

'Mediation Works' Symposium

*Royal Hospital, Kilmainham
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Opening Address

Karen Erwin, President, MII

... We have started a little bit late because I understand that there is a fire in Dame Street and the traffic is in a bit of a mess and people may have had a bit of difficulty or may now have a bit of difficulty getting here. So I apologise for the late start. But I hope that we will catch up during the course of the morning. The other thing I want to tell you about is a bit of a risk, and that is that Aine Lalor is the moderator for the day and she is not able to be here until 9.30. She was the person who was going to tell me when to shut up. So there is a risk that I might forget to do that. So I would ask maybe Lucy or Gerry to keep an eye on the clock if I run over. First of all, you are all extremely welcome here this morning to this absolutely fabulous venue. Thanks to the weather we are now also able to see the powerpoint slides. We had taken an executive decision not to black out all of the windows so that we could appreciate the room. But the weather has in this way favoured us so we can now do both. Today is an absolute celebration for mediation, for mediators and for the Mediators Institute of Ireland. For the Institute this has been nine years in the making and we are only here today as a result of all the hard work and effort that has been put in by all of the people who have volunteered and worked through as members on committees, as Chairpersons or as Presidents up to now. And formally I would like to thank them for enabling us to be here with such a star-studded cast today. Over the last two years the MII has effectively been revamping itself, if I can put it in that way. We have taken ourselves apart, we have worked out what it is to be a good mediator - we have set up assessments - we have set up competencies - we have set up standards. And we have put those over MII accredited training courses, so that the public and our clients can all be assured that every MII mediator is of at least a certain standard. And we encourage our members to go on and increase their skills base and achieve a higher level. We also have mandatory CPD for our mediators. And for our practising mediators they have to have insurance to protect the clients. And they have to subscribe each year to our then code of ethics. And last, but I think absolutely not least, in these days of regulation I believe we have what is as near as we can get absent statutory regulatory, to best practice of regulation, where in our complaints and disciplinary committees we have a majority of lay people. So it can't be levelled at us that we are just a bunch of mediators regulating ourselves. On those disciplinary and complaints panels as I say we have more lay

people than mediators and the same is true of the appellant panels from those panels. So I am delighted to say that we are now at a point where we are up to best practice both nationally and internationally. And we were asked by our members to be the home of mediators, and that now, I believe, is what we are - what we have been for nine years, but moreso now with all the new regulations and procedures and processes that we have put in place. We are a not-for-profit organisation and we welcome all mediators. We want to support mediators. We want to support mediators' clients. And we want to have a whole public awareness campaign of mediation. Because there isn't a single mediator that I know who isn't absolutely evangelical about the benefits of mediation. That I may say ladies and gentlemen brings with it its own difficulties, because mediators are a diverse bunch. And so that brings a set of diverse views. And that is challenging, and that is good. It is good to have openness and transparency. We welcome all mediators. We haven't limited ourselves to a particular type and indeed more than 50% of our members either practise or want to practise in more than one specialist area. We are noticing now that mediators are beginning to become more generalist in their practice. And that's an interesting development. We also notice that there are many more areas in which people are practising than the traditional areas of family, community, commercial and workplace. People now are moving into insurance, professional negligence, construction, environment, planning, peace building and many many more. And I believe that most mediators would say to you that there isn't a dispute that a mediator couldn't either help the parties to solve or go some way to doing so. And so today as I say is a celebration to mediation. So what is mediation? I have been given the hospital pass of describing to you what mediation is. If I go back to that point about diversity every mediator would probably describe it in a different way and would practise it in a different way, because it's a very individualistic method of practise. So to keep myself slightly out of trouble I am going to read the definition that the Mediators Institute have for what is mediation. You may not agree with it but this is as good a starting point as any. I am going to read this quickly first and then come back to it and parse it a bit later. Mediation is a process in which an impartial and independent third party facilitates communication and negotiation and promotes voluntary decision-making be the parties to a dispute to assist them to reach a mutually acceptable solution. And I am going to come back to that in a minute. But I would like first of all to tell you a story. Now some of you may know this story already in which case I hope I tell it as well as you will have heard it the first time. This is the story of an orange, John, Mary, an arbitrator, a judge and a mediator. And the story goes like this. John and Mary are in the kitchen and they are at the kitchen ledge. And they both have recipe books out in front of them. And in between them on the ledge is one very nice looking large juicy orange. And as John and

Mary work away with their recipes almost at the one time they both reach for the orange. That is mine. It is mine. I want that. I need that. Give me the orange. I need that. I want that. We can all relate to that, people taking positions. Luckily enough a judge wanders in, listens to John and Mary and said, OK, I have made a decision. John, you may have the orange, Mary you may not. In that decision that the judge made, one winner, one loser. Before they did anything with the orange the arbitrator said, no, let me. I will make a decision on this. And the arbitrator listens to John and Mary and says, I have got the right answer, I am deciding half the orange for you John, half the orange for you Mary. And so half a win, half a lose for both of them. Fortunately for John and Mary the mediator steps in and says to John, John why is it you need the orange, what do you need the orange for? And he said, well the recipe requires me to have the zest of an orange. OK. Mary, what do you need the orange for? And she says, well the recipe requires me to have the juice of the orange. The mediators says absolutely nothing. And the two parties look at each other, John and Mary, and say, well wait a minute now, if I give you the orange first you could get the zest of the entire orange and then if you give it back to me I would have the whole juice. And that is precisely what happened. And that was why it was win win. Now that may sound very simplistic but that actually describes in essence how mediation works. The mediator didn't make a decision. The mediator empowered the parties. They empowered the parties to make their own decision, to look at the problem a little differently, to put on a different set of lenses. And they empowered them both to move positions to arrive at a solution which actually enabled both of them to win. And that in essence is how mediation actually works. So if I go back to that definition, mediation is a process. It is not a one minute thing. It starts from the minute that you pick up the phone to the parties and talk to them. And it works through the pre-mediation meetings. And it works through the mediation. And it works through into a review meeting if you have one. And actually, as in the story of the orange, you may well be left as a party and certainly as a mediator with a different way of problem solving to carry with you as a life skill into the future. And that's what we all hope for the parties that we mediate, that it isn't just for the day, that it is a complete adjustment going into the future. The next piece of the definition, is in which an impartial and independent third party, and that person is the mediator. And frequently I define a mediator by what they are not rather than what they are. They are not a judge and they are not an arbitrator. They do not give decisions. They enable and facilitate. On the other hand they are not a therapist and they are not a counsellor. But they do have to be impartial. And sometimes that is extraordinarily difficult to do, and you really have to train yourself to do it. Because your natural chemistry will maybe make you feel more in line with one of the parties than the other. Maybe the story that they are telling is more in conformity with one than in

the other. And as a mediator we all have a duty to put that on the back burner, and not only to treat but to continue to treat the parties absolutely equally. And you must be independent of the parties. You must have no conflict of interest and no perceived conflict of interest, because that can upset that impartial balance. The process facilitates communication and negotiation. If I just take an example of a workplace dispute where two people have had a row in the workplace. And if that example is a manager and a member of staff, and the member of staff consistently doesn't come in at say 9 o'clock and the manager is tapping the watch. We have all seen this form of management...tapping the watch. And then a row breaks out and then it moves and we get into mediation. It may well be that the member of staff has never actually had an opportunity to explain to the manager why it is that they are not in at 9 o'clock in the morning. And so what you do in the mediation first of all is, in the actual mediation day itself, is you allow the claiming party to tell their side of the story. They don't need any documents. They just tell their side of the story. They say what happened. And they may say how they felt. And they may say how it affected them. And this could be the first time that the manager has ever heard this. It may be the first time they have ever actually heard that being told in a safe space. And that safe space is confidential because one of the basic tenets of mediation is that it is confidential. So what happens in that safe space doesn't go back to the company. The manager, on hearing the story says, well why are you always late, what is the reason, I don't understand this, why can't you get here. And maybe the claimant says, well actually I have got a sick mother and my sick mother needs to have a carer and I can't leave until the carer arrives. And the manager might well at that point say, well that's...why didn't you tell me that. If only you had told me that then we could have made arrangements. That is a very simple example, but it is one with which we can all be familiar and understand. And by facilitating that piece of communication which didn't happen actually in the workplace the parties can understand the reason for the problem, the reason for the issue. And then they themselves can set about a method of resolving that issue. And like the orange, they can come up to a solution for the future. And maybe as a result of that facilitation of communication and negotiation the parties will problem-solve in a different way the next time. And maybe for example the next time the manager sees somebody who is late instead of tapping his or her watch might say, I think...could I have a word with you, and privately take the other person to one side and said, is there a particular issue or problem....can we deal with it. And so in that small moment maybe that manager becomes a better manager, maybe the employee learns that they have to communicate more and explain why they are late. But there is a transformative element as well as just the problem solving element. Back to the definition, the mediator promotes voluntary decision-making by the parties to a dispute. And you will see how that

happened in both the ...in the explanation of the orange and in that workplace dispute that I described. One of the ways that a mediator helps to promote voluntary decision-making by the parties is to keep bringing the parties to look to the future. The past is fine for the context - the past, the history of the dispute is fine to let the pressure and the steam out of the situation. But once you move to the next stage the mediator's role is to try and look to the future. We are where we are, how are we going to move forward, what would have to happen to make this work. How could we help? What could we do? All those very open questions, who, what, where, when, and how. And sometimes why...but why to be used a bit sparingly. And so the role of the mediator is to push people to the fore. What would you do? How would that work? And make them focus towards getting out of the problem that they are in. It is voluntary, and any party can leave at any time. As I say to my clients any party can leave at any time including the mediator but I have never yet done it. There is always a first time I suppose. I haven't done it yet. But it's a very important basic tenet of mediation that it is voluntary and people can leave. And that goes back really to the empowerment issue, the people have to be empowered in the decision-making. And finally the mediator's role is to assist them to reach a mutually acceptable solution. So as a mediator you have to say well how would that work. Would that solution work, how would it...how would it be if it looked...what would happen...what would happen if...all of those open questions again to test the solution, just to make sure that the solution is actually a workable solution. What happens at the end then, and this depends on different mediators, many mediators will come to a binding agreement. Many people will come to a written legally binding agreement that says it is enforceable. Other mediators will say, well you take it off, go away, go to your lawyers, come back. Other mediators do...they get the parties to sign it and then they hold it in escrow for maybe 24 hours...48 hours...2 weeks...whatever. Every different mediator works differently and also works to what the parties actually want. And so that I hope in a quick gallop through what the Mediators Institute of Ireland would say has to be a 60 hour course is, I hope in essence, a bit of a picture, a bit of a sense of what mediation is all about. And I hope it puts into context for you what we are going to do with the rest of this morning and then in the master classes this afternoon. I hope I haven't run too much over my time. I purposefully didn't look at Lucy just in case she shut me up. But now I think we will move on. And if I could invite Lucy. [applause] Right ...Lucy. First of all I am going to give you the formal bit about Lucy. She is the Director of the National Centre for Partnership and Performance. And she has been that Director since its establishment in 2001. She provides strategic direction and oversight in the delivery of the Centre's work programme covering a broad range of workplace related research and advocacy activities. Prior to joining the NCPP Lucy served as Assistant Chief Executive

of the National Council for Curriculum Assessment before which she was a primary school teacher and Principal. And she holds an MA in Political Science from UCD and an MBA from the Michael Smurfit School of Business in UCD. But more importantly Lucy is a great great friend of the Mediators Institute. Somebody told me about a year ago that the person I really really needed to see was Lucy Fallon-Byrne. And I rang up Lucy Fallon-Byrne's office and made an appointment to see Lucy. And I arrived on the appointed day and I met Lucy, and Lucy met I, and we looked at each other and we said, well what exactly are we supposed to be talking about, what are we doing here. And neither of us actually had a clue. But we had the most wonderful conversation. And that led to Lucy being our keynote speaker at our conference in Cork and to be here today and providing a lot of support to us in the meantime. So ladies and gentlemen, Lucy Fallon-Byrne.
