Kluwer Mediation Blog

Proposed Regulations on Mediator Certification in Germany

Sabine Walsh (Sabine Walsh Mediation) · Thursday, March 6th, 2014

As we in Ireland wait…and wait for our promised mediation legislation one of the topics that featured strongly in the consultative process which preceded drafting of our mediation bill was mediator certification and regulation. Confronted with rather vague requirements not extending beyond mediators giving clients evidence of their qualifications, if requested, in the drafts heads of the legislation (see previous posts), mediators and mediation organisations in particular all agree that more robust regulation is needed. What form that regulation should take, however, is a different matter.

Spurred on by the EU Mediation Directive, and more recently by the requirements of their own national mediation law the Mediationsgesetz of 26.07.2012, the Germans have taken the certification bull by the horns and drafted the Verordnung über die Aus- und Fortbildung von zertifizierten Mediatoren of 31.01.2014 or statutory instrument addressing the training and certification of mediators. (For the text in German see www.dgm-web.de/download/RVO_MedG.pdf).

At first reading, it would appear to be a fairly comprehensive regulation (by Irish standards anyway). In order to meet the joint aims of quality assurance of mediation services, and market transparency, the legislation sets certain pre-requisites – a professional qualification or a degree plus two years professional experience – in addition to certified mediator training, which people must have in order to practice as certified mediator. Certified mediator training is set at a minimum hour level of 120 hours training, to include practical training, role-play and supervision.
After qualification, mediators are obliged to engage in a minimum of 20 hours professional development over a two year cycle and, in order to ensure their practical skills are not neglected, must mediate or co-mediate a minimum of 4 cases over a two year period. These cases must be documented, and supervision must also be undertaken. So far, so good.

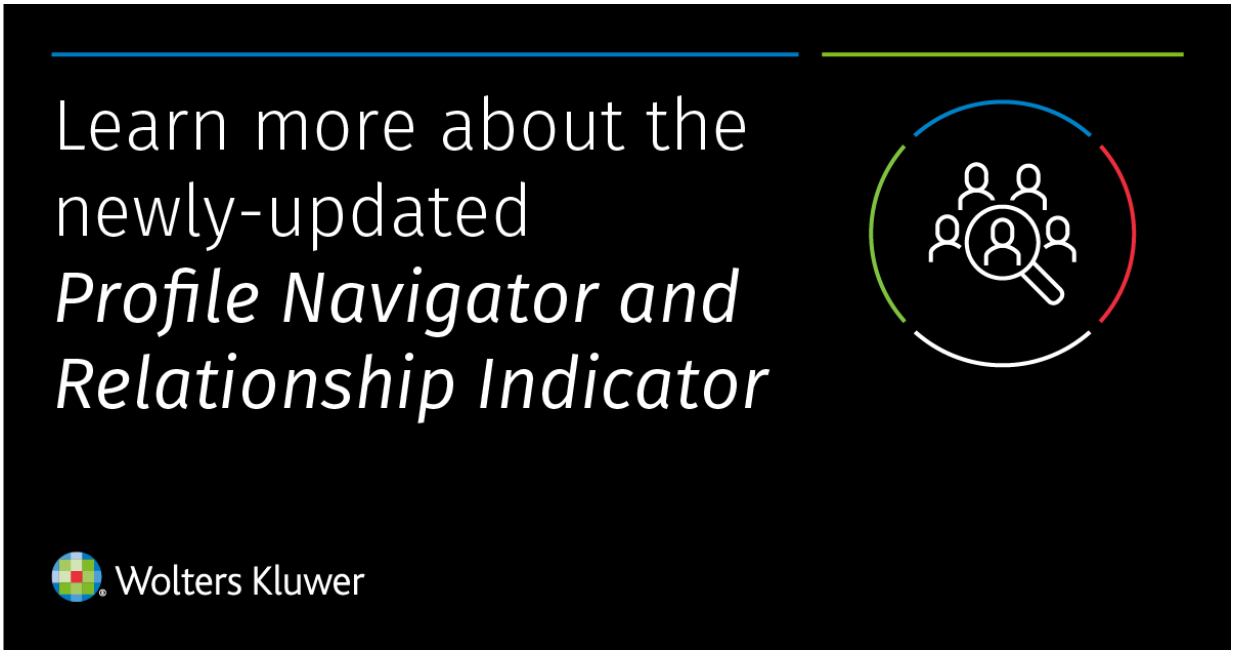
One slightly unusual move was to include, in the annex, a table setting out the minimum contents of the 120 hour training, in an appreciable amount of detail. The different core components of mediation training are assigned blocks of (again, minimum) hours, such as, e.g. negotiation skills and techniques – 12 hours, mediation processes – 30 hours, and so on. From the perspective of someone working as a trainer in a completely unregulated market (if you leave voluntary regulation aside) this appears quite ambitious and should, at first reading, go quite some distance to ensuring that all certified mediators have at least covered certain core areas.

As with so much legislation however, it falls down in the area of enforcement, or implementation.

The draft regulation expressly excludes the option of the state, or a state agency enforcing adherence to the training standards, and lawful use of the term “certified mediator”, which it sets out. The reasons given for this relate to cost efficiency and that wonderful German term “entbürokratisierung” or de-bureaucratisation. It is therefore left to the mediation organisations to come to agreement as to setting a quality standard or “quality seal” pursuant to private law. This, it is envisaged, should take place within the transitional period of one year envisaged by the regulation. A further review of this system, and the Mediation Law in general, is set by the legislation for 2017.
Given that the content of the regulation, and particularly the training content as set out in it, is based on standards discussed and set at a Working Group on Certifying Mediators, initiated by the Ministry of Justice and having mediators, lawyers, judges and educators amongst others as its members, one could think that this “soft regulation” would generally be welcomed. This does not however appear to be the case. Many of the critiques of the draft I have read to date point out the fact that the term “certified mediator” is already being used in many instances and that putting the onus on mediation bodies to police the use of this term will give them a task and quasi-judicial function for which they are not necessarily equipped, and also has the potential to heighten the existing turf war between mediation organisations and training bodies. This latter concern is something that, I think, many of us in different countries can relate to.

The concerns around soft regulation are particularly interesting for me as, in the absence of any signals to the contrary from the Irish Department of Justice, it looks as though a similarly non-state approach to enforcement is likely to be taken here. This is particularly ironic in the Irish context as the Legal Services Regulation Bill, which has at its centre independent regulation of the legal profession which is currently before parliament, was energetically promoted by the same Minister for Justice as is advocating self (if any) regulation for mediators.

It is interesting that mediation is still not viewed in the same way as other professions in terms of regulation. While I accept that the development of a profession takes time, mediation is not exactly a new phenomenon and it would seem to me a bit of a waste of a legislative opportunity to go into as much detail as the German regulation does on the content of mediation training without completing the circle and ensuring those standards can be enforced and maintained.
In any event, the various mediation bodies and other interested parties have until 30th April to make submissions on the draft to the Ministry for Justice, so it will be interesting to see how the regulation develops. I’ll keep you posted!



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