionary *"to*

make a statement of what you believe to be true, especially in support of something or someone or when someone has been accused in a law court" (Cambridge University Press, 2021) this word is intrinsically related to the complaints that a party can make before the WRC; in other words; are the parties pragmatically appealing to this service?

Chapter 3: Presentation of the Data

The following survey/questionnaire was sent to members of the employment bar of Ireland who appeared in the section of members[3], diverse workers unions of Dublin, Ireland, and some private lawyers who were considered to have a relevant level of expertise for the purpose of this analysis. This was done through Google surveys, and the draft version of the questions are contained in the appendix.

The questions are as follows:

1. *"What is your Occupation and/or field of expertise?"* In the first question respondents have all expressed that they specific field of expertise and/ or occupation is Barrister (since one of these specifically wrote "Lawyer"

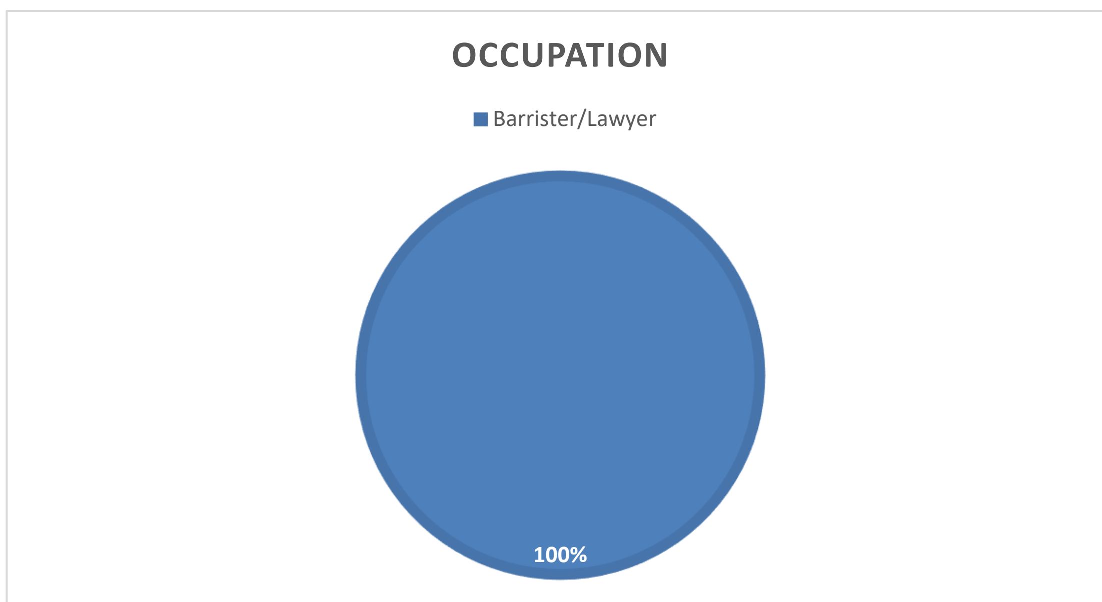

Figure 1.1

2. *Have you appeared before the Workplace Relations Commission? If yes, in what capacity have you appeared?* From the answers we can perform a division of three

[3] https://employmentbar.ie/members/

categories which are: “Yes”, “Yes, party representative for both employee and employer” “Yes as a party representative”.

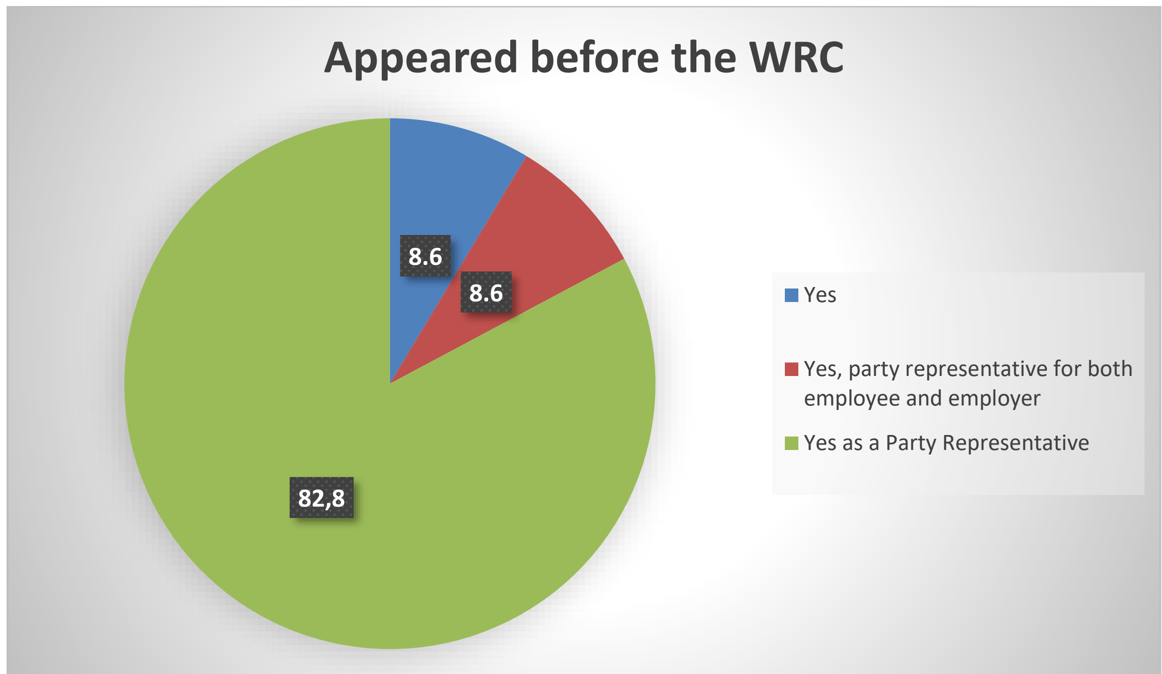

Figure 1.2

3. *“Approximately how many times have you appeared before the Workplace Relations Commission?”* From this question we have dissected four categories; the least referred as an undetermined number of occasions (*“a substantial amount of times*”), the second one addresses an appearance rate of more than 200 occasions (*“200+”*), two respondents answered they appeared between 50 and 60 times, and the majority reported an appearance of no more than 50 times before the WRC *(“10, 12,15, 20 and 30 respectively”).*

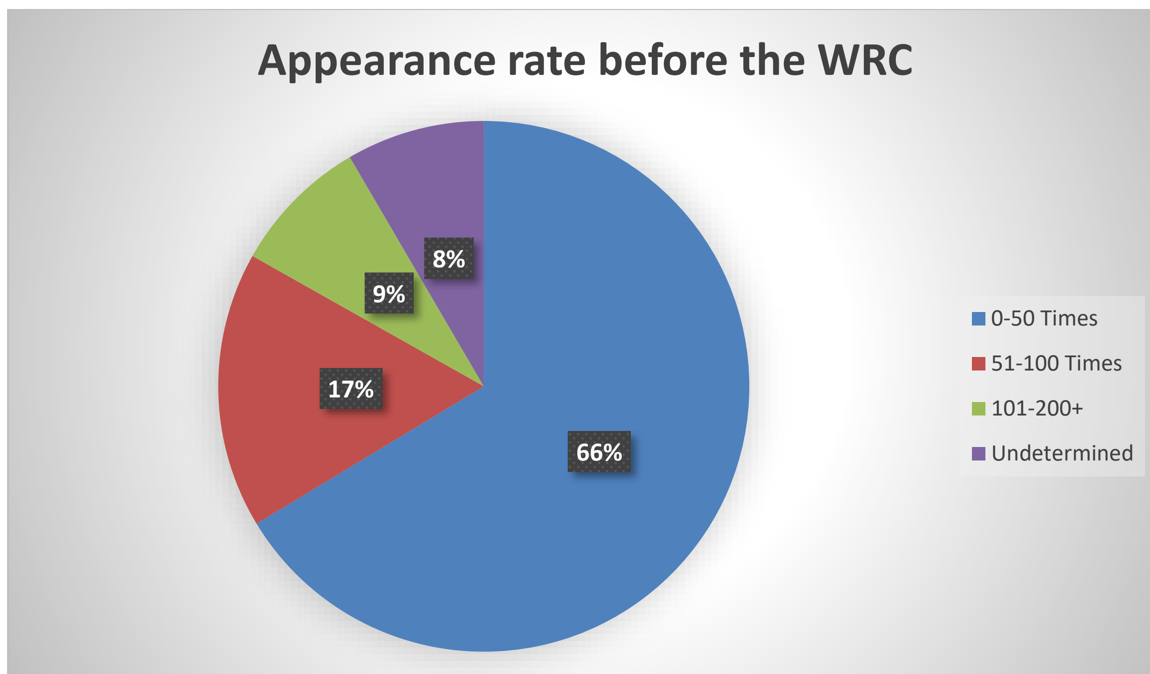

Figure 1.3

4. *Have you been involved in the mediation service offered by the Workplace Relations Commission?"* These questions collected, considered the participation of the answering Barristers in the WRC mediation program; in which the majority responded affirmatively (10 of 12 answers), one received answer was negative, although this might be to a misinterpretation of the question (assuming the participation regarded being a party of the WRC mediation instead of a representative, which is not the intended meaning of this question).

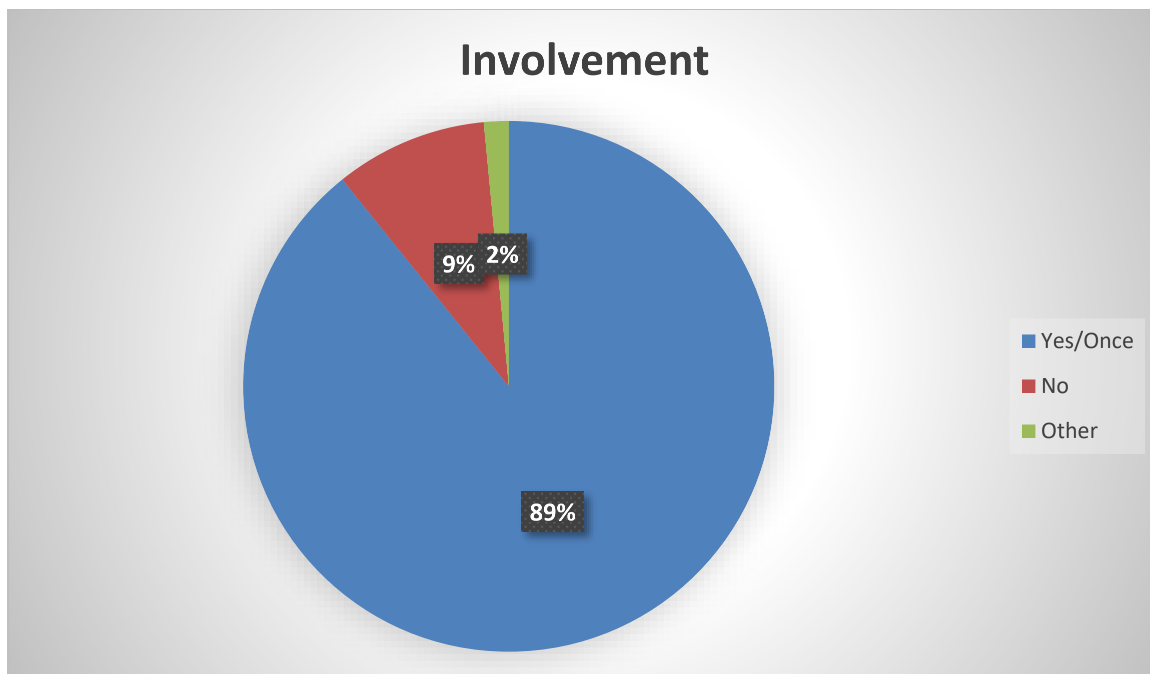

Figure 1.4

5. *"According to their experience, what is the percentage of people willing OR interested in solving their workplace dispute through the Workplace Relations Commission".* In this question only a participant reported a 0% rate, two participants asserted a 10 to 20% rate respectively. Additionally, other two answers regarded a low to minimal level of willingness to engage in the service offered by the WRC. Finally, approximately a 50% of answerers gave an estimation of a very low perceived interest in using WRC mediation. On a side note, only a respondent submitted a commentary which is the following: *"My view is that a Complainant will tick the option for mediation (as they are afraid that not to opt for same will reflect badly on them)"*[4]

[4] Appendix

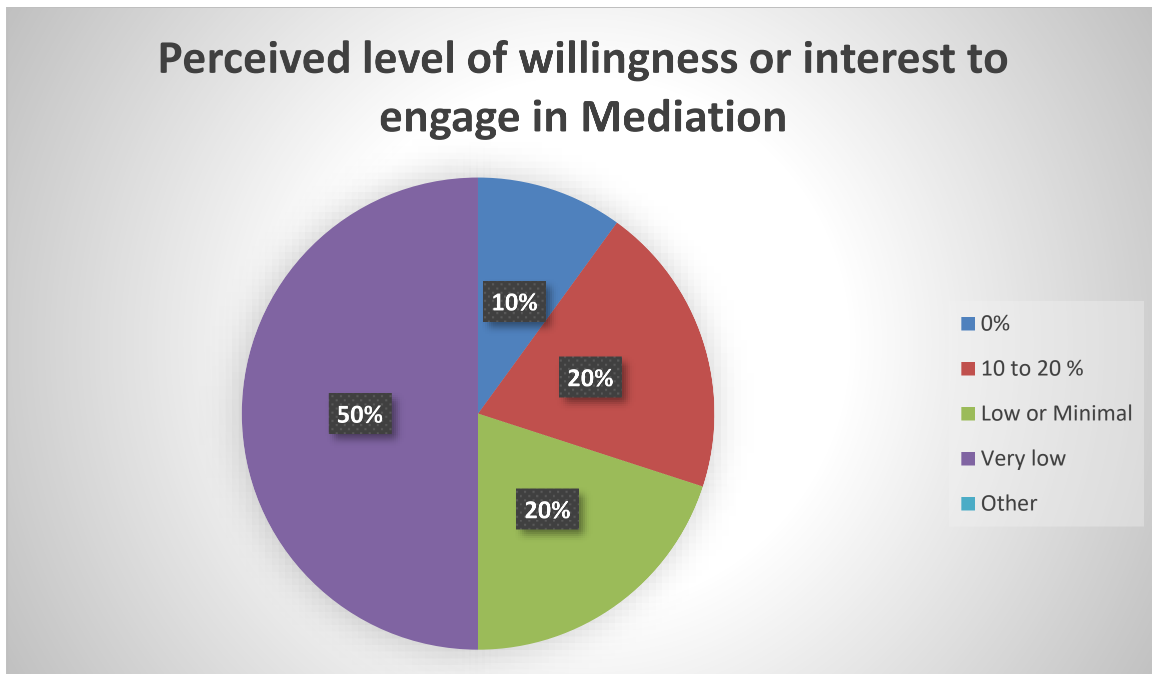

Figure 1.5

6. *"In your experience, what percentage of people actually go on to engage with and utilise the mediation service provided by the WRC?"* The answers gathered in this question showed that an actual engagement reported being from 0% to 10% (answers from 3 respondents), one answers regarded a "Minimal" engagement in the process. Moreover, five responses asserted a "very few/ very few people" (which conforms 46% of the responses gathered). Additionally, two answers had a rather specific data which is as follows: "*in my experience parties can sign up to mediation to prolong the proceedings"* and *"Rarely. In my experience, the mediation service was actually only offered once (by the WRC) out of the times I have acted in a WRC case."*[5]

[5] Appendix

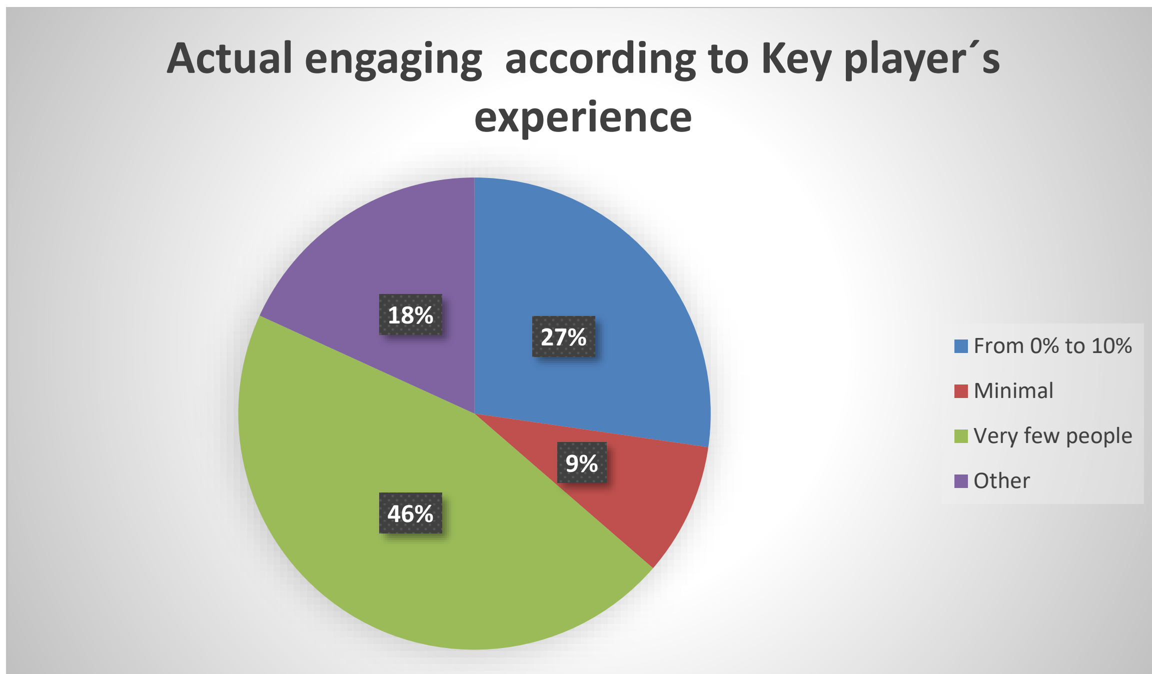

Figure 1.6

7. *How successful on average has the mediation service provided by the WRC been in solving claimant's workplace disputes? (5 being Highly successful, 4 Very Successful, 3 Somewhat successful, 2 Not very successful, 1 Not successful)"* According to participants, just one considered the WRC mediation service to be "Highly successful"; as well as two answers reported the service as being "very successful". In addition, the majority regarded the service as "somewhat successful" and the remaining participants considered as "Not successful" for the purposes of giving an end to the disputes of the claimants.

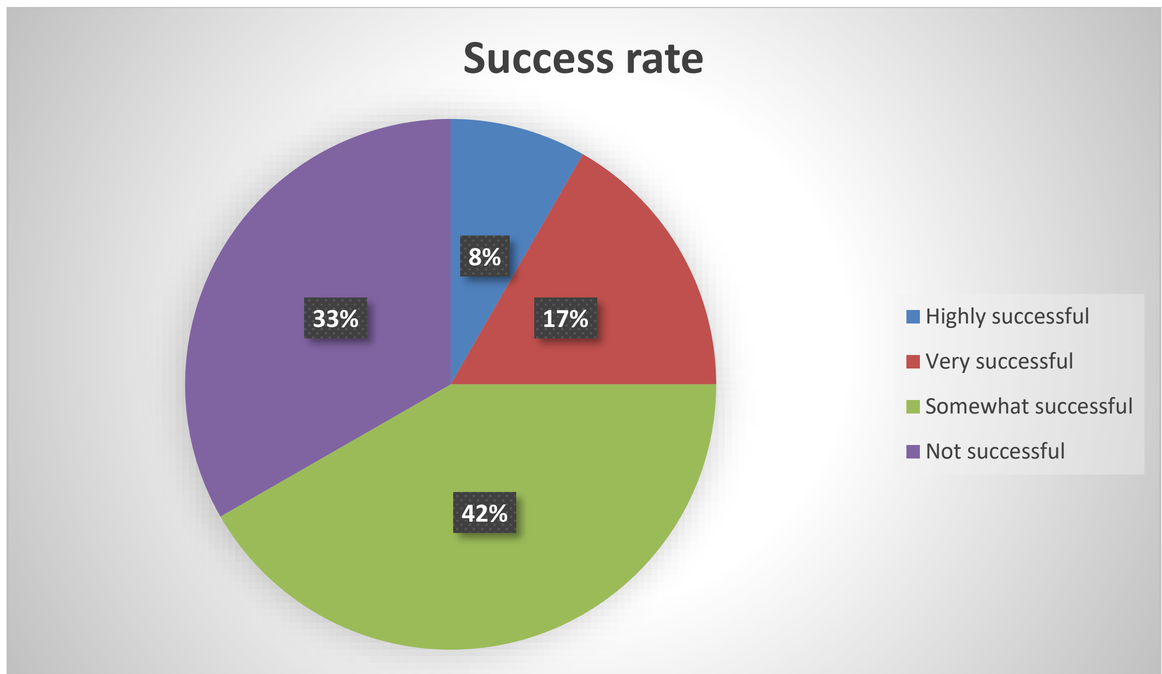

Figure 1.7

8. *On a scale of 1 to 5, do you consider that the mediation service offered by the Workplace Relations Commission is a practical and viable option to resolve workplace disputes? (1 being not at all, 2 little, 3 regularly, 4 very often, 5 almost every time)".*

Gathering the vast majority of answers; key players claimed that WRC mediation is considered as a "little" practical option (with 9 participants out of 12), one participant regarded to be "Not viable at all", another respondent asserted it to be a *"regularly"* practical solution, and other regarded it as a "*very often"* viable mean for workplace dispute resolution.

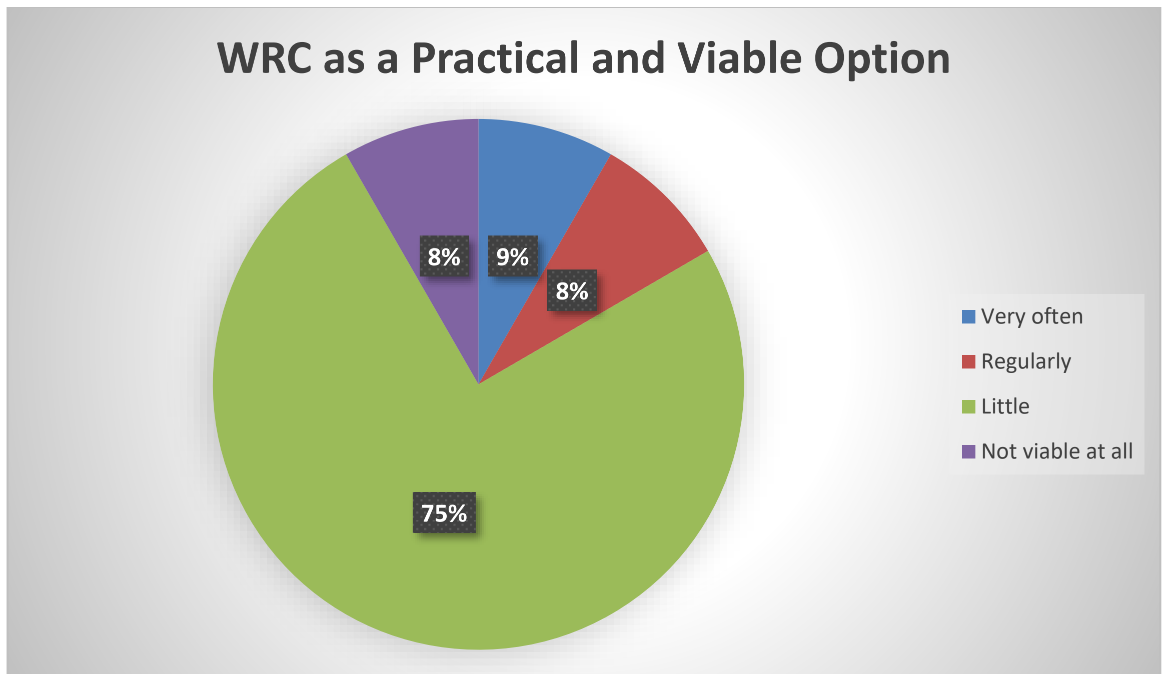

Figure 1.8

9. *In your experience, what is the most common reason why employees are not interested in/willing to use the Workplace Relations Commission's mediation service?* In this particular point, respondents were required to express and explain potential reasons of uninterested employees using WRC mediation. Each one of the responses are represented as the following:

"It is not offered in reality by the WRC in my experience. The option for mediation is ticked on the complaint form but no mediation service is offered."

"They prefer another methods to solve their claims".

"They feel they will get less for their case"

"From experience, it is the employees who are interested in using the service."

"They don't get adequate offers"

"They prefer other methods to solve their claims"

"By then the dispute is very bitter and they want their day in court"

"They prefer adjudication or another ways to solve their case"

"Poor quality of service"

"If it fails, the employee has to pay for representation for the mediation and the hearing so they might as well just go to the hearing stage. Also, employees don't believe the employer enters same in good faith and that they only use it as a means to work out the employees position in more difficult cases. Not all cases suit mediation."

10. *In your experience, what is the most common reason why employers are not interested in/willing to use the Workplace relations commission mediation?* Conversely, this question was concerning the possible explanations for the lack of notice employers may have for Mediation. *The expressed answers are the following:*

"Lack of faith in the process."
"It is not offered in reality by the WRC in my experience. The option for mediation is ticked on the complaint form but no mediation service is offered."
"They want to fight the case at that point."
"No faith in the process and extremely mediators."
"They don't want to make offers in the cases I'm instructed in"
"Lack of faith in the process"
"They will settle before it gets to this if they are minded to settle".
"presumption of having to offer compensation without regard to strength of case"
"Waste of money from their point of view unless employee is still in their employment. Then it's of benefit and may help a lot"

11. *"In your view, how could the mediation service be more appealing for people who wish to solve workplace disputes?"* The following answers contained potential point of improvement for the WRC service, this in accordance with the previously experienced in utilizing or engaging in this ADR strategy.

"Having people in separate rooms in the building as opposed to on the phone."

"Have better mediators who understand the law."

"No idea"

"The mediation should be mandatory and have an impact on the hearing of the case. the mediators in the WRC are not up to scratch and don't lay out the case properly"

"Better understanding of how mediation can solve their case
more professional, independent properly accredited mediators not merely as second function of Adjudication Officer"

"The service itself is positive so if a claim is suited for mediation then the service works well. Unless there was a costs incentive, there will be no benefit to either party going to mediation as success is not guaranteed and it might then result in having to run the hearing and incur the costs of that day also".

12. *In your opinion, should the mediation service offered by the Workplace Relations Commission be dispensed with?* Considering the submitted opinions, the majority considered this service should not be removed and they did not add further commentaries, and just one participant expressed that it should indeed be dispensed.

Moreover, a participant considered that it should be dispensed yet considering the current modality of the service; two answered regarded that it should not be removed and added that *" No, but it should be improved, either should be fully operational or it should be abandoned. It appears to me to be not fully operational"* and *"No, it may be useful in the cases I haven't been involved in",* respectively. In addition, a participant submitted that *"that's probably a better way forward than the current situation"* without expressing neither *yes or no* in its answer.

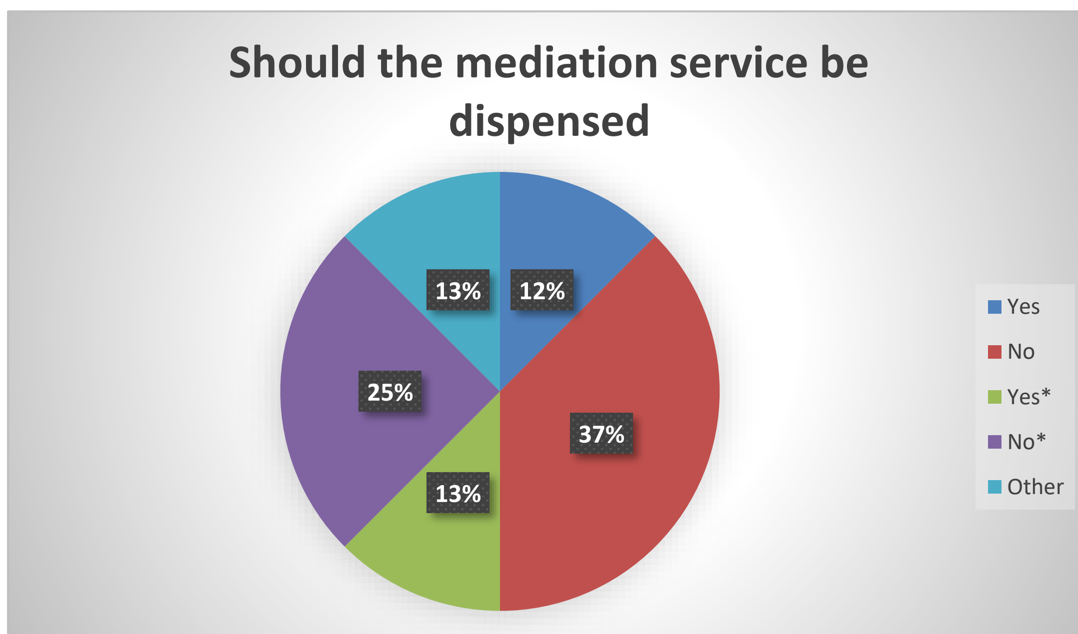

Figure 1.9

13. *"If you answered yes to [the above question], please explain why you believe the mediation service should be dispensed with:"* In this query, participation was considerably reduced (only 8 answers out of 12 participants) with some of them concurring in their commentaries (*"Doesn't serve its purpose"*) and some others nullifying their contribution (in the case of N/A, for example). These are compressed by the following:

"Perhaps there are not enough qualified mediators being used by the WRC and the service is not fully operational for that reason?"
"Doesn't serve its purpose." (three times)
"The concept of mediation is positive. However, the mediation service of the WRC is extremely poor."
"N/A"
"If it is not going to be improved, that is having people who are more skilled in negotiation, then it is a waste of time. I use it tactically to be honest to flush out the employers case if I am for an employee"
"not fit for purpose"

14. *If you answered yes to question 12, where in your view should the resources currently designated for and spent on the mediation service be utilised instead?* Despite a diminished participation at this stage of the survey questionnaire, respondents expressed some of their views in terms of redirecting the resources utilized in the WRC mediation service, these are as it follows:

"If mediation is abandoned, the resources should be utilised on increasing the number of adjudicators/ adjudications."
"More adjudication training or increasing the adjudication work capacity".
"The HSE! They are of no use to the WRC"
"N/A"
"Pre hearing vetting of cases to ensure they reach a standard of proof justifying the hearing at all. The WRC needs to ensure that all cases reach a prima facie standard of case stated before companies are put to the cost of defending cases." "This would be much better than a mediation service."
"Improved adjudication service"
"on proper training of Adjudication Officers"

15. *Do you believe an alternative dispute resolution mechanism not currently offered by the WRC should in fact be available? If you answered yes, please elaborate:* Despite the fact this question had little participation from key players, and some of the answers were null, the contained in the following brought a relevant insight of the current situation with ADR strategies of the WRC, which accordingly is*:*

"No. there should be clear separation between Mediation/ADR and legal adjudication The mediation service works well for those it suits. There are far bigger problems with the adjudication service. That is the weak element of the entire dispute resolution process".[6]

[6] Appendix

CHAPTER 4: DATA ANALYSIS/FINDINGS.

The present chapter seeks to evaluate the gathered answers from the Survey/questionnaire, in order to reach an appropriate representation of results and establish a foundational debate surrounding the matter.

Firstly, according to the Cambridge Dictionary "Key player" is defined as *"An important person, company etc. in a particular area of activity"* (Cambridge University Press, 2021). Therefore, in our first question we have aimed to estimate whether respondents concur in this trait. As a result, all participants have expressed that they pertain to the relevant field, asserting that their occupation is Barrister (just one of them submitted being a "lawyer). From the following we can infer that these subjects are adequate in providing insights for our research purpose.

Furthermore, in our second question we have divided the responses in three categories, which have regarded the appearance before the WRC and the condition of such. The answers provide a clear representation of the participation of the subjects in the mediation service offered by the independent body, including one response that contains being representative for both employee and employer (just one out of 12 answers did not contain the condition of "party representative")[7].

Additionally, the following two questions had the intent of evaluating the sum of occasions in which the participants had appeared before the WRC, as well as the participation in the mediation program. The responses garnered for question number 3, range from a measure as minimum as 10 occasions, going through 12, 15, 20, 30 50 60+, to a maximum of 200+ participations. This depicts an estimation of the extent in which respondents have interacted appearing before the WRC. In the following question number 4, we have explicitly questioned

[7] Appendix

whether participants have participated in the WRC mediation program; as a result, 10 out of 12 respondents answered "yes", just one participation was negative; however, we might ask ourselves if this was due to an improperly formulated interrogate, since it might have regarded the semantic of the term "participation", which is, as collected from the Cambridge Dictionary *"the act of taking part in an event or an activity"* (Cambridge University Press, 2021). This could imply that this involvement requires respondents to take part in mediation as a party and not as party representative, as it has been manifested by the majority in this question. Other two responses are composed by "2" which perhaps is the number of occasions in which this person has been involved in the service, and "once" which is considered as self-explanatory.

Moreover, in question number 5, there was only an answer with an estimation of 0% rate of willingness of engaging in mediation, two participants asserted a 10 to 20% rate, respectively. Other responses were quite specific in terms of expressing a "low to minimal" level of interest in the WRC service. Additionally, half of participants regarded the interest of disputants as "very low". In regard to the commentary *"My view is that a Complainant will tick the option for mediation (as they are afraid that not to opt for same will reflect badly on them)"*[8] we have estimated that not every party voluntarily engages in mediation in order to resolve their conflicts within the workplace; and perhaps some of them do accordingly with their dispute counterpart; this as a mean to give uniformity and consensus, which will provide better feedback for either the contrary party and whoever gets to resolve or advice on their particular case. The mentioned above, opposes a contrast and raises some questions regarding the voluntary aspect of the WRC mediation, since as contained in their brochure "*Mediation is a completely voluntary and confidential process"*[9].

In other words, from the portion of *"as they are afraid that not to opt for same will reflect*

[8] Appendix

[9] https://www.workplacerelations.ie/en/what-we-do/industrial%20relations/mediation_services/

badly on them" implies that if a discordance of opting for the mediation service may have a negative impact on a potential future outcome through other ADR mechanism, impact which could suggest a coercion factor that plays a role in the voluntary aspect to choose mediation.

The answers collected for question number 6 evaluated a measure of engagement from the respondent's views; in which in accordance 3 answered had a 0% to 10%, and one answer considered this level as "Minimal". Further, five responses which represented 46% of participation for this question, claimed between "very few/ very few people". From the following elaborations: "*in my experience parties can sign up to mediation to prolong the proceedings"* and *"Rarely. In my experience, the mediation service was actually only offered once (by the WRC) out of the times I have acted in a WRC case."*[10] We can infer, that besides the expressed below, Mediation seldom provides or actually functions as it is intended, as observed by the participants of the survey.

Nonetheless, in contrast with the previously expressed; 41% of the key players regarded WRC mediation as "Somewhat successful"; as well, 16% asserted that the service is "very successful". the other 33% expressed "Not successful" and just one answer of "Highly successful" was collected. This is rather paradoxical if we consider the asserted in the previous point of the survey.

Likewise, in terms of assessing the practicality of this ADR strategy, 9 out of 12 answerers claimed it is "little" viable. A participant asserted that is "Not viable at all", another response was that mediation is *"regularly"* a reasonable option, and a diverse expressed that it is *"very often"* an ADR mean for the workplace. This is aligned with the responses in question 6 of the survey, since it addresses a "little" and "minimal" occurrence of mediation as provide a conflict management or even more, a solution for its purported objectives.

[10] Appendix

From the expressed by participants in question 9, we gathered several potential reasons for a lack of interest from employees, in using WRC mediation; The responses range from considering that the service has *"poor quality", "They feel they will get less for their case"* which could mean that complainants might feel there is a more attractive outcome in engaging in other kind of ADR service or traditional litigation.

Other responses contained that *"It is not offered in reality by the WRC in my experience. The option for mediation is ticked on the complaint form but no mediation service is offered."* And *"They don't get adequate offers"* From this we assess that the Workplace relations commission does not offer mediation, yet this could be because there is a requirement of willingness from both of the parties involved in the dispute.

A diverse answer was *"From experience, it is the employees who are interested in using the service."* And this could be since the grievance and equal treatment is the first displayed at the WRC webpage addressing that this type of mediation *"affords employees appropriate access to its mediation service in circumstances where assistance is sought in respect of claims of infringements to employment rights; it also provides access to the public in respect of claims involving unequal treatment and discrimination claims in the civil and public service"* (Commission, Workplace Relations, 2020). Thus, this might be a reason why it is more appealing to employees as opposed to both employers and employees.

Furthermore, a response of *"By then the dispute is very bitter and they want their day in court"* could imply that disputants are willing to go further either litigation or adjudication procedures in order to obtain a stricter, and perhaps a more severe sanction for their counterpart.

Additionally, *"If it fails, the employee has to pay for representation for the mediation and the hearing so they might as well just go to the hearing stage. Also, employees don't believe the employer enters same in good faith and that they only use it as a means to work out the*

employees position in more difficult cases. Not all cases suit mediation" this is a detailed description of what probably is one of the main deterrents for employees to engage in mediation. Also, the last portion represents well what some critics of mediation have expressed about mediation.[11]

The most concurred answer was *"They prefer adjudication or another ways to solve their case"* along with *"they prefer another methods to solve their claims"* which is considered rather straight forward and simple in terms of explaining the causes of the lack of interest.

Conversely, the following point regarded the opposite side of the dispute, gathering the causes for the absence of consideration by employers in Mediation. The Answers and their respective observations are as follows:

"It is not offered in reality by the WRC in my experience. The option for mediation is ticked on the complaint form but no mediation service is offered." This answer was also submitted in our previous question; there is a lack of offering of mediation from the WRC, and this also regards the voluntary aspect of it. (both parts must be willing to solve their dispute through mediation)

"They want to fight the case at that point." And *"presumption of having to offer compensation without regard to strength of case"* Similarly, to the previous question, disputants believe they will get more compensation out of a litigation process in comparison with this ADR method.

"No faith in the process and extremely mediators." And *"Lack of faith in the process"* Comparably with the previously gathered, this is considered as self-explanatory; parties are sceptical about the purported benefits and outcomes of mediation.

[11] Debora Hensler in *"Our Courts, Ourselves: how the alternative dispute resolution movement is reshaping our legal system"* mentions a lack of attention in an extensive legislation for mediation since it might be compensated by the posterior use of a traditional litigation process

"They don't want to make offers in the cases I'm instructed in" Asserted as this, this participant considers that their experience cannot contain every aspect, therefore they just express the previous

"They will settle before it gets to this if they are minded to settle". This answer brings a question of whether disputants actually use mediation to solve their disputes and not to delay the proceedings, as it was collected in a previous response.

"Waste of money from their point of view unless employee is still in their employment. Then it's of benefit and may help a lot" From the previous can assess that the circumstance of having an ongoing work relation could be an appealing trait for using mediation, since according to this respondent view, otherwise it would seem useless from the disputant's perspective.

Similarly, in question 11 we gathered the views in relation of how mediation could be a more appealing service for workplace disputants. The participants expressed several points of improvement within this ADR strategy.

A view asserted that *"Having people in separate rooms in the building as opposed to on the phone."* This makes a direct reference to the Mediation in its via phone modality,

Moreover, *"Have better mediators who understand the law."* and *"Better understanding of how mediation can solve their case more professional, independent properly accredited mediators not merely as second function of Adjudication Officer"* This answer addresses a lack of preparation and knowledge in the law by the WRC mediators, where adjudication officers function as well as mediators, as opposed to having independently sourced mediators.

"No idea" considers simplistically that there is no potential point of improvement, in order to make the WRC mediation service more appealing to disputants.

The views that addressed that *"... mediation should be mandatory and have an impact on the hearing of the case. the mediators in the WRC are not up to scratch and don't lay out the case properly" and "Better understanding of how mediation can solve their case."*

"more professional, independent properly accredited mediators not merely as second function of Adjudication Officer" make reference to an valuable necessity of mediation offered by the WRC to raise the level of standards, quality of training provided to their officials; and overall, a broader understanding of the potential impact that mediation could offer to their users.

Nevertheless, one response addressed that *"The service itself is positive so if a claim is suited for mediation then the service works well. Unless there was a costs incentive, there will be no benefit to either party going to mediation as success is not guaranteed and it might then result in having to run the hearing and incur the costs of that day also".* This contributes to the expressed above, in relation to the suitability of mediation for specific cases and not the entire multiplicity of the disputes that might be submitted to the knowledge of the WRC.

Similarly, to determine whether the mediation service offered by the Workplace Relations Commission should be dispensed; the submitted views regarded in their majority that this service should remain, although one answer addressed the opposite. Additionally, a response contained that it should indeed be removed, considering the status and quality of such; two answers added the commentaries of *"No, but it should be improved, either should be fully operational or it should be abandoned. It appears to me to be not fully operational"* addressing the lack of viability and usage of the ADR strategy, and *"No, it may be useful in the cases I haven't been involved in",* regarding a potential practicality and utility in some cases in which this respondent has not participated. Finally, an answer commented that

"that's probably a better way forward than the current situation" without expressing neither *yes nor no* in its answer.

Further, in the questionnaire we requested participants to explain if applicable, why they believe the mediation service should be dispensed with and, since not all respondents answered positively to the previous question, the answers were rather limited, gathering 8 out of 12 participants. The most received commentary was *"Doesn't serve its purpose"* which can be interpreted that disputants do not utilize mediation to resolve their disputes; instead, they might use it to delay the process. Another answerer expressed: *"Perhaps there are not enough qualified mediators being used by the WRC and the service is not fully operational for that reason?"*. This is considered as rather descriptive for the purpose of providing potential reasons why mediation by the WRC may be not as used as it could be as other response asserted *"The concept of mediation is positive. However, the mediation service of the WRC is extremely poor."*. Contributing to this, a respondent claimed*: "If it is not going to be improved, that is having people who are more skilled in negotiation, then it is a waste of time. I use it tactically to be honest to flush out the employers case if I am for an employee",* this also additions to a previous answer that considers that mediations serves a goal of retarding an ADR or a conventional Litigation process.

The consequent point in the survey requests respondents who submitted a positive response in the previous question 12, to address *"where in their view should the resources currently designated for and spent on the mediation service be utilised instead?"*. Although there was a considerable reduction in the answers garnered at this question, the opinions are rather vocal in expressing a potential better capitalization of the assets utilized in WRC mediation, such as the following: several views considered that *"If mediation is abandoned, the resources should be utilised on increasing the number of adjudicators/ adjudications."* As well as *"More adjudication training or increasing the adjudication work capacity"*. And an

"Improved adjudication service" along with a *"proper training of Adjudication Officers"*. This was the more addressed potential improvement point, when it comes to the capital used for WRC mediation, which it may imply that the mediation process is a second-tier service in comparison with adjudication from the WRC, and this could be due to several reasons that will be discussing in the following chapter.

Along with the expressed above, a response asserted that these resources might as well be destined to "The HSE! They are of no use to the WRC", yet this seems rather obvious since at the moment of this dissertation there is an ongoing health services crisis around the globe due to the pandemic caused by the spread of Covid-19, nonetheless, is it relevant to mention it.

Further, one respondent addressed that a *"Pre-hearing vetting of cases to ensure they reach a standard of proof justifying the hearing at all. The WRC needs to ensure that all cases reach a prima facie standard of case stated before companies are put to the cost of defending cases. This would be much better than a mediation service." From the aforementioned answer, we can estimate a relevant area within this service that could seize and improve from this view; since this assessment of betterment, attacks a point that previous responses have considered, and that is a better quality, standard and more efficiency in their operation, this through a pre-requisite of mediations cases that without their fulfilment could be redirected to adjudication within the same WRC.*

Finally, in the last question recollected, we required the opinions of participants in relation to an alternative dispute resolution mechanism that is not currently offered by the WRC. Even though most of the answers do not contribute to the discussion, the two commentaries are the following*:*

"No. there should be clear separation between Mediation/ADR and legal adjudication" This insight might add up to the previous consideration of having a prima fascie stage within the

mediation service, in order to categorize which case suits better mediation and/ or adjudication, respectively.

Moreover, *"The mediation service works well for those it suits. There are far bigger problems with the adjudication service. That is the weak element of the entire dispute resolution process".* Similarly, this response considered the major relevance and perhaps a broader range for dispute resolution in the adjudication service, in comparison with the mediation offered by the WRC.

This also contributes to what Carrie Menkel-Meadow addresses; as a multiplicity of processes and variables that disable a "one size fits all" ADR method. (Menkel-Meadow, 2015)

The use of Alternative Dispute Resolution:

The silent revolution and the impact of ADR in the conflict management area has brought substantial changes in the atmosphere of our traditional litigation westerns systems, among these changes we find new strategies that seek to dissolve such disputes. Even though there is significant evidence that show the potential benefits of using these ADR methods, such as reduced cost, considerably less time spent and effort committed to resolve a conflict; in which among them, we can identify mediation, there is still a prevailing necessity of addressing points of importance when it comes to this purported benefiting aspects. (Stipanowich, 2004)

Although, there is a difficulty in terms of identifying which discipline prevails in the domain of Alternative Dispute Resolution since there is "no discipline that hold a lock or a monopoly in the subject" (Mnookin, 2003) and even so is that, ADR has a difficulty in having neutral observations, due to the background of researchers that converge in studying the discipline, ranging from diverse and well established academic subjects such as law, sociology, economics, psychology. (Michael L. Moffitt, 2012)

Moreover, within the span of the first decade of its inception, Alternative dispute resolution was not regarded as it is currently today. Having reputation of a fashionable and trendy movement which had, as a root cause the still ongoing criticism and flaws of our traditional conflict management systems, such as conventional litigation; however this lack of consideration had a turnaround in the opposite direction, creating a new necessity of self-evaluation for strategies; thus they can be implemented fully after attempting a preliminary version of them. (Edwards, 1986).

The previously addressed multiple academic disciplines that study this subject, also produce a large sum of variables that emphasize the required adequacy of these ADR strategies to their particular conflicts to resolve. This very intricacy, incapacitates the matter in terms of creating

a unique and supreme method of conflict resolution; therefore, some authors differ from the term alternative dispute resolution and prefer an appropriate dispute resolution, since addresses the suitability of methods for particular and diverse conflicts (Menkel-Meadow, 2015)

Although, there is remaining criticism towards several methods of ADR, such as mediation, addressing they are not as beneficial as they claim to be. Observations and commentaries have been made in relation to the absence of novelty and resource efficiency that is claimed by its proponents; in a sense that mediation could be an “old tale told again”. In other words, mediation specifically has faced some criticism in regard to the multifaceted style of performance, such as transformative style and transcendental mediation, just to name a few; as well as the scarcity of empirical studies surrounding it, the reported disengagement of participants involved besides from the third neutral party and a particular resemblance to a traditional court proceeding. (Hensler, 2003). Along with this, Curran also addresses a necessity to evaluate behaviours and useful practices of mediators throughout the process in further research. (Curran, 2015)

Similarly, since mediation involves the use of a third-party neutral, although without the power to decreeing a resolution on the parties; the mediator only aims to “facilitate” negotiation between them, so they can reach an informed, consented solution. Also, because the process usually lacks an established uniform procedure, this is strategy is rather informal and unstructured, which might help the parties to approach their issues differently, accomplishing a resolution that would not have been possible otherwise; besides the implied variety of the practice provided by mediators, which configure several styles and approaches to mediate a dispute (Mnookin, 1998).

In addition, taking into consideration the previously recommended self-appraisal of ADR programs before their full implementation in conflict management systems, we should consider a stakeholder theory as well, which in this paper serves the purpose of filling the little research

available about key players within this specific ADR area, such as it is workplace mediation key players. For this, there are theories that contribute in terms of adding traits such as "power, urgency and legitimacy" (Mitchell, et al., 1997). The previous it is considered a relevant aspect in terms of choosing the subjects who have provided their insights for our research questions, specifically member of the employment bar association of Ireland, lawyers, and barristers.

Workplace Relations Commission, The Mediation Act 2017, and Workplace Mediation.

The headlining and first instance of workplace conflict resolution in Ireland is contained in the Workplace Relations Commission, which as opposed to countries such as the UK, *"provides mediation by a cross-divisional team of trained professional officers and is free to all users."* (Workplace Relations Commission, 2021) This body has its origin in the document known as "Workplace Relations Act 2015", and the mediation act 2017 establishes the foundational legislation for the practice of mediation in Ireland.

The WRC offers mediation in "*respect of claims of infringements to employment rights; it also provides access to the public in respect of claims involving unequal treatment and discrimination claims in the civil and public service"* (Workplace Relations Commission, 2021). This is accessed via online through a complaint form, then the mediation contacts the contrary party in order to assess the willingness of this, to engage in mediation, thus complies with the point of "*the mutually permitted third party intervention"* as an addressed characteristic of this ADR method. (Beardsley, 2011)

The independent body offers two different kinds of mediations which are categorized as pre-adjudication mediation and workplace mediation; these have the objectives of dissolving the complaints referred to the WRC and to resolve ongoing interpersonal issues between persons or groups of persons (Workplace Relations Commission, 2021)

Following its inception in 2015, the WRC has published their Annual reports; documents in

which they compress the statistics regarding their activities in each specific service and modality they offer. Since its creation is considered relatively recent, it is a common occurrence that we find a low incidence of resolution through mediation in the first years; with an increased utilization and a reported success rate between 40% to 65% on average, including those cases that were resolved prior to an adjudication[12]. Nevertheless, there are some aspects that need further consideration within these documents, such as the case of the year 2016 in which the compressed success rate is composed by both settled and withdrawn complaints in the mediation modality, as well as treatment of separate class actions originated from a single dispute.[13]

ADR in Ireland, a contrast

As we have contained in the previous chapters, the Alternative dispute resolution discipline in Ireland, was not late in coming with a response from the wave of related literature and research, which was a product of the "back then" vogue subject in the United States. Moreover, in the Republic of Ireland, this ensuing effect was more notorious in evaluating the aspects concerning the wide spreading practices, such as the implementation of conflict management systems in their local firms. (Teague, et al., 2011)

Additionally, a probable reason why Ireland has been left behind in implementing dispute resolution strategies in its local firms may be a lack of economic incentives that these organizations receive in comparison with their North American counterparts; along with a reduced incurrence of resolution of individual conflicts as opposed to the prevalence of collective conflicts in these Irish agencies (Teague, et al., 2011) (Teague, et al., 2020).

Along with this, research shows that there was a considerable level of doubts in relation to the

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[12] From the data gathered among the WRC annual reports from 2015 to 2019

[13] https://www.workplacerelations.ie/en/publications_forms/wrc_annual_report_2016.pdf

adopted strategies from the Labour Relations Commission (what is now known as Workplace Relations Commission) in Ireland; in regard to implementing innovations in the area of ADR; since the participants of this study group have expressed that this organism "*has been faced with picking up the pieces when these had been ineffective or had backfired"* and that has not provided enough directions to achieve a betterment of relations among employers and unions, and even less within individual employees; even less individual disputes since, despite the fact there is an encouragement from the WRC to employ ADR in legal disputes, in house counsel within firms seems rather unlikely due to the potential further reference to the WRC of these disputes. (Teague, et al., 2020)

Moreover, as stated above; there is a relevant detail derived from the mediation act of 2017; in which its scope will not apply to a dispute that fall under the functions of the WRC[14]. For this, we can infer there is a potential fact, which has a consequence a redirection of the focus of disputants, leading them to seek outside the WRC to either a traditional court procedure, or to seek private mediation (or other type of ADR). This is rather paradoxical since according to a previous study *"Only a minority of establishments (16.3 percent of firms) use independent experts to resolve conflicts involving individual employees."* (Teague, et al., 2011). Therefore, these aspects are relevant in discerning a potential reason why mediation may not be as attractive to disputants. In other words, the WRC mediation could be a process that does not have their decisions legitimized by an appealing or an enforceability method, such as we detailed in prior chapters; as opposed to the enforceability and binding as asserted by Curran "*Mediated agreements at the Equality Tribunal are legally enforceable while those at the Labour relations Commission are not."* (Curran, 2015)

It is also worth mentioning that "*At the Equality Tribunal, mediation is automatically scheduled once a complaint of discrimination has been made as mediation is the default process used to*

[14] http://www.irishstatutebook.ie/eli/2017/act/27/section/3/enacted/en/html#sec3

address such complaints under Irish law" (Curran, 2015)

Defining effectiveness.

For a lack of a proper and pertinent *per se* definition of "effectiveness" in the ADR subject and regarding its multidisciplinary approach, several criteria might seem optimal for such evaluation, nevertheless, due to the unique dimension that is the matter of this research we disregard things such as: *"cost of transaction, outcome satisfaction, the impact on the relationships, and the endurance of the agreement over time."* (William Ury, 1988). Furthermore, the aforementioned is also in spite of the multiple attempts to lay out a "*framework that allows comparative analysis*" (Beck, 2004) when it comes to evaluating effective and successful ADR instruments.

Therefore, we have determined that effectiveness for the purposes of this paper, is based upon mostly on aligning the field of semantics with the qualitative methods that helped us to collect data. These terms are established as the following:

Practicality: *the quality of being able to provide effective solutions to problems" and particularly in this case: the possibility of being put into practice* (Cambridge University Press, 2021), which originates the question : what is the proportion of people actually engage in mediation to solve their workplace disputes? What is the average of people that are willing to use the Workplace relations commission mediation service according to experts in the practice field?

Viability: which is considered as "*the degree of chance that something will succeed"* (Cambridge University Press, 2021) similarly : does mediation actually resolves the average workplace dispute? If not, why it fails to do so? Is it due to a possible more attractive option for this purpose?

Plea: which makes reference to the incurrence of the WRC mediation*;* in its literality, according

to the Cambridge Dictionary *"to make a statement of what you believe to be true, especially in support of something or someone or when someone has been accused in a law court"* (Cambridge University Press, 2021) this definition hold a close relation with the degree in which disputants appeal to the WRC.

Queries in contrast with the WRC

From the collected data contained in the answered questions of the survey/questionnaires, we gather and infer the following:

The first four questions asses the quality of the respondents, their specific field of occupation, the capacity in which they have appeared before the WRC as well as the level of recurrence and reiteration; and whether they have been involved in the mediation service of the independent body or not, respectively. Most of our respondents have inference and close contact, in function of their respective occupation, with the processes of ADR offered by the WRC. Therefore, this group can represent a portion of key players since they hold interest and legitimacy in their interaction with the WRC and the evaluated program. (Mitchell, et al., 1997) Furthermore, according to the participants, the perceived level of interest and willingness by their represented parties in engaging in the WRC mediation is considerably low since, none of the participants regarded it as being moderately nor highly interesting for disputants.

Along with this, the received responses considered that mediation has a "very low" rate of usage. Also, the consecutive question evaluates the purported level of satisfaction or success of this ADR strategy, showing that some key players regard WRC mediation as "highly" and "somewhat" satisfactory; yet the remaining portion considers it not very or unsuccessful in terms of providing solutions. This could portray the level of practicality and viability that this service offers to disputants, since very few people could be interested in using a service that does not deliver satisfactory outcomes.

Additionally, this entire situation may change due to the impact of the recent determination of the Supreme Court in the Case of Zalewski vs Adjudication Officer and WRC, Ireland and the Attorney General [2021] IESC 24 on 6 April 2021, in which there has been "consequential orders made on foot thereof on 15 April 2021", this potentially represents a swift turnover for the previously exposed since, along with the considerations derived from this, the WRC has manifested and encouraging to *"all parties give due consideration to the opportunity offered by the WRC Mediation Service as a possible avenue to resolve an individual matter in dispute. Apart from obviating the need for a hearing, mediation can lead to a resolution of the matter in a confidential, mutually agreed fashion."* This particularly in relation to the "*provision for a private hearing no longer applies and also, as a consequence, that decisions will be published including the names of the parties – in other words the names of the parties will no longer be anonymised. This is the position until new legislation comes into force. In this regard, a complainant may choose not to proceed with a complaint, or the parties may settle the complaint or seek to have it mediated by the WRC without a need for a hearing in public."*[15]

Although, prior to the aforementioned, it might have been the very same mediation act of 2017 that redirected the focus of disputants outside the WRC, towards a standard proceeding whether its litigation or adjudication and, despite the fact that in use of their faculties and functioning; the court may "*on the application of a party involved in proceedings, or of its own motion where it considers it appropriate having regard to all the circumstances of the case: (a) invite the parties to the proceedings to consider mediation as a means of attempting to resolve the dispute the subject of the proceedings; (b) provide the parties to the proceedings with information about the benefits of mediation to settle the dispute the subject of the proceedings."*[16]

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[15] https://www.workplacerelations.ie/en/news-media/workplace_relations_notices/supreme-court-judgment-in-relation-to-the-workplace-relations-act-2015-and-related-statutes.html

[16] http://www.irishstatutebook.ie/eli/2017/act/27/section/16/enacted/en/html#sec16

A final aspect that we should regard, is the representation of the sample and targeted group of this research, since even though they are considered key, in terms of providing their insights to the discipline and evaluation of such program, the exact quantification of this group is rather unlikely for research of this magnitude. Thus, besides an aforementioned recommendation of self-evaluating programs for ADR methods; an important consideration for future research and governance bodies since they will *"put in place performance measures to monitor the effectiveness of this undertaking"* (Law Reform Commission, 2010)*;* whether is labour, civil, or criminal, is a lengthier study of ADR Schemes applied to the field and an outsourced measurement of their results, as opposed to an endogenous evaluation of these.

CONCLUSION.

The WRC in their annual reports display statistics of settlements through their mediation service; however, in their 2016 report, this rate is combined with withdrawn complaints. Furthermore, in 2017 the effect of workplace mediation was mostly *"triaging complaints away from the Adjudication Service."* (Workplace Relations Commission, 2017). Although it is worth noting that the year of 2018 saw an increase of 206% in use of mediation and had a success rate of 64%, although a considerable amount of these complaints was considered as separate class actions despite the fact they might have been originated from the same dispute with different complainants. This situation also is contained in their 2019 report. (Workplace Relations Commission, 2018) (Commission, Workplace Relations, 2019).

From these two last reports we can assess that the rates displayed do not consider a full settlement of the disputes, since they do not provide further explanation other that a misdirection out of the WRC adjudication service.

As previously discussed, from the gathering of data, the inference product of the synthesis of these and the concepts surrounding the area, we can evaluate the mediation service offered by the WRC is rather meagre in fulfilling its purported goal and providing sufficient resolution through the mediation service offered, due to several considerations such as: lack of trust in the process, preference for other dispute resolution methods, WRC officers with multiple functions that disable any type of specialization in mediation, strategical delaying or dismissal of proceedings and far bigger issues within the Adjudication service.

There is a perceived lack of faith in the process, and in contrast with more highly regarded strategies within the same WRC, such as Adjudication, mediation pales beside it.

Moreover, the training and experience of the WRC mediation officers in relation to mediation is little in comparison with Adjudication; however, this may be due to the same fact of the prevalent use of adjudication as an ADR method within this organization, as well as far more

concerning issues within this dispute resolution agency.

Additionally, we find that mediation officers are just performing a second function of adjudication officers, and that they might lack a specific and thorough training in mediation; along with this, some use mediation as a way to delay or just "flush out" cases from the employer's side. [17]

In summary, according to most of the survey participants, mediation is considered as not fully operational and as a lower tier service in comparison with adjudication, and perhaps this should be regarded by the WRC, so they can establish a self-appraisal method as previously mentioned (Edwards, 1986) and consider redirecting the resources used in mediation, to Adjudication and/or specialization and independently accredited of their mediators.

As previously stated, our secondary research goals may have been fulfilled; since we have described generally the Workplace Relations Commission Mediation service program, evaluated the effectiveness of the Workplace Mediation Service according to key actors, analysed the results of the views gathered through questionnaires, and surveys regarding this program.

Notwithstanding the previous the main objective of this research: *"Determine the effectiveness of the Workplace Mediation Service provided by the workplace relations commission in Dublin, Ireland; according to professional practitioners of diverse fields of study who converged in being familiarized with this program;* does not seem to be fully achieved for several reasons.

The representative level of the sample may not be adequate to satisfy this, however this could be due to several reasons such as: research time limit constraints, the unavailability of the key players in the field of workplace dispute resolution, social distancing constraints and restrictions, and perhaps the mere lack of utilization of the WRC mediation service could be a relevant factor to take into consideration since, according to some WRC adjudication officers,

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[17] Appendix

“they lack the experience in mediation”.[18]

Additionally, there is little evidence regarding the settlement rate and the endurance of the agreements reached through mediation from a user perspective, therefore further research considering this angle is widely recommended.

A rather ambitious goal for future investigation on this matter, could be performing an analysis considering and contrasting diverse perspectives such as user experience with key player interaction.

[18] Email text contained in the appendix B

REFLECTIONS.

As I approach the submission date of the present paper, I acknowledge the valuable experience this has brought to my work-ethic, perception in terms of planification, and overall academic life. Puzzled and bedazzled by the process of choosing a topic that could interest me in the previous module of Research methods, my limited expertise in academic writing was becoming more discernible as I encountered doubts in selecting the theme of this dissertation.

After consulting several colleagues and experienced people around me, I realized I needed to immerse myself in a topic, so I could perform a proper investigation; now I genuinely believe that the best help in such task, is an inquiring mind.

Workplace mediation has been always an area that I have regarded with a significant amount of interest, since I feel there is a massive spectrum of opportunity for equilibrium without resorting to litigation which can me an unnerving experience.

After processing what the participants of this research have expressed, I am confident the room for improvement in this area is broad, yet the change that we seek to encounter may be triggered by ourselves.

BIBLIOGRAPHY

Agapiou, A. & Clark, B., 2018. The practical significance of confidentiality in mediation. *Civil Justice Quarterly,* 37(1), pp. 74-97.

Australian Dispute Resolution Advisory Council, 2019. *Effectiveness in ADR: Key Issues,* s.l.: s.n.

Axinn, W. & Pearce, L., 2006. *Mixed Method Data Collection Strategies,.* s.l.:Cambridge University Press.

Beardsley, K., 2011. *The Mediation dilemma.* Second ed. s.l.:Cornell University Press.

Beck, C. J. A., 2004. Defining and Evaluating Success in Environmental Conflict Resolution. In: *Braving the currents.* Boston: Springer.

Board, C. I., 2017. *Citizens Information.* [Online]
Available at:
https://www.citizensinformation.ie/en/employment/enforcement_and_redress/workplace_mediation_service.html#:~:text=The%20Workplace%20Relations%20Commission%20provides,between%20individuals%20or%20small%20groups.&text=Workplace%20mediation%20is%20a%20volunt

Borgatti, S., 2006 . Identifying sets of key players in a social network.. *Computational and Mathematical Organization Theory,* 12(1), p. 21–34.

Byrne, J. &. H. A., 2007. An Introduction to mixed method research. *Atlantic Research Centre for Family-Work Issues,* pp. 1-4.

Cambridge University Press, 2021. *https://dictionary.cambridge.org/.* [Online]
Available at: https://dictionary.cambridge.org/dictionary/english/effectiveness

Citizens Information Board, 2020. *https://www.citizensinformation.ie/.* [Online]
Available at:
https://www.citizensinformation.ie/en/employment/enforcement_and_redress/workplace_mediation_service.html#

Commision, Law Reform, 2008. *Consultation Paper- Alternative Dispute Resolution,* Dublin: s.n.

Commission, Workplace Relations, 2015. *Annual report,* Dublin: s.n.

Commission, Workplace Relations, 2019. *Annual report,* Dublin: s.n.

Commission, Workplace Relations, 2020. *https://www.workplacerelations.ie.* [Online]
Available at: https://www.workplacerelations.ie/en/what-we-do/wrc/

Commission, Workplace Relations, 2020. *Mediation.* [Online]

Available at: https://www.workplacerelations.ie/en/complaints_disputes/mediation/

Curran, D., 2015. Workplace Mediation in Ireland:. *Journal of Mediation and Applied Conflict Analysis,* 2(1), p. 178.

Dunne, J. A. W. a. T. C., 2012. Mediation research: a current review. *negotiation journal,* pp. 217,218.

Edwards, H. T., 1986. Alternative Dispute Resolution: Panacea or Anathema?. In: *Harvard Law Review, 99(3).* s.l.:Harvard Law Review Association, pp. 668-683.

Goldfein, J., 2006. Thou shalt love thy neighbour: RLUIPA and the mediation of religious land disputes. *Journal of dispute resolution,* Volume 2, pp. 1-28.

Hensler, D. R., 2003. Our Courts, Ourselves: how the alternative dispute resolution movement is reshaping our legal system,. *Penn State Law Review,* 108(1), pp. 165-197.

Hox, J. & Boeije, H., 2005. Data collection, primary vs. secondary.. In: *Encyclopedia of Social Measurement,..* Atlanta, GA: Elsevier Science, p. 593–599..

Hugly, P. & Sayward, C., 1987. RELATIVISM AND ONTOLOGY. *The Philosophical Quarterly Vol. 37 No. 14,* 37(14), pp. 278-290.

Kingdom, G. o. U., 2021. *https://www.gov.uk/.* [Online]
Available at: https://www.gov.uk/solve-workplace-dispute/mediation-conciliation-and-arbitration

Koo, A. K. C., 2012. Confidentiality of Mediation Communications. *Civil Justice Quarterly,* 30(005), pp. 192-203.

Kumar, R., 2011. Research : a way of thinking. In: *Research Methodology: A Step-by-Step Guide for Beginners.* London: SAGE publications, pp. 3,4.

Law Reform Commission, 2010. *Alternative Dispute Resolution: Mediation and Conciliation,* Dublin: s.n.

Lipsky, D. B. & Seeber, R. L., 2000. Resolving workplace disputes in the United States: The growth of Alternative Dispute Resolution in employment Relations. *Journal of Alternative Dispute Resolution in employment,* 2(3), pp. 37-49.

McMillan, J. a. S. S., 2006. *Research in Education: Evidence-Based Inquiry.* 6th ed. Boston: Pearson,.

Menkel-Meadow, C., 2015. Alternative and Appropriate Dispute Resolution in Context Formal, Informal and semiformal Legal processes. *Legal Studies Research Paper Series ,* Issue 26, pp. 1-28.

Michael L. Moffitt, R. C. B., 2012. The Handbook of Dispute Resolution. In: *The Handbook of Dispute Resolution.* s.l.:John Wiley & Sons, pp. 1-3.

Mitchell, R. K., Agle, B. R. & & Wood, D. J., 1997. Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of who and What Really Counts.. *Academy of Management Review,* 22(4), p. 853–886.

Mnookin, R., 1998. "Alternative Dispute Resolution". *Harvard Law School John M. Olin Center for Law, Economics and BusinessDiscussion Paper Series.,* Issue 232..

Mnookin, R., 2003. Strategic barriers to Dispute Resolution: a comparison of bilateral and multilateral negotiations. *Harvard Negotiation Law Review,* 8(1), pp. 1-27.

O'Sullivan E, R. G. a. B. M., 2007. *Research Methods for Public Administrators..* second ed. London: Rutledge.

Oireachtas, G. o. I., 2015. *Irish Statute Book-Workplace Relations act 2015.* [Online]
Available at: http://www.irishstatutebook.ie/eli/2015/act/16/enacted/en/print.html

Oireachtas, G. o. I., 2017. *Irish Statute Book.* [Online]
Available at: http://www.irishstatutebook.ie/eli/2017/act/27/enacted/en/print#sec6

Oireachtas, G. o. I., 2017. *irishstatutebook.ie.* [Online]
Available at: http://www.irishstatutebook.ie/eli/2017/act/27/enacted/en/print

Raisfeld, R., 2007. How Mediation Works: A Guide to. *Employee Relations Law Journal,* 33(2), pp. 30-41.

Robinson, P., Pearlstein, A. & Mayer., B., 2005. Dyads: Encouraging dynamic adaptive dispute systems in the organized workplace.. *Harvard Negotiation Law Review,* Issue 10, p. 339–82..

Setia, M., 2016. *Methodology Series Module 3: Cross-Sectional Studies.* s.l.:s.n.

Stipanowich, T. J., 2004. ADR and the "Vanishing Trial": The Growth and impact of alternative dispute resolution. *Journal of Empirical Legal Studies,* 1(3), pp. 843-912.

Tanul, C., 2013. Mediation. Measuring the Success of Mediation. *Conflict Studies Quarterly,* Issue 2, pp. 30-39.

Teague, P., Roche, B. & Hann, D., 2011. The diffusion of alternative dispute resolution practices in Ireland. *Economic and Industrial Democracy,* 33(4), p. 581–604.

Teague, P., Roche, W., Currie, D. & Gormley, T., 2020. 'Alternative Dispute Resolution in Ireland and the US Model'. *ILR Review,* 73(2), p. 345–365.

William Ury, J. B. a. S. B. G., 1988. *Getting Disputes Resolved: Designing.* San Francisco: Josey-Bass Publishers.

Wilson, J., 2010 . In: *Essentials of Business Research: A Guide to Doing Your Research Project.* s.l.: SAGE Publications, , pp. 7-8.

Working Group, Hong Kong, 1999. *Report of the working group to consider a pilot scheme*

for the introduction of mediation to family law litigation, Hong Kong: s.n.

Workplace Relations Commision, 2016. *Annual Report,* Dublin: s.n.

WorkPlace Relations Commision, 2017. *Annual Report,* Dublin: s.n.

Workplace Relations Commission, 2018. *Annual Report,* Dublin: s.n.

Workplace Relations Commission, 2021. *https://www.workplacerelations.ie/.* [Online]
Available at: https://www.workplacerelations.ie/en/news-media/workplace_relations_notices/supreme-court-judgment-in-relation-to-the-workplace-relations-act-2015-and-related-statutes.html

APPENDIX A

Survey questions performed in this study:

By ticking the box below, you are agreeing that: (1) you have read and understood your participation (2) you are taking part in this research study voluntarily (without coercion).

1. What is your Occupation and/or field of expertise?
2. Have you appeared before the Workplace Relations Commission? If yes, in what capacity have you appeared.
3. Approximately how many times have you appeared before the Workplace Relations Commission?
4. Have you been involved in the mediation service offered by the Workplace Relations Commission?
5. In your experience, what is the percentage of people willing OR interested in solving their workplace dispute through the Workplace Relations Commission mediation service?
6. In your experience, what percentage of people actually go on to engage with and utilise the mediation service provided by the WRC?
7. In your experience, how successful on average has the mediation service provided by the WRC been in solving claimants' workplace disputes? (5 being Highly successful, 4 Very Successful, 3 Somewhat successful, 2 Not very successful, 1 Not successful)
8. On a scale of 1 to 5, do you consider that the mediation service offered by the Workplace Relations Commission is a practical and viable option to resolve workplace disputes? (1 being not at all, 2 little, 3 regularly, 4 very often, 5 almost every time)
9. In your experience, what is the most common reason why employees are not interested in/willing to use the Workplace Relations Commission's mediation service?
10. In your experience, what is the most common reason why employers are not interested in/willing to use the Workplace relations commission mediation?
11. In your view, how could the mediation service be more appealing for people who wish to solve workplace disputes?
12. In your opinion, should the mediation service offered by the Workplace Relations Commission be dispensed with?
13. If you answered yes to [the above question], please explain why you believe the mediation service should be dispensed with:
14. If you answered yes to question 12, where in your view should the resources currently designated for and spent on the mediation service be utilised instead?
15. Do you believe an alternative dispute resolution mechanism not currently offered by the WRC should in fact be available? If you answered yes, please elaborate:

APPENDIX B

Email received on the 13 of April at 12:01, as a response of requesting more in depth information regarding the WRC mediation Service.

"As an Adjudication Officer of the WRC I don't have any direct dealings or experience of the Mediation Service and your best audience would be employment solicitors and barristers which you can find by searching online. You might also wish to contact the WRC Mediation Service directly and request an interview for your research. Personally, I have found that Parties often wait until adjudication to settle because they are not fully appraised of the strengths and weaknesses of any claim until there has been an exchange of documentation and legal submissions. The impact of the recent Supreme Court decision in Zalewski may increase the uptake in mediation now that cases have to be heard in public and Parties may no longer be able to retain anonymity at the adjudication stage.

Best of luck with your research."

Aideen Collard

Form A: Application for Ethical Approval

Undergraduate/Taught Postgraduate Research

This form should be submitted to the module leader for the relevant initial proposal and/or the relevant supervisor is the proposal has already been accepted.

Please save this file as *STUDENT NUMBER_AEA_FormA.docx*

Title of Project	The effectiveness of the Workplace Relations Commission Mediation service in Dublin, Ireland
Name of Learner	Jesus Alcantar Rodriguez
Student Number	51701871
Name of Supervisor/Tutor	Nadia Bhatti

Check the relevant boxes. All questions must be answered before submitting to the relevant lecturer / supervisor. Note: only one box per row should be selected.

Item	Question	Yes	No	NA
1	Will you describe the main research procedures to participants in advance, so that they are informed about what to expect?	☒	☐	
2	Will you tell participants that their participation is voluntary?	☒	☐	
3	Will you obtain written consent for participation (through a signed or 'ticked' consent form)?	☒	☐	
4	If the research is observational, will you ask participants for their consent to being observed.	☒	☐	☐
5	Will you tell participants that they may withdraw from the research at any time and for any reason?	☒	☐	
6	Will you give participants the option of not answering any question they do not want to answer?	☒	☐	☐
7	Will you ensure that participant data will be treated with full confidentiality and anonymity and, if published, will not be identifiable as any individual or group?	☒	☐	
8	Will you debrief participants at the end of their participation (i.e., give them a brief explanation of the study)?	☒	☐	
9	If your study involves people between 16 and 18 years, will you ensure that passive consent is obtained from parents/guardians, with active consent obtained from both the child and their school/organisation?	☐	☐	☒
10	If your study involves people less than 16 years, will you ensure that active consent is obtained from parents/guardians and that a parent/guardian or their nominee (such as a teacher) will be present throughout the data collection period?	☐	☐	☒

Item	Question		Yes	No	NA
11	If your study requires evaluation by an ethics committee/board at an external agency, will you wait until you have approval from both the Independent College Dublin and the external ethics committee before starting data collection.		☐	☐	☒
12	If you are in a position of authority over your participants (for example, if you are their instructor/tutor/manager/examiner etc.) will you inform participants in writing that their grades and/or evaluation will be in no way affected by their participation (or lack thereof) in your research?		☐	☐	☒
13	If you are in a position of authority over your participants (for example, if you are their instructor/tutor/manager/examiner etc.), does your study involve asking participants about their academic or professional achievements, motivations, abilities or philosophies? (please note that this does not apply to QA1 or QA3 forms, or questionnaires limited to market research, that do not require ethical approval from the IREC)		☐	☐	☒
14	Will your project involve deliberately misleading participants in any way?		☐	☒	
15	Is there any realistic risk of any participants experiencing either physical or psychological distress or discomfort?		☐	☒	
16	Does your project involve work with animals?		☐	☒	
17	Do you plan to give individual feedback to participants regarding their scores on any task or scale?		☐	☐	☒
18	Does your study examine any sensitive topics (such as, but not limited to, religion, sexuality, alcohol, crime, drugs, mental health, physical health, etc.)		☐	☒	
19	Is your study designed to change the mental state of participants in any negative way (such as inducing aggression, frustration, etc?)		☐	☒	
20	Does your study involve an external agency (e.g. for recruitment)?		☐	☒	
21	Do your participants fall into any of the following special groups? *(except where one or more individuals with such characteristics may naturally occur within a general population, such as a sample of students)*		☐	☒	
			☐	☒	
			☐	☒	
			☐	☒	
			☐	☒	

If you have ticked any of the shaded boxes above, you should consult with your module leader / supervisor immediately. **You will need to fill in Form B Ethical Approval** and submit it to the Research & Ethics Committee **instead** of this form. There is an obligation on the researcher to bring to the attention of the Research & Ethics Committee any issues with ethical implications not clearly covered by the above checklist.		
I consider that this project has **no** significant ethical implications to be brought before the relevant Research & Ethics Committee. I have read and understood the specific guidelines for completion of Ethics Application Forms. I am familiar with the codes of professional ethics relevant to my discipline (and have discussed them with my supervisor).		☒
Name of Learner	Jesus Alcantar Rodriguez	
Student Number	51701871	
Date	17/03/2021	
I have discussed this project with the learner in question, and I agree that it has no significant ethical implications to be brought before the Research & Ethics Committee.		☒
Name of Supervisor/Lecturer	Nadia Bhatti	
Date	17/03/2021	