Examination of success factors for appropriate competencies and processes required by mediators and other parties operating in the construction industry

Chinoye T. K, Onwordi D. F, Anu Olu B., Ogunjobi Ade and Adea D. L

University of Tampere, Tampere

Abstract

The construction industry notoriously excels at dispute creation both in Ireland and abroad. This paper examines mediation in the Irish construction industry as a means of conflict and dispute resolution. It aims to identify success factors for appropriate competencies and processes required by mediators and other parties operating in the construction industry. Methodology includes a thorough review of the literature, followed by detailed interviews from industry experts to elicit and highlight the core competencies required. To aid in the analysis, qualitative analysis using mind mapping software was used. The findings suggest that facilitative mediation was best suited for the Irish construction industry. 13 and 17 success factors were identified as key skills necessary for a mediator and for a successful mediation process. For the skills, it ranges across behavioural, technical and intellectual skills. The mediation process factors can be split into actions of the mediator and other parties in the dispute. The results are similar to those identified in other countries and provide a good reference point for the development of the global construction industry. By following the findings of this report mediators and parties in dispute can improve processes and be more successful in mediation outcomes as a means of resolving conflicts and dispute.

Keywords: Alternative dispute resolution, conflict resolution, core competencies, critical success factors, Irishconstruction industry, mediation.

INTRODUCTION

While mediation is not a new form of dispute resolution, having been in existence in ancient Greece (Folberg, 1983), it has more recently been adapted as an effective method of resolving construction disputes in different countries around the world (Bradbeer, 2006). It is gathering momentum as a successful process in the Irish construction industry, gaining in popularity when the Construction Industry Federation (CIF) introduced it into their construction sub-contracts (Eccles, 2008; Stowe, 2008). They named mediation as the mandatory first step, in the dispute resolution process, to those working with this type of contract. Mediation is widely acknowledged as a beneficial form of dispute resolution (Cheung, 1999; Goodkind, 1988), thus must be acknowledged as so and embraced by all parties concerned.

Given that mediation in the Irish construction Industry is developing quickly (Pentony, 2010) it is necessary to investigate what makes for a successful mediator or a successful mediation process, particularly in the field of Irish construction mediation. The Mediators Institute of Ireland has published a list of competencies which they

.

require from their associates, depending on the level of membership they wish to secure. However, while this list is complex, it is directed at all mediators, regardless of which industry they choose to work. It is important to determine which of these competencies is important for those working as mediators within the Irish construction industry and to identify core factors attributable to mediators operating in this field.

Bucklow (2007) carried out research into mediator competencies, however, again, this research is focused on mediators in general, and is carried out in the United Kingdom, so while it provides an informative overview and can be used to draw comparisons, it is not specific to the details of mediators working in the Irish environment, and also, working within the realm of the construction industry.

Other research on the subject, (Suter, 2009; Sweet and Maxwell, 2009; Andre-Dumont; 2009; Sheils, 2008; Harmon, 2003) all discuss various aspects of mediation such as which form is best, it is effectiveness in the construction industry and the potential impact of the European directive on mediation on construction disputes. There is no research undertaken or published on critical success factors in competencies or processes specific to the Irish construction industry, hence the emergence of this research topic.

Based on the results of this research, construction mediators operating in the Irish construction industry can consult the findings and where applicable, adopt the core competencies, as discussed, to further aid their mediation skills, resulting in providing a better service to all concerned.

MEDIATION PROCESS, THE MEDIATOR AND CRITICAL SUCCESS FACTORS FOR MEDIATION

Mediation process

When examining the mediation process it is essential to understand that there is no specific structure identified that must be followed when conducting mediation. Each mediator will decide individually how the mediation process will proceed, based on the characteristics of the case in question. Stowe (2008) indicates one of the key approaches adopted in the mediation process in that there is no standard form for a mediator should take "as scope should always be left for the parties and their mediator to tailor a format to suit the circumstances". Stowe (2008) consolidates the mediation process identifying the following common procedure that could be applied to most mediation processes, regardless of form, dispute or mediator involved;

(1) Before the formal mediation case proceeds, it is often beneficial for the parties involved to conduct preliminary private meetings between the mediator and the parties involved. The purpose of these preliminary meetings is to portray the details of the case to all the parties, including the mediator. It is common practice for this process to be undertaken with the parties separately to avoid conflict and to remove the possibility of dispute among the parties with regards the details being discussed.

(2) On the day of the mediation, the mediator would greet the parties and ensure they are comfortable and settled.

(3) It is suggested that an initial joint meeting should take place where the mediator will outline the proceedings for the day. This ensures that the parties to the mediation are in acceptance and understand the format proposed including the rules and regulations imposed on the mediation proceedings, as enforced by the mediator. Once all of the parties to the mediation are in acceptance, a representative for each of the parties in dispute would present their case, outlining the key aspects of the dispute.

(4) This next stage is generally where the mediation process varies. There can be private confidential meetings between the mediator and each party separately to:

(a) "Examine the important issues and needs of each party. In this context the mediator will likely encourage openness about weaknesses as well as strengths."
(b) Discuss different possibilities for solution and settlement.

These private meetings can be mixed and interchanged with meetings where the parties congregate and discuss the case in unison, including:

(c) A discussion of the various parties understanding of the facts in the dispute, particularly where arguments differ or where their experts' opinions do not correlate.
(d) Provide more information or an explanation for a particular point
(e) Re-evaluate the agenda
(f) Discuss options for solutions
(g) Negotiate directly without proceedings getting heated.

This framework discussed by Stowe (2008) "reflects the broad structure advocated in respect of mediation". But it is also noted that "it should be borne in mind that there is no one method of running the process. Every mediator is likely to have his own idea and a differing approach."

Skills of a mediator

The skills required of different mediators in various industries are often discussed in general terms and are mostly immeasurable. Brown and Mariott (1993) documents and defines the skills of a mediator in more quantifiable terms by splitting the topic into three parts.

The mediator's roles and functions

This encompasses discusses the functions that the

mediator needs to undertake. However most of the roles subsequently identified by the authors are again ambiguous in nature. Because of this, it is necessary to continue to define this topic by carrying out specific research into exactly what are the important skills for a mediator working in the construction industry to possess.

The mediator's attributes

These are the inherent traits and qualities which the mediator possesses, rather than the skills which are specifically employed in the mediation process. Among these key qualities list are; understanding, judgement, intuition, creativity, trustworthiness, authority, empathy, constructiveness, flexibility and independence.

The mediator's skills

These skills are the more general personal skills required to successfully run a mediation process. Treanor (2009) states that these attributes are generally recognised as being "skills which improve communication, negotiation and problem solving and should incorporate; Listening to all arguments, Interpreting what the parties are trying to say, Clearly identifying the issues to be resolved, reframing positions so they are better understood, observing body language, questioning to reveal further information, acknowledging feelings, summarising details, managing the session and lateral thinking."

Critical success factors for mediation

There is little published information available on what makes a mediation process successful. Richbell (2009) discusses "how to win at mediation" and this is the best starting point for determining critical success factors for a successful mediation. The core points noted in the research advises that the parties should.

Prepare well

Due to the nature of the mediation process, it is essential that all parties prepare well in advance of the meeting to ensure that all of the information required is fully understood by the parties and available for the mediator, should they be requested. Jackson (2009) further this point by arguing that all parties need to enter the mediation process with confidence on the facts pertaining to the case along with having a thorough understanding of the overall mediation process and the policies within.

Mediator selection

Richbell (2009) indicates that the selection of an appropriate mediator is fundamental to the overall mediation process and the benefit of all parties concerned. The parties selecting the mediator must ensure that the individual selected is competent, knowledgeable and suitable for the successful execution of the mediation process, whether selected by the parties in dispute, the parties' advisors or by an independent nominating body, acting on behalf of the disputing parties.

Get the best out of the opening joint session

The opening joint session is fundamental to the overall mediation process and must be maximised by all parties to the dispute. Through using the initial joint opening session, each of the parties concerned can convey they're case to their disputing party coupled with acknowledging the case provided by the apposing side, thus providing a holistic overview of the facts of the case to all of the parties involved. Treanor (2009) furthers this point by indicating that the opening session can be used to dissipate tension among the parties and provide a basis in which the process can begin to move forward.

Co-operate

Mediation is a pointless exercise if parties are unwilling to participate and cooperate during the process. Treanor (2009) outlines that if all parties are genuinely committed to the process and are determined to come to an amicable resolution to the issues through mediation, resulting in a higher probability of success through the mediation process.

Through conducting further research on the topic, it is proposed that further insight be provided on the subject of the critical success factors attributable to construction mediators in the field of mediation in Ireland.

METHODOLOGY

In order to collect and correlate the relevant data, successfully achieve the research aims and satisfy the basis of the research, a number of steps were conduct to illicit the required information. To begin with, a detailed review of the literature was conducted to identify and catalogue the assorted factors, as perceived by the various authors from the field. To aid in the validation of the factors identified along with exhausting the list of all possible factors worthy of consideration, four detailed industry based interviews were undertaken. Each of the interviews were conducted in person rather than telephone or e-mail based procedures, due to the benefit of face-to-face synchronous interaction with the participant and the benefit of identification of social clues in the form of facial expressions, intonation, body language, etc. (Opdenakker, 2006). Through triangulation of answers provided by interview participants, a process of cross-verification was achieved in the identification and classification of key factors as prescribed by the respondents surveyed. The triangulation process was utilised further, through adopting mixed qualitative methodologies in the elicitation and

quantification of the prescribed data, as prescribed by Jick (1979), Golafshani (2003) and Decrop (1999). The four individuals nominated for interview were randomly chosen from a list of possible candidates based on selective sampling, to ensure that a holistic overview of mediation in the Irish construction industry was acquired. The list was based on obtaining details of potential candidates from various research institutions and mediation practices and accumulating details of potential participants. In total, seventeen individuals were highlighted for participation in the research, each with an average of eight years mediation experience in the Ireland. To deduce the appropriate candidates, participants were shortlisted based on the level of experience, number of years practicing mediation in the construction sector and the relevant qualifications acquired throughout their career. Four candidates were shortlisted and contacted to affirm their acceptance in partaking in the research. The average experience of the participants selected was twelve years in the field of mediation and dispute resolution, many of which was spend resolving disputes in the construction sector.

The interviews conducted were of a semi-structured nature with the key professionals chosen due to their experience of dispute resolution and more importantly, mediation in the construction industry. Due to the semi-structured nature adopted, this aided the interviewees to portray the points they felt were relevant to the research while also providing the interviewer the control to ensure that the interview did not deviate from the overall research objective. With the semi-structured approach, there is an openness from both parties to facilitate deviations and changes of context within the interview procedure while also allowing the research team to validate factors highlighted, where required (Kvale, 1996). In addition, the environment in which the interview is conducted is more akin to a complex conversation, during which dialogue is conducted in a reciprocal nature (Hammeell et al., 2000). The interview process adopted, emphasised on a number of underlying themes, where each of the interviewees were questioned. The order at which the questions were posed was diverse, with a number of subsequent questions answered in conjunction with other topics discussed. This process aided the fluidity and clarity of the interview process while also ensuring that the required data was obtained from each interviewee questioned. To further ensure optimum data elicitation form each of the interviews conducted, both thematic and dynamic dimensions were acknowledged and utilised throughout in order to ensure an optimum interview environment (Kvale, 1996). As a result, a comprehensive list of factors was established and catalogued, based on the perceptions of the four interviewees questioned and the associated literature reviewed.

To aid in deciphering the interviews and the factors within, qualitative analysis mind mapping software was utilised, namely Banxia's™ Decision Explorer™. It was possible to graphically illustrate each of the interviews in isolation and also to combine the overall results and portray the findings, based on the perceptions of those interviewed, in a coherent and visual approach, thus illustrating the interrelationship among the variables and the resulting effects. Subsequently, it was possible to capture the chain of causation where the interviewer highlighted the question posed and through a reciprocal interface, the respective solution, as perceived by the interviewee can be highlighted and documented in a clear, concise diagrammatic form, thus aiding in the analysis of large amounts of qualitative data (Ackermann et al., 1996; Buzan, 2006).

Thus, through consulting the literature on the subject coupled with conducting a detailed interview procedure, it was possible to deduct the core competencies and processes of mediators operating in the Irish construction market. Based on these key findings, it is feasible to derive conclusions and implication for the industry based on the perceptions of the various mediators in the field of construction mediation, particularly in Ireland.

QUALITATIVE RESEARCH

The basis of the research is conducted around four semi-structured interviews from individuals directly linked to the construction industry and the mediation profession in Ireland. Nachmias et al. (2007) identifies that the interview process is a significant technique used in the collection of both factual information as well as opinions of individuals.

The type of interview structure adopted in this case was semi-structured, due to the frequency of use in the field, the high return rate of usable data, the positive experience created between the interviewee and the interviewer along with the overall ease at which the interview can be conducted and altered based on the responses provided by the interviewee (Hove and Anda, 2005). In addition, the semi-structured interview process is more formal, aiding the interviewer to concentrate on the core topics requiring discussion but also allows the interview to deviate, where applicable (Naoum, 2006). Merton and Kendal (1946) identify four key factors for semi-structured interviews:

(1) It takes place with respondents known to have been involved in a particular experience.
(2) It refers to situations that have been analysed prior to the interview
(3) It precedes on the basis of an interview guide specifying topics related to the research hypotheses.
(4) It is focused on the respondents' experiences regarding the situations under study".

In the case of each of the interviews, a set criteria was adhered to, where a number of predetermined, standard questions were posed. These areas requiring redress were probed under a number of headings, with the associated questions as follows;

a) The overall mediation process
b) What do you feel are the key elements which make mediation more attractive than other forms of dispute resolution?
c) Do you think the style of mediation employed holds implications for the outcome of the process?
d) Do different styles of mediation suit different industries?
e) What do you feel are the key stages in the mediation process and why?
f) Mediator selection
g) What do you feel is the best way to go about finding and selecting a mediator?
h) What factors do you think would influence the selection of a mediator and why?
i) Do these factors apply regardless of the industry or do they vary dependant on the industry?
j) Key competencies
k) What do you think are the critical competencies/skills a mediator should possess and why?
l) Do these factors apply regardless of the industry or do they vary dependant on the industry?
m) Do different stages of the process require different key skills?
n) Critical success factors
o) What do you think are the critical success factors for a successful mediation process?
p) In regards the overall process
q) For the mediator
r) For the parties

Based on the answers provided to each of these questions in turn, the order in which they were answered deviated, due to the semi-structured nature of the interview process. Regardless of this, on completion of each of the interviewees, each of the participants had answered each of the sections outlined and the corresponding questions within, thus providing ample information with regards the research topic under investigation.
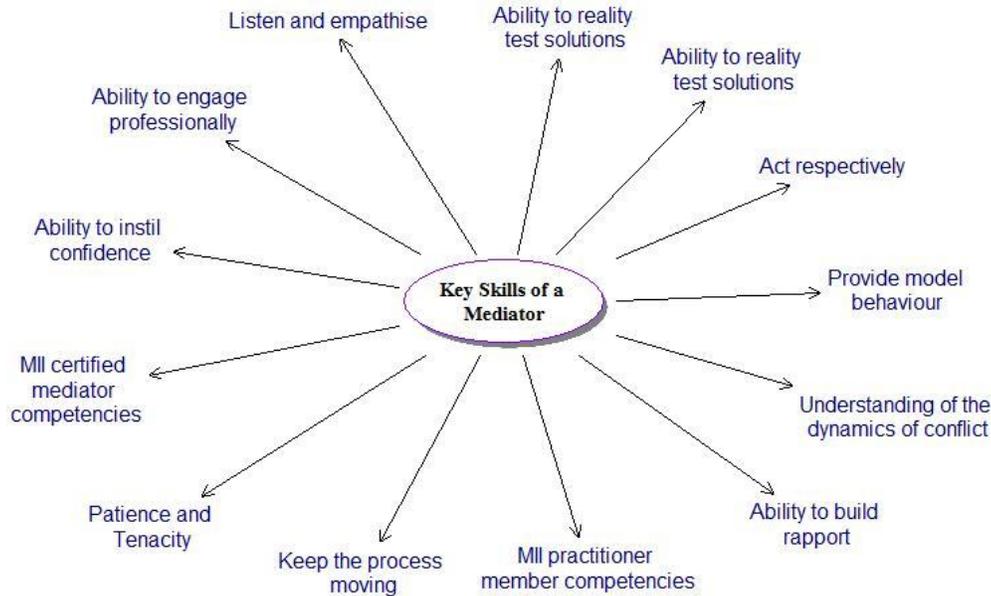
Figure 1. Mediator skills.

The results of which were imported into Banxia's™ Decision Explorer™ mind mapping software, where it was analysed and manipulated accordingly. Each of the interviews were amalgamated and dissected, resulting in the documentation of the following findings.

FINDINGS

Each of the interviews were conducted in isolation, analysed and map using Banxia's ™ Decision Explorer™ software to graphically convey the core concepts discussed and highlighted by the interviewees questioned. Each of the interview results was merged and the results combined. The following images graphically illustrate the results of the four interviews, depicting the factors outlined during the discussions. To aid the overall transparency and aid the coherency of the maps, each of the key research areas are segregated and the relevant data combined, relating to that particular research area, from the different interviews. Each individual cluster is then subsequently discussed, and the resulting data viewed and discussed in further detail.

Skills of a mediator

The thirteen factors in this cluster identify the key skills that the respondents felt were necessary for a mediator, working in the construction industry in Ireland, to possess. They range between behavioural, technical and intellectual skills and provided, such as in the case of MII member competencies, direction on where to discover a

more definitive list of capabilities. This recommendation was explored further when selecting factors for further discussion (Figure 1).

Critical factors for a successful mediation process

This cluster graphically displays the seventeen critical factors for a successful mediation, as identified through the interview process. These factors can be split into actions of the mediator and other parties in the dispute. Each of these factors will be discussed in further detail (Figure 2).

DISCUSSION

Based on the various interviews and resulting analysis, the various factors illustrated can be condensed to summarise the critical success factors of mediators operating in the Irish construction industry, as follows:

i) Ensure the parties see the process as a means to resolving the dispute and repairing their relationship: The first factor identified as being critical to the success of a mediation process is that the mediator needs to ensure that the parties see the process as a means to resolving the dispute and repairing their relationship. The parties need to be fully committed to the process and willing to actively participate in the mediation process with a view to resolving the dispute. If the parties do not see that mediation is an effective way to resolve their dispute, or if they are not dedicated to resolving the dispute at all, then there is little chance that the mediation process will
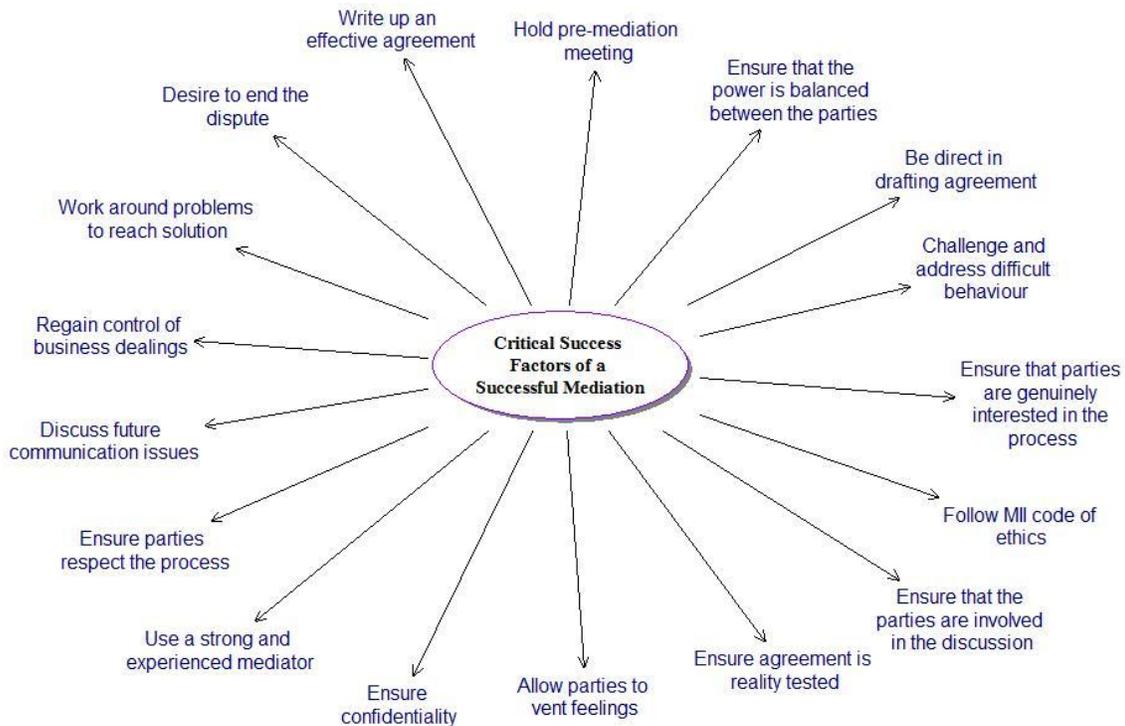
Figure 2. Critical success factors.

be successful. They should be an intention between the parties to settle the issues at hand; they should enter into the process with an open mind and show consideration for the other parties' feelings and emotions (Treanor, 2009).

In practice this can be done once the parties agree to mediate. The pre mediation discussions are vitally important to the outcome of the process as they allow the mediator to gauge the parties' commitment to the process. It is at this stage that the parties establish the boundaries for the mediation, and it also at this stage that the mediator can have an honest discussion with each party to advise them of the level of commitment and participation required of them if they are to continue with the mediation process.

Mediation is derived for the need to ensure a quick and relatively inexpensive means of dispute resolution. In order for the process to mirror these attributes, it is essential for all parties concerned to co-operate, thus ensuring a higher probability of resolving the dispute amicably (Moore, 1986). In addition, mediation incorporates upstream benefits, where there is a greater possibility of the parties in dispute to maintain or repair their business relationship, thus aiding in the possibility of future communication among the parties in disagreement (Bush and Folger, 2005).

On reviewing each of the individual interviewee comments, one of the core attributes echoed throughout was the essential requirement for the parties to

participate and co-operate in the mediation proceedings and ultimately, where possible, to aid in the restoration of the business relationship. Each of the participants highlighted that where one or more parties to the mediation process was unwilling to co-operate with the mediation process, the success of the overall process would suffer, as a direct result. This standpoint is also mirrored in a number of pieces of literature where the critical aspect with regards the mediation process is the co-operation among the parties present, ultimately with the idealistic vision of repairing the broken relationship (Bush and Folger, 2005; Crawley and Graham, 2007).

ii) Create a supportive atmosphere to facilitate sharing, trust and negotiation among the parties: It is the responsibility of the mediator to ensure that the parties are comfortable throughout the mediation. The mediator needs to ensure that negotiations do not deteriorate to the point where the parties trade statements or opinions which are not constructive towards the mediation procedure. It is important that the parties are able to express themselves but also that they allow the opposing body the same courtesy. They need to actively listen to each party and not interrupt the speaker (Jackson, 2009).

In practice, problems often arise where the dispute is fresh and the emotions raw, the parties may not be ready to hear each other or even interested in coming together to work towards resolution. A skilled mediator will be able to take this scenario and ease the tension, perhaps by

rephrasing the issues or by having an open discussion, dictating a party's position. Treanor (2009) stated, "It is all too easy for somebody to get caught up in their experience and feelings when a breakdown in a relationship occurs. When it comes to mediation they are free to express these feelings and experiences, which can be cathartic in and of it, but they also need to determine and focus on what it is that they want to get out of the process. If they can do this, they will get more out of the process and be able to move past the dispute."

One of the key points noted by three of the interviewees was the requirement of the mediator to provide an atmosphere that instils a feeling of trust and sharing, thus ensuring that the participants involved feel at ease in their surroundings. This point is also emphasised by Gaitskell (2006) who identifies that trust among the parties, but more importantly, trust with the mediator, is essential in order to ensure a successful mediation campaign. To complement the process, one of the core attributes of a mediation process is negotiation among the parties and the mediator (Goldberg, et al., 2003).

iii) Ensure clarity in both the stages of the process and the writing of the agreement: The mediation process needs to be clear and transparent throughout, this includes in writing up the agreement. The mediator needs to go through, in detail, the outline structure of what will happen on the day of the mediation. This can be discussed and agreed with the parties prior to the mediation.

In terms of drafting the agreement, once the parties have developed a strategy for resolution, the mediator needs to ensure that the decision they have come to is sufficiently reality tested, to ensure that it is a viable, practical resolution. In addition, the mediator needs to illustrate what is to happen, how it is to happen and any relevant deadlines, to ensure that the agreement among the parties is enforced. They also need to consider what will happen if the parties do not follow through on the agreement that they have made during the mediation session (Treanor, 2009). If everybody involved can implement these steps, the mediation process can be closed out with a successful resolution to the dispute achieved.

A core aspect of mediation is the presence of clarity and transparency both from the parties in dispute and from the mediator. In addition, clarity is required in the documentation and subsequent writing of the agreement between the parties, to aid in the execution of the appropriate steps as outlined by the mediator and the participating parties. Again, this point was touched upon by the participants to the interview process, as also by Pruitt et al. (1993) and Gould et al. (2010). To the contrary, Holmbeck (1997) outlines the issue where a lack of clarity, particularly with decisions provided by the mediator, results in confusion and ultimately conflict among the parties, in the decision given.

iv) The process should remain fair, logical and command respect throughout in order to allow the parties the best attempt at resolving their dispute: In order for a mediation to be successful the process needs to be fair, and more importantly appear to be fair, to all of those involved. If a party feels that the mediator or the mediation is biased in favour of the other side they may refuse to participate fully in the negotiations and ultimately dispute the overall resolution if not in their favour.

The mediation itself should follow a logical procedure, and the parties should be clear as to what is involved and what is expected of them. This will aid the parties involved in being more comfortable and prepared for what is to come. The mediator also needs to ensure that the parties continue to respect the process throughout, making certain that they don't lose faith in the desired outcome. In practice this will require the mediator to treat all parties equally; to show empathy but not agreement; to be clear and concise in instructions and to address coherently, all reservations and uncertainties that arise throughout the course of the mediation.

Throughout the entire qualitative analysis and interview process, one of the core attributes voiced by all of the parties was the requirement for respect, both from the opposing part and also from the mediator. Christorpherson (2009) argues that where respect between the parties in dispute exists, the possibility of settlement is more probably and easier achieved verses one where no such environment exists between the parties in dispute. In addition, where the process is conducted in a fair and logical fashion, the manner of the mediation process is one where reduced acrimony and hostility are present, thus ensuring a quick and relatively inexpensive dispute resolution process (Boulle, 2005).

v) Parties have a clear understanding of their requirements and participating in an effective feedback process: The parties need to be clear on what they want to walk away from the process with, at an absolute minimum. If they have established this in advance then they are free to participate in negotiations with the reassurance of knowing what their minimum requirements from the mediation process. This can be shared with the mediator, confidentially, and this will allow the mediator to determine how far apart the parties are from coming to an amicable resolution.

In practice what the parties want from the process can be very different and they can go a long way towards resolution by making conciliatory gestures on issues that are not important to them, as a party, but may be a fundamental condition of the other side. It is suggested that the mediator ask the parties to give feedback anonymously, based on their experience and opinion of the process and the mediator. This will help the mediator to improve their procedure, practice and ability to interact

with the parties (Treanor, 2009).

One of the interviewees highlighted the lack of participation of the parties in dispute either with each other and/or with the mediator, as one of the fundamental reasons why mediation processes fail. Brooker (2007), Bickerman (1997) and Chow (2010) all concur with this point, thus further compounding its importance in the mediation process. Where each of the parties have a clear understanding of the mediation process, the corresponding arguments and the overall facts of the dispute, again, further advances can be made in the progression of the mediation. The primary competencies outlined by the participants in the interview process all echoed a growing concern with regards mediation and the lack of preparation with regards the content in dispute. This point was voiced with regards the parties to the dispute being ill-informed with regards the facts or not concurring to the requirements as set out by the mediator.

vi) Acknowledge efforts towards achieving resolution and assist parties to voice apologies and repentance for transgressions

When the parties make a gesture to help the dispute move towards resolution, the mediator should draw attention to this gesture and ensure that the mediator and the other party acknowledge the effort being made. It may be that the mediator, being aware of the key requirements of both sides and can match up major and minor needs, and start the parties on the road to resolution and negotiations that will help to resolve the larger more complicated issues (Richbell, 2009).

The parties should also feel free to express apologies and regret if they feel it appropriate. Sometimes, when the parties come together to express their experience of the dispute it can completely reframe the dispute in the minds of the other party. Apologies and admissions of fault can help in the preservation of relationships which, in practice, can be one of the key reasons why the parties participate in mediation in the first instance.

As outlined earlier, one of the fundamental characteristics of mediation is the possibility of maintaining or rebuilding frayed business relations, thus enabling the possibility of continuing such a relationship into the future (Bush and Folger, 2005; Crawley and Graham, 2007). Venzie (2010) summarises the issues of closure with regards alternative dispute resolution and indicates that the case of closure is one of the most important aspects with regards the mediation process in construction disputes. Due to the often complex and diverse solutions envisaged coupled with an often exhaustive list of parties to a construction mediation case, the need for effective closure is of paramount importance. In essence, the key point noted by Venzie (2010) is that it is desirable for all parties to walk away from the dispute without any acrimony or distaste for any of the participating parties to the dispute resolution procedure.

CONCLUSION AND FURTHER RESEARCH

The research identified that recommendations and proven experience are what drives people in their selection of mediators. This is beneficial for the registration bodies who recommend mediators from lists they have established, based on several predetermined facets. It illustrates that they utilise the appropriate methods in assisting their members to resolve disputes and promoting the use of mediation as an effective method of dispute resolution within the construction industry in Ireland. Based on the overall research, the core competencies and processes required from mediators working in the Irish construction industry may be summarised as follows;

(1) Ensure the parties see the process as a means to resolving the dispute and repairing their relationship.
(2) Create a supportive atmosphere to facilitate sharing, trust and negotiation among the parties.
(3) Ensure clarity in both the stages of the process and the writing of the agreement.
(4) The process should remain fair, logical and command respect throughout in order to allow the parties the best attempt at resolving their dispute.
(5) Parties have a clear understanding of their requirements and participating in an effective feedback process.
(6) Acknowledge efforts towards achieving resolution and assist parties to voice apologies and repentance for transgressions.

Throughout the course of the research it was determined that the key skills of a mediator in the Irish Construction Industry were similar to those of mediators working in other industries. The key skills for a mediator are easily transferable and a good mediator will be able to work in any industry that is required of them. The data has showed what people working with the Irish construction industry feel are the key factors for success in mediation. If parties in dispute, which have agreed to mediate, implement these conclusions then they can feel more confident in the process and feel even more hopeful of achieving resolution.

It is recommended, based on the research and the opinions voiced by the interviewees, all of which were experienced mediation practitioners, all suggested that registration bodies in both mediation and construction in Ireland to work together to broaden and promote the rise of mediation as a successful and effective method of resolving disputes in the industry. It is suggested that additional information be provided to the industry about what would be involved or expected of the industry in such an environment along with why mediation should be

chosen. Given the current economic downturn it is inevitable that the number of disputes in the Irish construction industry will increase. Mediation may provide an alternative route towards settling many of these disputes in a proactive, timely and cost effective manner, while still aiding in maintaining a working relationship among the parties in dispute.

Furthermore, based on the key findings of this research, it is worth noting that additional research is suggested in the field of mediation in the Irish construction industry. It is suggested that a review of the overall impact of mediation as an alternative dispute resolution technique adopted in the construction industry in Ireland, with the possibility of benefiting the development of the dispute resolution process and the mediation procedure as adopted in the Irish construction industry. Such research would result in further benefits for the Irish construction industry through illustrating the importance and benefit of such a procedure in the overall dispute resolution process.

REFERENCES

Ackermann F, Eden C, Cropper S (1996). Cognitive Mapping: Getting Started with Cognitive Mapping. Management Science, University of Strathclyde, p. 1.

Andre–Dumont H (2009). The New European Directive on Mediation – Its Impact on Construction Dispute. Int. Constr. Law Rev., 26(1): 117–124.

Bradbeer R (2006). Mediation around the World in the 21st Century: A Personal Journey. The Metropolitan Corporate Counsel, Published: August 01, 2006.

Boulle L (2005). Mediation: Principles Process Practice. 2ND Ed. LexisNexis Butterworths: New South Wales.

BrookerP (2007). An Investigation of Evaluative and Facilitative Approaches to Construction Mediation. Struct. Surv., 25(3/4): 220–238.

Brown H, Marriott A (1993). ADR: Principles and Practice. 2nd Ed., Thomson Professional Publishing.

BucklowA (2007). The Everywhen Mediator: The Virtues of Inconsistency and Paradox: The Strengths, Skills, Attributes and Behaviours of Excellent and Effective Mediators. Int. J. Arbitration Mediat., 73(2): 40-48.

BushRAB, Folger JP (2005). The Promise of Mediation: The Transformative Approach to Conflict. 2nd Ed. John Wiley and Sons.

Buzan T (2006). Mind Mapping. Pearson Education: England.

Chow PT (2010). Pathology of Mediation Failure. Proceedings of the CIB World Congress 2010, Salford U.K., pp. 464-474.

Christorpherson JA (2009). Mediation and Arbitration of Construction Disputes. Dingeman, Dancer and Christorpherson, 100 Park Street, Traverse City MI, USA.

CrawleyJ, Graham K (2007). Mediation for Managers: Resolving Conflict and Rebuilding Relationships at Work. Nicholas Brealey Publishing.

Decrop A (1999). Triangulation in Qualitative Tourism Research. Tour. Manage., 20(1): 157-161.

CheungSI (1999). Critical Factors Affecting the use of Alternative Dispute Resolution Processes. Int. J. Project Manage., 17(3): 189-194.

EcclesC (2008). Construction Insight – The Latest News in Construction Contracts. Irish Construction Arbitration Newsletter, No. 26, March.

Folberg J (1983). A Mediation Overview: History and Dimensionsof Practice. Conflict Resolut. Quart., 1: 3–13.

Gaitskell R (2006). Engineer's Dispute Resolution Handbook. England: Thomas Telford, p. 95.

GolafshaniN (2003). Understanding Reliability and Validity in Qualitative Research. Qual. Rep., 8(4): 597-604.

Goldberg SB, Sander FEA, RogersNH (2003). Dispute Resolution: Negotiation, Mediation, and other Processes. Boston: Little, Brown and Company, p. 172.

Goodkind DR (1988). Mediation of Construction Disputes. J. Perform. Constr. Facil., 2(1): 9-12.

Gould N, King C, Britton P (2010). Mediating Construction Disputes: An Evaluation of Existing Practice. King's College London, Centre of Construction Law and Dispute Resolution, Vintage Books: London.

Hammell KW, Carpenter C, Dyck I (2000). Using Qualitative Research: A Practical Introduction for Occupational and Physical Therapists. Elsevier Health Sci., 26.

Harmon K (2003). Resolution of Construction Disputes: Rev. Curr. Methodol. Leadersh. Manage. Eng., 3(4): 187-201.

HolmbeckGN (1997). Toward Terminological, Conceptual, and Statistical Clarity in the Study of Mediators and Moderators: Examples from the Child-Clinical and Pediatric Psychology Literatures. J. Consult. Clin. Psychol., 65(4): 599-610.

HoveSE, Anda B (2005). Experiences from Conducting Semi-structured Interviews in Empirical Software Engineering Research. 11th IEEE International Software Metrics Symposium, Como, Italy, Sept.19-22.

Jackson V (2009). Mediation in Ireland. Dublin, Ireland.

Jick TD (1979). Mixing Qualitative and Quantitative Methods: Triangulation in Action. Admin. Sci. Quart., 24(4): 602-611.

Kvale S (1996). Interviews: An Introduction to Qualitative Research Interviewing. SAGE Publication, p. 124.

Moore CW (1986). The Mediation Process: Practical Strategies for Resolving Conflict. San Francisco: Jossey-Bass Publishers.

OpdenakkerR (2006). Advantages and Disadvantages of Four Interview Techniques in Qualitative Research. Qual. Soc. Res., 7(4): 1.

Pentony E (2010). The Development of Adjudication in Ireland: Lessons from other Jurisdictions. CPD Seminars, June 15th.

Pruitt DG, Peirce RS, McGillicuddy NB, Welton GL, Castrianno LM (1993). Long-term Success in Mediation. Law Hum. Behav., 17(3): 313-330.

Merton R, Kendall P (1946). The focused interview. Am. Sociol. Rev., 51: 541-57.

Naichamas D, Nachimas C (2007). Research Methods in the Social Sciences. 7th Ed., Worth Publishers.

Naoum S (2006). Dissertation Research and Writing for Construction Students. 9th Ed, Oxford, Elsevier, Butterworth-Heinemann.

RichbellD (2009). The Mediation Landscape, in Mediation of Construction Disputes. Blackwell Publishing Ltd., Oxford, UK.

Shiels J (2008). Mediation in the Construction Industry. Constr. Law, 19(1): 32.

Stowe R (2008). Mediation in Irish in Irish Construction. Construction Magazine, Matheson Ormsby Prentice, November.

Suter E (2009). The Progress from Void to Valid for Agreements to Mediate. Legal J. Index Arbitration, 75(1): 28-37.

Sweet & Maxwell (2009). Mediation in Civil and Commercial Matters. Constr. Law J., 25(3): 263-266.

Treanor B (2009). Mediation in Ireland. Ireland, Beo Solutions.

Venzie HD Jr. (2010). AAA Handbook on Construction Arbitration and ADR. 2nd Ed. American Arbitration Association: Juris Publishing.