

Judicial Dispute Resolution Network Report – Ireland

1. Introduction to the country and its legal framework

a. Overview of the Country's Legal System

The legal system in Ireland is a common law system. The law derives from the Constitution of Ireland (*Bunreacht na hÉireann*), statute law, European Union law, and case law as declared by judges.

The Structure of the Courts

There are five distinct court jurisdictions in Ireland which operate in a hierarchy, commencing at the lower jurisdiction, the District Court, followed by the Circuit Court, High Court, Court of Appeal and Supreme Court. The High Court, Court of Appeal and Supreme Court are known as the Superior Courts and are established under the Constitution.

Since it is the High Court which is a member of the JDRN, this report will concentrate on that court.

There are 51 judges in the Irish High Court. The High Court is, for the most part, a court of first instance. The High Court has jurisdiction in civil cases where the claim is for damages for more than €75,000 or €60,000 in personal injuries cases. Claims below that level are dealt with in the Circuit Court or in

the District Court. The High Court's criminal jurisdiction is exercised by the Central Criminal Court.

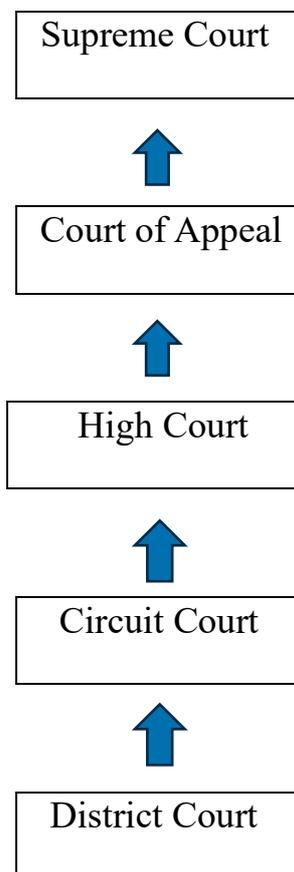
The civil business of the High Court is divided into various different lists (including Personal Injuries, Chancery, Non-Jury/Judicial Review/Asylum and Immigration, Family, Commercial and the Planning and Environment). The President of the High Court appoints a judge to be in charge of each of those lists and assigns judges to the lists.

In most cases, there is an unrestricted constitutional right of appeal to the Court of Appeal (which was established in 2014 – prior to that appeals were to the Supreme Court). Leave to appeal to the Court of Appeal is generally not required. Some statutory provisions do restrict the right of appeal, such as in Asylum and Immigration and Planning cases. Leave to appeal from the High Court to the Court of Appeal is required in those cases. Such leave is sought from the High Court itself. Appeals are permitted in exceptional circumstances from the Court of Appeal to the Supreme Court where the decision involves a matter of general public importance and/or where an appeal is in the interests of justice. “Leap frog” appeals from the High Court to the Supreme Court (by passing the Court of Appeal) are also permitted in exceptional circumstances.

The President of the Irish High Court is responsible for the general administration of the work of the High Court (and its various offices) and “managing” 50 other constitutionally independent judges. The President is also

responsible for certain lists which may change from time to time. The President of the High Court is also an *ex officio* member of the Court of Appeal and of the Supreme Court. The President is also the judge designated to deal with all arbitration related matters in the High Court under the Arbitration Act 2010.

THE CIVIL JURISDICTION OF THE COURTS



At which level of the judiciary is the JDR process or elements of that process implemented? To what extent is the JDR process implemented?

There is no formal Judicial Dispute Resolution (JDR) structure in the Irish legal system. However, Alternative Dispute Resolution (ADR) is very much to the fore of Irish judicial thinking and covers a wide variety of processes aimed at resolving disputes out of the court environment. These include arbitration (Arbitration Act 2010), mediation (Mediation Act 2017) and conciliation as well as adjudication (under the Construction Contracts Act 2013).

The Irish judiciary provides strong support for ADR at every level.

Litigants are encouraged by the Irish judiciary to engage in ADR, both formally and informally.

2. Objectives of the JDR process

What was the impetus for the introduction of JDR process and the use of dispute resolution modalities?

As noted above, Ireland does not have a formal JDR process. It remains a matter for the parties involved to decide whether to pursue such an approach (often with the strong encouragement of the court). The Irish courts enthusiastically support ADR processes, including arbitration and mediation. Mediation is particularly encouraged by the Irish judiciary. The impetus is to allow the

parties to reach a legally binding resolution of their disputes without the court making final orders after lengthy, expensive and acrimonious litigation. This also has the added benefit of freeing up the scarce resource of judicial time.

What are objectives and key outcomes of the JDR process?

The first and foremost objective of the ADR process is to provide swift and cost-effective access to justice for litigants. Here are the key outcomes associated with the ADR process:

1. **Settlement:** One of the main aims of ADR is to facilitate the settlement of disputes. This can save both parties time and money compared to a full court trial. The parties may avoid the risk and cost of court proceedings.
2. **Narrowing Issues:** Even if a case does not settle through ADR, the process will help narrow down the issues in dispute. This will make any subsequent court proceedings more focused and efficient.
3. **Flexible and Speedy Process:** It is a flexible process and can promote the speedy resolution of disputes.
4. **Preserving Relationships:** ADR can assist in preserving the relationship between the parties involved. By encouraging cooperative resolution, it helps avoid the adversarial nature of traditional litigation, which can be detrimental to ongoing relationships.

5. **Systemic Benefits:** Successful ADR processes benefit the judicial system as a whole. By resolving cases outside of court, ADR frees up court resources, allowing them to be allocated to other cases. This contributes to a more efficient and effective justice system.
6. **Confidentiality:** The process is confidential, and any information obtained in the mediation cannot be used elsewhere, for example in subsequent court proceedings if the mediation fails.
7. **Independent Third-Party Mediator:** Allows for the possibility of an agreement being reached, with engagement facilitated by an independent third-party mediator.

In summary, the ADR process aims to provide a more efficient, less costly, and relationship-preserving means of resolving disputes, benefiting not only the parties involved but also the judicial system at large.

3. Legal Framework for the JDR Process

As noted above, Ireland does not have a formal JDR process. But the courts have significant statutory powers to encourage ADR.

The EU Mediation Directive (*Directive 2008/52/ECon Certain Aspects of Mediation in Civil and Commercial Matters*)¹, was given effect in Ireland under

¹ Directive 2008/52/ECon Certain Aspects of Mediation in Civil and Commercial Matters

the European Communities Mediation Regulations 2011² and followed up by primary legislation in the Mediation Act 2017³.

The Mediation Act 2017 has as its objective the promotion of mediation as an attractive alternative to court proceedings, in terms of time, cost, resources and the avoidance of acrimony.⁴ The Act provides a legislative structure for parties to resolve their difficulties before (or after) commencing litigation, where appropriate. Section 18 and 19 of the Act are particularly relevant. Section 18 suspends the period of time for the purposes of a limitation period specified by the Statute of Limitations, from the day an agreement to mediate is signed and ending thirty days afterwards, or a settlement of the matter is reached, or the mediation is terminated in writing by the Mediator.⁵

Section 19 allows the court to adjourn matters if it is satisfied that there is no sufficient reason why the dispute should not be sent to mediation and the parties are ready and willing to mediate.⁶

Section 14 of the Mediation Act 2017 imposes a requirement on solicitors, prior to issuing proceedings on behalf of a client, to advise the client to consider mediation as a means of attempting to resolve the dispute the subject of the proposed proceedings and to provide the client with certain information in

² European Communities Mediation Regulations 2011

³ Mediation Act 2017

⁴ *Ibid*

⁵ Section 18 Mediation Act 2017

⁶ Section 19 Mediation Act 2017

relation to mediation and the advantages of resolving the dispute otherwise than by the proposed proceedings and of the benefits of mediation.

Section 14 further provides that where proceedings are issued, the originating document in the proceedings must be accompanied by a statutory declaration made by the solicitor evidencing that the solicitor has performed the obligations imposed on him or her which have just been referred to. If the originating document is not accompanied by that statutory declaration, the court is required to adjourn the proceedings to enable the solicitor to comply with those obligations.

Section 21 of the Mediation Act 2017 provides that in awarding costs in respect of proceedings, a court may, where it considers it just, have regard to any unreasonable refusal or failure by a party to the proceedings to consider using mediation and any unreasonable refusal or failure by a party to attend mediation following an invitation from the court to do so under Section 16 of the Act.

The High Court takes very seriously the obligation imposed on solicitors to file a statutory declaration confirming that they have advised their client in the manner required by Section 14. An example of a recent case where the statutory obligations were not complied with is *Byrne v. Arnold* [2024] IEHC 308 (Kennedy J.). In that case, Kennedy J. stressed that a plaintiff's solicitor must advise the client to consider mediation. The failure to comply with that obligation led to a reduction in the costs order in the plaintiff's favour.

The case law of the Irish courts is replete with judicial dicta in support of mediation and other forms of dispute resolution. For example, O'Donnell J. (now Chief Justice) in the Supreme Court in *Galway City Council v. Samuel Kingston Construction Limited* [2010] 2 I.R. 95 encouraged the search for other methods of dispute resolution apart from litigation. Similarly, Hogan J. in *Lyons v. Financial Services Ombudsman* [2011] IEHC 454, stated that “*mediation is a thousand times preferable than litigation*”. Irvine J. in the Court of Appeal noted in *Atlantic Shellfish Limited v. Cork County Council* [2015] 2 I.R. 575, the:

“evolving State and judicial policy which seeks to encourage the increased use of ADR wherever possible with the objective of improving the management and conduct of time consuming and costly disputes, while at the same time reducing the demands of such litigation on scarce judicial resources.”

The Civil Liability and Courts Act 2004 and in particular, Section 15 provides for mediation in cases involving personal injury.⁷

Dispute resolution procedures are also provided for in the procedural rules for the Superior Courts: Order 56A of the Rules of the Superior Courts.

⁷ Section 15 of The Civil Liability and Courts Act 2004

The Law Reform Commission's report of 2010 on Alternative Dispute Resolution: Mediation and Conciliation (LRC 98-2010) observed:

“1.12 ... parties to specific types of disputes should nearly always be encouraged to consider mediation or conciliation...disputes which are most amenable to resolution through mediation and conciliation include: appropriate family law disputes; appropriate employment law disputes; property disputes and, in particular, boundary disputes; probate disputes and, in particular, section 117 applications under the Succession Act 1965; appropriate medical negligence claims; and commercial and consumer disputes.

1.14 ... not all cases are suitable for resolution by ADR, just as the court based adversarial process is not suitable for all cases. The decision to use ADR should be made on the basis of a range of factors including how best to serve the specific interests of the parties and how best to ensure that justice is accessible, efficient, and effective for the parties involved.”

Mediation is firmly established in the area of medical negligence in the High Court, with many such cases settling by that route. Indeed, it is increasingly rare for such cases to run to a full hearing before settlement.

The Commercial Division of the High Court, which deals with commercial cases with a value of more than €1m, also actively promotes mediation. A high percentage of cases in the Commercial List are resolved by use of mediation.

4. Description of the JDR process

a. Description of the JDR process

- i. What are the characteristics of the JDR process and which dispute resolution modalities (e.g. early neutral evaluation, judicial mediation) are practised?

Dispute Resolution Modalities and their characteristics:

- a) **Arbitration** - Under the Arbitration Act 2010, which implemented into Irish law the UNCITRAL Model Law the courts have an oversight role in supporting the parties going to arbitration. The two most obvious supports are the power to prevent the issuing of legal proceedings where a binding contract contains an arbitration clause and the court's power to overturn an arbitrator's award, in strictly limited circumstances, pursuant to Article 34 of the Model Law.

In the first scenario, where the parties have agreed by binding contract to refer a dispute to arbitration, any proceedings issued will be stayed pending arbitration (Article 8 of the Model Law).

In the second scenario, the courts have limited powers to overturn an arbitrator's award in stated limited circumstances (Article 34 of the Model Law). Precisely how restricted can be seen from the decision of Barniville

J., in *Ryan v O’Leary* [2018] IEHC 660⁸ where he noted the words of Gilligan J. noted in *Delargy v Hickey* [2015] IEHC 436, that “*clearly there is a public policy ground in issue in relation to the desirability of making an arbitration award final in every sense of the term...*”⁹

As noted earlier, the President of the High Court is designated as the judge dealing with all arbitration related applications in the High Court under Section 9 of the Arbitration Act 2010.

- b) **Conciliation** is broadly similar to mediation and is a common form of ADR in construction disputes. If the parties do not reach a negotiated settlement, the conciliator can issue a recommendation which is binding on the parties, unless rejected by either of them within a prescribed time. The recommendation is largely at the discretion of the conciliator who can make a recommendation based on their opinion of the merits of the case.
- c) **Mediation** is dealt with in detail above.
- d) **PIAB** - The Personal Injuries Assessment Board, now The Injuries Board. is another form of dispute resolution in personal injury cases where liability is not in dispute. Under the Personal Injuries Assessment Board

⁸ *Ryan v O’Leary* [2018] IEHC 660

⁹ *Delargy v Hickey* [2015] IEHC 436, para. 78

Act 2003¹⁰, a claimant can only issue legal proceedings after the matter has been admitted into the Injuries Board and either an award has been made or the Injuries Board has determined that it is not in a position to make an award. Thereafter, it issues a certificate which is a prerequisite for the issuing of legal proceedings. Awards are made in line with the Personal Injuries Guidelines issued by the Judicial Council. These are binding, not only on the Injuries Board, but also on all levels of the courts.

- e) **Family Law Courts** – There are various forms of dispute resolution in family law, including mediation and collaborative law. Family law practitioners are required to advise their client of the benefits of mediation. The introduction of a family law arbitration scheme similar to the scheme operating in England and Wales is currently being considered.

ii. **How is the JDR process carried out? Is the JDR process conducted online? Are technological tools used to facilitate the JDR process?**

As noted above, Ireland does not have a formal JDR process. As we hope is clear from the above, the Irish judiciary is extremely supportive of ADR. The ADR process can be carried out by phone, video hearing or in person. But

¹⁰ Personal Injuries Assessment Board Act 2003

experience shows that the best way of ensuring a binding agreement between the parties is for them to be present at and part of the process. This allows the parties to own the process and to feel as if they have a direct input into the final binding settlement.

According to research carried out by Dr. Treasa Kenny on Ireland's experience of adapting to mediation online, the main challenges associated with online mediation in Ireland are:

1. Mediators' familiarity with technology;
2. Familiarity with technology for mediation participants;
3. Power balancing; and
4. Maintaining confidentiality.¹¹

iii. Do Judges conduct early neutral evaluation and judicial mediation or are these outsourced to third parties?

The Irish judiciary is strongly supportive of mediation, in particular. Therefore, to that extent, the process is outsourced to independent mediators. A number of those mediators are retired judges who naturally bring their judicial experiences to the fore.

¹¹

<https://mural.maynoothuniversity.ie/15193/1/Research%20Online%20Mediation%20Use%20in%20Ireland%5B15678%5D.pdf>

The Injuries Board also has recently set up a mediation service outsourced to third parties.

b. Eligibility criteria for the JDR process.

Is the JDR process mandatory or optional? Is it mandatory for certain types of disputes only?

Most of the ADR processes are optional but recent decisions of the High Court show the court's view as to the advisability of the parties going to mediation. In *Byrne & Others v Arnold* [2024] IEHC 308 Kennedy J. imposed a 5% cost penalty on the Plaintiffs because their solicitor did not advise them to consider mediation in accordance with Section 14 of the Mediation Act 2017.¹² The costs consequences of an unreasonable refusal to consider mediation or to attend a mediation when invited by the court to do so have been mentioned above (Section 21 of the Mediation Act 2017). Therefore, whilst ADR is optional, it is clear from both case law and *obiter* comments that it is very much encouraged by the courts.

¹² *Byrne, Hyslop and Kerrigan v Arnold* [2024] IEHC 308

c. **Training of Judges conducting the JDR process**

There is no specific training for judges as of yet in conducting the ADR process. However, the majority of the newly appointed members of the judiciary have undertaken training in ADR and many practised as successful mediators and arbitrators.

The Judicial Council Act 2019 creates an obligation on the Council to provide for “*continuing education of judges.*”¹³ It is hoped in the future that this would include training in JDR.

Some of the training programmes offered by the Judicial Council to members of the judiciary contain elements of mediation and dispute resolution. The courtroom control and the mentor programme are two such programmes; they offer the opportunity to develop transferrable skills in relation to management of high conflict situations and provision of a safe supportive environment for discussion.

The Irish section of GEMME (European Judges Group For Mediation) has organised a number of events dealing with ADR and involving members of the Irish judiciary. Examples of those events include:

¹³ Judicial Council Act 2019

- (a) An event entitled “Building Bridges Not Walls: Essentials of a Successful Mediation” in October 2023. The seminar was chaired by Bolger J., a judge of the High Court and current President of GEMME Ireland.
- (b) GEMME Ireland hosted a hybrid event in June 2023, in Dublin, exploring the theme of mediation in the resolution of disputes in sport. The event was chaired by Dignam J., a judge of the High Court, and committee member of GEMME Ireland and a former board member of Community Law and Mediation.
- (c) GEMME Ireland hosted a hybrid mediation event in April 2023 held at the Bar of Ireland. The seminar explored the theme of mediation in employment law disputes with a focus on the processes and mediator skills that leads to a successful mediation. The event moderator was Bolger J., Judge of the Hight Court.
- (d) The Irish section of GEMME had an event under the title "Mediation in Medical Negligence and Catastrophic Injuries" in February 2023.
- (e) GEMME Ireland hosted a commercial mediation event in March 2022. The keynote speakers were Barniville J. (now President of the High Court), and retired Judge of the Court of Appeal, Gilligan J.

- (f) GEMME Ireland with the Family Mediation Service hosted a mediation seminar event in November 2021. The Presidents of the High Court and of the District Court were present, as were members of the Supreme Court.

d. Statistics on the JDR process

As of yet, there are no statistics on the Judicial Dispute Resolution process. But in the future, it is hoped that it will become a feature of our judicial system. In line with the Courts Service's modernisation programme and also based on the recommendations of the Judicial Planning Working Group, the manner in which data is gathered in the Irish Courts is being streamlined and improved. It is hoped that this process will lead to an increase in the accuracy and sophistication of statistical information in the courts and allow for trends to be better identified in all areas, including ADR.