The promotion of mediation in commercial disputes as a tool to effectively manage human and financial resources in companies based in Ireland

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Abstract

This research explores the limitations to the use of mediation in commercial disputes by companies based in Ireland, so as to propose initiatives to overcome these barriers and promote the method among employers and employees in the Irish context. In order to do that, the mediation process, its history, and differences to other alternative dispute resolution methods were described. In addition, it was explained the practice of mediation in commercial disputes, which includes the management of intra and inter-organisational conflicts, which can be done through different mediation approaches. Finally, the opportunities and challenges to foster the use of commercial mediation by companies based in Ireland were explored, covering the topics: awareness, availability of resources, and legislation.

The study was based on the interpretivist philosophy, in which an inductive approach was chosen to guide the analysis of qualitative data collected through interviews. A thematic analysis was applied to the data gathered from 12 participants, being them 6 employers and 6 employees from different companies based in Ireland and from several business fields.

Based on the analysis of the data, it was concluded that the main obstacle to the use of mediation in Ireland is the unawareness about the method by employers and employees. Among other reasons that prevent companies from engaging in mediation are misconceptions about the method, and the size of the business, as small-sized companies usually have a more limited availability of human and financial assets. It was found that people are unaware of legislation on mediation, therefore, regulation was not considered as a factor thar influences on companies' decision of not engaging in the process.

Initiatives that can be taken by the Irish government and companies are proposed in the study, so that mediation can be widely used in the country as a tool to effectively manage human and financial resources.

List of tables

Acronyms

ACAS	Advisory, Conciliation and Arbitration Service
ADR	Alternative Dispute Resolution
BATNA	Best Alternative to a Negotiated Agreement
BC	Before Christ
HR	Human Resources
MII	Mediators' Institute of Ireland
S.I	Statutory Instrument
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
WRC	Workplace Relations Commission

1. Introduction

Human beings are social creatures, which means they are a species that relies on interactions with one another in order to survive and prosper. As these interactions take place, conflict is prone to happen as decisions made may affect the others. In a world where people wish to be independent and have control of their lives, conflict is a growth industry (Fisher & Ury, 1991).

Mediation was used as a means of solving conflicts by different societies throughout history, such as Phoenicians, ancient Greeks, and Romans. Some scholars argue that mediation has been developed in ancient China or India. Although its origin is arguable, mediation is surely a millenary practice (Miranda, 2014).

Mediation has become popular worldwide in the past 30 years, and its use in commercial disputes is relatively new in Ireland (Moore, 2014). The Irish government has taken actions aiming to promote mediation in this jurisdiction. The enactment of the Mediation Act 2017 was a turning point, as it created the statutory footing for the practice of mediation in the country. The facilitative approach was determined as the mediation style to be pursued by mediators. Moreover, the Act established a duty on solicitors to provide their clients with advice and information about mediation before instituting proceedings. In addition, the Act allowed courts to invite litigants to consider mediation as well as penalise with costs parties who unreasonably refuse to consider or attend mediation (*Mediation Act 2017* [Irl]).

The creation of the Mediation Act 2017 was preceded by the establishment of Court Order 56A and Order 99 1B of 2010, which gave Superior Court judges the power to adjourn proceedings and facilitate referral to alternative dispute resolution (ADR) methods as well as consider refusal of a party to engage in ADR when awarding costs. Another attempt made the by government to promote commercial mediation was the establishment of the Commercial Court in 2004 and its power to refer litigants to ADR through Order 63A. These initiatives, however, are seen by some authors as against the voluntariness of the process, given that parties may feel coerced to engage in mediation so as to avoid being punished with costs by judges (Cowhey & O'Riordan, 2012; Fox, 2011).

In the commercial field, it is hoped that mediation will gradually become a more popular method to solve disputes (Doyle, 2010). Poorly or unmanaged conflicts may cost a company money, time, and relationships, be them among co-workers or commercial partners (Cowan, 2003). Accordingly, the mediation of commercial conflicts can be used as a tool to effectively manage human and financial resources.

In spite of the initiatives taken by the government, the challenge that remains is to comprehend the reasons why businesses (including employers and employees) based in Ireland still do not consider mediation in the first place, instead of being influenced by courts to do so.

1.1 Background of dissertation

The author's undergraduate course was in International Relations. During that time, the researcher studied in depth past and current national and international conflicts. Interestingly, the means of solving conflicts, however, were never presented to him. The focus given was to the consequences of such conflicts which marked and changed the human history.

With regard to the author's professional background, one has worked in the commercial/customer service field for the past few years. The researcher has seen and has also been involved in conflicts in the workplace which could have been solved through mediation, which would have resulted in a much more speedy, less costly, and amicable process to the company and the parties involved. At that time, however, the author did not know much about any alternative dispute resolution methods.

Have employers and employees ever heard of ADR, especially mediation? If they have, do they know how mediation works and its benefits? Can mediation be used in internal and external conflicts of a company or is it necessary to engage in litigation? Are decisions reached in mediation biding and enforceable? Even though the researcher studied about conflicts for years in college, one could not answer the above questions until a year ago. The author was unaware of most ADR methods and had the misconception that mediation was ineffective and almost like a therapy session. The researcher's previous unawareness and misunderstanding about ADR made one wonder how this may impact the use of mediation in Ireland, especially in the commercial field.

The government has attempted to promote mediation in the country, however, what is necessary for people to consider using it as their first means of solving disputes, when conflict arises? Answering this question is the aim of this research.

1.2 Aim and objectives

The overall aim of the research is to understand the reasons which still prevent companies based in Ireland from using mediation when commercial disputes arise, given that mediation is an amicable, expeditious, and less costly dispute resolution method. Once these reasons are identified, this research aims to suggest initiatives that can be taken to overcome these barriers in order to foster the use of mediation among employers and employees in the Irish context. In other terms, how can mediation in commercial disputes be promoted among companies based in Ireland?

In order to answer the research question, three objectives have been defined:

- To describe the mediation process, its history, and contrast with other ADR methods.
- To explain the practice of mediation in commercial disputes.
- To identify the opportunities and challenges to foster the use of mediation in commercial disputes by companies based in Ireland.

1.3 The scope and limitations of the research

The scope of this project is to explore the factors which still prevent employers and employees in companies based in Ireland from considering mediation as their first means of solving disputes when a conflict arises. Once these barriers have been identified based on the results from the primary and secondary research which will be undertaken, initiatives to promote mediation in the Irish commercial field can be proposed by the researcher.

In order to reach such conclusion, this research covers the following topics: the concept of mediation and its history, the difference between mediation and other ADR methods - including negotiation, conciliation, and arbitration -, different mediation approaches to commercial disputes, the use of mediation in internal and external conflicts of a company, the statutory footing for the practice and regulation of mediation in Ireland, and possible barriers and opportunities to foster the use of mediation in commercial disputes in the country.

The main limitation of this project is that the findings of the research will not be generalised to the whole population, due to the fact that an interpretivist approach has been chosen as the paradigm which will guide the project as well as the selection of a non-probability sampling method through self-selection, which will be used in the primary research. Results in this type of research are context

bound and are based on the interviewees' perceptions. These terms will be explained in depth in the research methodology and methods chapter.

In addition, the contact between the researcher and the population sample may influence the results of the study. The participants may have limited knowledge about alternative dispute resolution methods, especially mediation, given that the research population is formed by employers and employees who have not used mediation in commercial/workplace disputes. In order to give interviewees more clarity to answer the questions, the author will offer a brief explanation about the topic to participants during the interview. It must be recognised that such explanation will be based on the researcher's understanding of the literature review findings about mediation and its potential use, and this may influence the interviewees' perspective about the topic.

1.4 Contribution

Although there has been an extensive contribution to academic research on mediation over the last 50 years, the use of commercial mediation is still considerably new in Ireland, in contrast to the United Kingdom (UK) and the United States, for example. It has become more common for Irish courts to refer commercial disputes to mediation, however, conflicting parties usually do not contemplate using mediation before engaging in litigation in the first place (Doyle, 2010).

According to research undertaken in the UK, lack of awareness and misconceptions about the purpose and benefits of mediation are still significant obstacles for the implementation of the practice by companies (Latreille, 2011). In the Irish context, however, data is limited, which highlights the importance of this research, so that findings in the secondary research can be compared to the findings in the primary research.

Thus, further research in the area is welcomed so as to understand the current limitations to the practice of mediation in Ireland, so that these barriers can be overcome and the use of mediation fostered.

1.5 Dissertation road map

This research has been divided into five parts so that the presentation and analysis of the data gathered can be clear for the all the readers.

Introduction

This section provides background information to place the research in context. It presents the purpose and objectives of the study, the value of the research to the academy and mediation industry, and the scope and limitations of the project.

Literature review

This section contains information extracted from bibliography, journals, reports, and legislation, which relates to the objectives of this project, so that the findings presented in this chapter can be compared to the data gathered in the primary research in order to answer the research question.

Research methodology and methods

This chapter outlines the methodology and methods used to carry out the primary research as well as the reason for such choices, so as to prove the research as valid, reliable, and accurate. It includes the choice of philosophy, approach, strategy, type of data collected, time horizon, and the methods used to collect and analyse the data.

Presentation and discussion of the findings

This section presents the questions asked in the interview and the reason for them to be asked, as well as analyses the qualitative data collected in a descriptive way, so that the results obtained can be better comprehended. In addition, this chapter proposes a discussion on the research topic, using of the theory previously presented in the literature review and the findings obtained in the primary research so as to answer the research question.

Concluding thoughts

This section presents the conclusions reached in this research based on the critical analysis of the results obtained. Moreover, the author proposes recommendations for future research.

2. Literature review

2.1 Introduction

The literature review below aims to answer the questions stated as the objectives of the research. The chapter will be constructed through a thorough analysis of journal articles, books, reports, and legislation on mediation practice in the Irish jurisdiction, focusing especially in the area of commercial disputes.

The first part of this chapter will present the definition of mediation, its development throughout time, and contrast the practice of mediation to other ADR methods.

The second section of the literature review will explain the three primary styles currently used by most mediators, which are facilitative, evaluative, and transformative mediation. Furthermore, the second topic of the literature review will describe how mediation can be used to deal with conflicts which arise within a company – intra-organisational conflicts -, such as a dispute between two employees, as well as conflicts which emerge between the company and outsiders – inter-organisational conflicts -, for instance a dispute with suppliers or clients of the organisation. The use and enforceability of mediation clauses and mediated agreements will also be presented.

The final section of the literature review aims to identify the opportunities and challenges to foster the use of mediation in commercial disputes by companies based in Ireland. These opportunities and challenges are related to the statutory basis for the practice of mediation in Ireland. Moreover, the lack of awareness by employers and employees about mediation as well as misunderstandings about what the practice consists of will be discussed in this third topic. Finally, limitations to the practice of mediation caused by scarce resources, such as time, available funds, and number of employees will be considered.

The relevance of the findings presented in the literature review to the Irish context will be determined through the comparison with the data gathered in the primary research from managers and employees of companies based in Ireland which have not used mediation in their commercial disputes.

2.2 Mediation as an alternative dispute resolution method

2.2.1 Concept of mediation

Mediation is a confidential and voluntary method to solve disputes in which an impartial and neutral third-party is selected to facilitate the communication between conflicting parties, so that they can solve or prevent an issue based on mutually acceptable outcomes that are suggested and agreed by themselves (MII, 2021; Beer & Packard, 2012).

Mediation is considered an alternative dispute resolution method. ADR involves structured processes to resolve conflicts in which an impartial and neutral third-party either assists disputants to settle a dispute or decides the outcome on their behalf, which may be binding or non-binding. This definition of ADR is controversial, however, as there is no harmony in the authors' views about which dispute resolution methods are part of the ADR range. Besides mediation, the ADR framework usually includes conciliation, negotiation, and arbitration. These three methods to solve disputes will be further discussed later in this paper. Even though all authors agree that ADR does not include litigation, it may be linked to or integrated with litigation, which is the case in the Irish Justice System (Law Reform Commission, 2010).

The mediator is responsible for assessing whether or not the issue is suitable for mediation, as well as ensure that the participants are there on their own free will and are able to participate in the process. Moreover, the mediator is expected to explain the process to the parties and assure that they agree to proceed with it (Law Reform Commission, 2008).

The mediator initially focuses on identifying the underlying needs and interests of each party, which may be done in private sessions known as caucus. The information gathered by the mediator in these meetings is confidential and shall not be shared with the other parties, unless otherwise agreed by the disputant. Once this is done, the mediator facilitates the dialogue between the parties on these areas of common ground, so that they are given an opportunity to explore proposals for mutually acceptable solutions to their issues. If an agreement is reached, the mediator prepares a draft agreement which is reviewed by the parties. In case all the parties are satisfied with it, the final agreement is issued and signed by them (Law Reform Commission, 2008).

There are several reasons which may lead parties to engage in mediation. There may be a mediation clause which is part of a contract that parties have agreed to, on which it has been determined that any issue that may arise will be dealt with through mediation. In addition, judges may

adjourn proceedings so that parties can consider participating in ADR methods, either by the application of any party or by court referral. The above topics will be discussed later in this paper. Moreover, the disputants themselves may suggest the use of mediation without any legal impositions related to it when an issue arises, as ADR has become more popular over the last decades.

According to the Mediators' Institute of Ireland (MII, 2021), the core principles which mediation is based upon are confidentiality, voluntary participation, impartiality and neutrality, respect, and self-determination of the parties.

The first principle mentioned, confidentiality, is binding to the mediator, parties, and any third-party who may be involved in the process, such as solicitors or observers. *The Mediation Act 2017* (Irl) determines that all communications (including verbal statements), records, and notes in relation to the mediation process shall not be disclosed before a court. Moreover, the mediator shall not be called as a witness in a legal case about the matter that brought the parties to the mediation process. However, there are exceptions to the confidentiality, which includes when it is required by law, implementation or enforcement of a mediated agreement, child protection, prevention or revealing of criminal activity (including an attempt to commit a crime), prevention of physical or psychological harm to a party, and as a proof or disproof of a civil claim concerning the misconduct or negligence of a mediator or a professional body, as per the *Mediation Act 2017* (Irl). It is important to highlight, however, that any evidence which would otherwise be accepted in legal proceedings, do not become inadmissible or protected only because it was used or disclosed in the mediation process.

In some commercial disputes, the client may not be a party to the mediation. For instance, employees who had an issue and have been referred to mediation by their manager. Even in this case, the principle of confidentiality is applied to the process. The mediator and the parties are not obliged to give any information to the client, other than the length of the process, any additional meetings which may be necessary, and whether or not agreement has been reached. Any other information may only be disclosed to the client if agreed by the parties and the mediator (MII, 2021).

The *Mediation Act 2017* (Irl) determines that mediation must be voluntary. For that reason, parties are allowed to leave the process at any time. The mediator is also allowed to withdraw from the process, as long as s/he gives the parties a notice in writing explaining his/her reasons for the withdrawal.

With regard to the principles of impartiality and neutrality, the MII (2021) clarifies that an impartial mediator must be free of bias, prejudice, and favouritism. Moreover, a neutral mediator must not interfere in the content and the outcome of the mediation.

In relation to the fifth fundamental principle stated by the MII (2021), parties and mediator must be respectful to one another at all times. In case of continuous disrespectful behaviour by any

party, the mediator is entitled to terminate the mediation. Lack of respect affects the process, given that mediation will only be successful when constructive communication can be established between the parties.

The final core principle of mediation is the self-determination of the parties. Therefore, the mediator must not impose decisions on the parties. The participants will jointly come up with solutions to the issues that emerge during the session, while the mediator will guide and support them during the process, gathering information, clarifying interests, needs, and concerns that they might have, so as to facilitate the communication between the parties, in a polite and respectful environment. As a result, the mediator will allow the disputants to make informed decisions about their issues, regardless an agreement is reached or not (MII, 2021).

It is valid to mention that even though there is a wide range of mediation styles, the predominant approach is the Western model, which is based on principles of fairness and neutrality, rule bound, individual-orientated, and interest-based, as aforementioned. Some scholars believe, however, that the so called American or Western concept of mediation may not be suitable to all types of disputes and individuals, as cultural, political, and economical factors may influence the resolution process. Mediators, therefore, must be aware of that so that they do not have a mechanical approach to the parties' issues (Bagshaw, 2015; Feerick, 2003).

Mediation should be considered at different moments of a commercial dispute and favoured over other ADR methods. Mediators respect the participants' self-determination, which means that any decision achieved during the process will not be forced nor influenced by the mediator, in contrast to arbitration and conciliation processes. If a settlement is agreed between the parties, a contract is written down and signed by them, becoming legally binding and enforceable as a judge's decision, unless otherwise agreed by the parties (Doyle, 2010).

Moreover, the presence of a mediator is essential when parties cannot negotiate directly, especially at the first stages of the dispute resolution process. The mediator has the option of having private meetings with the participants and gradually prepare them to establish direct dialogue at a later stage (Doyle, 2010).

In addition, the conciliatory nature of the process and the possibility of reaching win-win outcomes emphasises the advantages of mediation over adversarial dispute resolution processes, such as arbitration and litigation. Consequently, business relationships may be maintained or restored even when conflict emerges (Doyle, 2010).

Furthermore, settlement may be achieved within a matter of days or weeks, and businesses' reputation is protected, as the whole process is held in private. Finally, mediation is significantly cheaper than arbitration and litigation (Doyle, 2010).

Research has shown that agreements are achieved in 70% of mediated commercial disputes. Even when settlement is not reached, time and costs are decreased, as issues may be narrowed down and participants' understanding broaden during the mediation process, which may help if litigation has to be sought (Doyle, 2010).

After going through the current concept of mediation in the Western world, specifically in Ireland, the next subsection will present an overview of mediation as an alternative dispute resolution method used by different civilizations throughout the human history.

2.2.2 Brief history of mediation as an alternative dispute resolution method

The exact origin of mediation is unknown, as the practice can be identified in a large number of societies throughout the human history. Even though the practice was not structured as it is known today, as each society had their own procedures, they all followed the idea of third-party intervention to issues between disputants. Regardless its origin, mediation is unquestionably a millenary practice.

The roots of mediation are found in cultural and religious practices of ancient civilisations. These two factors determined what was considered as a conflict, the parties who should be involved in solving it, the appropriate behaviour expected from the third-party and disputants, and procedures. These customary and religious processes of solving disputes normally consisted of a combination of mediation and arbitration, as third parties would initially help disputants to reach voluntary agreements, while they would also have power to give parties advice or even make biding decisions on the matter of the dispute, as these intermediaries were often chosen to mediate the conflict due to their position in the society, for instance a Chief or Elder (Moore, 2014).

Among these communities which have practised religious or customary mediation are Jewish, Christian, Islamic, Hindu, Buddhist, Confucian, as well as many indigenous cultures in the Pacific Ocean region, such as in Australia and New Zealand (Moore, 2014).

Some authors argue that roots of mediation are in Asia, as the practice has been identified in communities in the Asian Pacific region for at least two millennia. In Sri Lanka, for instance, as early as 425 BC, village councils were established in which elders would hear disputes involving minor offences so that amicable settlements could be reached on the issues (Moore, 2014). Other authors highlight the influence of the Islamism to the practice of mediation, as the principles of forgiveness and negotiated settlement are taught in the Holy Quran. Jesus was also seen by Christians as a divine mediator between God and the mankind. In addition, the Australian and New Zealand indigenous

communities contributed with a more holistic approach to mediation, as they focused on restoring relationships and involved the extended family and/or the community in the process, which was based on indirect or circular communication (Bagshaw, 2015). Each of these cultural and religious groups mentioned above influenced in a certain way the manner in which conflict is viewed and handled during a mediation process nowadays.

Mediation was formally institutionalised and developed into a recognised profession only in the twentieth century, becoming more popular especially from the 1960's, given the promotion of human rights and democratic participation at social and political levels during that time. People were unsatisfied with the traditional system to solve disputes and desired to take control of the decisions which affected their lives. Therefore, the scientific analysis of conflict and alternative methods of dispute resolution became increasingly popular among scholars, mainly in the United States and Europe (Moore, 2014).

During the 1960's and 70's, there was only one approach to mediation, which was the facilitative model. However, as the practice expanded, new theories and approaches were developed during the 1980's and 1990's, which included the evaluative and the transformative styles (Bagshaw, 2015). The use of these three models in commercial disputes will be presented later in this paper.

Globalisation and the introduction of information technology allowed mediation to become more popular worldwide. From the 1990's, emphasis was given to the use of mediation in family and commercial disputes, as the practice was seen as an amicable, less costly, and expeditious method to solve disputes, in contrast to litigation. As a result, public and private programmes which promoted the practice of mediation in several fields, including criminal, started to be developed especially in the United States, Canada, United Kingdom, Australia, New Zealand, South Africa, and Ireland (Moore, 2014).

Even though mediation has become more popular in the last three decades, the promotion of the practice is extremely important and has to be continued, as research in the UK has shown the unawareness and misunderstanding about mediation are among the main reasons which still prevent people from pursuing it when conflict arises (Latreille, 2011). The primary research which will be conducted and discussed later in this paper will assess the applicability of the above statement to the Irish context.

2.2.3 Mediation compared to negotiation, conciliation, and arbitration

Besides being a dispute resolution method itself, negotiation is a technique used in litigation as well as in other ADR methods, such as mediation and conciliation. Negotiation is understood as any form of voluntary direct communication between two or more parties in which the goal is to reach a mutually acceptable agreement. It can be an informal conversation as well as a highly structured and formal process (Law Reform Commission, 2008).

Fisher and Ury (1991) introduce three different models of bargaining: hard and soft negotiation and principled approach. The hard-positional bargaining has been described as an aggressive negotiation style in which the aim is winning. Negotiations usually begin with exceptionally high requests, positions are fixed, and the agenda must follow one side's interests. On the other hand, the soft-positional bargaining is characterised by its amicable style of negotiation. In this approach, the maintenance of a good relationship with the others is fundamental. The parties focus on achieving a compromise and, in order to do that, positions are easily alternated, and offers and concessions are made even if they are favourable to the other side only. Both negotiation styles mentioned above are characterized by win-lose scenarios. In other words, one party's gain is another's loss.

As stated by Fisher and Ury (1991), any negotiation should produce a wise and efficient agreement, in which the relationship of the parties is improved or at least not damaged. In the authors' view, these conditions are not met in the hard nor in the soft positional bargaining. For this reason, the authors suggest that every negotiation should follow the principled approach, which is interest-based. The parties' goal is to work together in order to find mutually acceptable solutions to their issues, rather than focusing on defeating the other side. In principled negotiations, parties concentrate on the problem, not on the people involved in the conflict. As a result, disputants move from their initial positions to a more flexible approach to the dispute, making decisions based on their real needs.

Power in negotiation is connected to having a BATNA – an acronym for best alternative to a negotiated agreement. A party should analyse all the options available to them before entering a negotiation. After checking their BATNA, parties may be in a position of not accepting an offer which has a lower value than what their BATNA is worth. Therefore, informed decisions will be made by disputants when negotiating, which is one of the core principles of mediation, as mentioned before (Law Reform Commission, 2008).

Another ADR method commonly used in commercial disputes is conciliation, during which parties may pursue the bargaining techniques mentioned above. In a conciliation process, the third-

party has a more interventionist role, as the conciliator may offer the disputants a recommendation which will be binding if accepted by all the parties. Therefore, the third-party may influence the content as well as the outcome of the dispute. It is important to mention that the conciliator does not have authority to impose decisions on the parties, s/he has only an advisory role in the process (Law Reform Commission, 2008).

Conciliation has a non-adversarial nature, and it is considered an inexpensive and flexible dispute resolution method, similar to mediation. If parties are not able to reach an agreement themselves, the conciliator may suggest a solution which is fair, satisfactory, convenient, and sustainable to both parties. For this reason, this ADR model is very useful in commercial relationships (Miranda, 2014).

Miranda (2014) argues that conciliation is an ADR method used "to pacify a contrast" between disputants, however this approach may not be effective to solve more delicate issues. In cases which the roots of the dispute are deeper or when legal expertise is required, mediation is the best approach to be pursued. The mediator will help the parties explore the "contrast" which led other issues to arise as well as reality check with the parties the consequences of the relationship breakdown, so that the parties themselves can make informed decisions on the matter of the dispute.

In relation to arbitration, this is a private method to solve disputes in which an impartial third-party considers evidence presented by the parties and make a final binding decision on the subject matter of the claim. The disputants have the opportunity to choose the number and the identity of the arbitrators - who are usually experts in the field of the claim -, and the procedures to be embraced in the process - according to their interests and the nature of the issue (Hutchinson, 2010).

In Ireland, arbitration is governed by the Arbitration Act 2010, which adopted the UNCITRAL Model Law developed by the United Nations Commission on International Trade Law in 1985 (Hutchinson, 2010).

For arbitration to have legal basis to take place, there must be an agreement to arbitrate in writing, either as a clause in a contract or as a separate agreement. Murdoch and Hughes (2000) explain that disputants have the right to engage in any other dispute resolution process, even if they are subject to an arbitration contract. However, all the parties to the agreement need to consent to resolve the issue with a different process, otherwise they must refer the case to arbitration. A judge has the power to stay any proceedings before the court in case the matter of the claim has been agreed to be settled by arbitration.

The arbitrator's judgement is named award, and it is final and binding. The arbitrator analyses the evidence provided by the disputants and makes the award, having a range of remedies and reliefs available, unless otherwise agreed by the parties. In Ireland, an award is enforceable similarly to an

order or judgment made by the courts. In addition, the award is recognised and enforceable in signatory countries of the New York Convention 1958 (Cunningham, 2015; Hutchinson, 2010).

In Ireland, a significant contrast between litigation and arbitration is that it is not possible to appeal a decision made by an arbitrator. The award can be challenged in the High Court only in a few specific cases (Cunningham, 2015).

Arbitration is the preferred means of settling disputes in several sectors in Ireland, especially in the construction and insurance industries, given that this ADR method is efficient, confidential, expeditious, offering certainty to parties, as the arbitration award is final, enforceable and cannot be appealed. Moreover, the process is more flexible and less formal than litigation. Another advantage is the possibility of using of specialist knowledge during the process (Law Reform Commission, 2008).

On the other hand, arbitration has an adversary nature, therefore, commercial relationships may be damaged during the process, as the award issued will result in a win-lose outcome. In addition, the power given to parties to design the procedures themselves could be considered a disadvantage of arbitration where disputants cannot collaborate. The efficiency of the method relies on the ability of the parties to cooperate with one another and with the chosen arbitrator. The process may become time-consuming and costly if parties cannot agree on applicable procedures, or if they enter court proceedings to challenge the appointment of the arbitrator or the award itself. Moreover, costs of venue, legal representation, arbitrator's fees, transcript of proceedings, and expert witnesses – if needed - may be high. Furthermore, the remedies and reliefs available in arbitration may be more limited than in the courts, conditional to the parties' agreement (Dowling-Hussey and Dunne, 2008; Hutchinson, 2010; Murdoch and Hughes, 2000).

In the first section of the literature review, the concept of mediation, its core principles and advantages, the role of the mediator, the development of the practice throughout history, as well as the use of other ADR methods in comparison to mediation were presented. It is possible to conclude that mediation should be the first means of settling disputes attempted by parties when a conflict arises, given that mediation allows the disputants to communicate and make informed decisions themselves on their issues. Moreover, mediation is an inexpensive and expeditious process, and it allows business relationships to be preserved or even improved.

The second section of the literature review will describe the different approaches which can be pursued in commercial mediation, as well as explain the use of mediation to solve intra-organisational and inter-organisational conflicts.

2.3 Mediation applied to the commercial field

2.3.1 Different styles of mediation used in commercial disputes

This subsection will discuss the use of the three mediation models that are currently widely practised, which are the facilitative, transformative, and evaluative mediation. Although all models are based on the core principles of party empowerment and self-determination, in each approach the role of the mediator differs with regard to their level of active intervention during the mediation process. While in the facilitative and the transformative model mediators are required to be neutral and impartial as part of their code of ethics, the evaluative approach allows mediators to depart from that principle to some extent (Field & Crowe, 2020).

The facilitative model is the dominant paradigm of mediation, hence most jurisdictions created their ethical codes and standards of practice based on this model. In Ireland, for instance, the *Mediation Act 2017 (*Irl*)* states that mediation is facilitative, even though elements of other approaches were incorporated.

As mentioned in the first section of the literature review, the concept of mediation widely accepted is the facilitative one, in which the mediator is neutral to the merits of the dispute and the parties' arguments, as well as the outcome reached by them. The facilitative mediator has the role of assisting the parties to communicate effectively, so that they can broaden their understanding of the issue and one another and make informed decisions based on their real interests. Therefore, the content discussed and the outcome of the dispute are decided by the disputants, while the mediator ensures procedural fairness (Field & Crowe, 2020). In order to do that, the mediator asks questions, validates and normalises the disputants' points of view, explores the parties' needs underneath their initial positions, and assists them to find and analyse the available solutions to their issues (Zumeta, 2018).

The transformative model supports and emphasises the importance of an impartial and neutral mediator. Bush and Pope (2002) state that conflict generates a feeling of weakness and self-absorption in individuals, as one feels confused, helpless, aggressive, individualist, and closed. These feelings lead parties to a circle of interactional degradation or conflict escalation. Thus, the main goal of mediation should be to address these feelings and assist disputants to overcome them through a transformation of their conflict interactions. As the mediator supports the parties to recover strength

and sense of connection during the transformative mediation sessions, they will be able to shift from a hostile interaction to a more constructive one and, therefore, more forward (Bush & Pope, 2002).

Transformative mediators believe in the parties' capacity to find manners to make the best decisions for themselves, and agreement will only be reached if such settlement terms exist in fact. Regardless the resolution of the conflict, disputants are encouraged to face their issues in a humanising and positive manner, which will help them to deal with conflicts that may arise in the future, which is particularly useful if parties have an ongoing relationship (Bush & Pope, 2002).

The transformative mediator will search for parties' verbal and corporal expressions which indicate signs of weakness and self-absorption, so that s/he can offer supportive responses, such as close listening, reflection, summarising, checking in, and non-directive questioning. These questions may be used in order to check in, offer parties the opportunity to further discuss a topic, and open doors to new ones (Bush & Pope, 2002). To sum up, in a transformative mediation session, parties decide the structure of the process and the outcome of the dispute, while the mediator only support them throughout the process.

On the other hand, the evaluative mediator intervenes more directly in the process. This model was developed in response to court-ordered and court-referred mediations. Evaluative mediators normally have a background in the area of the dispute, such as legal or financial. For this reason, the mediator may point the strengths and weakness of each party's position and his/her opinion on what might happen should the case go back to court. Furthermore, the mediator might make formal or informal recommendations on the issue. In contrast to the approaches above, evaluative mediation is focused on facts rather than feelings. The mediator will not necessarily explore the parties' needs and interests and any underlying issues. Private individual sessions with each party and attorneys are normally held by the mediator, so that they can discuss and evaluate each party's case. To conclude, in this approach the mediator determines the process and may also influence on the outcome of the dispute (Zumeta, 2018).

Bush and Pope (2002) criticise problem-solving approaches (including the facilitative and the evaluative model), as these approaches ignore the crisis in human interaction, considering them as technique and settlement driven. They argue that parties may feel pressured by the mediators to reach an agreement. The authors believe that in the problem-solving models, even when resolution is achieved by the disputants, their sense of weakness and self-absorption are not changed, leaving the parties unable to deal with future conflicts that may arise.

The claims made by Bush and Pope against problem-solving models, however, fails to recognise the success of mediation achieved by this approach, which is reinsured by the high rates of parties' compliance with the mediated agreement (Field & Crowe, 2020). Critics of the transformative

and facilitative mediation argue that both processes take too long when compared to the evaluative approach. In addition, it is argued that transformative mediators are not able to ensure standards of fairness during the process, as their level of intervention is minimal. While transformative mediation is criticised by some authors for not being suitable for business and court matters, others consider evaluative mediation as coercive and partial (Zumeta, 2018).

The concepts of neutrality and impartiality have been questioned by some authors, due to the fact that mediators, as any human beings, have personal biases, political, cultural, and social influences. Therefore, mediators should recognise and be mindful of their position of power in the mediation process, so that s/he is flexible to respond to differences, privilege, and unbalanced power. In addition, some collectivist cultures as well as certain types of conflict may require a mediator who is familiar with the issue, so that s/he has the ability to inspire trust and confidence and use of his/her local knowledge to support the parties to reach an agreement (Bagshaw, 2015).

Even though several other meditation styles have been developed over the last decades, the three models above are the most relevant to the area of commercial mediation. While some scholars state that practitioners should only pursue one approach, other authors support that mediators should not have a mechanical approach, as each conflict has its own particularities. Zumeta (2018) emphasises that mediators should adapt their approach according to the nature of the dispute being dealt with, as well as their individual skills, rather than following one model exclusively, as each approach has its contributions to the area.

2.3.2 Mediation of intra-organisational conflicts

Intra-organisational conflicts can be defined as oppositions between and among individuals or groups who have professional and/or personal relationships within the same institution. These issues are normally related to material (*e.g.* objects, income) and nonmaterial (*e.g.* ideas, emotions, values, symbols) entities (Tripp, 1985).

The psychologists Art Bell (2002) and Brett Hart (2000) have identified in separate articles the eight most common causes of conflict in the workplace. Tangible and intangible assets, such as a meeting room or office supplies as well as praise or training may be a cause of conflict within an organisation, as these resources are generally limited and may not be available or offered to all the staff at the time desired.

Different working styles may be another cause of issues, especially when these co-workers are dependant on one another to perform their tasks. The third source of conflict is divergence in perceptions, especially due to access or lack of information. One action may be perceived differently by individuals, regardless its real intentions. Similarly, conflicting roles is a cause of issue, as it may not be clear who is responsible for performing certain tasks (Bell, 2002).

The fifth cause of conflict presented by Bell is connected to conflicting goals. If the goals set for the company, departments, and individuals are not aligned with each other, conflict may arise. In addition, pressure is understood as an issue generator, particularly in cases where conflicting tasks are assigned to an individual or group and other workers depend on those tasks to be finished in order to perform theirs (Bell, 2002).

The seventh cause of conflict presented is divergence in values among co-workers, given that values are part of a person's culture and, therefore, part of their identity. Finally, the eighth most common cause of conflict is the uncertainty about a company's policies. The scenario of unpredictability may lead workers not to follow a certain standard in several areas of the company, from dress code to formal complaint procedures, for instance (Hart, 2000).

It is important to highlight that even though Bell and Hart presented the eight most common causes of workplace conflicts separately, there may be more than one reason for a conflict to emerge. The theories presented by the authors are, however, extremely relevant so that companies can prevent conflicts from happening and when they do happen, the issues can be recognised and be intercepted.

Intra-organisational conflicts impact the individuals involved in the issue as well as the organisational environment as a whole. Poorly or unmanaged internal disputes may result in relationship damage, stress, hostility and violence, withdrawal of staff, lack of trust and cooperation among workers, creation of hidden agendas, reduction of productivity and effectiveness, slow learning and growth, and suppression of creativity and innovation, as people become more defensive. As a result, the company is impacted with the waste of time, money, and human resources, as individuals tend to use of blaming and fault-finding in such situations (Cowan, 2003).

The impacts of unmanaged or poorly managed disputes are normally significantly larger than the issue itself. Cowan (2003, p. 30) states that:

> In the final analysis, no one wins in an organizational conflict unless everyone wins. Any member of an organization who perceives him- or herself as a loser can be expected to produce losses for the organization as well, whether those losses be in the form of reduced morale, damaged communication, lowered productivity, faction-building, or some other consequence.

When a workplace conflict arises, the first attempt should be to resolve it through informal existing procedures. However, some issues cannot be solved through such procedures. In such cases, mediation should be administered by the company before any further formal action is taken (Tripp, 1985).

The Central Bank of Ireland, for instance, has implemented a mediation policy to all its staff members. If neither the parties themselves nor the line managers can resolve issues that may arise between co-workers, the disputants have the option to engage in mediation on a voluntary basis without any prejudice to their rights under other Central Bank policies, such as Grievance Procedure Policy or Dignity at Work Policy. The policy highlights the importance of awareness and understanding by all the staff about the mediation scheme and its potential uses, which should be ensured by the company (Central Bank of Ireland , 2019).

The policy outlines some issues that may be suitable for mediation, such as: personality clashes, unreasonable work demands, inappropriate behaviour or treatment, differences of working style, communication breakdown, and inappropriate use of power, status or position. In addition, the policy states that perceived discrimination, harassment and bullying may be brought to mediation before any formal action is taken, if the parties wish to do so (Central Bank of Ireland , 2019).

Mediators are work colleagues from within the organisation, and they are trained and qualified to perform this role. It is important to mention that the mediator must not be connected to the situation in order to ensure impartiality. Moreover, one staff member called the Mediation Co-ordinator is responsible for analysing the suitability of the issues to mediation, as in some cases other policies/procedures may be more adequate to deal with the dispute, such as where either party wishes a formal investigation or performance issues (Central Bank of Ireland , 2019).

Besides aiming to solve the issue between the parties, mediation may help the disputants to restore their relationship, which is extremely important, given that most relationships in the workplace context are on a long-term basis. Results can be reached in an amicable, informal, expeditious and private manner, offering employers and employees confidence in the process.

2.3.3 Mediation of inter-organisational conflicts

Inter-organisational relationships refer to competitive and collaborative exchanges between institutions. The relationship may be based on strategic alliance, joint ventures, buyer-supplier, buyer-

courier, co-branding, franchising, cross-sector partnerships, licensing, as well as competitors in the same business field. These organisations are parties to a contract which regulates their relationship, except for the relationship between competitors, which normally lacks contractual obligations. When a conflict arises between organisations, they must be resolved through formal – such as legal – and informal – relational norms – governance mechanisms (Lumineau, et al., 2015).

Inter-organisational issues have impacts at an organisational and individual level, as the exchange between the institutions is compromised as well as they affect the individuals who run and work in the company (Lumineau, et al., 2015).

The challenge to resolve inter-organisational conflicts is that institutions normally have several decision-makers, and even though they should act in the best interests of the company, contrasting individual interests may influence the negotiation and create barriers for the resolution process. Moreover, the lack of formal and singular hierarchy to deal with disputes, varied culture, structure, and policies in different organisations creates obstacles to solve the issues, which often results in either disputes remaining unresolved or companies seeking more adversarial resolution mechanisms, such as litigation and arbitration. If the disputants decide to engage in litigation or arbitration, however, they may risk compromising permanently their relationship with the other party as well as afford high costs with the process, which is normally lengthy (Lumineau, et al., 2015).

In order to give contracting parties certainty on how to deal with any issues that may arise in in the future from their contractual relationship, it has become common practice internationally to include a mediation clause in commercial contracts. Theses clauses state that parties must engage in mediation if any contractual dispute emerges. It is important to highlight that a mediation clause does not exclude the right of the parties to engage in litigation, nor it forces parties to cooperate and consent, it should only determine that mediation will be the first means of solving disputes to be attempted and completed before court proceeding commences (Feehily, 2016).

The advantage of creating such clauses is that parties are made aware since the beginning of their commercial relationship that conflict may arise and that they will have to deal with it in a constructive manner. Moreover, organisations are able to tailor their own dispute resolution process while their relationship has not been affected by any issue. For instance, contracting parties have the option to agree in advance on the appointment of the mediator and features of the process, choose a mediation organisation which may appoint the mediator and/or whose the rules and processes will be used from in case the parties cannot reach agreement on these topics, and decide the sequence of resolution methods that may be attempted *(e.g.* negotiation, followed by mediation, followed by arbitration). Furthermore, in order to offer certainty to the process, parties should ensure that the costs of the process and a jurisdiction clause will be covered in the contract (Feehily, 2016).

Mediation clauses are extremely useful for commercial exchanges which will be on a long-term basis, especially if they will last over a long period of time in changing circumstances. The inclusion of such clauses in commercial contracts are seen as good corporate governance, as they allow institutions to resolve their conflicts without damaging their reputation and performance (Feehily, 2016).

In relation to the enforceability of mediation clauses, there is no legislation in the Ireland that deals with this topic specifically, in contrast to the well-established law that guarantees the enforceability of arbitration clauses. The latter has been interpreted by Irish courts in a vast number of cases. In case a party refuses to adhere to a mediation clause, however, judges are likely to determine their enforceability based on general contractual principles. It should be pointed out that where a mediation clause only states that mediation may be sought dependent on the future wishes of one party, judges may interpret it as an agreement to agree, lacking certainty to be enforceable. Therefore, the more detailed a mediation clause is, in which procedural aspects of the mediation process are addressed, the more likely it is to be considered enforceable by courts (Feehily, 2016).

With regard to the enforceability of a mediated agreement, in other words, the settlement reached by the parties through mediation, that will depend on the parties' wish to make it a legally enforceable contract or a non-binding agreement. The mediation process itself is not binding, as parties participate in mediation on a voluntary basis. However, disputants may wish to make a mediated agreement binding and enforceable, especially in the commercial field. In order to do that, both parties must agree with this decision and clearly express in writing in the agreement to mediate, stating that any decision reached during the process will create legal obligations on all the parties (Law Reform Commission, 2010).

The most common method for enforcing a written mediated agreement is as a contract. However, this may be seen by some parties as unsatisfactory, as it leaves them in the same situation where they were at the beginning of the dispute, with a contract that they are trying to enforce. For this reason, some parties may decide that the mediated agreement is to be made into a court order, as it gains a similar status of a judge's decision and, therefore, is considerably easier to enforce than a contract, as the latter must first be proved. In order to do that, the parties must satisfy the court in their application that the settlement reached do not affect the rights and entitlements of the parties nor of any of their dependents. Some authors believe, however, that turning a settlement agreement into a court order may be easier in court-ordered mediation, as the issues in dispute have already been framed in justiciable terms and can be presented as a consent order (Law Reform Commission, 2010).

Whether a mediated agreement is applied by a party to be enforced as a contract or as a court order, the enforcement action itself represents a failure to the primary goals of mediation - speed,

economy, and the maintenance of relationships -, as a party is forced to engage in litigation due to a breach of the agreement (Law Reform Commission, 2010).

To sum up, mediation should be considered by companies when inter-organisational issues arise due to the fact that besides reaching a settlement, disputing parties have the chance of dealing with the issue in a constructive manner, so that they can re-establish their mutual trust, which may lead them to generate new business opportunities, especially if they do not see one another as competitors in the market. Moreover, the terms of the settlement are mutually and voluntarily agreed and, therefore, are more likely to be adhered to by the parties.

The last section of the literature review will discuss the opportunities and challenges to use mediation faced by companies based in Ireland. In order to achieve that, the researcher will critically analyse the legislation that regulates the practice of mediation in the country, as well as raise the issues of unawareness and misunderstanding about mediation and its potential uses. Finally, the influence of (un)available resources of a company on their decision of whether or not to use mediation will be presented.

2.4 The use of mediation by companies based in Ireland: opportunities and challenges

2.4.1 Mediation in the Irish law

In Ireland, legislation on mediation has evolved and gradually become an important means of settling civil and commercial disputes as an alternative to litigation. Section 5 of the *Judicial Separation and Family Law Reform Act 1989* (Irl) determines that prior to an application for judicial separation, solicitors acting for separating spouses shall discuss with their client the possibility of engaging in mediation to help effect a separation on an agreed basis and give the applicant contact details of persons and qualified organisations that provide a mediation service. Moreover, when applying for judicial separation, solicitors shall send a certificate on behalf of the applicant stating that the provisions mentioned above have been adhered to in advance to the application.

As mentioned earlier in this chapter, mediation became popular worldwide especially from the 1990's, which is the period in which the mention to mediation in the Judicial Separation and Family Law Reform Act 1989 was created and made into law.

In 2004, the *Statutory Instrument (S.I) number 2/2004 Rules of the Superior Courts (Commercial Proceedings) 2004* (Irl) inserted Order 63A, which created the Commercial Court in Ireland. The Commercial Court is a division of the High Court that deals with business disagreements, where normally the value of the claim is not less than €1 million, even though the Commercial Judge has discretion to consider other cases which s/he may find appropriate to be judged by the court. The aim of the court is to ensure efficient carriage of litigation in the field of commercial disputes, so that cases are judged in a just and expeditious manner. In order to that, it is stated in Order 63A that the Commercial Judge may on the application of any party or of his/her own motion adjourn proceedings so that parties have time to consider engaging in mediation, conciliation, or arbitration to solve their dispute. It is important to highlight that no mention is made in Order 63A to costs sanction for unreasonable refusal to engage in ADR, however, if a litigant unreasonably refuses an opportunity to settle the dispute , the judge may depart from the principle that 'costs follow the event' when awarding costs to a party (Fox, 2011).

In the same year, the *Civil Liability and Courts Act 2004* (Irl) was enacted. The Act deals with the matter of referral to mediation in civil disputes in its section 15, where it states that the court may, where the judge considers it would be helpful for the parties to settle their dispute, direct disputants to a mediation conference. This may happen, however, only upon the request of any party to a personal injuries action, differently from the Commercial Judge who may refer parties to ADR on his/her own motion[1]. On the other hand, section 16 of the Act determines that once parties have been referred to mediation, the judge may, if satisfied that a party failed to comply with a provision under section 15, order that party to pay the full or partial amount of the costs of the action.

In 2010, the *S.I number 502/2010 Rules of the Superior Courts (Mediation and Conciliation) 2010* (Irl) inserted Order 56A and Order 99 1B, which deal with referral and cost implications of refusal to engage in ADR, being considered a significant advance to the Irish legislation on mediation. Order 56A defined ADR as mediation, conciliation, and other dispute resolution methods that the court may approved, except for arbitration. The order determines that Superior Courts may, on the application of any of the parties or of its own motion, adjourn proceedings and invite the parties to engage in an ADR process in order to settle or determine the proceedings or issue, or where the parties consent, refer the case to such process. Moreover, it is mentioned in Order 56A that following the invitation or reference to ADR, parties are invited to attend an information session on the use of mediation. This highlights the importance of awareness and understanding of the mediation process, so that it can be used effectively and efficiently by disputants.

[1] The *Mediation Act 2017* (Irl) amended section 15 of the Civil Liability and Courts Act 2004, allowing courts to invite parties to a personal injuries action to consider mediation on their own initiative.

Order 99 1B of the *S.I number 502/2010 Rules of the Superior Courts (Mediation and Conciliation) 2010* (Irl) determines that Superior Court judges may consider an unreasonable refusal or failure of any party to participate in an ADR process when awarding costs of any appeal or of any action. Therefore, with the enactment of this statute, it became clear the judge's discretion as to whether penalise a party for not engaging in ADR (Fox, 2011).

In 2011, another attempt was made by the government to make mediation an integral part of the Irish legal system. The Minister for Justice and Equality signed into law the *S.I number 209/2011 European Communities (Mediation) Regulations 2011* (Irl), which transposed the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (2008). The Directive only covers cross-border disputes and allows the High Court, the Circuit Court, and the District Court to adjourn proceedings on the application of any of the parties or of its own motion, when it considers appropriate to do so, and invite the parties to use mediation to settle the dispute, or where the parties consent, refer their case to such mediation. Furthermore, the S.I number 209/2011 covers topics such as confidentiality of mediation and its exceptions as well as the enforceability of agreements resulting from mediation. The Directive 2008/52/EC did not impose domestic meditation processes nor required that Member States mandate or encourage the use of mediation in their jurisdictions. Therefore, its recommendations had a limited effect to the promotion of mediation in the European region as a whole.

Finally, the enactment of the *Mediation Act 2017* (Irl) was a turning point to the regulation and use of mediation in the country, as it has been mentioned previously. The Act restated provisions from previous legislation on mediation, besides creating a standard for the practice of mediation in Ireland. The Act defined mediation as a facilitative, confidential, and voluntary process to settle disputes. Moreover, the requirement for parties and the mediator to sign an agreement to mediate prior to the commencement of the mediation is mentioned in the Act. Furthermore, the role of the mediator is clarified, as well as the core principle of confidentiality and its exceptions, and the enforceability of mediated settlements. The obligation of solicitors and barristers to advise clients to consider mediation is expressed again in the Mediation Act 2017, as well as the power given to courts to adjourn proceedings on its own motion or on the application of a party to invite the disputants to consider mediation to settle the dispute. Judicial discretion to penalise a party who unreasonably refuses or fails to consider or attend mediation following an invitation to do so is restated in section 21 of the Act.

Even though the Mediation Act 2017 is regarded as a highly important piece of legislation to the mediation field in Ireland, a number of contradictions can be found in its construction. Firstly,

mediation is defined as a facilitative process, however, as it has been mentioned previously, different approaches can be pursued during a mediation process, depending on the skills of the mediator, as well as the nature of the issue being dealt with. Such limitation, therefore, would only lead to a mechanical approach to the parties' issues.

Secondly, the award of costs to a party who refuses or fails to consider or attend mediation contradicts the voluntariness of the process, which is a fundamental principle of mediation. The fear of being penalised may compel parties to engage in the process against their wish. Moreover, the term unreasonable is broad and could lead to different interpretations by judges.

With regard to the role of the mediator, section 8 of the *Mediation Act 2017* (Irl) states that the mediator shall not make proposals to the disputants to resolve their issues, however, in the same section it is expressed that if the parties request, the mediator may make proposals to resolve the dispute. This can be interpreted as a contradiction, as it would be an approach normally pursued by an evaluative mediator.

Section 9 of the *Mediation Act 2017* (Irl) determines that a code of practice would be prepared and published by the Minister for Justice and Equality or s/he would approve a code of practice prepared by another person or institution. However, this has not been done yet. Although the MII Code of Practice is seen as one that sets standards for the conduct of mediation in Ireland, it was never officially approved by the Minister for Justice and Equality. Furthermore, the Act states that a Mediation Council will be established in the country, however, the purpose of such institution is not clear, and it has not been created as of yet.

The enforceability of mediation settlements may be seen as an issue in business disputes, as section 11 of the *Mediation Act 2017* (Irl) states that a court may exempt the enforceability of a mediated agreement which is not based on full and mutual disclosure of assets. This requirement may be necessary in family mediation for instance, however, in the commercial field such requirement would be considered inappropriate.

Confidentiality becomes an issue when a mediator is invited by a judge to come before the court, as there is no legal privilege covering mediation. A mediator, therefore, does not have the right not to disclose to a judge what occurred in a mediation process, if asked. The mediator would be obliged to answer the Judge or risk being in contempt of court. Even though judges may refrain from questioning the mediator as a matter of public policy, they have the right to do so.

According to section 17 of the *Mediation Act 2017* (Irl), in cases where parties who have been invited to consider mediation apply to re-enter the proceedings, there is an obligation on the mediator to prepare and submit to the court a written report setting out whether or not the mediation took place and, if not, the reasons as to why it did not take place. In addition, if the mediation took place, the

mediator has a duty to report whether or not the parties reached agreement and, if they did, the terms of the mediation settlement. This report may compromise the principle of confidentiality of the mediation process, as a judge may penalise a party with costs based on the content covered in this report.

Despite contradictions, the Mediation Act 2017 as well as all the legislation covered above are welcome developments in the mediation field in Ireland, as they promote the use of mediation in the country, offering a certain level of clarity for individuals and businesses that wish to solve their disputes through means other than litigation.

2.4.2 Awareness and understanding of the practice

Research has shown that lack of awareness and understanding of the use and potential benefits of mediation are among the main reasons why the process is not highly used by individuals and businesses when issues arise (Latreille, 2011). However, data on this matter is still very limited, especially in Ireland – which emphasises the importance of this research, so as to understand the impact of these two factors on the use of mediation in the country.

Research undertaken by the Advisory, Conciliation and Arbitration Service (ACAS) in the UK has identified that unawareness and misunderstanding are among the predominant barriers for the use of mediation by organisations. Even in organisations that had a mediation policy in place, the level of awareness of mediation among staff was low, as a considerable proportion of workers had never heard of mediation, and the companies did not promote the scheme to the staff (Latreille, 2011).

According to the study undertaken by the ACAS, more significantly than unawareness was the impact of misconceptions on the use of mediation by the workers interviewed. Employees perceived mediation as a form of punishment or that referral was related to some sort of disciplinary issue or complaint, instead of seeing it as a process to help improve employees relations. For instance, some individuals had the idea that mediation should be used as a tool to claim compensation or to penalise the other party. Latreille (2011) states that this misconception may be related to an organisational culture where employees tend to pursue formal complaints/grievances procedures when an issue arises.

In a company with a mediation policy in place, employees had the impression that they would be forced to engage in mediation. Moreover, some employees did not trust the process, especially with regard to partiality and confidentiality. Latreille (2011) highlights that the reason for that,

however, may be related to the fact that parties who have been involved in the process themselves have breached the confidentiality. Furthermore, the research identified that individuals may have the impression that mediation is not financially beneficial to them, while others do not want to involve emotions in the resolution process.

The research undertaken by ACAS has shown that there was unawareness about mediation even among the members of the management team interviewed. In addition, some managers may have the impression that mediation undermines their authority, while others did not believe that mediation was appropriate in cases of bullying, for instance (Latreille, 2011).

Another misconception that may prevent companies from engaging in mediation is the fact that parties may be seen as weak if they suggest mediation, as they are believed to have cases which would not win if brought before the court (Feehily, 2016)

A study undertaken in the United States has shown that 40% of litigants have never spoken about ADR on their own initiative with solicitors. The reason behind that may be unawareness or misunderstandings about mediation among the general public. Therefore, a law that creates such obligation on solicitors may be a way of increasing the awareness and use of mediation by disputants. It is valid to note that the Mediation Act 2017 has such provision included. The legal obligation on solicitors, however, may not be sufficient if they do not understand ADR themselves. Thus, it is important that ADR education is promoted among lawyers, so that they advise their clients about ADR clearly and correctly (Shestowsky, 2017).

The fundamental principle of self-determination in mediation can only be achieved if disputants are aware and understand their dispute resolution options, so that they can make informed decisions. The importance of understanding the practices and protocols followed in mediation is that it allows disputing parties who opt to solve their issue through mediation to frame their expectations, so that they will be satisfied with the outcome, which reduces the chances of future litigation on the topic (Latreille, 2011; Shestowsky, 2017).

2.4.3 Available resources

Mediation can be used as a tool to effectively manage human and financial resources of a company, as the process is an amicable, expeditious, and less costly means of settling intra and inter-organisational disputes.

When dealing with inter-organisational disputes, companies will normally use of external mediator services agreed between the parties. In case where parties have signed a contract which contains a mediation clause, the institution or mediator who will deliver the service is normally specified in such clause (Feehily, 2016). As it has been mentioned in this study, the cost of the mediation process is generally lower than it would be for disputants to engage in litigation, besides the possibility of maintaining or even improving the relationship with the other party, while resolving the issue in a matter of days or weeks. Even if parties cannot reach an agreement through mediation, the process will help them to narrow down the issues which then may be solved in the court (Doyle, 2010).

With regard to intra-organisational conflicts, there are two approaches which can be pursued by a company: using external mediator services or developing an in-house mediation scheme. A number of factors, however, may be considered by a company in order to develop a mediation scheme, which includes the size of the institution, cost, training, and time. (Gifford, 2021).

Internal mediators are generally members of the human resources (HR) department, or a multidisciplinary team formed by staff from across the company. The issue that arises from the use of internal mediators is that they may not be impartial and objective in relation to the dispute. In small-sized businesses, having a mediator who is not connected to the disputants may be a challenge, which is less likely to be an issue in big and medium-sized firms. For this reason, some authors argue that small institutions should use external mediators, as they will be seen as independent. In addition, the use of external mediators may be appropriate in more complex cases, such as group conflicts (Gifford, 2021; Liddle, 2017).

Developing an in-house mediation scheme requires investment in training internal mediators and implementing the scheme across the organisation, fund which may not be readily available for some companies. However, the scheme is likely to be more cost-effective on long-term basis, as the organisation will not have to hire an external mediator every time an issue arises, besides being less expensive than defending one case at an employment tribunal. Once the mediation program is in place, parties contact the HR which then refers the case to one of the internal mediators, so that disputes can be resolved quickly and informally within the company (Liddle, 2017).

In relation to qualification, besides generating costs, selecting, training, and managing a pool of internal mediators may be a challenge for companies. Employees who are selected to be internal mediators are expected to participate in continuing professional development activities in order to practise their mediation skills and offer a high-quality service. Moreover, it is recommended that organisations have a mediation scheme coordinator, a person who is responsible for managing the program and checking the results of the scheme to the business. The coordinator will also promote

and secure buy-in at all levels of the organisation, while ensuring that participation is completely voluntary (Gifford, 2021; Latreille, 2011; Liddle, 2017). Once again, the size of the company as well as the cost of having a person to perform these tasks may be a barrier for a company to implement its own mediation scheme.

Finally, the process of implementing an in-house mediation program can be time-consuming. Besides the time needed to train internal mediators, the organisation should offer adequate time off for staff to perform their mediator role and related activities alongside with their current role in the company (Gifford, 2021). Time could be a barrier, especially where parties work shifts, as a mediation session must mutually suit mediator's and disputants' work schedule (Latreille, 2011).

The allocation of resources to a mediation scheme shows that a business is committed with conflict management, which may increase participant buy-in. While employees may be influenced to participate in mediation based on the relational benefits that the process offers, employers are more likely to support the practice based on the cost-benefits to the organisation (Latreille, 2011).

2.5 Summary of the literature

The literature review aimed to answer the research objectives based on reports, books, legislation, and journal articles. The Western concept of mediation, its development throughout history, and the contrast between mediation and other ADR processes were presented in the first section of this chapter. The second section dealt with the use of mediation in intra and inter-organisational disputes, as well as the main approaches that can be pursued by a mediator in in the commercial field. Finally, the third section of the literature review discussed the opportunities and challenges to promote the use of mediation in commercial disputes in Ireland. These opportunities and possible barriers are related to the statutory footing of mediation in the country, the lack of awareness and understanding of mediation by employers and employees, and the availability of a company's resources – such as time, money, and staff.

It is important to highlight that data about the reasons which still prevent companies in Ireland from engaging in mediation is limited and further research is needed and welcomed by the academy. The primary research which will be undertaken aims to answer this question, so that recommendations to promote the practice of commercial mediation in Ireland can be made.

3. Research methodology and methods

3.1 Introduction

This research is essential as it aims to identify problems and new opportunities in the regulation and practice of mediation in the commercial field in Ireland. A structured process must be followed in order for the information gathered to be accurate, valid, and reliable. As a result, the research will be of value as scientific techniques will be used to gather the data (Saunders, et al., 2019).

It is necessary to differentiate the terms methodology and method, so that readers have a better comprehension of the approach used by the researcher to conduct the study. According to Saunders (2019, p. 4) 'methodology refers to the theory of how research should be undertaken'. In other words, the philosophy from which the research will be approached. On the other hand, the term method is used 'to refer to a technique or procedure used to obtain and analyse data. This, therefore, includes questionnaires, observation and interviews as well as both quantitative (statistical) and qualitative (non-statistical) analysis techniques' (Saunders et al., 2019, p. 4).

This study will be designed based on 'The Research Onion' created by Mark Saunders, Philip Lewis, and Adrian Thornhil (2019). This model presents the stages which a researcher has to go through in order to develop a cohesive, understandable, and logical research. The type of selection, collection, and analysis of the data gathered were chosen from within each layer of the 'onion', as you can see below.

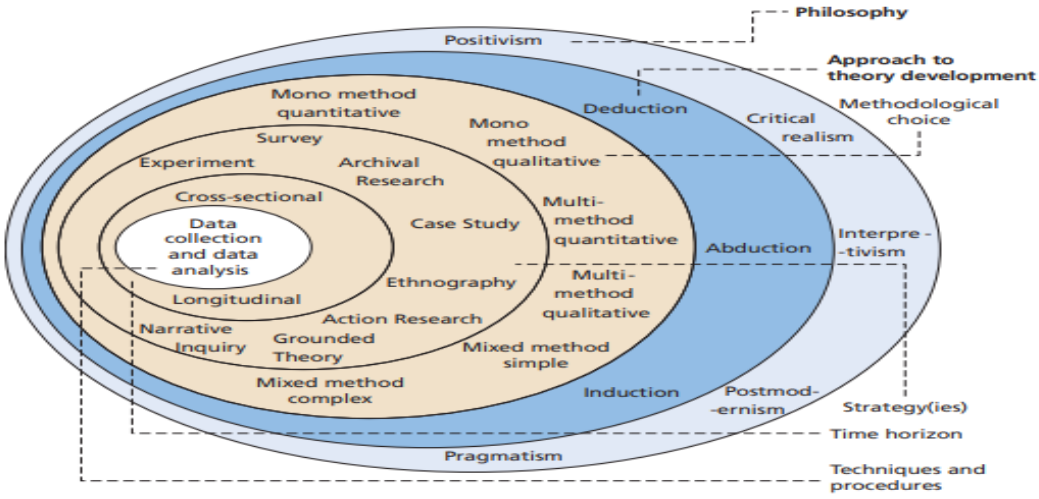

Table 1 – The Research Onion Model (Saunders, et al., 2019)

In the following sections, the researcher will present the methodology and methods used to carry out the primary research. Moreover, the author will explain the reasons which validate each decision made about the research design, which are aligned with the research question, objectives, and the philosophy of the study.

3.2 Philosophy

Research philosophies relate to systems of beliefs and assumptions about the creation of knowledge. These assumptions are about (but are not limited to) the nature of the reality - named ontological assumptions -, how the knowledge is acquired - epistemological assumptions -, and the extent to which the researcher's values influence the research process - axiological assumptions. These beliefs will influence how the researcher comprehend the research question, the methods used, and the data obtained from the research population. (Saunders, et al., 2019).

The appropriate philosophy for this research is interpretivism, given that the nature of the reality – ontology – will be shaped by the context, being complex, socially constructed with multiple meanings and interpretations. The knowledge will be acquired – epistemology – from the interaction with the research population. Therefore, the contribution of this research to the academy will be the creation of new and richer understandings and views on the research topic based on the interviewees' narratives and perceptions. With regard to axiology, the researcher's values will impact the research process and the interpretation of the findings. Every choice made by the researcher – be them the topics investigated, the methods used, and the research population chosen -, has personal values incorporated in them. The researcher is part of what is being researched, and that must be explicitly recognised (Saunders, et al., 2019).

Saunders (2019, p. 149) states that 'different people of different cultural backgrounds, under different circumstances and at different times make different meanings, and so create and experience different social realities'. Thus, the interpretivism approach has been chosen to guide this research.

3.3 Approach

The research approach relates the extent to which the research focuses on theory testing or theory building. The approach can be deductive, which means that a hypothesis is tested based on an existing theory and usually findings can be generalised, or inductive, in which observation is needed for patterns to be identified, being linked to the context. In addition, there is a third approach which combines the deductive and inductive approach, the abductive one. In this approach, known premisses are used to generate testable conclusions. Based on the results, researchers create new theories or modify existing ones (Saunders, et al., 2019).

The appropriate approach to this study is inductive. This approach is less structured and allows the researcher to determine alternative explanations for the current limited use of commercial mediation in Ireland which may not have been identified in the literature review. Saunders (2019, p. 155) explains that 'you may end up with the same theory, but your reasoning to produce that theory is using an inductive approach: theory follows data rather than vice versa, as with deduction'. As a result, the data collected will allow the researcher to build a theory about the promotion of commercial mediation in Ireland based on the current barriers identified by the employers and employees interviewed.

Researchers who pursue an inductive approach normally study a small sample of subjects, as they focus on a specific context where such event takes place, being more likely to work with qualitative data (Saunders, et al., 2019).

3.4 Choice

Research choices relate to the type of data collected, which are: qualitative, quantitative, or mixed methods - in which qualitative and quantitative data are gathered. (Creswell & Creswell, 2018). In this research, a survey will be carried out through interviews in which qualitative data will be collected and analysed.

Qualitative research is an approach that explores the meaning and understanding of a certain topic ascribed by individuals or groups. This type of data is normally related to the inductive approach, as the researcher asks open-ended questions to the research population and then interprets

the meaning of the data. Qualitative research focuses on individual meaning and the complexity of a given context (Creswell & Creswell, 2018).

3.5 Strategy

The research strategy is a plan of action to answer the research question. Survey, archival research, case study, and experiments are some of the strategies that can be pursued by a researcher. The strategy chosen for this research will be survey, as it allows the researcher to understand how a group of people thinks or behaves in relation to a certain issue. It is a strategy widely adopted in the business field, as a great amount of data can be collected at a low cost, being used for exploratory and descriptive research. This type of strategy allows data to be analysed quantitatively and qualitatively. Questionnaire is the most popular data collection technique that belongs to the survey strategy, however, there are other methods, which includes the use of interview (Saunders, et al., 2019).

3.6 Time horizon

The timeframe of a research can be defined in longitudinal and cross sectional. The former regards studies which are carried out for a long period of time, while the latter is the study of the subject in a specific point in time (Saunders, et al., 2019). Cross sectional is, therefore, the appropriate time horizon, as the research will focus on the current context of commercial mediation in Ireland.

3.7 Data collection

The research population is formed by companies based in Ireland which have not used mediation in their commercial disputes, so that the reasons for these organisations not engaging in mediation will be understood and, therefore, the limitations and opportunities for the use of mediation in the country will be identified. It is beyond the researcher's capabilities to identify every member of the population, as this is a large and diverse group. Thus, probability sampling cannot be used. A

non-probability sampling through self-selection method will be adopted, as 12 companies' representatives (6 employers and 6 employees) known by the researcher will be selected for semi-structured interviews, being the most easily accessible sample (Saunders, et al., 2019).

In order to aggregate value to the research, the author selected employers and employees from varied fields, so that a broad picture of the limitations in relation to the use of mediation can be obtained. In addition, as the data will be collected through virtual interviews via the platform Zoom, interviewees will have a chance to provide as much information as they wish when asked the questions, allowing the researcher to collect a large amount of data.

The questions of the semi-structured interview are divided in predetermined themes which will help the researcher to guide the conduct of the interviews. However, as this study is guided by the interpretivist paradigm, the structure of the interview is more flexible. Therefore, the questions asked may vary according to what each interviewee responds (Saunders, et al., 2019).

All the interviewees received an information sheet in advance of the interview, which provided them with information about the research topic, the interview process, their rights as participants of the study, the confidentiality term, and contacts for further information. Moreover, all interviewees signed a consent form to confirm that they were taking part in the research voluntarily and authorising the author to use the information provided by them for academic purposes. It is important to mention that the interview questions were sent to the supervisor for analysis and approval before any interview took place.

The predetermined questions to be asked during the interview will be presented in the next chapter. Furthermore, the transcript of one interview as well as the information sheet and consent form sent to interviewees will be available as a sample for readers in the appendix section. It is valid to mention that all the interview recordings and transcripts, as well as all the information sheet and consent forms signed by the interviewees will be uploaded to the link for supporting documentation provided by Independent College Dublin on their Moodle page.

3.8 Data analysis

As the research will gather qualitative data through interviews, a thematic analysis will be pursued. This type of analysis allows the researcher to analyse qualitative data in a systematic manner,

being an accessible and flexible method. In order to do that, the researcher will explore similarities and relationships in the data acquired (Saunders, et al., 2019).

The interviews will be recorded, with the interviewees' authorisation, and then transcribed. The aim is to identify patterns or themes that come up repeatedly in the series of interviews through the coding of the data. The research question and objectives will allow the researcher to select which data to code, which will then be interpreted in order to answer the same (Creswell & Creswell, 2018; Saunders, et al., 2019).

The first step to do a thematic analysis is to become familiar with the data gathered. This step begins as the researcher produces transcripts of the interviews and reads and re-reads them. Once the researcher is familiarised with the data, the second step is coding them. In order to do that, the author will use a manual approach in which he will label each unit of data - which may be a number of words, a sentence, or even a complete paragraph – from each interview transcript with a code that summarises or symbolises the extract's meaning. Different units of data with similar meaning are labelled with the same code during the process (Braun & Clarke, 2006; Saunders, et al., 2019).

The third stage then is searching for themes and recognising relationships in the list of codes, so that a list of themes that relate to the research question can be created. A theme may include several codes that are about one broad topic, or it may be one code that is significantly important to the research question, being converted into a theme. Subsequently, the researcher will analyse the list of preliminary themes created and the relationship among them, so as to decide whether to keep, discard, or merge them based on the data included in each category. There may be the need to create new themes or subthemes after this analysis (Braun & Clarke, 2006; Saunders, et al., 2019).

The fifth step is defining and naming themes. During this stage, the author will formulate explanations of the exact meaning of each theme and then decide a succinct and easily understandable name for each of them. Finally, the final step will be the presentation and discussion of the findings based on the thematic analysis (Braun & Clarke, 2006).

The table below shows the strategy for this process:

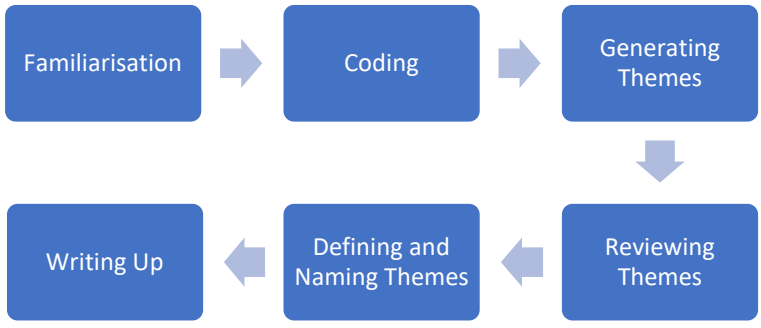

Table 2 – Six-step process of thematic analysis (Braun & Clarke, 2006)

In the next chapter, the interview questions will be presented as well as the purpose of asking each one of them. In addition, the author will analyse the answers given by the interviewees in a descriptive way in order to then propose a discussion on the topic based on the comparison between the findings of the primary research and the literature review.

4. Presentation and discussion of the findings

4.1 Overview

In order to answer the research question, it is necessary to analyse the findings of the primary research and how the information relates to the literature review. As mentioned in chapter 3, the author chose to analyse the qualitative data acquired in the interviews through a thematic analysis. 12 individuals accepted to participate in the study, being all of them from different companies and varied business fields. 6 of the interviewees perform a management role, while the other 6 are at a lower hierarchical level within the company they work for. In doing that, the author aimed to gather data from individuals from different backgrounds and, therefore, different perspectives on the topic, where a better understanding of the trends/feelings around commercial mediation could be investigated by the researcher.

As the author opted to conduct a semi-structured interview due to the interpretivist philosophy that guides the study, the questions asked to each interviewee varied according to their answers. There were 15 questions which were asked to all the participants, and within some of those questions other sub-questions could be asked depending on the interviewee's response.

The table below shows the main fifteen questions and sub-questions that could have been asked to the participants.

Introductory questions
1. Can you tell me your age, please?
2. What is the field of the company that you work for?
3. What is your position in the company?
4. For how long have you been working in this company?
Following questions
5. Have you and/or the company ever been involved in a commercial/workplace dispute that you are aware of?
5.1 If your previous answer was yes, could you tell me what the issue was and if it was solved?
5.2 Do you think that the dispute could have been resolved in a different manner? How?

Key questions
6. Have you ever heard of alternative dispute resolution methods?
6.1 If you have, could you name the ones that you know?
6.2 If you have heard of mediation before, could you tell me what is your understanding of how the process works?
6.3 If you had to name the advantages of using mediation over other means of solving disputes, what would they be?
7. The three main mediation approaches are facilitative, transformative, and evaluative. To explain them very briefly, in the facilitative approach the mediator is in charge of the process and assists parties to communicate so that they can reach mutually agreeable resolution based on information and understanding of their real interests and needs. On the other hand, the evaluative mediator focuses on solving the issue that brought the parties to mediation, without exploring any other issues that may have emerged from that. The evaluative mediator normally focuses on the legal aspects of the conflict and may have a more directive role. Finally, the transformative mediator aims to transform the relationship of the parties involved in the conflict through empowerment and recognition of themselves and one another. In this approach, the parties are in charge of the process and the outcome. After listening to this brief explanation of the three main mediations styles, in your opinion, what would be the best approach to be used in a commercial dispute and why?
8. Within a company, conflicts may emerge due to multiple factors, such the availability of tangible and intangible resources, uncertainty about company's policies, pressure, conflicting working styles, perceptions, roles, and goals. Moreover, there may be cases of discrimination, harassment, and bullying in the workplace. In your opinion, would mediation be suitable to solve the type of issues mentioned above? How?
9. Every organisation has external relations with other institutions. These relationships are based either on competition or collaboration, such as strategic alliance, joint ventures, buyer-supplier, buyer-courier, co-branding, franchising, cross-sector partnerships, and licensing. Most of these exchanges are regulated by a contract. When an issue arises from this relationship, however, most companies seek litigation or arbitration in order to reach a final binding decision on the matter. In your opinion, would mediation be suitable to solve the type of issues mentioned above and offer companies the level of certainty and enforceability of the decisions reached as they expect?
10. In your opinion, how much consideration do you think that companies give to legislation when deciding whether or not to use mediation to solve their commercial/workplace disputes?
11. Are you aware of any legislation which regulates the practice of mediation in Ireland?
11.1 If you answered yes to the previous question, what is your view on it? Do you think that legislation has to be improved or changed?
12. Do you believe that a mediation policy could be implemented in any type of company?

12.1 If you answered yes to the previous question, consider the following factors and tell me how they may impact the implementation of a mediation policy: number of employees, time, and budget of the business. 12.2 If you answered no to the previous question, in your opinion what are the factors which would prevent a company from implementing a mediation policy?
Final questions
13. In your opinion, what initiatives should be taken by the government in order to promote the use of alternative dispute resolution methods, especially mediation, in Ireland? 14. What other organisations and/or members of the private sector could take initiatives to promote the use of mediation in Ireland? How? 15. After participating of this research and being aware of the use of mediation in commercial disputes, do you believe that mediation should be considered the first means of solving disputes attempted by a company? Explain the reasons for your answer.

Table 3 – Interview Questions (Source: Author)

As the participants have never used mediation in their commercial/workplace disputes, the author found appropriate to offer them a brief explanation to the topic before certain questions, so that the interviewees had more clarity to answer the questions.

Question 1 to 4 aimed to identify the interviewee's profile. Question 5 and sub-questions 5.1 and 5.2 had the purpose of understanding what the participant's experience in relation to commercial/workplace disputes has been. Question 6 to 12.2 are considered the key questions of the interview as they relate to the research question and objectives. Question 6 and its sub-questions were asked in order to assess the interviewee's awareness and understanding of alternative dispute resolution processes, especially mediation. Question 7, 8, and 9 address the use of mediation in intra and inter-organisational conflicts and the mediation styles. Question 10, 11, and 11.1 focus on the regulation of mediation in Ireland. Finally, question 12 and its sub-questions intended to encourage interviewees to consider any barriers which prevent them from engaging in commercial mediation. Once participants have broadened their understanding of ADR, especially mediation, throughout the interview, the final questions 13 to 15 were designed to hear from interviewees their perspective about the use of mediation in commercial/workplace issues and the promotion of mediation in the country.

After the thematic analysis of the 12 interviews, the author developed a table which shows the patterns identified in the interviewees' answers. The themes and subthemes added to each category are presented below. Moreover, the reader can find in the appendix section a list of all the codes created by the researcher which are aggregated within the themes.

Mediation as a tool to manage human and financial resources	Barriers to the use of commercial mediation in Ireland	Promotion of commercial mediation in Ireland
•Effects of poorly or unmanaged disputes •Effectiveness and benefits in the resolution of commercial/workplace disputes	•The central role of unawareness and misconceptions about mediation •Resources: limitations to small companies •The lack of knowledge about legislation	•Initiatives to be taken by the government •Initiatives to be taken by members of the private sector

Table 4 – Presentation of the themes and subthemes (Source: Author)

The theme 'Mediation as a tool to manage human and financial resources' presents the answers given by interviewees with regard to the effects of poorly or unmanaged disputes that the participants themselves or the company they work/worked for were involved in. In addition, it is presented and discussed the participants' perceptions about the use of commercial mediation and its results to businesses and workers, as well as the approaches that can be pursued to the process. In the theme 'Barriers to the use of commercial mediation in Ireland', it is discussed the central role of unawareness and misconceptions on the limited use of mediation in the country, as well as the impact of the availability of resources, especially to small businesses, and the lack of knowledge about the legislation on mediation in Ireland, factors which are also seen as challenges to foster the use of mediation in the Irish jurisdiction. Finally, the theme 'Promotion of commercial mediation in Ireland' presents the interviewees' proposals to promote commercial mediation in the country as well as the author's view on the topic.

In the following sections, the findings will be presented and analysed according to the 3 main themes and 7 subthemes identified in the interviewees' answers.

4.2 Findings

4.2.1 Mediation as a tool to manage human and financial resources

Firstly, it is valid to describe the profile of the interviewees. 11 out of 12 participants are in the 25-35 age group. The business field they work in are the most varied, being, insurance, medical

devices, retail, food industry, building management, pharmaceutical industry, accounting, engineering, cyber security, and energy management. 9 out of the 12 interviewees have worked in their current job for 2 years or less, while 1 participant has worked over 3 years in the same organisation, and 1 interviewee has been with the same company for 17 years.

With regard to workplace or commercial disputes that either the interviewee or the company they work/worked for has been involved in, 10 out of the 12 participants mentioned issues that they either experienced or heard of in the workplace. Most of the issues were not solved or if solved, the interviewees still believe that it could have been resolved in a different manner. Among the causes of the issues mentioned were conflicting values, perceptions, working styles, resources, and pressure, as well as multiple factors, which can be interpreted in accordance with Art Bell (2002) and Brett Hart's (2000) findings. In addition to the causes of conflicts listed by the psychologists, one participant mentioned a conflict related to procedures, while several interviewees pointed the impact of poor communication to workplace and business relationships.

Besides being a cause of a conflict, lack of communication can be a barrier to the resolution of an issue. Interviewee 6 highlighted the effect of miscommunication to the resolution of a dispute that happened in the company they work for:

> Uhm, to be honest with you it, it seemed like a very aggressive situation because they, they didn't all meet up together. It was more so the union representatives were being used as a middleman some of the times, that from what I've heard of the situations, because they, my management were looking for kind of… A representative to take the fault or take the blame for the situation. So, they're looking for firings or sackings kind of thing. And they would give that information to the union reps, and the union reps would have to go back to the employees. And it was just kind of a messy thing…

When asked their opinion about the advantages of using mediation over other means of solving disputes, interviewee 6 continued:

> I think personally it would be the type of thing where everything is very clear, because going back to my example of, of the workplace that I, I worked in, it seemed like it was a very dysfunctional way of putting, like, giving information to each other through it. It kind of seemed like it was childish Chinese whispers kind of thing. If you've heard of that game before where you whisper in someone's ear and then they whisper again. And the theme of the thing is that if the first method that is said gets so badly interpreted every time that it comes along that the message in the end isn't, uhm, isn't even close to what the initial message meant to be. So… Once you have all main parties in a room with an impartial kind of adjudicator, I think it's, it's, it's always going to be very clear, and it's always going to be very upfront as to what is happening and what is being done, if that makes sense.

ADR has been used by different civilisations throughout history, given that conflicts will happen as long as there are two or more people interacting (Moore, 2014). As mentioned by Fisher

and Ury (1991), conflict is a growth industry, as people do not accept decisions dictated by others if these decisions affect them. Aligned with that view, interviewee 6 stated that:

> …I think as long as there's people working, there's always going to be some types of disputes 'cause everybody is different in how they see the world or how they go about their business. Even if everyone has good intentions, you, you'll still have public disagreements with people, especially when put under stress or pressure. So, I think once you have people working or interacting with each other, I think disputes will happen and, as a result you'll need a means to resolve those disputes.

In order to effectively manage these issues that emerge from human interaction, mediation should be pursued. As expressed by interviewee 9 ‘most of the time, from my experience, it's more emotions are involved. You know, people feeling disrespected or bullied, as you say. So, I do you think mediation would be a good option’.

The study findings correspond with the research undertaken by Cowan (2003), where the author expresses the impact of poorly or unmanaged disputes to the individuals involved in the issues as well as the organisation as a whole. Interviewee 4 believed that:

> …Plenty of problems and even health problems could be caused due to the lack of a good environment to work, you know, with the small things that you leave and don't fix it at the first time, you know, at the first start. And then you can, even, uhm, lost *(lose)* money because of that, you know, because if I, if I, if someone works for you, it's *(they are)* not feeling well, uhm, it's *(they are)* gonna miss… Days of work, and your production could be affected by this, you know…

The loss of human and financial resources (Cowan, 2003) and the importance of having trained staff, especially members of the management team, to be prepared to deal with conflicts (Gifford, 2021; Latreille, 2011; Liddle, 2017) can be seen in the comment made by Interviewee 5 when talking about an issue they had in their former job: ‘I had a few issues with other co-workers… And my manager, she didn't know how to deal *(with the issues)* or her supervisor. So, after a while I just decide to, to leave the company 'cause, like, that was impossible to, to live in that type of environment’.

Interviewee 12 was the only participant who did not agree that mediation could be used as a tool to manage intra and/or inter-organisational conflicts. According to them:

> …I would say that, uhm, our, our experience is that money fixes everything rather than mediation. We've had lots of problems, particularly during the financial crisis, when businesses went bust, when businesses, good businesses weren't able to pay and so on. But, again, we, we, we dealt with that stuff in-house, and we dealt with it internally. There was a few disputes that went legal, but that was, that was literally over big amounts of money and, uhm, just unable to pay. So, it was beyond mediation, do you know what I mean? So, yeah, I, I'm not sure mediation would have worked in any of the situations that we were in, yeah (Interviewee 12).

Even though the interviewee said they were able to manage most of the their issues internally without using mediation, the cases that went to court cost the company money and probably the loss of business partners. If mediation had been attempted, the company might have managed their human and financial resources more efficiently, as the method is a more amicable, less costly, and more expeditious means of solving disputes (Doyle, 2010).

Even if settlement cannot be achieved through mediation, the process should be considered at different stages of the commercial dispute, as issues may be narrowed down, which will still save the company money and time when the case is brought to court (Doyle, 2010). Aligned with that view, interviewee 6 mentioned that:

> It's very intense to be going into a legal kind of situation. The second there's a dispute, I think as, as we were discussing, having a mediation or having an impartial person there to help is, is, is perfect. It would really, really help, uhm, get over any issues that people might have, or it's a very good first step because you can kind of see: okay, this is gonna be an issue beyond mediation or at least 50%, 60%, 70%, 80%, 90% might be solved, or at least made better for mediation, which will always be... Even if an issue isn't completely resolved, I'm sure talking about an issue would help, 'cause at least it would define what exactly the problem is instead of have just people angry shouting at each other, you know.

The use of mediation in commercial disputes allows conflicting parties to enhance their communication, so that they can deal with the issue more constructively and arrive at mutually agreeable terms, while they maintain or even improve their relationship (Beer & Packard, 2012; Doyle, 2010; MII, 2021). In relation to that, interviewee 1 expresses that '…We are not dealing with only machines or paperwork'. They continued, saying that:

> …Before we would deal with papers, law and everything that would relate… not to physical contact, like, uhm. But then, if you have a mediator, I think it would be an extra. Especially today, uhm, like, even for the relationship with the employees change. The relationship in the industry change as well. So, people want to be connected (Interviewee 1).

In relation to the resolution of intra-organisational conflicts, 10 out of the 12 participants answered that mediation would be suitable. The potential benefit offered by mediation to companies and employees is highlighted by interviewee 2:

> I, I think at times in the work that we do, whereby sometimes, you know, the clearest path to, you know, execute your work may not be known, and then you could potentially have two sides to an argument where, like, both sides are extremely passionate about... .So, in that sense, you know, the kind of somebody to come in and kind of facilitate the discussion to actually come to the best solution for the company and the project involved. Well, I could see that kind of means very beneficial to us… Uhm so yeah, I, I think in my line of work anyway, if we had like a facilitator, it could probably very much ease some of the workload that's maybe put on it, so that we can actually make better decisions and at least understand our colleagues better.

In intra-organisational conflicts, interviewee 6 suggested that the transformative approach to mediation would be more appropriate, given that it would help parties with an ongoing relationship to reach long lasting resolution to their issues as well as prepare them for any future conflicts that may emerge, which can be interpreted in accordance with Bush & Pope (2002).

> …Transformative would be the best one in my opinion, especially if people are going to continually work close by each other, because it would kind of be a more natural kind of way of figuring out a resolution. Whereas some of the other ones, such as facilitative, or evaluative, seem like it's more, uhm, mediator based… So, I think it would have more of a lasting and effective, uhm, resolution to an issue (Interviewee 6).

This idea is supported by interviewee 5, who expressed that 'If you understand why we are having the problem, we can avoid future problems, not just with us but with the others as well, I believe'.

With respect to inter-organisational conflicts, interviewees' opinions varied. 7 participants agreed that mediation would be suitable, whereas 2 people believed that it depends on the type of issue, and 3 people stated that mediation would not be appropriate to solve disputes between organisations. The reason for their negative answer was related to the structure of such disputes, and the fact that this sort of issues usually has a legal and/or technical aspect and involves high amount of money, being arbitration or litigation more appropriate in such cases. These views are aligned with Lumineau, et al.'s (2015) findings.

On the other hand, mediation clauses have become more popular, and judges have backed the enforceability of well-constructed mediation clauses as well as mediated agreements (Feehily, 2016; Law Reform Commission, 2010). For inter-organisational disputes, therefore, an evaluative mediation may be more appropriate, given that the mediator normally has a background in the area of the dispute, such as legal or financial, and focuses on facts rather than feelings (Zumeta, 2018). On that view, interviewee 6 argued that:

> Uhm, I think one of the reasons why companies would probably try to go to litigation or arbitration quicker than going to mediation is because probably they want a definite answer or they want to kind of set in stone what will happen. Uhm, but to be honest, that sounds like it's a very lengthy, and it's a very expensive and a hassle filled process, whereas from how you described evaluative mediation, it sounds like it would be very matter of fact and help people get down to the bones of a situation. So, they could, they could really talk about and delegate the small issues, but through an impartial mediator that would probably be way cheaper and much more initially effective. Maybe it wouldn't work for everybody, and you might need your litigation and arbitration in some cases, especially for your very complex issues, but it definitely would help in a wide varieties of issues, I'd say.

Interviewee 10 agreed on the same aspect, stating that:

> The evaluative mediation sounds good, because it only focuses on the problem at hand…The third party being in, being independent of the, of the other two parties, uhm, uhm, and just being an effective way to… help them see the, the perspective of what the other party is seeing, as well as how it, how it fits into the, to the legislation or whatever contract has been drawn up between the two parties.

The interviewees' perceptions about the use of different mediation styles varied. The three most used mediation approaches – facilitative, transformative, and evaluative – were chosen by the interviewees for different reasons and purposes. This emphasises Zumeta's (2018) statement that mediators should not pursue only one approach. According to Zumeta (2018), mediators should adapt their style according to the nature and dynamics of the issue being dealt with as well as consider their own personal skills, given that each style has its contributions to the mediation field. On the other hand, this opinion conflicts with Bush & Pope's (2002) view on the use of only one unique approach, the transformative one.

The human and financial assets required from the company to implement a mediation policy should be considered an investment which will allow the business to save resources on a long-term basis (Liddle, 2017). In accordance with this view, interviewee 9, who is one of the 6 managers interviewed, affirmed that:

> I think, uhm, budget wise I think if it could be proven that it would save money in the long term, you know, and produce results, I think that the budget would be found. There's always budget for these things, once there's a good business case. And time, I think if you have to go to mediation, time will be found. I do think that probably people not finding the time is how you get to mediation, but people just ignore problems.

Furthermore, the comment above is aligned with the statement made by Latreille (2011) that employers tend to support mediation based on the cost-benefits to the organisation. Regarding this affirmation, interviewee 10 concluded 'I think that, that the company would rather spend time producing a product or delivering a service rather than being caught up in disputes. But at the same time, uhm, it can be essential to sort out these disputes to get production up and running'.

It is important to highlight that mediation allows organisations to deal with their internal and external disputes without damaging its reputation, as the process is held in private (Doyle, 2010; Feehily, 2016). Aligned with this view, when asked about the use of mediation in inter-organisational disputes, interviewee 2 outlined that:

> …The last thing you probably want is kind of to have your brand name being brought up in the paper is that you're involved in some sort of litigation activities. So, I suppose it probably is maybe a little bit more difficult in terms of, you know, you're probably going to need to have, say, they both, you know, your company and say the external companies actually come to an agreement to stage. Okay, yeah, we're happy to mediate on this before we go to litigation or arbitration. But you would imagine from our

> perspective or my perspective, I wouldn't want my company's name being brought through the papers to say, you know, we're being sued, or we're in some litigation activities. Until, you know, that's the, you know, until there's no other option, really. Whereas I would be kind of thinking, yes if we can have a, you know, a contractor mediator between the two parties to actually solve the dispute. Then to me, that's the best outcome.

When asked if mediation should be the first means of solving a dispute attempted by a company, 10 out of 12 interviewees answered yes. As mentioned above, their answers varied according to the type of issue being dealt with, be it attempted only to internal, external, or both type of issues faced by organisations and workers. Interviewee 12 was the only person who answered no, having the most conservative view among the interviewees. This may be related to their age, as they were the oldest participant as well as the employer who has been the longest time in the same company. Interviewee 9 offered an alternative perspective to the topic, which is aligned with Tripp's (1985) view, stating that mediation should not be the first means attempted, but litigation should definitely be used as a last resort. According to interviewee 9:

> So, I think that, uhm, the sooner you address a problem, the better. So, I think that mediation comes in somewhere in the middle. So, first you try to use your own personal relationship or common sense to try resolve an issue. Then, uhm, before that. If that doesn't work, then bringing in a mediator I think would be a good place, especially before going to anything like a legal dispute or cancelling contracts or anything too formal. Uhm, if you can get a good professional in, good reputation, again, not just kind of an agony columnist, someone to, like, a proper professional in, then, yeah, I think mediation comes in before you get into anything serious like litigation.

The researcher agrees with this statement, as the disputing parties as well as managers should first use their human relation skills in order to solve the issue without the need for engaging in any further process. In case this attempt is unsuccessful, however, mediation should be an option available to employers and employees without any prejudice to their rights under other company's policies, such as Grievance Procedure Policy or Dignity at Work Policy, which is in accordance with the mediation policy in place in the Central Bank of Ireland (2019). Unquestionably, for all the reasons mentioned above, litigation should be used as a last resort.

4.2.2 Barriers to the use of commercial mediation in Ireland

The main barrier to the use of mediation in commercial disputes in Ireland is the unawareness by employers and employees about the topic, which is in accordance with the research undertaken in the UK by the ACAS (Latreille, 2011). Only 3 out of the 12 interviewees had heard of the term ADR

before the interview. 1 interviewee knew and understood how ADR works because of their qualification in the same field, whereas the other 2 interviewees had heard only of mediation before, but their understanding was related to family disputes. Moreover, one of them knew about the use of mediation in landlord-tenant conflicts.

In relation to that, interviewee 9 expressed that 'I know that *(mediation is used)* in personal life, you know, people who say divorce and stuff like that, or if they are separated and, you know, they're arguing over custody of children'. The participant added that the government '…Could take a page out of the rental tenancy boards book, so their website makes it very clear on mediation, what's binding, what's not binding, how it works, how to avail of it. I think more information on it would be good'.

Interviewee 3, who performs a management role, stated that even though they had heard of mediation before due to their qualification in ADR 'Most managers and supervisors there *(in the company they work for)* they don't know at all what is mediation and the mediation facilities, mediation, uhm, mediation as like, like, a tool of resolve conflicts'.

Aligned with Shestowsky's (2017) findings that in the United States a considerable proportion of litigants have never spoken about ADR on their own initiative with their solicitors, Interviewee 9, who is also a manager, affirmed that:

> I think a lot of companies don't think about mediation. I don't think it ever entered our mind. It's always what's the contract say, and then we go to our solicitors and try to see: OK, is there room for us to, uhm, push back on anything? From my experience, I never heard the word mediation go into play.

In addition to unawareness, misconceptions about mediation are a significant reason why employers and employees still do not use the method in commercial and workplace disputes, which is aligned with ACAS's (2011) findings in the UK. When talking about the use of mediation in inter-organisational conflicts, Interviewee 4 mentioned that they did not believe mediation would be appropriate to solve such issues, because '…At the end of the day, everyone wants profit and, uhm, you know. And I don't think that in this kind of relationship outside of the company, uhm, this kind of mediation would be effective'.

As mentioned in the previous section, 3 participants believed that mediation cannot be used to deal with external disputes of a company. Although handling such conflicts through mediation may be more challenging than using mediation to manage internal disputes, it is still an effective dispute resolution method. People are, however, more likely to seek more adversarial resolution mechanisms, such as litigation and arbitration (Lumineau, et al., 2015).

Interviewee 12, who is an employer, mentioned at different moments of the interviewee that mediation was only possible to be pursued through external mediation services: ‘I think if you're bringing in mediation, you're bringing you, your, you certainly have a problem that, that, that, that, that cannot be resolved internally...’; ‘…I think if, if time would be applied internally would be better. If it can’t, maybe mediation will work’ (Interviewee 12). When asked if mediation should be considered the first means of solving a dispute attempted by a company, the participant stated:

> No. I would say always, my view would be, always it should be internal first. There should be every effort to resolve all disputes and to be aware of whatever niggles are going on before they become, you know, uhm, uhm, grounds for dispute. So, I think every measure should be taken internally before, uhm, mediation is considered (Interviewee 12).

As presented in the previous section, interviewee 12 mentioned that ‘money fixes everything rather than mediation’. This statement highlights their perspective that mediation is understood as an external process out of their control, and it is not financially beneficial to them, views which have also been identified in the research undertaken by the ACAS in the UK (Latreille, 2011). It was presented earlier in the study, however, that an in-house mediation scheme can be created and it offers benefits to companies on the long term, although external mediation services may suit smaller business better (Gifford, 2021; Latreille, 2011; Liddle, 2017).

Even though the 12 interviewees agreed that a mediation policy could be implemented in any type of company, when they were asked to consider the impact of the number of employees, time as a resource, and budget on the implementation of this policy, it was mentioned by several participants that the size of the business could be a barrier to the use of mediation in Ireland. The reason for this view is that small companies usually have a more limited availability of human and financial assets, as well as time to dedicate towards the development of an in-house mediation scheme (Gifford, 2021; Liddle, 2017).

For this reason, external mediation services are more appropriate to this type of business, however, it has to be acknowledged that such services may not suit the budget of some of these organisations. As interviewee 10 stated: ‘The smaller companies… would have tighter budgets and… wouldn't have time to research these alternative research methods possibly’. Aligned with this view, interviewee 9 expressed that:

> I think that's, uhm, it's a lot easier for big companies because maybe they don't have to go for outside help. They can just have someone internally who has no relationship with these people. Uhm, but I think in a small company, uhm, yeah, it would be very difficult because everyone has a relationship with everyone.

It is important to mention, however, that the size of a business does not prevent it from qualifying their workers on dispute resolution techniques. Courses could be offered so that employers and employees are prepared to deal with issues more effectively and efficiently even if a mediation policy is not in place in the company, given that conflicts are part of everyone's daily life.

In addition, the Workplace Relations Commission (WRC) offers mediation services at free or low cost for companies to deal with workplace disputes in Ireland (WRC, 2017). Even though the service would not be suitable for inter-organisational disputes, intra-organisational conflicts may be mediated by the mediation agency withing the WRC upon application of the parties. This highlights an attempt made by the government to facilitate the access to mediation for disputants, being the unawareness still the main barrier for people to avail of such services, as this research has shown.

Finally, this study has concluded that even though the legislation on mediation in Ireland presents contradictions and could be improved in certain aspects, as presented in section 2.4.1 - Mediation in the Irish Law, the regulation was not identified by the interviewees as a barrier for the use of mediation in the country. Again, the unawareness about the legislation has been identified as the main challenge to the promotion of mediation in Ireland. 2 out of the 12 participants were aware of the existence of regulation on mediation in the country. Interviewee 3 was aware of the regulation as they have qualification in ADR. Despite their awareness, they could not criticise the current legislation on the matter. Interviewee 9 had knowledge about legislation on landlord-tenant disputes regulated by the Residential Tenancies Board.

When asked about the consideration given to legislation by companies when deciding whether or not to use mediation to solve their commercial/workplace disputes, interviewee 8, who performs a manager role, answered: 'I think the company should consider that more, but I don't think people have knowledge about this kind of legislation, you know'. Interviewee 11, who is also a manager, stated that: 'To be honest, I think they're thinking more about money than about legislation'. Aligned with that view, interviewee 12 expressed: 'My observation would be that the, the government probably lead the way in terms of mediation... Do they do enough in terms of legislation? Honestly, I don't know'.

When asked the same question about the consideration given by organisations to regulations, interviewee 6 mentioned that companies would only focus on legislation if there was some sort of obligation on them to have a mediation procedure as part of their policies. Otherwise, as mentioned by other interviewees, they will only focus on money, as people have this misconception that mediation is not financial beneficial to them, usually pursuing more adversarial means to solve the issue:

> I, I don't think much to be honest, because unless it was a legal parameter or a legal necessity that they would have to have, they just would more focus on the dollars coming in and dollars coming out. They wouldn't really care as much unless it became a rather big issue in the company, then they'd probably look into it a little bit more, which is a bit of a weird way of doing. The preventive measures are always better than reactionary measures, in my opinion.

The answers given by interviewees support the thesis that mediation is not considered by companies as a means of solving their commercial / workplace disputes in Ireland due to the fact that they are unaware or lack understanding about the practice. Therefore, mediation is only considered by disputing parties when the case has been already brought to court, given the cost sanction in place for parties who unreasonably refuse or fail to participate in ADR, as mentioned in subsection 2.4.1 - Mediation in the Irish Law.

4.2.3 Promotion of commercial mediation in Ireland

It has been identified that the main barrier for the use of mediation in commercial and workplace disputes is the fact that people are unaware or misunderstand the process. Therefore, the first action needed to promote mediation in Ireland is to provide information about the topic, which should be done in a top-down approach, starting with actions taken by the government and then by companies, ensuring that workers are aware and understand how the process works.

As Latreille (2011) and Shestowsky (2017) state, parties' self-determination can only be achieved if they are aware and understand mediation, so that they can make informed decisions and frame their expectation in relation to the process, which will ensure parties' satisfaction and reduce the chances of future disputes and litigation on the case.

In relation to the role of the government in increasing awareness, interviewee 8, who is a manager, mentioned: 'Make people know more about the, the legislation and this sort of things, of course. If we have more knowledge about this, it will be easier to implement'. Aligned with this view, interviewee 9, who also has a management position in a small business, stated that:

> …A lot of companies outsource their HR or their accounting. So theoretically, if there was a company out there who had mediation services and made it very clear what it is, uhm, yeah, I could absolutely see myself reaching out to those people, or suggesting using a company like that. Just as long as it was very obvious, very clear what the services were, 'cause I don't want to pay for someone who's not trained or there's no regulations around us. If I was to advocate for mediation, I'd want good structures in place, professional and then backed by law.

Based on participants' 8 and 9 statements above, it is possible to conclude that if companies are made aware of mediation and its respective legislation and benefits, they are likely to consider adopting it into their policies, either through developing an in-house scheme or seeking external mediation services, especially in the case of small businesses. There are highly qualified mediators available in Ireland as well as there is legislation to regulate the practice. Therefore, the main barrier remains the government making companies aware of mediation and create incentives for them to use it. The media could play an important role in the promotion of information, as well as the organisation of workshops and trainings with relevant business sector representatives.

Interviewees 5 and 11 mentioned that the government could create a tax incentive for companies which adopt mediation into their policies, as businesses give high consideration to the financial benefits that such implementation would offer them, as it has been mentioned in the literature review (Latreille, 2011) and also by other participants in the research. As interviewee 11 expressed: '… (*the government should)* give some, some financial incentives, like tax, reduce some tax would always help. Probably would make them *(the companies)* just think about it'.

The incentive of mediation by the government would be beneficial to the Irish court system. Interviewee 10 concluded that:

> I think that Ireland is a, there's a court system that is overloaded at the minute, so, uhm, alternative dispute resolution, uhm, could be brought in by, uhm, educating the, uhm, relevant businesses and people about the, the effectiveness of mediation and the, the benefits of using mediation over, over typical dispute resolution.

In case the creation of a tax incentive would not suit the budget of the government, another alternative suggested by participant 3 would be to create regulation which required that companies had a mediation policy in place:

> I think could be like, uhm, all the, all the companies should have these policies… if the company doesn't have this policy, it'd be, like, out from the law, kind of…I think that's kind of the incentive…. Government waste money when people go to court as well. Do you know? All the process to go to court is long and it's expensive. So, the government pay as well for this (Interviewee 3).

The researcher believes, however, that such regulation could be challenged by organisations, especially the smaller ones. If this legislation was to be implemented, the offer of mediation services free of charge or at low cost, such as the service available at the WRC, would have to be expanded. With such a requirement by law, the demand for mediation services would definitely be increased in Ireland and the creation of eligibility criteria could help the government to manage the access to free mediation services, ensuring the small-sized businesses with a certain amount of revenue per year

could avail of it, whereas companies with higher revenues could implement the policy either by training their own staff to develop an in-house mediation scheme or contract the services of external mediators on an ad-hoc basis.

Interviewee 6 and 9 mentioned that the government should create a national council which could facilitate the access to information about mediation, offer mediation services, and help in the regulation of the practice. Interviewee 6 highlighted that:

> …Maybe some type of National Council or… Some, uhm, government registered body that would, I don't know, offer or some way to facilitate mediation would be good, because then it would be more well known. I don't think it's as widespread or as commonplace in Ireland.

The creation of the Mediation Council of Ireland is proposed in section 12 of the *Mediation Act 2017* (Irl). Even though the MII is the body that accredits mediation training courses in Ireland and promotes mediation in the country, a mediation council has not been created or recognised by the government yet.

Finally, interviewee 9 suggested that legislation could be improved with regard to the protection of individuals who decide to seek mediation to deal with their workplace conflicts:

> …Also, I think if, I don't know, if maybe anonymity would be a barrier for people to seek mediation. I think there should be protections for people to be able to go and look to these bodies for help. And not suffer any, also, any negative consequences at their workplace.

Such improvement of the legislation was not considered in the literature review, and the researcher welcomes the suggestion, as people have to be treated fairly and not feel attacked or threatened if they decide to solve their workplace issues through ADR.

Following the initiatives that could be taken by the government to foster the use of mediation in commercial disputes in Ireland, companies would also have a role to play, as they would need to include mediation clauses to their contracts in order to deal with any inter-organisational dispute that may arise, whereas internally they would need implement a mediation policy and ensure their employees were aware that mediation was available for them to use in case an issue happens.

The importance of a mediation policy in large businesses is a pattern identified among the interviewees' answerers, which is aligned with Gifford (2021) and Liddle's (2017) views that the size of the company should be considered for the implementation of such policy. Interviewee 6 pointed that:

> …The more employees there are in a business is probably the more chance of having a... It's just from a, uhm, numbers aspect, probably if there's one in 10 people who have a dispute, maybe every year or something. If you have 100 employees or 1000 employees, it kind of exponentially get greater.

The Bank of Ireland (2019) is an example presented in the literature review of a large business that already has a mediation policy in place. Interviewees believed that big organisations are the main actors in the private sector in terms of promotion of mediation, as these companies are models of businesses for smaller institutions. Interviewee 1 stated that:

> So even if you don't have it in your company, you can get inspired for the companies that have this type of mediation. And normally multinational companies always have this. So, if they have it is for a reason. If it's there, why not explore? Why not try?

Gifford (2021) and Liddle (2017) described that members of the HR department are normally involved in the development of a mediation policy, being themselves the mediators in many cases. Interviewees confirmed this view. Participant 2 stated: '…All of that is going to come back to our HR board and how much they want to actually pursue mediation versus litigation versus arbitration'. Interviewee 9 believed that: '…It (*mediation)* would be helpful, and I think someone from HR should really be in charge of it'.

It was pointed by interviewees that if issues are not dealt with by the HR, they are normally handled by managers or even the owner of the company, especially in small-sized organisations. Interviewee 4 mentioned that:

> Uh, I think, I think everything is kind of proportional in a small company…. So, maybe the HR of the company could work with this *(mediation)*. I don't know. And some companies, I don't, maybe don't have not even, uhm, HR, so maybe it's the owner that do this, so he may do the mediation part also… I think, they do this, like, uh, naturally, you know, to solve this kind of conflicts, you know, the owner and with like 2… employees…

However, when the owner or line manger deals with the dispute, their relationship with the parties may affect the resolution of the conflict, which is against the core principle of impartiality in mediation (MII, 2021). Moreover, they may not be prepared to manage issues properly. As interviewee 2 indicated: 'I suppose sometimes that role can kind of end up falling into a project manager, but again, they mightn't be an expert in kind of actually mediation between a dispute between two colleagues about, you know, their actual work'.

For this reason, if mediation is needed to solve the issue, a neutral and impartial mediator is essential, be this person a qualified employee, who has no relationship with the parties, or an external mediator. On that view, interviewee 2 stated that:

> …You need to kind of work it into the head count of the company that, you know, you say: okay, well, we have one impartial mediator here and not somebody who's, you know, a project manager as such to kind of take control of it. Kind of has to be somebody that's totally impartial to it, and then, therefore, kind of give the time, or, for them to kind of, you know, put up, you know, policies in place.

Besides a mediation policy, it is essential that companies offer workers courses to develop dispute resolution skills, so that they can deal with issues more effectively and efficiently, especially during any decision-making process of a company, moment in which conflict is likely to arise (Fisher & Ury, 1991). Interviewee 2 highlighted that if workers were trained to use mediation techniques, a new organisational culture based on open and honest dialogue could be created, in opposition to a reactive culture in which more formal complaints/grievances procedures are pursued when an issue arises, as mentioned by Latreille (2011).

> I think as I was probably saying in an earlier answer, if you can sort of nearly build mediation into your process as nearly a frontline tool as opposed to a last resort. It may kind of lead to probably more conflict resolution before you even have your conflict… I think firstly you'll probably get to the source your problem a lot quicker. You'll probably have a lot more open, far more open discussions in terms of: Okay. Well, what are our baseline problems at the minute? You'll probably get better engagement with your employees. But also, you're probably not going to create, you know, any cultural issues, whereby we're kind of looking to, you know, pull that fire alarm whenever we kind of have any big disputes down the line. So, the fact that you're kind of, you know, there for creating and kind of harbouring an open and honest culture. You know, mediation can be the forefront of that as opposed to being the last resort (Interviewee 2).

This perspective is aligned with interviewee's 9 view that before engaging in mediation, conflicting parties and managers should try to resolve the issue using their own dispute resolutions skills. In order to do that, however, these skills must be developed first, and companies could offer workers training on that.

To sum up, as interviewee 7 expressed, government and companies may take initiatives in order to foster the use of mediation in Ireland, being access to information and qualification the main features of these actions.

> Maybe promoting more courses around that theme. You know, I, I think also bringing more informations about mediation… Like, both sides, like, the government side, but also the company side. So they can, you know, in a way, let them, their employees, know about that as well, uhm, that they have this option (Interviewee 7).

Based on the interviewees' answers, it possible to conclude that once people are made aware of mediation and understand the potential benefits of the process, they are likely to consider the implementation of a mediation policy in their companies as well as use dispute resolution techniques

in their daily life. The answer given by interviewee 8, who is the manager of a company, highlights this affirmation:

> You explained to me some things that I, I didn't know about. And after have this conversation and know a bit more about mediation, I think, uhm, It probably should be something that the companies would implement in their policies to facilitate communication, uhm, as I said, in a daily basis.

4.3 Conclusion

The participants' answers to the interview questions allowed the researcher to conclude that the main limitation to the use of mediation in commercial disputes in Ireland is the unawareness about the process. Misconceptions about mediation may be another reason which prevents some businesses from using this ADR method. These findings are aligned with the limitations identified in the research undertaken by ACAS (Latreille, 2011) in the UK.

Surprisingly, the current legislation on mediation did not seem to be a barrier for organisations to engage in the process, as 11 out of the 12 interviewees did not know about the regulation on the practice of mediation in Ireland and its use in commercial disputes. Even though the Irish government has created different regulations on the topic, which seems to be an attempt to promote the use of mediation in the country, the findings of the research indicate that people do not take into consideration such legislation, because they are not aware of mediation as a means of solving disputes in the first place. Once businesses are aware and understand the process, the legislation is likely to become an important factor to be considered, as companies need to engage in processes which are backed by law.

The availability of resources seemed to be another limitation for the use of mediation in Ireland, as it has also been indicated in research in the UK (Latreille, 2011). While the government offers mediation services free of charge or at low cost for workers to resolve their workplace disputes in the WRC, the use of mediation in inter-organisational conflicts may be a challenge due to the expenses and time needed to engage in the process – which could be a barrier especially to small organisations.

Moreover, the participants' answers offered new perspectives on the promotion of commercial mediation in Ireland. Employers and employees contributed with ideas of actions that the government as well as the companies could take in order to foster the use of mediation in the country. After the analysis of the interviews, the researcher adapted their initial perspective that mediation should be

the first means attempted by a business to solve disputes. The use of human relation skills to solve conflicts should be attempted first, and in order to do that, training on dispute resolution techniques is essential and should be offered by companies. If personal skills are not enough for the issue to be resolved, then mediation should be considered, and companies should have a policy in place for that. The researcher strongly believes that litigation should be used as a last resort.

5. Concluding thoughts

Intra and inter-organisational disputes are prone to arise, as conflict is part of any decision-making process (Fisher & Ury, 1991). Therefore, a tool to manage these issues effectively is essential.

As it was presented in this paper, mediation is a means of settling disputes that allows businesses to manage their human and financial resources more effectively. The process is usually expeditious, less costly, and more amicable, when compared to typical dispute resolution methods such as litigation and arbitration (Doyle, 2010). Parties who engage in mediation avoid damaging their relationship further and may even improve it during the process, which is essential for companies to keep their business partners and ensure a good workplace environment. Whereas companies may look at the financial benefits of using mediation, employees may be more interested in the interpersonal aspects of the process, and both are advantages offered by mediation (Latreille, 2011).

There are different approaches that can be pursued for commercial mediation, such as the facilitative, evaluative, and transformative models. Participants in the study had different preferences of mediation styles, which is aligned with Zumeta's (2018) view that the mediator's approach should be flexible, being adapted to the nature of the dispute and the mediator's skills. Some interviewees found evaluative mediation more appropriate for inter-organisational conflicts, due to its more technical nature, whereas other participants believed that the transformative model was the best for intra-organisational issues, as the parties normally have an on-going relationship. The facilitative style was mentioned for both types of issues for varied reasons, being the main focus the communication that is established between the conflicting parties.

The findings of the research confirmed that mediation is not widely used by companies in Ireland because people are not aware of the process or do not understand it properly. Even though the Irish government has created legislation on mediation, this did not seem to be enough to promote the method. It is possible to conclude that people are not aware of the legislation on the topic nor the mediation services available in the country. After being informed about mediation and the potential benefits of the process, most interviewees expressed that they would be likely to consider using it.

Mediation could be promoted through actions taken by the government and companies, firstly by increasing awareness about the process. Among the actions that can be taken by the government to promote mediation in Ireland are the creation of a tax incentive for companies which adopt a mediation policy for their internal conflicts, or legislation which requires that all the companies have a mediation policy in place – as long as mediation services offered by the government are expanded in order to guarantee that companies with limited budgets can avail of it. Furthermore, the creation

of the Mediation Council of Ireland, as it is proposed in section 12 of the *Mediation Act 2017* (Irl), would be welcomed by the field in order to increase awareness and access to information about mediation. Mediation services could also be offered by the Council, especially if a legislation that required companies to have a mediation policy was implemented. Moreover, a law that guaranteed protection to parties who seek mediation could be created, so that parties feel safe to engage in such process without the fear of being punished in the workplace.

With respect to companies, once they are aware of the method, it is recommended for them to have a mediation policy in place to deal with their internal disputes, either through an in-house mediation scheme or external mediation services (Gifford, 2021; Liddle, 2017). There are a variety of private qualified mediators available in Ireland, as well as the mediation services offered by the WRC for workplace disputes, which are free of charge or at low cost (WRC, 2017). In addition, organisations should qualify workers on dispute resolution techniques, so that they can use these skills on a daily basis to solve issues locally before mediation is even needed.

In relation to inter-organisational conflicts, the insertion of a mediation clause to business contracts has become more popular and the enforceability of such clauses as well as the mediated agreement normally have been supported by Irish courts (Feehily, 2016; Law Reform Commission, 2010). The use of mediation in this type of conflicts, however, may be more challenging depending on the structure in which the conflict is developed in - multiple parties with decision-making power may be involved, especially in disputes between big companies (Lumineau, et al., 2015). In addition, cost may be a limitation for small-sized companies to resolve their external disputes through mediation. Litigation, however, is likely to be more costly and harmful for the business. Therefore, it should be used as a last resort.

The overall aim of the research was to understand the reasons which still prevent companies based in Ireland from using mediation when commercial disputes arise, and once these reasons had been identified, to suggest initiatives that can be taken to overcome these barriers in order to foster the use of mediation among employers and employees in the Irish context. It is possible to affirm, therefore, that this goal has been achieved after the analysis of the data.

For future research the author would recommend the conduction of more interviews with larger groups of employers and employees who have not used mediation in their commercial/workplace disputes in order to have a better and deeper understanding about the limitations on the use of this method in Ireland. Moreover, the researcher would recommend the conduction of an investigation with employers and employees who have engaged in commercial mediation in Ireland, so as to complement the study with this third point of view from people who have been through the process and would be able to offer their perspective about it.

Reflections

Studying a master's degree is a challenge in any field, and the challenge becomes even bigger if the course is being taught in a language that is not your mother tongue. The level of critical thinking required from the course is high. The conduction of an investigation and the creation of a piece of work based on your findings is an experience that makes you grow as an academic and professional in your field.

One of the reasons why I chose to study a master's in Dispute Resolution was to develop my negotiations skills, which I would like to apply at a business level. During the lectures I was presented to mediation as a means of solving disputes, a method that can be applied to several fields and allow effective management of human and financial resources in situations of conflict. I learned about the importance of a clear and constructive communication, active listening, empathy, among other skills developed that have been useful in my professional and personal life. Similarly, I believe that other people may not be aware of mediation and the importance of developing such skills. Therefore, I wanted this research to be a project to raise awareness about a topic that I strongly understand as essential to everyone's life, while also keeping the focus on the business field, which is where I have my professional background in.

There were many challenges to conduct this study, being them deciding the appropriate topics to be included in the paper within such a broad theme, researching about the theory and relevant authors - especially in relation to the barriers to the use of mediation, as research on the theme is very limited in Ireland -, finding interviewees from different fields and roles who were willing to participate in the study in order to aggregate value to the research and offer a broad perspective on the topic and, finally, managing all the tasks above while also having responsibilities to meet in my professional and private life.

Based on my findings of the research and the feedback I received from interviewees, I believe this study contributed to the academy, as new knowledge and perspectives about the topic were developed, as well as provided information to employers and employees who, like me one day, did not know about mediation. This might have been the first step for participants, especially managers, to further research about the topic and promote mediation in their workplace. I believe that I achieved both of my goals and I am proud of my work.

There will be always need for more research and I acknowledge that due to the time and length of the study, the findings are limited and cannot be generalised to the whole population. More research on the topic could confirm and/or uncover new findings.

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Appendix

Appendix A – Information Form & Consent Sheet

Information Sheet for participants

Project title:

The promotion of mediation in commercial disputes as a tool to effectively manage human and financial resources in companies based in Ireland.

My name is Arthur Ribeiro. I am a student enrolled in a master's in Dispute Resolution at Independent College Dublin. The supervisor of this research is Mr. Klaus Walter, one of the lecturers at the business school at Independent College Dublin.

You are being asked to take part in a research study on the promotion of mediation in commercial disputes in companies based in Ireland.

Even though mediation is a millenary practice, its use in commercial disputes is relatively new in Ireland. Therefore, this project aims to explore the reasons which still prevent employers and employees from using mediation when issues arise, so that recommendations can be made to overcome these barriers in order to foster the practice in the country.

WHAT WILL HAPPEN

The research population chosen for this project are employers and employees of companies based in Ireland who have never used mediation in their commercial/workplace disputes.

In this study, you will be asked to answer some questions in relation to your professional background, disputes that you and/or the company that you work for have been involved in the past, the manner in which these issues were solved, your knowledge about alternative dispute resolution methods - especially mediation -, and your opinion on this topic.

Your answers will be of great value, as they will contribute to the creation of new knowledge in the mediation field, which will be useful for the academy as well as the society, especially businesses based in Ireland, as the project aims to increase the awareness and foster the use of mediation by companies in the country, given its advantages for the finances and relationships of an organisation.

TIME COMMITMENT

The interview should take about 20 minutes.

PARTICIPANTS' RIGHTS

You may decide to stop being a part of the research study at any time without explanation required from you. You have the right to ask that any data you have supplied to that point be withdrawn / destroyed.

You have the right to omit or refuse to answer or respond to any question that is asked of you.

You have the right to have your questions about the procedures answered (unless answering these questions would interfere with the study's outcome. A full de-briefing will be given after the study).

If you have any questions as a result of reading this information sheet, you should ask the researcher before the study begins.

CONFIDENTIALITY/ANONYMITY

This interview will be recorded and all interviewees will be made aware of it in advance to the commencement of the interview.

The research is guided by the principle of confidentiality, therefore, identifying information such as your name, name of the business, and third-parties that may be mentioned during our conversation will not be included in the transcript of interview and will remain confidential. The information will be provided for research purposes only and, therefore, cannot be divulged.

The original recordings and the consent forms will be securely retained in possession of the researcher (Arthur Ribeiro) until the end of November 2021, when the Independent College exam board will confirm the results of the dissertation. The audios of the interviews and the dissertation will be uploaded on the moodle page of Independent College for evaluation of the work.

DECLARATION

This research is being carried out in accordance with the WMA Declaration of Helsinki ethical principles (available at: https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/).

FOR FURTHER INFORMATION

If you require any further information or have any concerns in relation to this research, you are welcome to contact the researcher at arthursilva50@hotmail.com. You may also wish to contact the research supervisor, Mr. Klaus Walter at klaus.walter@independentcolleges.ie.

INFORMED CONSENT FORM

PROJECT TITLE: the promotion of mediation in commercial disputes as a tool to effectively manage human and financial resources in companies based in Ireland

PROJECT SUMMARY:

By checking the box below, you confirm that:
(1) you have read and understood the Participant Information Sheet,
(2) questions about your participation in this study have been answered satisfactorily,
(3) you are aware of the potential risks (if any), and
(4) you are taking part in this research study voluntarily (without coercion)

☐ **Agree**

Name of the research participant:

_____

Date:

_____

Independent College Dublin, Block B, The Steelworks,
Foley Street, Dublin 1, D01 X997
Tel: 01-877-3901
E-mail: info@independentcolleges.ie

Appendix B – Sample of interview transcript

Interviewee 1

00:00:02 Speaker 1
Hello, my name is Arthur and I'm going to talk to you about commercial mediation. You agree that you have read and signed the information form and the consent sheet and you are taking this interview voluntarily.
00:00:22 Speaker 1
Can you confirm that please?
00:00:24 Speaker 2
Sure.
00:00:24 Speaker 1
Perfect.
00:00:27 Speaker 1
So, I'm going to start asking you a few questions. So, could you please tell me your age?
00:00:34 Speaker 2
My age is 32 years old.
00:00:38 Speaker 1
OK, and what is the field of the company that you work for?
00:00:46 Speaker 2
Insurance.
00:00:47 Speaker 1
Insurance? All right. And what's your position in the company?
00:00:52 Speaker 2
Uhm, administration agent.
00:00:57 Speaker 1
OK. And for how long have you been working in this company?
00:01:03 Speaker 2
For four months.
00:01:11 Speaker 1
For four months, yeah?
00:01:20 Speaker 1
Can you hear me?
00:01:21 Speaker 2
Yeah, I can hear you.
00:01:28 Speaker 1
You were just breaking up.
00:01:34 Speaker 2
Yeah, right?
00:01:37 Speaker 1
So, can you just repeat please for how long have you been working in the company?
00:01:43 Speaker 2
It's been four months.
00:01:47 Speaker 1
OK, perfect. And have you or the company ever been involved in a commercial or workplace dispute that you are aware of?

00:01:57 Speaker 2
No.
00:01:59 Speaker 1
No? Okay. And have you ever heard of alternative dispute resolution methods?
00:02:07 Speaker 2
No, I've never heard about it.
00:02:12 Speaker 1
No? Okay. So, alternative dispute resolution methods are, uh, approaches that you can use to solve disputes instead of going to litigation, so one of them is mediation and the three main approaches are facilitative, transformative, and evaluative mediation. So, to explain them very briefly to you, in the facilitative approach, the mediator is in charge of the process and assists parties to communicate, so that they can reach mutually agreeable resolution based on information and understanding of their real interests and needs. On the other hand, the evaluative, mediation, mediator focuses on solving the issue that brought the parties to mediation without exploring, uhm. Sorry, without exploring any other issues that may have emerged from that. So, the evaluative mediator normally focuses on the legal aspects of the conflict and may have a more directive role. And the transformative mediator aims to transform the relationship of the parties involved in the conflict through empowerment and recognition of themselves and one another. So, in this approach, the parties are in charge of the process and also the outcome of the dispute.
00:03:47 Speaker 1
So, after listening to this brief explanation of the three main mediation styles, in your opinion, what would be the best approach to be used in commercial disputes and why?
00:04:04 Speaker 1
Audio breaking up.
00:04:18 Speaker 2
I think the transformative one would work better, because if you're thinking, uhm, about the relationship, for both parts, for both, uhm, at both sides would be benefit. Would avoid to lose a customer or to give a bad review. And also, in my opinion, is a way for the company shows that they care of the issues that happened, and they are prepared to deal with and to receive any type of negative feedback that could occur at any time. They are prepared to understand and solve the sides. Not only this, but then it would, like, affect the relationship with the customers. I think is very important thinking in the marketing situation and the proper industry market, and I think that evaluation would, should be considered.
00:05:24 Speaker 1
Okay, perfect, thank you very much. So, within a company, conflicts may emerge due to multiple factors. So, there could be an issue related to the availability of tangible or intangible resources, uncertainty about company's policies, pressure, conflicting working styles, perceptions, roles and goals. So, there may be also conflicts based on discrimination, harassment and bullying in the workplace. So, in your opinion, would mediation be suitable to solve the type of issues mentioned above and how?
00:06:11 Speaker 2
I think it would be a very important role to help the HR to deal with that in a, uhm, better way, like, following all the laws, steps and or like, it's difficult to do with people nowadays. So, I think as much as you get it prepared is important. Especially like big companies. They need to care about their brands and they need to be prepared to anything.
00:06:41 Speaker 1
Mm-hmm. Okay. Perfect. Thank you.
00:06:44 Speaker 1
And in every organisation, like, every organisation has external relationships with other institutions as well. So, these relationships are based either on competition or collaboration, such as: strategic

alliance, joint venture, buyer-supplier, buyer-courier, cobranding, franchising, cross sector partnerships, and licencing. So, most of these exchanges are regulated by a contract and when an issue arises from this relationship, however, most companies seek litigation or arbitration in order to reach a final binding decision on the matter. So, in your opinion, would mediation be suitable to solve the type of issues mentioned above and offer companies the level of certainty and enforceability of decisions reached as they expect?

00:07:45 Speaker 2

Yes, yes, it is. And I just can think in my mind that and before we would deal with papers, law and everything that would relate to not to physical contact, like, uhm. But then, if you have a mediator, I think it would be an extra. Especially today, uhm, like, even for the relationship with the employees change. The relationship in the industry change as well. So, people want to be connected. So, I just keep thinking about it.

00:08:30 Speaker 1

OK, perfect. And in your opinion how much consideration do you think that companies give to legislation when deciding whether or not to use mediation to solve their commercial workplace disputes?

00:08:45 Speaker 2

I think if they don't consider to use mediation it could be a risk. Risk, uhm, not to be prepared to give the right support to their employees or to them. Uhm, they probably would not be prepared to deal with the big problems, like. I don't know, like, imagine a big company or even a small company. So, you have a problem that you didn't expect to have this problem. How would you explain this to your company, to your employees? We will deal with that, we are not dealing with only machines or paperwork. I think don't have a mediation would be... (Audio breaking up). So even if you don't have it in your company, you can get inspired for the companies that have this type of mediation. And normally multinational companies always have this. So, if they have it is for a reason. If it's there, why not explore? Why not try?

00:10:14 Speaker 1

Alright. And, are you aware of any legislation which regulates the practice of mediation in Ireland?

00:10:23 Speaker 2

Mediation, no, but I know about the GDPR, that, uhm, about data breach and all. Not exactly.

00:10:32 Speaker 1

Huh, okay. And do you believe that mediation could be implemented in any type of company?

00:10:43 Speaker 2

I guess yes. I don't think there is a style that would not be fitted on this. So, in the end, you're dealing with people. So, why not?

00:10:56 Speaker 1

Okay. So, and, could you consider the following factors and tell me how they may impact the implementation of a mediation policy? So, the number of employees, time, and the budget of the business?

00:11:17 Speaker 2

Uhm, I think they would impact the number of employees in a way that the employees would feel protect and would feel involved in their workplace. Uhm, time, I think they would solve problems quicker and more accurate depending on the field the problem raised for. And, the budget. I'm not true aware of budgets and everything. But, look, if you have a, uhm, complaint sector, you need to implement those things, especially nowadays, and you must be prepared. So don't think you don't have to consider this just because of the budget if it's just benefit you.

00:12:21 Speaker 1

Okay. And in your opinion what initiatives, uhm, should be taken by the government in order to promote the use of alternative dispute resolution methods, especially mediation, in Ireland? Do you think that the government could do something to promote this practice?

00:12:44 Speaker 2
I'm not sure if they could promote. But if they have some, like, promotions or adverts about it, people will get to know more about it. And we'll be aware of this, 'cause I wasn't aware about all the type of mediations since today. So, maybe, okay, I should go and Google and looking for. But if you are starting a new company or if you have a company or something like that, you try, you want to improve it, uhm, especially in the in the market and, uhm, in industry, you, the government could at least give you using informations about it. Have somewhere in the website or so.
00:13:34 Speaker 1
Okay. Alright, and what other organisations and or members of the private sector could take initiatives to promote the use of mediation in Ireland and how?
00:13:53 Speaker 2
Let me think. Umm, in my company we take a few exams, like, they offer few exams per year, like, they pay certificates and other ones. They could rise the awareness of, uhm, be prepared and be qualified to deal with this type of problems using the mediator. Or even, like, contracting the right people to work with, who has some sort of degrees or experience in the area.
00:14:44 Speaker 1
Okay. And after participating in this research and being aware of the use of mediation in commercial disputes, do you believe that mediation should be considered the first means of solving disputes attempted by a company? And could you explain the reasons for your answer?
00:15:06 Speaker 2
I think it is I. I work in the admin, but we deal with complaints as well, and it's really tough to deal with that. Like, I'm talking about customers, we respond by our company. And, sometimes it's difficult to get the right answer on time and you have to be careful. It's also very a lot of pressure on our shoulders to deal with things like this. We would have a place in the company specifically to take those complaints, or you know, 'cause could escalate it for something bigger. Uhm, would it be easier for everybody, would be less pressure, I guess, on us. You know, sometimes we are not prepared for that, you know.
00:16:06 Speaker 1
Okay, yeah. So, that was the last, uhm, question. So, I'm just going to give you a final overview of the topic, so that you can understand better mediation. So, like, we... This research is trying to promote the use of mediation in internal and external disputes that arise in a company, because mediation is a more amicable, cheaper and faster method of solving disputes. Because besides resolving the problem, you are also trying to keep or even improve the relationship between the parties involved in the conflict. So, if you go to litigation, normally it's a more adversarial way of solving the dispute, and normally the parties don't keep any type of relationship after that, because the relationship is broken down. And mediation try to avoid that, because the parties can talk about the issue, both of them try to find the best way to solve the problem and then they can work together to resolve the issue and keep their relationship. So, in the end, it's a way for the company to save money and also preserve their relationships.
00:17:28 Speaker 2
Lovely.
00:17:31 Speaker 1
Well, thank you so much for participating and for your time.
00:17:36 Speaker 2
Thank you.

Appendix C – List of codes

Theme: Mediation as a tool to manage human and financial resources

Subtheme – Effectiveness and benefits in the resolution of commercial / workplace dispute

1. CODE – RELATIONSHIP
2. CODE – CONFLICT MANAGEMENT
3. CODE - SUPPORT
4. CODE – RESOURCES SPENT ON MEDIATION SEEN AS INVESTMENT
5. CODE – COMMUNICATION
6. CODE – CONFIDENTIALITY
7. CODE – LITIGATION SHOULD BE LAST RESORT
8. CODE – REPUTATION
9. CODE – IMPARTIALITY
10. CODE – EMPATHY
11. CODE – HUMAN RESOURCES
12. CODE - FACILITATIVE AS THE FIRST ATTEMPT AND EVALUATIVE AS SECOND OPTION
13. CODE – BENEFITS OF TRANSFORMATIVE MEDIATION TO PRESENT AND FUTURE
14. CODE – EVALUATIVE MEDIATION MORE APPROPRIATE FOR INTERORGANISATIONAL CONFLICTS
15. CODE - NARROW DOWN THE ISSUES
16. CODE – PREVENTIVE MEASURES OVER REACTIONARY MEASURES
17. CODE – PERSONAL RELATIONSHIP SKILLS FIRST

Subtheme - Effects of poorly or unmanaged disputes

1. CODE – CONFLICTS ARE NOT ADDRESSED AND REMAIN UNSOLVED
2. CODE – COMMUNICATION ISSUES
3. CODE – STRESS AND UNPLEASENT ENVIRONMENT
4. CODE – MONEY SOLVES THE PROBLEM
5. CODE – HUMAN RELATIONSHIPS AND CONLICTS

6. CODE – IMPACT OF CONFLICT ON COMPANIES
7. CODE –LOSS OF RESOURCES FOR COMPANIES

Theme: Barriers to the use of commercial mediation in Ireland

Subtheme: The central role of unawareness and misconceptions about mediation

1. CODE – UNAWARENES
2. CODE – ADVERSARIAL ORGANISATIONAL CULTURE
3. CODE – MEDIATION NOT APPROPRIATE
4. CODE – MEDIATION SUITABLE TO INTRAORGANISATIONAL ISSUES, BUT NOT TO INTERORGANISATIONAL DISPUTES
5. CODE – MONEY SOLVES THE PROBLEM
6. CODE – MEDIATION IS NOT CONSIDERED
7. CODE – UNDERSTANDING OF MEDIATION CONNECTED TO FAMILY DISPUTES
8. CODE – MISUNDERSTADING

Subtheme: Resources: limitations to small companies

1. CODE – QUALIFICATION
2. CODE – SIZE OF THE COMPANY
3. CODE – TIME TO IMPLEMENT POLICY
4. CODE – EXTERNAL MEDIATION

Subtheme: The lack of knowledge about legislation

1. CODE – LEGISLATION NOT CONSIDERED

Theme: Promotion of commercial mediation in Ireland

Subtheme: Initiatives to be taken by the government

1. CODE - INFORMATION

2. CODE – MEDIATION POLICY AS AN OBLIGATION
3. CODE – CRIATION OR APPROVAL OF A MEDIATION BODY BY THE GOVERNMENT
4. CODE – FUNDING
5. CODE – PROTECTION FOR PEOPLE WHO SEEK MEDIATION
6. CODE – LEGISLATION

Subtheme: Initiatives to be taken by members of the private sector

1. CODE – BIG COMPANY AS ACTOR IN THE MEDIATION FIELD
2. CODE – IMPORTANCE OF MEDIATION IN BIG COMPANIES
3. CODE – MEDIATION TECHNIQUES BUILT INTO COMPANIES' PROCESSES
4. CODE – QUALIFICATION
5. CODE – MANAGERS AS MEDIATORS
6. CODE – OWNER AS MEDIATOR
7. CODE – ROLE OF COMPANIES
8. CODE – OPENESS TO MEDIATION ONCE INFORMED ABOUT THE TOPIC