

Who's Got the List? Different Approaches to Professional Regulation

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This post will be the first of a series focusing on individual aspects of regulatory robustness, as introduced in previous blogs by Nadja Alexander and applied in the context of Ireland by the two of us in our [last post](#). With so many areas to focus on, it was difficult to choose one to begin with but I reckon it is always good practice to take a look at areas of controversy. So, for this post, I'll be focusing on how different jurisdictions approach the issue of professional regulation of mediators and mediation services.

Working from the assumption that well-developed, accessible mediation services with effective quality assurance mechanisms contribute to the robustness of a jurisdiction's regulatory framework for mediation, significant variations in approach are evident in different countries.

The issue of regulation of the mediation profession is more controversial than those outside it might assume. Efforts to set minimum standards, protect the designation of "mediator" and put in place quality assurance processes have been met with resistance in many jurisdictions with many different reasons being given including the early stages of development of the profession, the maintenance of flexibility of the process, and of course cost and insurance implications.

A number of general trends can be identified in the regulation of mediation professionals and services. Among the least robust of these is the very common practice of leaving this regulation to individual mediation institutions or training providers, that is, to the profession itself. This can result in a number of different lists or groupings within one country, often with different standards and quality assurance mechanisms - by which we mean complaints /disciplinary and / or feedback procedures - and with little integration. This can, of course make it difficult for users and professionals to figure out where to look for suitably qualified mediators, particularly if they are coming from a different jurisdiction. Some examples of jurisdictions which take this self-regulation approach are Sweden, Germany - pending the adoption of [new rules](#) on the certification of mediators - and England and Wales where numerous different mediation bodies with members exist, even within the same practice area such as family mediation.

Other jurisdictions have taken the approach of creating a register or list of mediators, some held and administered by government bodies and some by other non-State organisations. Such registers vary as to whether entry on this is mandatory or voluntary, and whether they exist alongside other registers. A number of countries for example have one list for court-based mediators and one for out-of-court of private mediators, such as Denmark, or one regulatory system for registered mediators and one (or none) for unregistered mediators such as Austria.

Where countries have registers these also exist within different frameworks and bring different regulatory features with them. Hungary and Scotland are examples of jurisdictions having such registers within two very different regulatory frameworks for mediation, and two different legal systems.

Hungary's register is held by the Ministry of Public Administration and Justice and registration is obligatory for those intending to practice mediation. Different pre-requisites and training requirements are set for in-court and out-of-court mediators and removal from the register is available as a sanction for certain actions or omissions. Provisions regarding the register are set out in the Hungarian Mediation Law and registration is open to non-nationals also. Relatively sophisticated search functions are available on the relevant website for parties to access mediators. Romania takes a similar approach, with the Register being maintained by the Ministry of Justice and bringing with it robust requirements for being listed and remaining on the register.

Scotland's register, on the other hand, is held and maintained by the Scottish Mediation Network, and registration is voluntary. Training pre-requisites also exist for registered mediators, and those who do register are obliged to adhere to a Code of Conduct and are subject to a complaints procedure administered by the Network. Prospective parties can also search for mediators on the website by reference to their location and area of specialisation. Other jurisdictions again assign the task of managing a register or list to a Mediation Council which may, or may not be a state body. Some jurisdictions such as Italy and Cyprus differentiate between lawyer mediators and non-lawyer mediators in terms of regulation imposing different training and registration requirements for each.

Differences also exist, of course, in funding which has a direct impact on how useful and effective lists and registers, and the bodies that hold and administer them, are. The creation of Scotland's register benefited from some state funding, and those administered by Ministries for Justice or other government departments do also. Funding for staff, ICT facilities and, in particular, the administration of quality assurance procedures makes it much easier to run these in an efficient way. Many mediation bodies are non-profit, and run by volunteers and the lack of financial support for such organisations can be frustrating when they are trying to implement quality assurance standards.

Does that mean regulation of the mediation profession should always fall within the remit of the state? It doesn't, but its accessibility, transparency and quality assurance are desirable, at least from the perspective of regulatory robustness, it appears from an analysis of the systems in different EU jurisdictions that a solid infrastructure, adequate resources and clear standards are the foundation for reaching this goal.

What we can't see from an analysis of the regulatory framework is, of course, how things work in practice. I know from my own experience that the absence of any legal framework for mediator regulation in Ireland has not meant a difficulty in accessing suitably qualified mediators who are subject to effective quality assurance processes, quite the contrary, but I would be interested to know what the practical reality is in other jurisdictions, including those used as examples above. So feel free to comment and share your experiences below! And next time? We might look at comparative confidentiality!