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Shaping the Agenda 1: Exploring the Competencies, Skills and Behaviours of Effective Workplace Mediators

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Exploring the Competencies, Skills and Behaviours of Effective Workplace Mediators

A Literature Review Conducted by:

Kennedy Institute Workplace Mediation Research Group

KI MRG

Executive Summary

The Kennedy Institute Workplace Mediation Research Group (KIWMRG) is a group of academics and mediation practitioners attached to the Kennedy Institute of Conflict Resolution, Maynooth University, Ireland. The Group is committed to exploring the role of mediation as an effective response to many forms of workplace conflict.

The Mediators Institute of Ireland (MII) is the governing body in Ireland for mediators. It is committed to raising standards through the continual development of best practice and through producing, maintaining and regulating mediators in Ireland.

In April 2015, the MII commissioned the KIWMRG to produce a systematic review of published material on mediator skills, behaviours, and competencies. The MII intends to use this review as a foundation for establishing mediator quality standards for workplace mediation in Ireland.

This report outlines what is currently known about workplace mediation: its benefits, styles and strategies, its expected outcomes and training challenges. It also identifies an urgent requirement for Irish research in light of the increased promotion of mediation at state level in Ireland. It outlines some international experiences of the difficulties faced in balancing high quality accreditation and regulation with innovation and growth.

Finally the report commits to a partner document consisting of a systematic analysis of the implications of the material presented here for the field of workplace mediation in Ireland.

Deirdre Curran, PhD, National University of Ireland Galway
Project Leader
September 2016

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Section 1: Introduction and Context

Section 1.1: Introduction

The aim of this project is to provide a comprehensive review of the literature regarding the competencies, skills, and behaviours of effective workplace mediators along with an analysis of the implications for mediation practice, standards and training in Ireland.

In order to ensure a systematic exploration of the literature, a team of researchers from the Kennedy Institute Workplace Mediation Research Group (KIWMRG) accessed research literature across multiple jurisdictions and databases. All relevant articles were then distributed among team members for comprehensive themed-analysis using a structured format.

This document presents a summary of the international literature relevant to the project brief across a number of key themes. A follow-up document will discuss the implications of this review for mediation practice in Ireland.

This report is structured as follows. Section 1, includes a short introduction, definitions of the core concepts pertinent to this review and a brief look at the context of workplace mediation in Ireland to situate the review.

Section 2 presents the literature on the benefits of mediation and Section 3 focuses on what the literature says in relation to the importance of context in mediation. This is followed in Section 4 and Section 5 by a detailed discussion of the styles, qualities, competencies, skills and behaviours of an effective mediator. Section 6 presents the literature on mediation outcomes.

The penultimate section, Section 7, deals with mediator training, standards, ethics and accreditation, while Section 8 presents an overall summary of key themes from the mediation literature.

Section 1.2: Defining the Concepts

It is important, at the outset, to define the core concepts that will be addressed in this review.

Workplace Mediation

Drawing on the international literature, Kenny (2014) defines workplace mediation as 'a confidential and voluntary process whereby an independent mediator assists two or more individuals, work groups, or employers and trade unions experiencing conflict or a dispute to identify their issues and objectives, and explore how those objectives can be addressed with a view to reaching agreement.'

> **Workplace Mediation**
>
> A confidential and voluntary process whereby an independent mediator assists two or more individuals, work groups, or employers and trade unions experiencing conflict or a dispute to identify their issues and objectives, and explore how those objectives can be addressed with a view to reaching agreement.'
>
> **Kenny, 2014**

In addition, the following definitions of competencies, skills, and behaviours have been identified by drawing on generic human resource literature:

Competencies

Competency refers to the specific experiences, behaviours and technical abilities that an individual requires in order to carry out a specific role. Competencies are measurable and observable and relate to individual performance (CIPD, 2015).

Skills

Skill represents the ability to do something well. Beardwell and Thompson (2014) categorise skills into three main types: psychomotor (doing) skills, soft (feeling) skills and cognitive (thinking) skills.

Behaviours

Crawshaw, Budhwar & Davis (2014:319) define behaviours as 'the specific actions of an individual geared towards achievement of specified objectives'.

This report adopts these definitions of the core concepts.

Section 1.3: The Context of Workplace Mediation in Ireland

A comprehensive study of conflict management innovations in Ireland, recently undertaken by Teague et al. (2015), presents mediation as 'an increasingly popular part of a systems approach' to managing workplace disputes (p.111).

Furthermore, the development of internal dispute systems which would incorporate mediation was one of the recommendations for Irish organisations outlined in the Law Reform Commission Report in 2010 (Law Reform Commission, 2010). The LRC Report highlights the importance of introducing alternative dispute resolution processes into organisations' internal grievance and disciplinary procedures.

The enactment of the Workplace Relations Act, 2015 gave statutory authority to the replacement of four statutory dispute resolution bodies with a single body of first instance – the Workplace Relations Commission (WRC). The services provided by the WRC include a Mediation Service, Advisory and Information Services, Conciliation and Early Resolution Services, an Adjudication Service and Compliance and Enforcement Services.

Under the Act, three services are offered for resolving workplace disputes. The Early Resolution Service and the Mediation Service aim to assist parties to resolve their dispute quickly and informally and a more formal process for resolving workplace disputes is offered by the Adjudication Service. The creation of a separate Mediation Service within the WRC is a significant step in the development and promotion of workplace mediation in Ireland, giving workplace mediation a statutory foundation in this jurisdiction. This is particularly welcome given that the long-awaited Mediation Bill, 2012 has not, as yet, been enacted into Irish law.

Figure 1: The context of workplace mediation in Ireland

•Workplace Relations Commission (WRC)

•Mediators
•Companies

Statutory Body

Private Service

Internal Mediation schemes

Professional Body

•Private Sector
•Public Sector

•Mediators Institute of Ireland (MII)
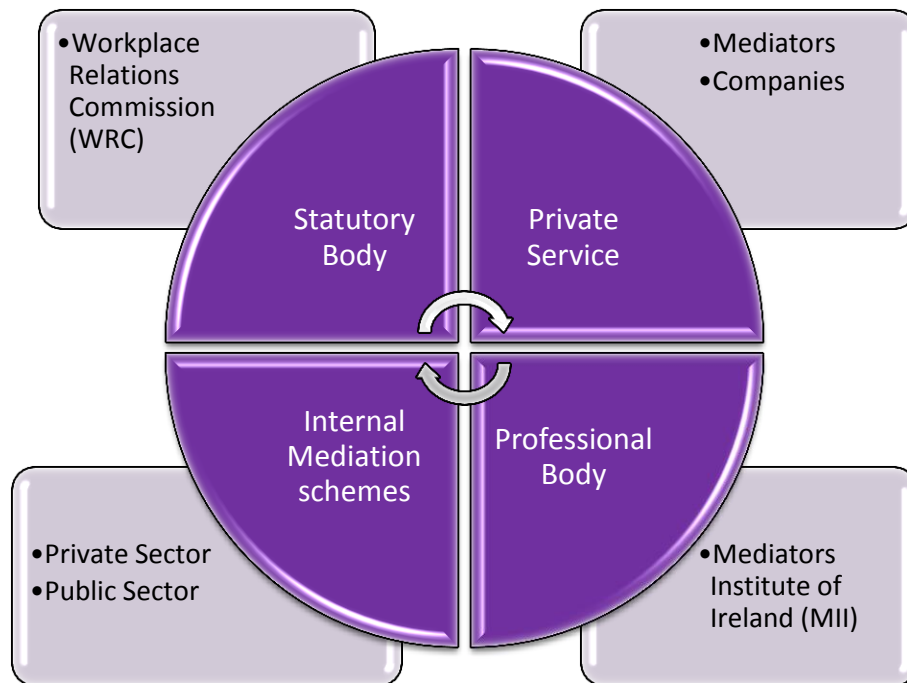
However, there are concerns regarding the legal provisions for mediation. There are inconsistencies between the Workplace Relations Act, 2015, and the Mediation Bill, 2012, in relation to conduct of the mediation process. It is not clear which set of rules/codes of practice will be applicable to the mediation process and to mediators, in particular. This matter requires clarification.

The Irish State provides guidance to organisations around best practice procedures for dealing with grievances and disputes in the workplace. Various Codes of Practice that are given legal effect in the relevant Statutory Instruments recommend that organisations put in place a combination of both formal and informal procedures. These Codes of Practice include: the Code of Practice Detailing Procedures for Addressing Bullying in the Workplace (Labour Relations Commission, 2007), the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work (Health and Safety Authority, 2007), the Code of Practice on Sexual Harassment and Harassment at Work (Equality Authority, 2012), and the Code of Practice on Grievance and Disciplinary Procedures (Labour Relations Commission, 2000).

Growing interest in workplace mediation in Ireland is reflected in the establishment of internal mediation services across a range of state and semi-state organisations including Irish Rail, An Post, ESB,

Dublin Port, Dublin Bus, Teagasc and The Courts Service (Teague et al., 2015:98). These organisations have built mediation into their dispute resolution policies and practices. An internal mediation service also operates within the National Health and Social Care Service. In addition, a Civil & Public Service Mediation Service (CPSMS) has been provided for employees who currently work within those sectors.

However, the same study concludes that most organisations in Ireland are not in favour of implementing radical conflict management innovations, favouring the adaptation of revised 'conventional practices to address new forms of conflict' (ibid: 294).

The Mediators' Institute of Ireland (MII) is the professional association for mediators in the Republic of Ireland and Northern Ireland. The MII was established in 1992 to promote the practice of mediation and it provides a public list of accredited mediators on its website. The number of mediators listed as offering workplace mediation (either as individuals or within consulting companies) currently stands at 211 out of a total of 492 registered members (MII, 2016).

To summarise, workplace mediation services in Ireland are provided by the WRC, by private mediators and mediation companies and by internal mediation schemes established in public and private sector organisations. The MII is the professional body for mediators in Ireland. In addition, various state-sponsored Codes of Practice recommend that organisations put in place both formal and informal procedures for dealing with disputes at work.

Section 1.4: The Use of Workplace Mediation

Currently, there are no published data available in relation to the use of workplace mediation in Ireland. Citing CIPD (2008, 2011) Kenny (2014) provides evidence of the increased use of workplace mediation in the UK, from 42.7% of employers in 2008 to 57.3% in 2011 with higher use among public sector employers at 82.8%. However, the numbers are less impressive when one examines the number of actual mediations. Kenny (2014) cited CIPD (2008) who found that 43% of "large" organisations in the UK used mediation between one and five times in the previous year while the overall percentage of private sector companies using mediation in the UK was just 5%

In summary, although changes are occurring in relation to resolving workplace disputes in Ireland, including the renewed provisions for mediation under the Workplace Relations Act (2015) and

significant number of trained and accredited mediators, if UK evidence is considered a reliable indicator, it is likely that the usage of mediation in the Irish workplace is still quite low. Actual use of mediation in the Irish context has yet to be established.

In Summary

- ℘ *Workplace mediation services in Ireland are provided by the Workplace Relations Commission, private mediators and mediation companies, and internal mediation schemes established in public and private sector organisations.*

- ℘ *The MII is the professional body for mediators in Ireland. In addition, various state-sponsored Codes of Practice recommend that organisations put in place both formal and informal procedures for dealing with disputes at work.*

- ℘ *Despite the changes that are occurring in relation to resolving workplace disputes in Ireland – including the renewed provisions for mediation under the Workplace Relations Act (2015) and the proliferation of trained and accredited mediators – the level of mediation uptake in the Irish workplace appears to be quite low judging by UK evidence. Actual use of mediation in the Irish context has yet to be established.*

Section 2: The Benefits of Mediation

This section of the review will focus on the benefits of workplace mediation as identified in the literature, principally the settlement of the substantive issues, improved workplace relationships and organisational benefits.

Section 2.1: Settlement and Satisfaction Rates

Research consistently indicates that mediation delivers high settlement rates and high levels of participant satisfaction (Poitras and Le Tareau, 2009:368), regardless of the mediator's style and orientation (Bowling and Hoffman, 2000:5). The role of the mediator as a neutral third-party, trained in negotiation and conflict management, can greatly enhance the efficiency of the negotiation discussions (McCoy, 1996:976).

As a collaborative process, mediation allows for the exploration of underlying issues and the identification of 'real interests', rather than concentrating on 'articulated negotiating positions' (McCoy, 1996:976), thereby producing more satisfying agreements than other dispute settlement processes (Poitras and Le Tareau, 2009:368).

Section 2.2: Improved Relationships

A widely cited benefit of workplace mediation is improved employee relationships (Banks and Saundry, 2010:7; Latreille, 2011:592; CIPD survey cited in ACAS, 2013:15). Unlike more confrontational procedures, mediation actively seeks to rebuild damaged relationships (Bennett, 2013:190). It is an open and consensual approach (Banks and Saundry, 2010:7) which enables the exploration of underlying concerns and emotions (Bollen and Euwema, 2013:331) and allows the parties to address issues beyond the immediate situation, which otherwise might not be aired (Ridley-Duff and Bennett, 2011:118).

It has been suggested that mediation can allow a more nuanced approach that takes account of complex inter-relational dynamics (Jameson, Bodtker & Linker, 2010:29; Sargent, Picard and Jull 2011: 362-363)

and may promote understanding and reconciliation between the disputing parties (Ridley-Duff and Bennett, 2011:118). Citing McDermott *et al.* (2001), Banks and Saundry (2010:6) observe that a relational approach in a workplace conflict could be criticised 'for underplaying the importance of ending the conflict in the short term'.

Section 2.3: The Organisational Benefits

Workplace mediation can improve morale and enhance performance (Dolder, 2004) and can provide insights into conflict triggers, thus enabling positive organisational change (Tallodi, 2015:382). It is significantly less expensive and time consuming than more traditional conflict-management procedures (Kressel, 2007), and can reduce the number of cases progressing to litigation (Bingham and Pitts, 2002, cited in Banks and Saundry (2010:7).

Mediation can help to create 'a problem-solving culture' and can enhance the 'emotional health' of an organisation (Doherty and Guyler 2008; Bollen and Euwema 2013). It is also shown to reduce occupational stress (ACAS, 2015:15), one of the most common causes of work-related illness and which accounted for the loss of 10.4 million work days in the UK during 2011-2012 (UK Health and Safety Executive 2013, cited in Tallodi, 2015:362).

Significantly, mediation can provide a mechanism to address a broad range of issues and concerns that would not arise through formal organisational procedures, but which could negatively impact workplace relations and the organisation (Begler, 2001:76-77; Banks and Saundry, 2010:8). Also, in an increasingly diverse workforce, mediation can provide a culturally sensitive means of conflict resolution that can foster intercultural cooperation (Salmon et al. 2013:889-905).

> ***In Summary***
>
> - *Workplace mediation offers significant benefits to both employee and organisation.*
> - *It delivers high settlement rates, regardless of mediator style or orientation.*
> - *It can improve damaged relationships, improve culture and morale, facilitate organisational change and enhance performance.*

Section 3: The Importance of Context

The literature identifies context as an important factor in relation to both the use and the effectiveness of mediation.

Section 3.1: The Impact of Context on the Use of Mediation

Organisational size is a factor in the use of mediation. Large organisations are more likely to adopt a structured approach to conflict management and to use mediation (Harris, 2009; Williams, 2011). Cost constraints and low levels of awareness are identified as barriers to the use of mediation in smaller firms (Latreille, 2011; Rojot, Le Flanchec and Landrieux-Kartochian, 2005:445).

Cultural ethos and associated attitudes in relation to the nature of the employment relationship can significantly influence organisational approach to resolving workplace disputes (Harris, Tuckman and Snook, 2012; Latreille, 2011). Also, the hierarchical context and the structures and 'logics' inherent in an organisational system affect perceptions of conflict and conflict behaviour (Bollen and Euwema, 2013:441; Kressel, 2006:726).

A recent UK study found that in the UK there is greater use of mediation in the public sector compared to the private or cooperative sectors, in particular, there is an identifiable impact of ethos on how conflict is viewed and managed (Bennett, 2013). Bennett (2013:200-201) observes that attitudes of 'community' and 'extended family' in the higher education environment and a strong commitment to public duty in the civil service inform a perception of dispute resolution that is 'grounded in the need to repair and maintain close relationships', rather than simply addressing performance and leadership issues.

While increased employment regulation and the corresponding legalisation of workplace conflict are identified as influencing a move towards more innovative conflict management practices in the US (Lipsky and Seeber, 2000, Lipsky, Seeber and Fincher, 2003), Irish studies indicate that this shift has not followed through to Ireland, despite the significant presence of US multinational organisations in this jurisdiction (Roche and Teague, 2012). Studies indicate two factors for this: a reluctance on the part of some organisations to digress from 'tried-and-tested' methods for resolving workplace conflict (Roche

and Teague, 2012) and a preference on the part of others for the adoption of innovative people-management policies that promote 'common purpose' and 'organisational citizenship behaviour' over innovative conflict-management practice (Doherty and Teague, 2011, Roche and Teague, 2012).

Section 3.2: The Impact of Context on the Effectiveness of Mediation

Mediation does not operate in a vacuum, and the context in which it takes place affects the antecedent conditions and also the process and outcomes of the mediation (Bollen and Euwema, 2013:338). For mediation to be effective, the mediator must understand how their role fits within the organisation's relevant policies and procedures (ACAS, 2013:22) and ensure that their approach and performance fit the context and particular dynamics of the case (Banks and Saundry, 2010).

Furthermore, Hoskins and Stoltz (2003) suggest that, in light of the complex relational dynamics of workplace conflict, mediators should have an understanding of processes of change and transformation and an awareness of the contextualised experience of participants during and after their engagement in mediation.

In Summary

- ⟲ *Context is an important consideration for workplace mediation.*
- ⟲ *In spite of recent advances in conflict management practices in the US and UK, Irish studies indicate a lack of innovation in this area.*
- ⟲ *Mediators need to understand the complex relational dynamics involved in transformational organisational change and how their own role interacts with relevant organisation-specific policies and practices.*

Section 4: Mediator Style and Qualities

Section 4.1: Introduction

In looking at the question of 'What makes an effective mediator?' it is important to firstly consider how this effectiveness can be evaluated and how a successful mediation process is defined. For example, is the primary focus on achieving a settlement for the parties? Some researchers, (e.g., McDermott, 2012), view settlement as the essential condition for successful mediation.   Others, such as Nabatachi, Bingham and Moon (2010), suggest that the question of mediator effectiveness should not be limited to the eventual outcome and should be examined in the light of other factors, such as the strategies and tactics used in the process.

In Sections 4 and 5, we will examine the multi-faceted nature of mediator competence. As well as an ability to bring parties to agreement, the literature identifies other factors that make an effective mediator, including mediator style, strategy, personality, competencies, skills, knowledge and behaviours.

In the interest of clarity, this section, Section 4, focuses on mediator style, strategy and personality. Section 5 will consider what the literature says in relation to mediator competencies, skills, knowledge and behaviours.

Section 4.2: Mediator Styles

While research on mediator styles continues to be conducted, it is a challenging subject that provokes vigorous debate among practitioners and academics (McDermott, 2012). Mediator style is described as 'the characteristic pattern of behaviours or tactics that mediators employ when assisting people in a controversy' (Kressel and Wall, 2012, p.334). When discussing mediator competence, writers use varying terms including style, strategy, tactics and models. Yet these terms are used interchangeably to describe the mediator's personal attributes and his/her approach to the mediation process. This review attempts to provide clarity by distinguishing, where possible, between such terms.

While there is still no universal agreement on the differentiating characteristics of mediation styles, they can help us identify commonalities in how mediators behave in mediation and what they view as the overall goals of the intervention (Nabatachi, Bingham and Moon,2010). The most prominent mediation styles advanced in the literature are facilitative, evaluative, settlement and transformative (Kressel, 2006; Morris, 2015).

In the facilitative style, the mediator allows the parties a high degree of autonomy to express their interests and needs in the hope that underlying compatibilities and compromises can be uncovered (Kressel, 2006; Morris, 2015). Zumeta (2000:1) captures the true essence of facilitative mediation when remarking that 'the mediator is in charge of the process, while the parties are in charge of the outcome'.

In the evaluative style, the focus is on distributive justice and the mediator provides the parties with a realistic evaluation of their negotiating positions in an attempt to reach a successful agreement (Kressel, 2006; Morris, 2015). It is important to note that despite evaluative mediation being a prominent style

advanced in the literature, some, such as Della Noce (2009), contend that this style bears so little resemblance to other approaches that they question its legitimacy as a form of mediation.

In the settlement style, the mediator attempts to bring the parties to a point of compromise through incremental bargaining (Morris, 2015). Alexander (2008:104) sees the key objectives of settlement mediation as service delivery and access to justice. He explains that this mediation style is 'process orientated', meaning that the dominant focus for the mediators' intervention centres on creating a structure for the mediation process and a dynamic between the disputing parties that are conducive to reaching a satisfactory resolution or 'settlement.'

Finally, the transformative style, first advanced by Bush and Folger (1994), is based on the principles of empowerment – allowing the parties autonomy to find a resolution between them – and recognition – facilitating the acknowledgement of each other's interests, values, and point of view (Zumeta, 2000; Kressel, 2006; Morris, 2015).

While these mediation styles are most frequently cited, there are many more styles suggested in the literature. Some are closely linked to these major styles and focus on the degree of mediator intervention versus party autonomy, while others focus on differentiating characteristics such as setting, context, or dispute type.

Section 4.3: Characteristics, Strategies and Tactics associated with Mediator Styles

Kressel (1972) categorises mediator styles into three approaches: reflective (i.e. rapport building), nondirective (i.e. supporting communications), and directive (i.e. pressuring parties to reach agreement). The reflective and non-directive approaches can be viewed as characteristic of facilitative mediation, while the directive approach is linked to evaluative and settlement-oriented mediation (see page 16, previous). Similarly, Martinez-Pecino et al. (2008:482) describe three mediation strategies identified from literature: 'contextual strategies', 'substantive strategies' and 'reflexive strategies'. Again, these strategies can be closely associated with the major mediation styles: contextual and reflective strategies are linked with facilitative mediation and substantive strategies with settlement and evaluative mediation. The authors suggest a variation in the effectiveness of these strategies depending

on the type of dispute (e.g. interest-based or rights-based) or the degree of tension or hostility between the parties. This suggests that mediators need to be competent in using a balance of strategies and knowing when to apply such strategies as the situation demands. Interestingly, Martinez-Pecino et al. (2008) find that contextual and substantive strategies are effective in most situations regardless of the dispute type and that the reflective strategy is less effective in rights-based disputes. In addition, reflective strategies are also seen as unsuited to high-tension situations, where reaching a settlement may be favoured over rapport and trust building.

Kressel (2007) describes the strategic style approach to mediation, identifying the main characteristics of this style as the mediator's focus on the latent causes of conflict. He supports the premise advanced by advocates of transformative mediation who see disputes arising from underlying conflict and the value of uncovering such issues. Similar to other researchers in the field, Kressel (ibid) suggests that mediator style is strongly shaped by the mediator's personal characteristics and the social context.

Grima & Trépo (2009: 1174-5) identify four types of mediator tactics: 'aggressive', 'collective pressurisation', 'surgical' and 'comprehensive'. When considering these tactics in light of the mediation styles discussed earlier, the aggressive tactic can be associated with the settlement and evaluative mediation styles, as can the collective pressurisation tactic, although the collective dimension differentiates it slightly. The surgical approach is, as the name suggests, a targeted tactic. It is quite suited to the evaluative style in that the mediator advises the parties regarding the legal implications of particular actions, yet unlike the evaluative style, the interventions are targeted at key moments during the process. Finally, in the comprehensive tactic, the mediator again keeps the parties aware of their legal rights and responsibilities but is more flexible, with the central goal of reaching agreement while minimizing damage to the parties' interests. In this way, the comprehensive tactic is best suited to the settlement mediation style.

Grima & Trépo (2009) further break down the four mediation tactics into two typological dimensions where the mediator's approach is examined in the context of 'the intensity of the pressure exerted and the number of sources of influence' (p.1186). Grima & Trépo's (ibid) research appears to challenge the consensus about the Western stereotype of an impartial, neutral mediator. Their findings suggest that a mediator's profile/background and training have a strong influence on the mediation style employed.

Section 4.4: Considerations

Referring to the development of mediation research in the 1980s, Kressel and Wall (2012) suggest that the shift from the 'one-size-fits-all' ideology to a more comprehensive understanding of mediation was the most significant development in mediation theory and practice during this decade. Exploring the array of literature on mediation styles, there is no consensus on a specific set of mediation styles or strategies and/or their suitability in particular disputes or contexts. However, there is a growing consensus as to what differentiates one style from another. The degree of autonomy provided to parties is a key variable in this regard. Revisiting the major styles identified, facilitative and transformative mediation styles allow a high degree of party autonomy, while evaluative and settlement mediation promote a higher level of intervention from the mediator.

Determining the effectiveness of each style is equally complex and depends on various factors including: mediation setting; type of dispute; level of hostility between the parties; and the mediator's profile and training background (e.g., substantive knowledge). Martinez-Pecino et al. (2008) acknowledge this complexity, asserting that, while certain strategies may be very effective in some situations, they may actually be detrimental in others. Focusing on context, Manning (2006) suggests that the combined use of both a transformative and facilitative mediation style has the potential to be more effective than a settlement-based mediation model, particularly in scenarios involving interpersonal conflict where there is an ongoing working relationship. Grima & Trépo (2009) note a distinction in how mediators view their role in the process, with some viewing their role as being responsible for resolving the problem that led to the dispute, while others see it as simply facilitating dialogue between the parties.

Of course, there are many consequences that can result from a lack of clarity regarding style, suitability and best practice approaches. Hermann et al. (2002) and Charkoudian (2012) both illustrate the practical implication of the ambiguity surrounding mediation styles and warn of the repercussions for practice, ethics, and quality assurance. Charkoudian (2012) asserts that agencies responsible for ensuring quality assurance must have a clear understanding of what styles are appropriate and legitimate, and suggests that, without agreement on a set of best-practice mediation interventions within a given style, oversight is seriously compromised.

McDermott (2012) argues that, as the various mediation-style options are not presented to the parties in advance, thus allowing them to choose their preferred style, parties to mediation may be deprived of

informed consent. Charkoudian et al. (2009) agree that the lack of consensus around mediation labels among practitioners has important implications for the process. Informed consent is not practical in that one practitioner's description of a mediation style may vary considerably from another, thus further compromising the consistency of the process.

Perhaps focusing on best-practice interventions, rather than differentiating between mediation styles, and seeking to identify the suitability of each, is the most sensible approach.

Section 4.5: Personal Qualities of the Mediator

There are further factors to consider beyond the various styles and strategies employed by the mediator. One such factor is the personal qualities of the mediator.

There is an understanding among many writers (e.g., Pou, 2004) that training and substantive knowledge alone are not a true measurement of a mediator's long-term capability. Indeed, Bowling and Hoffman (2000) affirm that once mediators have mastered the basic skills and knowledge of mediation, the next stage in their development is within themselves, i.e., personal and professional development. The authors speak of 'presence' – which they suggest is more related to who the mediator is rather than what they do – as having a considerable influence on the mediation process. Bowling and Hoffman (2000) describe 'integration' as a personal quality that mediators may never fully achieve, but should strive to develop. They contend that the qualities of the integrated mediator enable them to see and accept the limitations of others' views as well as their own, thus providing a positive model for the parties in the process.

An important and related personal quality identified as key to mediator effectiveness is emotional intelligence. Goleman (1998: 317) defines emotional intelligence as 'the capacity for recognizing our own feelings and those of others, for motivating ourselves, and for managing emotions well in ourselves and in our relationships'. Schreier (2002) highlights the importance of emotional intelligence in mediation and emphasises the need for mediator training in how to understand and manage emotions, both the mediator's and the parties', in the mediation process. Schreier (ibid) identifies experiential techniques (e.g., role play), analytical/conceptual techniques (e.g., trainer lecture), and self-reflective techniques and strategies (e.g., breathing and relaxation awareness) as effective means for developing

emotional intelligence in mediators. Emotional intelligence is sometimes classified as a 'competence' in the literature and consequently will be revisited in the next section.

Della Noce (1999) in considering the issue of neutrality, argues that it is not sustainable for mediators. We have seen from earlier discussions that mediators have a strong influence and shape the mediation process (and in some cases the substantive outcome), yet mediator neutrality remains central to the work of many writers in the field of mediation (e.g., Jacobs, 2002, Van Gramberg, 2006, Astor, 2007) as well as a core element in broader ethical standards and regulation.

Della Noce (1999) asserts that the mediator's ideological framework strongly influences both the mediation interventions used and the interactions between the parties. Bush and Folger (1994) identify two mediator ideologies that they suggest have a key influence in fostering empathy among the parties in different ways. The individualist ideology, which the authors link to interest-based, problem-solving mediation, helps foster transactional empathy. The relational ideology, which they link to transformative mediation, helps foster relational empathy. Della Noce (1999:273) defines empathy in the mediation context as building understanding and recognition between the parties. In this way, those holding an individualist ideology use transactional empathy as a tool to achieve the eventual outcome (i.e. a settlement) while supporters of the relational ideology see relational empathy as a valued outcome in itself.

In Summary

- *Mediator competence is multi-faceted.*

- *As well as the ability to bring parties to agreement- mediator style, strategy, personality, competencies, skills, knowledge and behaviours – all contribute to effectiveness.*

- *A mediator's profile, background and training can have a strong influence on the mediation style employed.*

- *Given that there is no consensus on a specific set of mediation styles or strategies, and/or their suitability to particular disputes or contexts, agencies responsible for ensuring quality assurance must have a clear understanding of what styles are appropriate and legitimate, and suggest that, without agreement on a set of best-practice mediation interventions within a given style, their oversight is seriously compromised.*

The next section of this review will focus on presenting the literature relating to the competencies, skills, knowledge and behaviour of effective mediators.

Section 5: Mediator Competencies, Skills, Knowledge and Behaviours

Section 5.1: The Importance of Competency, Skills, Knowledge and Behaviours

This section of the review will focus on the literature exploring the competencies, skills, knowledge and behaviours of effective mediators.

In the introduction to this review, (p.5), the authors defined the core concepts of competency, behaviour and skill. Competency refers to the experience, behaviours and technical abilities that an individual needs to carry out a specific role. They are measurable and observable aspects of individual performance. This is distinguished from competence, the term often used to describe the ability to use

dispute resolution skills and knowledge effectively to assist parties in prevention, management or resolution of their disputes in a particular setting or context (Pou, 2004:306).

A skill is an ability or capacity to carry out complex activities and can be further categorised as psychomotor (doing) skills, soft (feeling) skills and cognitive (thinking) skills. Behaviours are defined as the specific actions of an individual geared towards achievement of specified objectives.

A review of the literature indicates that, in the context of mediation, these concepts can be arranged hierarchically. Knowledge should be added to skills and behaviours as critical aspects of mediator effectiveness, subsumed under the broader term of competency.

Mediation is a delicate and complex process which often addresses very sensitive issues between vulnerable parties. The mediator is charged with the professional responsibility of helping the parties to explore and attempt to resolve their differences. Mediators certainly have an ethical responsibility not to make things worse. The principles dynamics of impartiality, confidentiality, emotion-management and power-balancing undoubtedly require the work contribution of a skilled facilitator.

There is widespread agreement that the mediator's skills and other attributes can be crucial to a quality outcome as they seek to help parties resolve their differences. Mediators are asked to play complicated, diverse roles that may involve efforts to "transform," to "facilitate, to "evaluate," or to perform a combination of these (and perhaps other) activities (Pou, 2004:306).

It is critically important that mediation practice, both at the institutional and at the individual practitioner level, is informed by a body of theory and research (Curran, 2015). Theory provides both a foundation for our work and a way to understand the nature of the process we are managing. It gives the practitioner a foundation upon which to base an assessment of a conflict situation and to design an appropriate intervention (Lang, 2000). Accordingly, it is necessary for those charged with maintaining the quality and standards of mediation to base their policy and practice choices on a solid theoretical foundation

A review of the mediation literature reveals that competencies, skills and knowledge are often grouped together in scholarly works while a discrete body of literature focuses on mediator behaviours. The remainder of this section is structured to reflect this.

Section 5.2: Mediator Competencies, Skills & Knowledge

According to Pou (2004) the competencies required of an effective mediator are derived from the combined sources of innate characteristics, education/training, and experience. This notion of personal qualities or innate characteristics is also emphasised by Bowling and Hoffman in their article 'Bringing Peace into the Room'. Their essential premise is that the personal qualities of the mediator have a direct and powerful influence on the course of the mediation. These attributes, which they call 'the combination of psychological, intellectual, and spiritual qualities that make a person who he or she is', tend not to enjoy the focus of mediation training (2000:6).

As was seen in Section 4.2, Schreier (2002) places the focus firmly on emotional intelligence. She argues that emotions are both a cause and an escalator of conflict and that emotional resolution is a key dimension of effective conflict resolution. How we view our emotions and those of others, what we feel about our emotions, and how we choose to express them often defines the quality of our relationships and our approach to conflict (Schreier, 2002:99). Schreier contends that emotional self-awareness is a key competence for mediators, allowing them to be fully present to the parties in mediation.

Taking the matter of emotions further, it is generally acknowledged that the personal skills required of a mediator derive from emotional intelligence and specifically emotional self-awareness and self-regulation (Johnson Levine and Richard, 2003). According to Rothman (2014) an important mediator competence is the ability to self-reflect and develop awareness of personal emotions and biases that impact on the mediation process. Rothman believes that 'failure to recognise these biases and emotions could diminish the mediation process; but that when properly acknowledged, these emotions and attitudes can be reflexively harnessed by the mediator to enhance the mediation process' (2014:451).

In addition to being aware of and managing one's own emotions, training in how to understand and manage emotions in the room is an importance competence and an essential and neglected aspect of mediator training (Jameson et al. 2010). After exploring the significant role of emotion in conflict, and drawing on their empirical research, these authors (p.40) propose five emotion-eliciting strategies to be used by mediators, as follows: '[to] grant legitimacy to emotions, encourage emotion identification, confront avoidance of emotion, paraphrase emotion, and encourage emotional perspective taking.' These findings have clear implications for mediator training.

In an attempt to chart the range of mediator competencies, the US Test Design Project (TDP) (cited in Pou, 2004) brought together a group of renowned dispute resolution experts to establish a set of competence-based criteria for the selection, training and evaluation of mediators. The TDP identified the competencies, listed in Table 1 below, as those 'likely to be needed most to perform the most common and essential tasks of a mediator' (adapted from Pou, 2004:308). Pou (2004) acknowledges that while many mediators have endorsed this list, some, particularly those in favour of a more transformative approach, have highlighted its shortcomings.

Latreille (2011) conducted an analysis of eight organisational case studies where workplace mediation had been adopted. On behalf of ACAS, he sought to establish common themes across the case organisations in the UK. Through the research, Latreille (ibid: 3) identified a number of mediator skills/competencies deemed important, including: active listening and questioning, ability to manage circumstances, emotional resilience, capacity to be non-judgmental, ability to identify key issues, assertiveness, impartiality, problem-solving skills, and co-mediation skills.

Table 1: Mediator competencies

Mediator Competence	Description
Investigation	Identifying and seeking out pertinent information
Empathy	Conspicuous awareness and consideration of the needs of others
Impartiality	Maintaining a neutral stance between the parties and avoiding undisclosed conflicts of interest or bias
Generating options	Pursuit of collaborative solutions and generation of ideas and proposals consistent with case facts and workable for opposing parties
Generating agreements	Moving the parties toward finality and 'closing' the agreements
Managing the interaction	Developing strategy, managing the process, and coping with conflicts between clients and representatives
Substantive knowledge	Adequate competence in the issues and type of dispute to facilitate communication, help parties develop options, and alert parties to relevant legal information

In 2013 CIPD and ACAS published a joint report on workplace mediation. In this report the authors outline the 'skill set' of an effective mediator which incorporates competencies/skills, qualities, and knowledge/experience. See Table 2 below.

Table 2: Mediator skills set (CIPD/ACAS, 2013:22)

Skills and Competencies	Qualities	Desirable Knowledge/ Experience
⚘ Active listening ⚘ Oral, written and non-verbal communication ⚘ Questioning ⚘ Reasoning ⚘ Observing ⚘ Summarising ⚘ Problem-solving ⚘ Reflecting ⚘ Building rapport ⚘ Facilitation ⚘ Reframing ⚘ Objectivity ⚘ Information analysis ⚘ Planning ⚘ Time management ⚘ Conflict management ⚘ Negotiation ⚘ Following procedures ⚘ Organising ⚘ Generating options	⚘ Empathy ⚘ Impartiality ⚘ Approachability ⚘ Non-judgemental ⚘ Professional ⚘ Honesty ⚘ Creativity ⚘ Credibility ⚘ Flexibility ⚘ Integrity	⚘ Theory of Conflict Resolution ⚘ Experience of conflict resolution ⚘ Understanding of equality and diversity issues ⚘ Understanding of HR policies and practices ⚘ Knowledge of power and minority issues ⚘ Experience of facilitating informal groups ⚘ Knowledge of the mediation process ⚘ An awareness of the legal context of mediation ⚘ Knowledge of employment relations

This table presents an ideal standard and it is unlikely that any mediator would demonstrate all of these skills/competencies. Indeed, not all of the items are essential and it is acknowledged that mediators will acquire these competencies/skills etc. as they develop through their career. However, the table may

provide a useful framework for the development of Continuous Personal Development (CPD) benchmarks.

The extent to which the success of the mediation will rely on the knowledge-set of the mediator is a question that is somewhat neglected in the literature, and yet intuitively seems important, hence the CIPD/ACAS list in Table 2 above is a welcome contribution. Prior knowledge lends itself to an understanding of the context of conflict, the 'why', 'how' and 'when', encompassing a range of facts and information (Hermann et al., 2001). Prior knowledge of the organisation context, its policies and procedures, may help to inform the outcomes of a mediation process and/or highlight the alternatives to non-agreement. Knowledge of employment law, experience of similar situations and similar organisational contexts may allow the mediator to better facilitate the process and offer the best chance of agreement. Knowledge of employment law can help the mediator to 'reality check' in disputes of rights. However, the mediator cannot be all-knowing. If local knowledge is required, trade union representatives or HR managers can be asked to supplement this part of the process in a passive capacity (Grima and Trépo, 2009).

Other types of relevant knowledge identified include theories of social change, knowledge of resources outside of the mediation framework (e.g. employee support services), and agreement-formation techniques. A broad awareness of these matters can contribute to mediator understanding of how the conflict has developed and how it can best be resolved (Hermann et al., 2001).

In a literature review of mediator knowledge and skills conducted by Hutchenson (2008), the following key areas were identified: understanding of the causes of conflict; neurobiology; behavioural economics; and understanding problem-centred versus relationship-centred approaches. Key skills identified include: highly developed questioning skills; active listening; thinking skills; self-reflection; and honest, empathetic communication.

In their Mediator Skills Project, Hermann et al. (2001) used a job analysis methodology to identify the relevant knowledge areas and corresponding skills of effective mediators. Their findings are presented in Table 3 below.

While unlikely to represent the definitive results, by creating grounded definitions of knowledge areas and skills important to the job, the job analysis conducted by the Mediator Skills Project provides a tool for enhancing our understanding of mediation. This list can then inform mediator quality assurance, training and evaluation programmes.

Table 3: Mediator Skills Project findings (Hermann et al., 2001)

Knowledge Areas	Corresponding Skill Areas
Administrative practices & procedures	Administration
Personal skills and limitations	Mediator error correction
Mediation models	
Mediation process	Mediation process management
Problem-solving techniques	Problem solving
Interpersonal dynamics	Relationship management
Theories of social change	Critical thinking
Conflict theory	
Communication	Communication
Information gathering	Information gathering
Solution/agreement formation	Dealing with information
Cultural issues	Culture and diversity competency
Power and control	Power and control
Inform/disseminate/educate/teach	Education and dissemination of knowledge
Alternatives to mediation	
Knowledge of resources outside mediation	
How to interact with people outside the mediation	
Ethical issues	Ethical issues

Bollen and Euwema (2013) concluded in their review of mediation literature that the 'likelihood of reaching an agreement improves when the mediator has a strong skill base and when disputants have a collaborative orientation.' (p347). They further suggested:

> 'By investigating which mediation conditions contribute to mediation effectiveness, research may show which mediation tactics work best given certain disputants, types of dispute and contexts. Providing mediators with this knowledge would, we believe, improve the quality of mediation. To successfully undertake some of these new avenues of workplace mediation, we suggest that researchers consider collaborating with mediators and/or mediation providers in the field.'

ibid:349

The literature provides us with information about the competencies, skills and knowledge areas that are considered relevant to effective mediation. The next part of this section focuses on the literature related to mediator styles and behaviours. While it became evident in Section 4.2 that mediator style and behaviour are inextricably linked, this section attempts to clarify the link between style and behaviour, and place more of a focus on what the literature tells us in relation to mediator behaviour.

Section 5.3: Clarifying the Link between Mediator Styles and Behaviours

There is considerable ambiguity in relation to what mediators actually do in practice (see for example, Riskin, 1996; Charkoudian et al., 2009; Wall and Dunne, 2012) and whether, and to what extent, the behaviour of mediators varies with context. This ambiguity, combined with a dearth of empirical evidence, has somewhat obvious implications for quality assurance, regulation, and training within the profession. This gap and its growth are most unfortunate because mediators' behaviours have significant consequences and therefore should be studied (Kressel and Wall, 2012:334).

Brazil contends that 'the single most important variable affecting how mediation works is the behaviour of the mediator' (2012:331). He acknowledges that mediator behaviour can vary with both the environmental context and with the mediator's goals, and that the determinants of such variation require further empirical investigation. Kolb (1983) concluded from his research that mediation styles and behaviours are a function of the organisational setting within which the mediator operates.

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This section attempts to address some of the ambiguity surrounding what mediators actually do. According to Riskin (1996:8) '...a bewildering variety of activities fall within the broad, generally-accepted definition of mediation', and Kressel and Wall observe that, while the literature portrays mediation as a standard process with a defined number of sequential steps, in practice 'mediators depart significantly from the "one size fits all" approach to mediation' (2012:335).

Charkoudian (2012) argues that focusing on mediator behaviour – i.e. what mediators actually do in session – is important for a number of reasons. Firstly, having a realistic expectation of the approach that a mediator will take facilitates client self-determination, a purported core principle of mediation (Hedeen, 2005). Potential clients, if they understand what will actually happen 'in-the-room', can select a mediator based on their own preference rather than engaging somewhat blindly in an ambiguous process. Because of varying interpretations, mediation descriptor labels such as 'facilitative', 'transformative' and 'evaluative' can serve more to confuse than clarify. Also, regulating the mediation profession and maintaining quality standards will prove challenging if it is unclear what mediators actually do. Similar issues arise with the design, delivery, evaluation and accreditation of mediation training programmes.

There are also indications that mediator style and behaviour affect outcomes (Charkoudian et al., 2009; Wall and Kressel, 2012). For example, mediators with a problem-solving style, adopting corresponding behaviours (e.g. making suggestions), are more likely to reach settlement than those with a transformative style. As McDermott (2012:347) identifies settlement as 'the *sine qua non* of participant satisfaction', the importance of style/behaviour becomes obvious.

Section 5.2 of this review focused on mediator style and presented evidence that the concepts of style, approach and behaviour are inextricably linked and are sometimes used simultaneously or interchangeably. Thus, the exact nature of the style/behaviour link is by no means clear. According to Kochan (2012), the term 'mediator style' captures mediator behaviour imprecisely and incompletely, while Lang and Taylor (2000), claim that it is likely that mediators are only partially in touch with their 'actual stylistic proclivities'. They further argue that mediator training has a strong influence on style and that there is little empirical evidence of mediator stylistic flexibility.

Debate also exists regarding whether mediators stick to the same style and behaviour patterns throughout a mediation process or whether they actually switch between styles and behaviour patterns

as circumstances require. Consensus seems to suggest that stylistic/behavioural consistency is more likely than stylistic eclecticism:

> 'One should not expect most mediators to be able to move easily between styles, because the mediators' stylistic proclivities reflect core personal values or engage fundamental issues of professional identity.'

Tracy & Spradlin, 1994

Della Noce (2012) makes the radical argument that the construct of 'mediator style' is theoretically unsound and that focusing on style alone obfuscates sub-variations in mediator behaviour and approach. She recommends that considerations of mediator goals and values need to be added to render the construct more 'robust' (p.397). She also raises questions about certain research methodologies such as observation and self-report instruments and suggests that a research approach categorising mediators by style (based on goals and values) and THEN comparing behaviours between groups would produce more valuable findings to inform practice. She argues that:

> 'When the why of mediator behaviour is added to the construct of style, we will have the necessary foundation for connecting the construct of style to the important questions of whether mediator practice, or any given style, is competent, ethical and effective.'

ibid:400

Focusing on actual behaviours is likely to present a clearer picture of what happens in mediation and whether behaviours are grouped together in patterned sets to reflect mediator stylistic preference. Charkoudian (2012:368) made this argument by suggesting that a more fruitful avenue for research would be to 'ignore style labels altogether and focus on mediator behaviours'.

In 2009, Charkoudian et al. (297) conducted a comprehensive study using both a mediator survey and observational methods. The focus of the study was to establish 'what mediators say they do', based on survey data and to correlate that with 'what they actually do', based on observation. In this study, the researchers wanted to establish whether patterns of behaviours emerged in statistically significant clusters. A 76 item survey was completed by about 250 mediators which revealed four distinct clusters.

> 'Within each cluster mediators did similar kinds of things, to form a particular approach to mediation'

ibid:299

The mediators were then asked to assign a stylistic label to themselves. Charkoudian et al. (ibid:310) found that mediator behaviour patterns were not always consistent with self-defined stylistic labels. Clearly, self-describing as facilitative does not confirm a specific recognisable approach. Mediators who call themselves 'facilitative', for example, claim to be doing very different things in mediation.

Asking mediators to self-identify their stylistic preference has limitations, as empirical evidence suggests that some stylistic labels are less 'popular' than others. Charkoudian et al. (2009) found that mediators tended to shy away from labels such as 'directive' or 'evaluative' even while adopting behaviours that the literature defines as 'directive' or 'evaluative':

> 'The results... suggest that mediators may want to consider carefully how they describe their approaches to mediation, and whether or not the stated description matches what they actually do.'
>
> **ibid:313**

Charkoudian et al.'s (2009) research highlights a limitation of the methodological approach adopted in much of the research into mediator style/behaviour, namely an over-reliance on survey-type instruments. Survey approaches provide an indication of what mediators believe they do, or think they should do. A more robust research design regarding mediator behaviour would be to adopt a mixed-method approach using surveys to ask mediators what behaviours they think they adopt, then observing those same mediators in practice, and finally following up by interviewing the mediators about the discrepancies.

Nabatachi, Bingham and Moon, (2010) conducted an interesting variation on this theme. Their research was based on the US Postal Service's (USPS's) use of transformative mediation. They wanted to establish whether what the Postal Service mediators were doing in terms of tactics and behaviours was consistent with the purported style declaration of 'transformative mediation'. The researchers designed instruments which highlighted the tactics and behaviours consistent with a transformative style and then set out to explore whether the USPS mediators were adopting behaviours consistent with the Postal Service's transformative label. They found that they were. An indirect finding of their research is that stylistic labels imply different sets of tactics/behaviours which mitigates against a 'one-size-fits-all' set of tactic/behaviours being developed for quality control, training or evaluation purposes. They concluded:

'We support Bush's call (2004) for diversity of performance evaluation standards and criteria to reflect the diversity of both models of practice and organizational contexts in which practice occurs.'

ibid:285

Nabatachi, Bingham and Moon (2010) started from the premise that there are essentially three accepted models of mediation: facilitative, evaluative and transformative. However, they contend that the literature is unclear about the specific strategies and behaviours associated with each model. Drawing heavily on the writings of Riskin, Bush and Folger, they summarised what they believed were the key contentions regarding mediation styles and associated behaviours (see Table 4 below). Nabatachi et al.'s research instruments represent a unique set of measures tailored to a particular mediation model/style.

To conclude this section of the review, it is clear that, while much has been written about the competencies, skills, knowledge and behaviours of effective mediators, confusion still persists. This is not helped by the fact that core concepts such as style/behaviour/approach are often used interchangeably in the literature and without clear definition. What we are left with is discrete sets of lists of desirable/required mediator attributes which often serve to confuse rather than to clarify (see Table 4 below). The implications for quality control and mediator selection, training and evaluation are somewhat obvious: if we are not clear what we are looking for, how will we know when we have found it?

A challenge for those charged with establishing and maintaining standards of practice is to draw on the literature to develop a clear set of criteria.

Table 4: Mediation styles and associated strategies and behaviours

Mediator Strategies and Behaviours

Facilitative Style	Evaluative Style	Transformative Style
◐ Focuses on helping parties to clarify the problem and build communication ◐ Helps the parties decide what to do ◐ Listens to opening statements ◐ Uses caucusing as needed ◐ Problem-solving approach ◐ Emotions allowed to a point ◐ Focus on the future ◐ Avoids areas of disagreement ◐ Focuses on settlement ◐ Does not assess the merits of the dispute ◐ Searches for underlying compatibilities and opportunities for compromise ◐ Helps the parties to identify options ◐ Focuses on underlying needs and the pursuit of an interest-based settlement ◐ Engages in 'reality testing'	◐ Focuses on helping the parties understand the strengths/weaknesses of their case ◐ Offers assessment, prediction and assessment ◐ Generally asks the parties to make a formal opening statement ◐ Caucusing commonly used ◐ Problem-solving approach ◐ Emotions allowed to a point ◐ Focus on the future ◐ Avoids areas of disagreement ◐ Focuses on settlement ◐ Focuses on collecting facts, identifying issues, and evaluating legal arguments to determine who is likely to win and the elements of a settlement ◐ Mediator directs the parties towards settlement and may propose the resolution	◐ Seeks to change how the parties relate to each other ◐ Fosters empowerment ◐ Emotional expression is encouraged ◐ During the opening statement, transformative mediators explain that the parties are responsible for developing the ground rules, guiding the process, establishing goals, and determining outcomes, and that settlement is only one of a variety of possible goals or outcomes ◐ Promotes recognition of the others' perspective ◐ Discussing the past has value ◐ Reaching agreement is (at best) secondary to transforming relationships ◐ Empowerment facilitates self-determination ◐ Mediator does not direct the parties ◐ Mediator actively listens and attends to critical points in the discussion that present opportunities for recognition or empowerment ◐ The mediator supports the parties in their process of making and owning clear and deliberate decisions

In Summary

꩜ *There is widespread agreement that mediators' skills and other attributes can be crucial to a quality outcome as they seek to help parties resolve their differences.*

꩜ *Personal skills required for mediation derive from emotional intelligence and specifically emotional self-awareness and self-regulation.*

꩜ *Despite ample research, there is still much confusion about the competencies, skills, knowledge and behaviours of effective mediators.*

꩜ *This poses a challenge for mediator selection, training and evaluation*

The next section of this review turns the attention to what the literature tells us about mediation outcomes.

Section 6: Mediation Outcomes

Section 6.1: The Significance of Outcomes

In Ireland, the Law Reform Commission described mediation as leading to 'better results: higher satisfaction with process and outcomes, higher rates of settlement and greater adherence to settlement terms' (Law Reform Commission, 2010:32). A relationship between the skills of the mediator and the outcomes from mediation is, therefore, important to consider (Wissler and Rack, 2004:253). Although much of the literature on outcomes is considered to be 'rediscovering the windmill' (Wall and Dunne, 2012:238), it discusses these in terms of relevance to participants, the organisation and mediators themselves in relation, predominantly, to short-term measures of success rather than the durability of agreements (Latreille, 2011:52).

Section 6.2: The Range of Possible Outcomes

No single outcome or measure of success has been identified for evaluating the impact of workplace mediation (Urwin et al., 2010). The range of outcomes used to measure success include: satisfaction with the process, reaching and sustaining agreement and restoring relationships (Poitras and Le Tareau, 2009; Poitras, Stimec and Lauberge., 2010; Hoskins and Stoltz, 2003). A discussion of the key mediation outcomes is set out below.

Recent US literature reports settlement rates for mediation generally as 80 per cent (Wall and Dunne, 2012). For workplace mediation, the US Equal Employment Opportunities Commission reports 64 per cent settlement rates (cited in McDermott et al., 2000), the UK 90 per cent (CIPD, 2008) and New Zealand 81 per cent (Department of Labour, 2012). Figures for Ireland show settlement rates of 80 per cent at the Labour Relations Commission (Labour Relations Commission 2004: 21) and 60 per cent at the Equality Tribunal (Eurofound, 2010: 12). Recent Masters level research conducted with consultant mediators in Ireland found 87.5 per cent settlement rate with 75 per cent of settlements identified as being sustained (Bouchier, 2013).

Eight factors have been identified as influencing whether mediation results in settlement (Wall et al., 2001; Wall and Dunne, 2012). Four of these factors - conflict level, type of conflict, stage of conflict and disputants' relative power – restrain the effectiveness of the mediation, while the other four factors – mediator's resources, disputants' commitment to mediation, mediator's rank and visibility of mediation – enhance effectiveness. Time pressures are highlighted as producing less integrative outcomes (Adrian & Mykland, 2014:425) as are absence from work and prolonged conflict (Jehn et al., 2010:340).

In addition to measuring mediation outcomes in terms of settlement and the institutional impacts of time saved and lower costs for organisations, some literature identifies a continuum of factors where agreement could be considered as a step 'along a path of development' (Hoskins and Stoltz, 2003: 347). When a relationship or interaction needs to continue, then apologies, stating one's point of view and face-saving proposals are important participant outcomes (Wall and Dunne, 2012: 221). Where long-term and potentially intractable conflict exists, participants may discover new ways of approaching the problem on their own and change their attitude towards the other people involved or build respect for others even if no agreement is reached (Latreille, 2011:50). Over and above the relational element, engaging in the process of mediation may lead to emotional insights for individuals and a better

understanding of their own feelings (Hoskins and Stolz, 2003:30; Jameson Bodtker and Linker, 2010). Change may occur in the months following mediation, leading to full settlement or agreement (Bollen and Euwema, 2013) where mediation has delivered creative outcomes constructed by the participants which address their respective needs and interests (Bennett, 2013:204; Adrian and Mykland, 2014:422; Tallodi, 2015:369):

> 'All disputes end. In order to minimise the costs to the parties the key questions are when and how. While mediation may not lead directly to a settlement, there is evidence here of a significant indirect impact in terms of positive momentum towards the end.'
>
> **Curran, 2014**

The literature points to high rates of satisfaction among the parties to mediation generally (Wall and Dunne, 2012). The US Postal Service Redress mediation programme found that: 90 per cent of participants were satisfied with the fairness of the process, 64 per cent of employees and 70 per cent of supervisors satisfied with the outcome, while 66 per cent of employees and 92 per cent of supervisors thought mediation was more effective than the traditional grievance processes (Bingham, 2004; Bingham et al., 2009). In England, satisfaction rates for participants were 74 per cent when internal mediators were involved and 80 per cent when external mediators were involved (Ridley, Duff and Bennett, 2011:112).

Considering the restraining factor of the disputants' relative power identified earlier (Wall and Dunne, 2012), managers are usually more satisfied with outcomes than those reporting to them where there is mediation related to hierarchical conflict (Bollen, Euwema, and Muller, 2010; Jehn et al., 2010:343). Gender and ethnicity can impact participant satisfaction (Lande, 2004:94; Miles and Clenney, 2010; Nelson, Zarankin and Ben-Ari., 2010; Benharda, Brett and Lempereur, 2013; Hong and van der Wijst, 2013; Salmon et al., 2013;). An individual's perception of the level of the conflict may also have a bearing on their satisfaction level - the greater the perceived conflict, the greater the satisfaction with the outcome (Jehn et al., 2010:329) – and having access to representation in the process may play a part as well (Ridley-Duff and Bennett, 2011:112).

UK research shows that employers were satisfied where resolution was reached (CIPD, 2008), and less satisfied where the most recent mediation did not result in resolution (Latreille, 2010).

In terms of mediator satisfaction, three specific outcomes of value to mediators are identified as. They are resolution of the dispute – which led to personal satisfaction, prestige and more work, being paid for services regardless of settlement and developing and honing skills (Wall and Dunne, 2012; Adrian and Mykland, 2014:423).

Section 6.3: Longer-Term Outcomes

In relation to longer-term outcomes, there is currently one longitudinal empirical study of the impact of workplace mediation (Bollen and Euwena, 2013:346). This study of the US Postal Service Redress Scheme found that, in addition to the resolution of conflicts and supporting participants in changing the way they deal with conflict, there was a 30 per cent fall in the number of informal complaints filed and a 17 per cent decrease in formal complaints (Bingham, 2004).

Organisational culture change has been linked to the use of transformative mediation which, it is argued, can improve workplace environments by developing the communication and conflict management competencies of participants (Bush and Folger, 1994). These 'upstream' effects were particularly observed where managers undertook training to manage conflict more effectively (Bingham, 2004) as they 'listen more, are more open to expressing emotion, and take a less hierarchical top-down approach to managing conflict' (**Bingham, et al.,** 2009:43). In the UK, workplace mediation is identified as offering improvements in employee relationships, avoidance of the stress of formal procedures and the development of organisational culture (CIPD, 2008; Saundry, Bennett and Wibberly., 2013; Latreille, 2011). Organisations that provided mediation training were subject to lower levels of employment tribunal cases than those that did not (CIPD, 2007; Banks and Saundry, 2010), and evaluation of mediation in small firms in the UK found evidence of a sustained improvement in employer-employee relationships (Sargent, 2005). Limited, robust evidence exists (Roche and Teague, 2012) as to the extent to which organizations have adopted transformative approaches to mediation as part of an integrated conflict management strategy.

In Summary

- *Labour Relations Commission and Equality Tribunal data shows high settlement rates (60-80%) for Irish workplace disputes handled by mediation.*
- *These figures are comparable with similar experiences in the US, UK and New Zealand.*
- *The range and longevity of mediation outcomes vary from an immediate impact on a dispute or conflict to longer, more sustainable development of employees and their working environment.*

The penultimate section of this review will explore what the literature tells us about mediator qualifications, training and accreditation before concluding the review by drawing out the key findings from the literature.

Section 7: Mediator Qualification, Training and Accreditation

Literature on mediator qualifications, training and accreditation (certification) is relatively limited. However, what has been written offers a useful exploration of the following:

- The qualification requirements for persons who seek to apply to become a mediator;
- The scope and structure of training programmes designed to grant accreditation to a mediator,
- Comparative insights into training and accreditation in specific jurisdictions (United States and Australia).

Section 7.1: Qualification Requirements of Mediators

The literature discusses the debated issue of what qualification requirements mediators should possess for admission to a particular mediation programme. Hill (1998) speaks of arbitrary qualification requirements, in particular, third-level degrees as a controversial filter which is relatively pervasive in programmes across the United States. Henning (1999) supports the view that degrees are not accurate predictors of the kinds of skills that are needed to be an effective mediator, and that such a requirement is restrictive, and would limit the diversity and growth of the field of mediation.

Henning (1999) also examines the external qualification requirement of limiting certification to lawyers and notes that the majority of states in the United States that maintain lists of court-approved mediators require that mediators be lawyers. Although proponents of this requirement argue that mediation is a natural extension of legal skills, knowledge and training, Henning argues that, in reality, the requirement again limits diversity of mediators. She also argues that it restricts innovation in the field, and that some of the purported advantages of a law degree requirement do not hold up to scrutiny.

Hill (1998) argues that qualification requirements for mediators must be considered in terms of their effectiveness, cost and discriminatory effects, observing the tension between these. She refers to two examples of preliminary examination of prospective candidates' qualifications.

The first approach, taken by Suffolk County, Massachusetts Superior Court, was the introduction of a hybrid two-step test comprising a preliminary written examination to 'weed out' applicants who did not possess the required knowledge of mediation skills. This was followed by a performance evaluation test judged by a pair of experienced mediators.

The second approach was the use of standardised tests to gauge for aptitudes and attitudes in candidates that are seen as desirable in a mediator.

Hill (1998) suggests that while such selection methods have merits, there is a risk that certain skills-based performance tests may result in some mediation styles or personality types being favoured over others.

Section 7.2: Mediator Training and Accreditation

A starting point in reviewing this area is Henning's exploration of a number of issues pertaining to mediator accreditation (Henning, 1999). She describes the key benefits of certification programmes as improving quality for users of mediation, and enhancing the prestige and legitimacy of the mediation field. She also presents some arguments against certification programmes suggesting that they stifle innovation in the field (particularly in respect of mediation techniques) and hinder diversity of background in the mediation community. Henning also suggest that certification is not necessary because competition in the marketplace can itself maintain the quality of services.

Despite the arguments for and against mediation certification at a basic level, Henning (1999) notes, at least within the United States, that certification and regulation of the area is inevitable, and so it is best for all concerned to consider how best practice can be applied to accreditation programmes.

Henning (1999) concludes that users of mediation are best served by implementing training programmes and performance testing rather than relying on one-dimensional standards based on being a member of the legal profession or having an advanced degree. She proposes that standards such as the imposition of training requirements and performance-testing requirements can achieve a balance between the need for quality assurance among the mediation community and allowing for growth of and innovation within the mediation field

> Henning (1999) evaluates whether standards can achieve a balance between the need for quality assurance among the mediation community against avoiding potential restriction on the growth of and innovation within the mediation field.

Henning (1999) notes substantial disagreement among the mediation community on the amount of training required and what it should comprise of. She proposes that a typical forty- to sixty-hour training programme, with an apprenticeship to follow, should be the minimum amount of training, and that it would allow a variety of people with varying levels of commitment to mediation to enter the field.

Training ought to include substantive knowledge of the subject matter that the trainee seeks to mediate (Henning, 1999:221). The traditional standard lecture format and readings must be complemented by supervised case experience (Henning, 1999:222). Henning (1999) gives the example of a Californian programme which comprises twenty-five hours of lectures and discussion and a minimum of thirty-three hours of mediation experience (18 of which must be real mediation experience). She also suggests an apprenticeship, pairing a newly trained mediator with an experienced mediator from outside of the programme.

Henning (1999) also proposes that a certification programme should end with performance testing. She suggests evaluators would directly observe programme participants based on pre-determined criteria.

Section 7.3: Mediator Accreditation in Australia and the United States

Zhang (2008) provides a comparative analysis on mediation certification in the United States and Australia. Both jurisdictions experienced a considerable increase in the use of mediation in the 2000s. Zhang describes differing reactions within both jurisdictions during this time vis-á-vis the introduction of mediator accreditation. Mediation stakeholders in Australia took a decisive step towards establishing a unified, collaborative nationwide system of mediator accreditation in 2006. Following a national conference of mediation interest groups, a committee was established and objectives for a national uniform system of mediator accreditation were determined. Zhang notes the following components of the Australian proposal at the time of publication:

- The creation of a National Mediator Accreditation System, a voluntary nationwide accreditation system for mediators

- Mediators to be accredited to a National Mediation Standard, resulting in inclusion on a National Register of Mediators

- Training and assessment procedures to be prescribed and delivered by recognised Mediator Accreditation Bodies. Training must amount to a minimum of 40 hours, excluding assessment

- Assessment to be based on competence in mediation simulations, awareness displayed in written debriefings, performance in an examination and general course participation;

- CPD requirements to be prescribed

- Mediators must remain members of recognised Mediator Accreditation Bodies and adhere to a Code of Practice.

In relation to the United States, Zhang (2008), like Henning (1999), refers to the divide within the American mediation community over whether mediation accreditation is a help or a hindrance. In the United States, organisations such as the Association for Conflict Resolution (ACR) and the American Bar Association Section of Dispute Resolution (ABA-DRS) separately established task forces to consider creating nationally applicable mediation certification programmes.

The ACR task force recommended a national certification system through a Mediator Certification Programme. This would have required completion of a written knowledge test, an intermittent re-certification process and the submission of an extensive portfolio which would demonstrate training and experience. The candidate would be required to document at least 100 total hours of training or academic coursework in conflict resolution, and at least 100 total hours of mediation or active co-mediation within the previous five years.

Feedback on the efficacy of this proposed accreditation system took account of mediator views but did not take account of the views of users of mediation. The proposal was abandoned and Zhang (2008) calls for the ACR and the ABA to refocus a collaborative effort to implement an acceptable standardised programme for mediator accreditation in the United States.

In Summary

- *A requirement for balance between the need for quality assurance among the mediation community and avoiding potential restriction on growth and innovation has been identified.*

- *Although arbitrary selection requirements such as the requirement of a third-level degree may appear attractive as a low-cost means of identifying competent mediators, its effectiveness may be poor.*

- *This search for balance has frustrated some efforts internationally.*

Section 8: Conclusions

The aim of this project is two-fold. Firstly, we aim to provide a comprehensive review of the literature regarding the competencies, skills and behaviours of effective workplace mediators. Secondly we will furnish a systematic analysis of the implications of that literature and the literature on education and training of mediators for mediation practice, standards and training in Ireland.

This document delivers on the first part of the project, i.e. a comprehensive review of the relevant literature, while the sister document, *Shaping the Agenda 2,* presents the implications for training, standards and practice of workplace mediation in Ireland.

The first thing to note from this review is the consensus that context matters. The Irish dispute resolution culture, along with relevant legal and institutional structures, is important. While there is a

large body of international literature on mediation (as evidenced by this review), very little of it draws on the Irish context and therefore an obvious conclusion is that more research needs to be conducted here. This is particularly urgent in light of the increased promotion of mediation at State level in Ireland. A second conclusion is that the literature presented here should be considered in light of the local context.

The purported benefits of mediation are many and varied: the achievement of settlement and participant satisfaction to a range of favourable outcomes at the individual and organisational levels. The literature coverage of the outcomes of mediation confirms these benefits. The case for mediation as a dispute resolution process is therefore clear and strong.

A broad range of literature presented here focuses on the mediator – their style, qualities, competencies and skills. Confusion abounds, firstly because there is no clear delineation between certain concepts and so, for example, discussion of style often merges into behavior and discussion of competence often merges into skill. Secondly, one is left with a series of lists, the elements of which vary depending on the researcher's focus and competence, the context within which the research was conducted, and the research methodology adopted. However, some common elements emerge, so that we can at least establish the items that are consistently identified as relevant or important.

Finally, what emerges from the literature with regard to accreditation, standards and training, is a debate between regulation (for the sake of standards and consistency) and innovation (for the sake of creativity and flexibility). Other jurisdictions have grappled with this debate, more or less successfully, so we have the opportunity to learn from international best practice.

The partner document to this literature review, Shaping the Agenda 2, contains a systematic analysis of the implications of the material presented here for the field of workplace mediation in Ireland. The recommendations presented in the second document will be informed by the international body of knowledge presented in this document.

Figure 2: Report Authors, KIWMRG MII Project Team

Back row, L-R: James Dillon, Cyril Joyce, Genevieve Murray and Brian Barry
Front row, L-R: Alec Coakley, Margaret Bouchier, Louisa Meehan, Treasa Kenny,
Deirdre Curran (Project Leader) and Oksana Kokaylo

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