
Mediating a way to avoid court fees and delays

Mediation is about dealing with the nitty gritty



Marese McDonagh



Sabine Walsh, president of the Mediators' Institute of Ireland, says mediation costs a fraction of the cost of litigation, and the route to resolving conflict is speedier.

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Sometimes mediator [Sabine Walsh](#) finds herself talking to couples about seemingly trivial matters such as lifts to football matches and who is going where for their summer holidays.

Mediation is about dealing with the nitty gritty, she stresses, whether it's family conflict, strife in the boardroom or screaming matches across the garden fence about who is leaving the rubbish out in the wrong place.

Walsh, the president of the Mediators Institute of Ireland (MII), says her job is to help the parties in front of her to find a comprehensive, mutually acceptable, long-lasting resolution.

As well as being a fraction of the cost of litigation, the route to resolving conflict will be speedier, she says. Fans of mediation

also argue that the so-called adversarial system synonymous with courts can increase hostility and resentment, instead of encouraging collaboration, a buzzword with mediators.

But collaboration can seem too much to hope for when couples are at war. And [Mary Hough](#) from the Sligo Community Mediation Service, which caters for low-income clients, acknowledges that clients sometimes feel worse before they feel better because they have to relive and re-experience their pain.

“But if they stick with mediation, they feel their voice is being heard for the first time, and they get to vent all their feelings in a safe environment,” says the mediator.

A way forward

Many mediators see the participants separately in the early stages because, when it comes to family breakdown, some people need to “vent”, before they can even think of thrashing out a way forward.

Sometimes mediators realise that clients need the services of a different professional. “If people say to me, ‘I want to give it another go,’ I say ‘Great’, and I give them a number for a relationship counselling service,” says Walsh. “This is not family therapy. We are not counsellors. We are here to help the parties reach an agreement about the issues they feel need to be sorted out.”

The issues will include the obvious ones such as living arrangements, custody and mortgage payments, and a lot more besides. “Relationship breakdown is overwhelming and there are a lot of things to be sorted out,” says Walsh.

“Couples may need to agree, for example, where will they go for Christmas, what happens when there is a new partner, what do we do about the fact that Granny lives with us, who brings the kids to football matches or to school, who buys their clothes. Agreeing these things helps the participants to build skills so that ultimately they will not need mediation to reach a resolution.”

Getting separating parents to put children at the centre of their agreement is often the focus of family mediation. Mary Hough says the stress of conflict can interfere with the emotional health and wellbeing of children, who can show challenging behaviour, and poor concentration at school, as a result.

Sometimes clients are adamant that they want their “day in court”. Or, as High Court judge [Michael Peart](#) told a conference on mediation some years ago, they turn to “prohibitively expensive weapons of legal warfare” determined to emerge “from the gladiator’s arena with their opponent’s bleeding head held high”.

Circuit court judge [Keenan Johnson](#) who, before his promotion to the bench, worked as a mediator as well as a solicitor, told the same conference that the success rate for mediation was 80 per cent.

[Mark Connellan](#), state solicitor for Longford who describes himself a “recent convert to mediation”, says many clients won’t even consider mediation without a strong nudge from their solicitors.

“It always makes sense to get cases settled as early as possible with as little acrimony as possible,” says Connellan.

“I always say to people, ‘If this case goes to litigation, it could end up in the High Court in two or three years’ time with junior and senior counsel coming out of our ears.’ I tell them that 95 per cent of cases are settled on the steps of the court but at that stage the costs will be absolutely enormous for both sides.”

He agrees some clients are committed to litigation because of a strong sense of grievance. “They think mediation would indicate weakness or a willingness to compromise. They worry about a loss of face.”

Court and legal fees

But Connellan believes mediation is preferable to lengthy court battles which can ratchet up the conflict and cost a lot of money, whether the issue is conflict between neighbours or a family dispute .

It has been estimated that a contested separation or divorce can cost anything from €8,000 while mediation can cost less than €1,000, plus the cost of having the agreement signed off by lawyers for each side.

Many mediators charge from €200 for a session and while circumstances obviously differ, five visits is the norm for many conflict situations.

“If couples go to a solicitor, they are often advised to sort it out before the entire estate is used up,” says Walsh. Mediators increasingly find that couples who want to separate are tied together – and forced to remain under the one roof – because of the curse of negative equity and a 30-year mortgage.

“Banks have no idea of the strain this imposes,” says Walsh. “It is actually easier to get out of a marriage than out of a joint mortgage.”

Family therapist Joanna Sweeney works closely with Walsh and the pair have designed a Master’s programme in mediation at St Angela’s College, Sligo.

“Separation by definition makes you poor,” says Sweeney. “If your income is limited, you don’t want to put your resources in your solicitor’s pocket instead of investing in the care of your children.”

She has a bird’s eye view of the fallout when separation agreements or divorces are formalised.

“I cannot tell you how many children come to me and say they cannot go to the access that the judge is forcing on them,” she says. “Kids will say a judge made a decision when I was six but I am 14 now.” Teenagers who want to hang out with their friends or play a football match on a Saturday sometimes feel coerced into trips to McDonalds or the movies with the non-resident parent, she says.

“Mediation gives children a voice. People must not think that they actually sit around the table but the mediator can listen to their worries.”

Sweeney also says studies have shown that parents who don’t live with their children generally have more contact with them and more involvement in their lives than those whose access was determined by the courts.

“Courts are over-worked. They cannot work out the fine detail such as who takes them to school, or brings them on holidays.”

Connellan says judges are increasingly pro-mediation. “A judge will often ask ‘Has this case been to mediation and, if not, why not?’”

Tips for family mediation Know what you want to achieve and your legal entitlements. Consult with your solicitor before you start if you are unsure of your legal entitlements.

Consider the other person’s position. Having prepared your own case, try to anticipate the other person’s.

Try to come up with suggestions which may resolve differences.

Be realistic about the constraints. You cannot divide more than is totally available. Be aware that in the current climate it may be more difficult to sell or liquidate assets as part of a financial settlement. Equally, obtaining finance for new houses or assets is generally more difficult than it used to be.

Try to focus on the future and what will work. Mediation is not about fixing the relationship but trying to move forward.

The process: Generally, the mediator will see the parties separately at first to get each perspective. All information disclosed in these private sessions remains confidential. Then mediation continues in joint sessions, though further individual sessions can be held. Sessions normally last one and a half to two hours.

Role of children: Children are not expected to make decisions about their future or which parent they will live with, but some mediators specialise in dealing with children and can relay their worries back to the participating parents.

Role of solicitors? Some clients consult a solicitor at the beginning of the process to know their legal rights, but they negotiate directly with their spouse in mediation. Participants can consult a solicitor at any time if unclear about their entitlements. At the end of the process a solicitor will prepare legal documents based on the decisions reached in mediation, to finalise the issues.

When the parties have reached agreement: The agreement can be made legally binding with the involvement of solicitors or it can be approved by a court and form the basis for a judicial separation or divorce.

How much does it cost? Family mediators charge per hour or per session. Rates can range from €200 to €400. Family mediation can be provided free through the State-funded Family Mediation Service, legaidboard.ie

There are now 800 members accredited by the Mediators Institute of Ireland, many of them working in the area of family law and governed by a code of ethics.

Practitioners have been calling for regulation.

Information from the Mediators' Institute of Ireland.

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