



Guide

Mediation

An employer's guide

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- University of Central Lancashire (UCLan) – a large university
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Introduction

Mediation is increasingly being used to resolve disputes in many areas of life. It is one of the processes within the alternative dispute resolution (ADR) spectrum and involves a neutral third party bringing two sides together with the aim of reaching a mutual agreement.

Policy-makers and organisations are recognising that mediation, and other forms of ADR, have a particular resonance in the workplace. People are the key to organisational success and productivity, and negative conflict between individuals or groups of individuals can severely hamper an organisation's drive for competitive advantage and damage employee well-being.

In the world of employment, mediation has a key role to play in settling workplace disputes. The 2007 review of employment dispute resolution in this country by Michael Gibbons (2007) recommended that a free early dispute resolution service, including mediation, be made available to workplaces. The overall aim of the review's recommendations is to bring about effective resolution of disputes at the earliest stage possible.

Mediation is especially effective when used at the initial phase of any disagreement, before conflict escalates in the workplace. An early intervention can prevent both sides from becoming entrenched and the difference turning into a full-blown dispute. If the disagreement is resolved early on, there is less chance of the working relationship breaking down irrevocably. This improves the likelihood of maintaining good and productive employment relations in the longer term.

There are convincing reasons to promote the wider use of mediation in individual employment disputes. The advantage of using an informal approach means there is greater flexibility in how it is used to suit specific

circumstances, and the confidentiality of the process can offer a breathing space that allows more open and honest discussion.

It is a cheaper alternative to employment tribunal claims, which carry immediate financial costs to the organisation and the individual claimant as well as non-financial burdens. Mediation is also a speedier option and can nip potentially damaging disputes in the bud. In 2008, Acas commissioned GfK NOP to carry out a telephone interview survey of managers in 500 small/medium-sized enterprises (SMEs) to assess their experience of mediation; of those that had used mediation almost half said that the last mediation had resolved the issues completely (49%), and more than four in five (82%) said it had resolved the issues either completely or partly (Johnston 2008).

Moreover employment tribunals do not resolve systemic problems at work that may underlie an individual dispute. Mediation is more likely to enable the employer to get beneath the problem and make changes to working practices that can benefit employees and the organisation more generally in the long term.

This Acas/CIPD guide aims to provide practical help for employers, trade unions and employees, and their representatives, in deciding whether, and in what circumstances, mediation may be suitable. We hope its publication will help raise the profile of mediation and inform the public debate about effective dispute resolution. The guide is not intended as a step-by-step 'how to' guide for mediators. It is to help organisations to decide if mediation could work in their organisation and the factors and processes to be considered in its implementation.

The case studies used to illustrate this guide are predominantly from the public sector, but the messages and guidance are equally applicable whatever the size or sector of the organisation.

The guide covers the use of both internal mediation schemes and external mediation providers. The use of internal mediation is still in its infancy, and may be more appropriate in larger organisations. The GfK NOP poll of SMEs found that of those that had used mediation, 77% had used external providers. However, the more detailed understanding of mediation processes required to establish in-house mediation provides useful insights for all organisations, however they choose to approach mediation.

Acas and the CIPD have a shared aim in promoting good dispute resolution techniques. Acas's mission to improve organisations and working life through better employment relations means that the promotion of good practice is at the heart of its in-depth work in workplaces. The CIPD is dedicated to helping its members to make informed decisions about improving practice in their organisations.

Both organisations therefore have a vested interest in helping workplaces acquire the skills needed to manage conflict effectively so as to sustain the employment relationship in situations of conflict. We believe that mediation, when used appropriately, can offer a fresh approach to organisations wishing to avoid the potentially destructive effects of drawn-out conflict.

When adopted as part of a culture that is consultative and supportive, using third party mediators to help resolve internal disputes has the potential to bring benefits beyond the immediate situation. If mediation is embedded across the organisation, and the techniques associated with its use adopted as part of managers' day-to-day approach to dealing with conflict, it can contribute to the success of the organisation. Likewise, the expertise of internal or external mediators can be accessed in a timely way to help resolve conflict situations that are in danger of spiralling out of control.

Mediation is not offered as a panacea, and there are some cases of conflict where it will not be suitable. Similarly, there is no one best method of mediation. Different mediation approaches can work to suit different organisational circumstances. The in-depth research carried out by Acas in a range of organisations to inform this guide reflects this, and the results are quoted throughout.

Part 1: The impact of conflict in the workplace

'I think mediation is a good first port of call for the business. For the Ministry of Justice to have mediation is very valuable because we are investing in the staff. Conflict causes all manner of problems including health problems resulting in sickness absence and stress or anxiety. It can have a detrimental impact in teams within the workplace who are directly or indirectly involved.' Quote from the Ministry of Justice

Conflict between individuals in the workplace can cost an organisation dear. In 2007–08, the number of individual employment tribunal claims rose to over 190,000.

Over the past decade there has been a significant increase in employment rights legislation, providing additional avenues for employees to seek recourse through formal channels. People are also now more aware of their rights at work. This expanded legal framework means that, if employers do not manage conflict effectively, the consequences can be serious.

Why does conflict happen?

Conflict is an inherent part of the employment relationship. Modern organisations are dynamic and complex, made up of people with increasingly diverse backgrounds, opinions, values and expectations about work. For their part, organisations are under ever-increasing pressure to be productive or deliver quality services to clients. The continuous change experienced by many organisations can also lead to conflict. As the HR consultant, Incommunities, comments: 'I think the constant changes bring tension.'

The CIPD 2007 *Managing Conflict at Work Survey* found that general behaviour and conduct issues were rated as the most common causes of disputes at work, followed by conflicts over performance, sickness absence and attendance, and relationships between colleagues.

A certain degree of healthy conflict – for example, fair competition between individuals to excel in their roles – can be a good thing, and can even help to create innovation within teams. But often the tension can lead to discord and start to create negative conflict. It is when the initial disagreement is pushed under the carpet and not managed properly that the situation can fester and the conflict spiral.

Line managers typically have to play multiple roles in today's workplace. It is not surprising that many shy away from having those difficult conversations with staff, particularly if they lack the skills or training to handle complex situations that have become personalised. But if conflict is not managed directly, at an early stage, their job in helping the parties to resolve their differences will be much harder.

The stages of conflict

It is not always easy to pinpoint when a disagreement becomes a conflict because of the different ways that people react. But there are distinct stages in the lifecycle of conflict, where they will display certain common behaviours. It can be helpful to recognise these (Table 1).

Table 1: The conflict lifecycle

Stage of conflict	Behaviours or signs
Beginning	Incompatible goals Open or covert conflict Avoidance of conflict Tension starts to be noticed
Early growth	Confrontation Polarisation of positions Seeking allies More overt signs of conflict
Deadlock	Conflict at its peak Blame apportioned Communications cease between parties Entrenched positions
Look for a way out of the conflict	An acceptance that the problem needs sorting out
Working together for a solution	Collaborating Consensus

The formalisation of conflict

Formal procedures have an important role to play in the workplace. But many disputes could potentially be settled without the need to pursue a formal grievance procedure. Once formal procedures have been triggered, the tendency is for differences to become more adversarial. Once the conflict has escalated and positions have become entrenched, it is very difficult to alter people's perceptions and have an open discussion. The likelihood of a mutually acceptable outcome then becomes more remote.

Organisational costs

The price organisations can pay for conflict goes beyond the costs of an employment tribunal claim. There are also the internal resources spent on discipline and grievance cases to take into account – the CIPD (2007) survey indicated that managing each grievance case takes an average nine days of management and HR time.

The cost of conflict includes direct and indirect costs. Some, such as sickness absence and staff turnover, are quantifiable and have an immediate adverse impact on the organisation. Other costs, such as loss of team morale, are harder to pin down but the effects are just as damaging on productivity.

A personal price to pay

It is not only the organisation that suffers if there is conflict between people. The situation can have serious implications for the individuals concerned and for bystanders, who are not immune to events taking place around them. For every incident of conflict there is likely to be several colleagues who witness or who are drawn into the disagreement. If formal processes come into play, people may be forced to take sides in an adversarial way. This will do nothing to build relationships between those involved and could endanger future teamworking.

Being involved in a conflict – be it a personality clash or a dispute over performance – can cause psychological stress leading to mental health conditions such as anxiety and depression. The welfare of the organisation is bound up with the health of its employees – the Health and Safety Commission revealed that 14 million working days were lost due to work-related stress in 2006.

Being caught up in a conflict at work can distract a person from their work and affect their long-term career plans, particularly if they have taken time off as a result of the problem. The situation can impact on their home life, creating a vicious circle of pressure and discord. If the situation becomes formalised to the extent that legal proceedings are involved, there can be a significant financial cost to the individual.

Workplace conflict – the organisational costs

- the risk of time-consuming formal proceedings such as grievances and employment tribunal claims
- sickness absence costs as the individuals concerned take time off to deal personally with the effects of the conflict
- management time being diverted to dealing with the conflict instead of focusing on managing the business
- staff turnover and recruitment and re-training costs where conflict leads to the departure of those affected from the organisation
- lower staff morale leading to less commitment to exerting discretionary effort, leading to lower productivity
- poor working relationships within the teams affected
- loss of focus on corporate goals and common objectives as people are distracted by the disagreement
- the potential for a blame culture to develop, rather than one focused on innovation
- the employer's external reputation could be compromised

Part 2: What is mediation?

‘Mediation is based on the principle of collaborative problem-solving, with a focus on the future and rebuilding relationships, rather than apportioning blame.’ Quote from mediation policy, University of Central Lancashire

Mediation is where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Mediators may be employees trained and accredited by an external mediation service who act as internal mediators in addition to their day jobs. Or they may be from an external mediation provider. They can work individually or in pairs as co-mediators.

Mediation distinguishes itself from other approaches to conflict resolution in a number of ways. Mediation is:

- informal
- flexible
- voluntary
- morally binding but has no legal status
- confidential
- (generally) unrepresented.

What does mediation seek to achieve?

Mediation seeks to provide an informal, and speedy solution to workplace conflict, and it can be used at any point in the conflict cycle. What the process offers is a safe and confidential space for participants to find their own answers. It does this in a number of ways, by:

- exploring the issues, feelings and concerns of all participants and rebuilding relationships using joint problem-solving
- allowing those involved to understand and empathise with the feelings of those they are in conflict with

- giving participants insights into their own behaviour and that of others and opening up opportunities for change
- helping participants develop the skills to resolve workplace difficulties for themselves in future
- encouraging communication and helping the people involved to find a solution that both sides feel is fair and offers a solution that favours them
- using energy generated by conflict in a positive way to move things on.

What happens during a mediation?

There are distinct phases in the mediation process, and these are variously described in the literature as a three-, four- or five-stage process. Whichever way it is broken down on paper, the essential elements remain the same. The first stage will deal with the parties separately, while the remaining stages will generally be dealt with during the joint session. There may be a need to separate the parties at various points and speak to them individually – if there appears to be an impasse or the mediator feels that one side is unwilling to divulge information that might help to break the deadlock.

There are occasions where shuttle mediation – the mediator moving between the parties and relaying the views of each – has to be used because parties will not sit in the same room with each other; or because at certain points it is more effective to do so. But the aim is to bring them together eventually.

Although mediation is generally assumed to take place face to face, it can also be carried out via email, video link or over the phone.

Stages of mediation

Separate meeting

- **First contact with the parties**

The mediator will meet parties separately. The aim of this first meeting is to allow each individual involved to tell their story and find out what they want out of the process.

Joint meeting

- **Hearing the issues**

The mediator generally brings the participants together and invites them to put their side of the story during a period of uninterrupted time. At this stage the mediator will begin to summarise the main areas of agreement and disagreement and draw up an agenda with the parties for the rest of the mediation.

- **Exploring the issues**

Having identified the issues to explore, the mediation is now about encouraging communication between the parties, promoting understanding and empathy and changing perceptions. The aim of this part of the meeting is to begin to shift the focus from the past to the future and begin to look for constructive solutions.

- **Building and writing an agreement**

As the process develops the mediator will encourage and support joint problem-solving by the parties, ensure the solution and agreements are workable and record any agreement reached.

- **Closing the mediation**

Once an agreement has been reached, the mediator will bring the meeting to a close, provide a copy of the agreed statement to those involved and explain their responsibilities for its implementation. In some cases no agreement is reached and other procedures may later be used to resolve the conflict. However, nothing that has been said during the mediation can be used in future proceedings.

Confidentiality

Anything said during the mediation is confidential to the parties. They may choose to reveal some or all of what has occurred during the mediation to colleagues, or their managers, but only if all parties agree. The only exceptions are where, for example, a potentially unlawful act has been committed or there is a serious risk to health and safety.

Confidentiality at the University of Central Lancashire

Mediation is confidential on all sides. The only exception to this is a potentially unlawful act or where there is evidence of a serious risk to health and safety. The mediator handwrites two copies of the agreement between the parties (there are no photocopies) and leaves the room with nothing. Written records of the proceedings are not kept. The HR or line manager will know participants' names if they have passed the case to the mediation service, but they will not receive any formal feedback other than that the case has been completed. However, where a mutual agreement reached by the participants needs support from the line manager, then the participants will take responsibility for discussing this with them. The scheme manager will record the names, but keep them in confidence, in case they return for further mediation. Statistics will be provided at the end of each year to record the number of cases dealt with and the success rates. No names or confidential information will be released as part of this process. If the mediation identifies that someone should have some training, then that will form part of the agreement.

Future legal proceedings

What happens during the mediation cannot be used in future legal proceedings without agreement from both parties. In theory a mediator could be called upon to give evidence at a tribunal or a court of law. However in practice, courts prefer to protect the confidentiality of the mediation process because without that protection they realise that people would be less willing to use mediation.

Models of mediation

The way in which a mediator conducts the mediation process will depend on the particular style of mediation involved. Various models exist, although it is common for mediators to draw on more than one. This guide is based predominantly on the model of facilitative mediation.

Models of mediation

Facilitative mediation is the most common style in the UK. The mediator normally plays an active role in guiding the process. Using joint problem-solving approaches, the mediator asks questions to identify the interests and real issues of disagreement, and helps parties to identify and evaluate options for resolution and settlement. The mediator does not suggest solutions, though they may float ideas.

Evaluative mediation puts the emphasis on reaching a settlement according to the legal rights and entitlements of the parties and within the anticipated range of court outcomes; the mediator is more interventionist, more likely to give an opinion, recommend options, and advise on the court's normative outcomes; mediators are often known to have expertise in contextual issues, such as family or employment law.

Settlement or transactional mediation encourages incremental bargaining towards compromise between parties.

Transformative mediation uses techniques to empower parties by encouraging them to take ownership of the process as well as the outcome. Transformative mediators believe that mediation possesses the power to change how people behave not only towards their adversary in a particular conflict, but also in their day-to-day lives thereafter. For mediators who adhere to transformative mediation, achieving this type of long-term change is more important than solving a specific problem between the parties.

Directive mediation, or 'mediation with recommendations', involves the mediator taking a more proactive role and providing the parties with formal recommendations at the end of the mediation process (although not necessarily on the same day). It can be a useful tool for very small firms where, for instance, the only staff available to hear an appeal, are also involved in the conflict.

Part 3: When can you use mediation?

There are no hard-and-fast rules for when you can or cannot use mediation.

Who? It can be used for conflict involving colleagues of a similar job or grade, or between a line manager and their staff. It can be used, exceptionally, where there is conflict between teams, or between a trade union or groups of employees and management.

When? It can be used at any stage in the conflict as long as any ongoing formal procedures are put in abeyance, or where mediation is a stage in the procedures themselves. It can be used after a formal dispute has been resolved to rebuild relationships.

What? It can be used to address a range of issues, including relationship breakdown, personality clashes, communication problems, bullying and harassment.

A judgement call

There are situations where it may not be appropriate to use mediation, but it is often not clear-cut and it will be up to the mediator or whoever is overseeing the mediation process to make a judgement on a case-by-case basis. It is often said in relation to mediation that 'if you can't make it better, don't make it worse'.

Mediation **may not** be suitable if:

- used as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation
- it is used by a manager to avoid their managerial responsibilities
- a decision about right or wrong is needed, for example where there is possible criminal activity
- the individual bringing a discrimination or harassment case wants it investigated
- someone has learning difficulties or mental health problems

- the parties do not have the power to settle the issue
- one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome.

There are some areas where mediation can prove particularly useful, however.

Relationship breakdown

There is a clear hierarchy of issues that employers perceive as suitable for mediation. In the CIPD (2007) survey of employers who had used mediation, researchers found that:

'Outstandingly the most suitable for mediation is judged to be relationship breakdown. This underlines the value of mediation as a method of leading parties to re-evaluate their feelings towards one another, where financial compensation is less likely to be appropriate.'

This view was reinforced by case study organisations. At the Ministry of Justice, mediation is considered to be an especially effective mechanism for dealing with workplace relationship breakdowns, 'interpersonal conflict... when people don't communicate and the gap gets wider and wider, and things get more and more difficult'.

A host of issues can give rise to tensions at work, including arguments over personal possessions, personal space, or the use and misinterpretation of language and behaviours.

Bullying and harassment

The other issues particularly suited to mediation are bullying and harassment, and perceived discrimination issues, although each situation needs to be judged on a case-by-case basis, as serious cases of bullying and harassment, and clear cases of discrimination, may need to be dealt with by more formal procedures.

Bullying and harassment: a judgement call – Ministry of Justice

‘Sometimes certain behaviours can be perceived as discrimination, harassment or bullying, when that is not how they were intended. Mediation can be a good way to help the “victim” see the other person’s perspective and help the other side see how their behaviour is affecting their colleagues. This is a difficult area and it is a judgement call for the mediators to make if it becomes clear during mediation that discrimination, harassment, bullying or poor treatment is going on. They would have to consider stopping the mediation. They would not normally do anything about the misconduct themselves due to the confidentiality agreed before the mediation, but they can advise the parties accordingly.’

(Quote from the Ministry of Justice)

When managers are not well placed to deal with the issue

Mediation can also provide a useful tool for individuals to turn to when managers are, for one reason or another, not well placed to deal with a dispute. This may be because an intervention from a manager may be perceived as biased, or as favouring one side over another. It may be that the manager has insufficient skills in handling people conflict or ‘emotional anger’.

Discipline and grievance procedures

In some organisations mediation is written into formal discipline and grievance procedures as an optional stage. Where this is not the case, it is useful to be clear about whether the discipline and grievance procedure can be put into abeyance if mediation is deemed to be an appropriate method of resolving the dispute.

It is grievances that most obviously lend themselves to the possibility of mediation. Managers may not always see it as appropriate to surrender their discretion in relation to disciplinary issues where they believe a point of principle is at stake, such as misconduct or poor performance. However, the line between disciplinary and grievance issues may in specific instances become blurred, in which case the employer may prefer to tackle the underlying relationship issues by means of mediation rather than impose a disciplinary sanction.

Although mediation is often perceived as a form of early intervention in disputes, it can also be used to rebuild relationships after a member of staff has undergone a disciplinary or grievance process.

Part 4: The benefits of mediation

'A lot is gained from people talking about their problems before an employee with a grievance goes to the law. Many conflicts are escalated by external involvement. When employees go for external advice, additional claims are always added. Too much formalisation leads to escalation of problems, which lead to stress for all concerned, and costs.' Quote from respondent to the CIPD *Survey report (2008): Workplace Mediation: How employers do it*

The 2008 CIPD survey on workplace mediation showed that three-quarters of respondents considered mediation to be the most effective approach to resolving conflict in the workplace. In the GfK NOP telephone survey of managers in 500 SMEs, of those that had used mediation, 99% agreed that it was a good tool for resolving workplace disputes. The CIPD's 2007 report on managing conflict at work provides

some evidence that organisations providing mediation training for managers receive fewer employment tribunal claims.

If even one employment tribunal case is avoided as a result of introducing mediation arrangements, that organisation will potentially recoup a significant portion of the cost of the scheme's introduction.

West Midlands Police makes the most of mediation

West Midlands Police launched its mediation scheme in June 2004, with Police Federation support. The scheme was embedded over a 12–18-month period. Since then, 83 cases have been referred to mediation and around half have been successfully resolved. According to the personnel adviser who co-ordinates the scheme, mediation plays a key role in avoiding tribunal proceedings: 'It keeps you out of an ET. Ultimately it can help you avoid an employment tribunal, which can cost a lot of money.'

The number of employment tribunal cases has fallen from 25 in total for the 2006–07 financial year to 13 during 2007–08. The view of West Midlands Police is that a more formal process (such as a formal grievance) involves an investment of time and money for all those involved, and is more restrictive in terms of the recommendations made.

The prime focus of mediation is to find a resolution through joint working. But mediation can also help reduce the incidence of formal grievances. The numbers show an increasingly downward tendency. For example, in December 2006, 12 grievances were recorded whereas in December 2007, only one case was recorded. Similarly, in January 2007 16 cases were recorded while in January 2008 the number was reduced to four.

According to the scheme co-ordinator, the use of mediation at an early stage has led to the resolution of conflicts where situations may once have not only escalated but perhaps not have been resolved at all. In the scheme co-ordinator's view, mediation improves employee relations. There has been a growing awareness of HR and employee relations issues from the informal process that is enabling management to address these. The skills that people learn through mediation can also be used in everyday life, extremely effectively.

In the 2008 CIPD survey report on workplace mediation, although in only 16% of cases was mediation said to follow an actual or threatened tribunal claim, in 9% of instances a claim was withdrawn. This suggests that, in the majority of cases where mediation is used, it is effective in resolving issues that would otherwise have had to be resolved at a tribunal. This shows that mediation can be introduced even at the point where relations have broken down and an individual has filled in, or thought about filling in, the paperwork for an employment tribunal claim.

Statutory and non-statutory mediation

Where an employment tribunal claim has been lodged, or may be lodged, the parties involved have access to free mediation* provided by Acas as a statutory service. Acas's role is to help employer and employee find a solution that is mutually acceptable rather than proceeding to a tribunal hearing. The outcomes of statutory mediation are likely to be guided by the potential outcomes of an employment tribunal and the level of compensation that can be awarded.

The principles of statutory mediation are identical to those of non-statutory mediation: Acas mediators act as a neutral third party in helping two parties resolve their differences. They do not impose or suggest solutions but help people settle their disagreement on their own terms. Close to three-quarters of tribunal claims are settled or withdrawn following this process, proving the effectiveness of using an independent third party in settling workplace disputes on a large scale.

Non-statutory mediation differs from statutory mediation in the following ways:

- It does not take place against a background of an actual or potential tribunal claim.
- It typically deals with relationship issues between individuals or groups, or individuals and their managers.
- There is a flexibility of outcomes.

** This process is formally known as individual conciliation and the mediators are known as individual conciliators.*

The business benefits

'...increased productivity and better morale, getting better employees in the first place, because they realise you are an employer of choice. Less legal action, hopefully cheaper in the long run. And the fact that you are more able to carry out your service provision.'

Quote from equalities adviser and mediation scheme co-ordinator, Customer Service Direct

According to the 2008 CIPD survey on workplace mediation, the main benefit in using mediation is improving relationships between individuals, cited by 83% of respondents. The other most common benefits include:

- reducing or eliminating the stress involved in using more formal processes (71%)
- retaining valuable employees (63%)
- reducing the number of formal grievances raised (57%)
- developing an organisational culture that focuses on managing and developing people (55%)
- avoiding the cost of defending employment tribunal claims (49%)
- reducing sickness absence (33%)
- being able to maintain confidentiality (18%).

Assessing the advantages of mediation at Salisbury Cathedral

Salisbury Cathedral is a place of prayer, contemplation and deep spirituality. It is also a business. There is no formal mediation 'scheme' set up; the HR manager will suggest mediation when issues have been referred to him or when he notices issues that he thinks would be suitable for mediation. The HR manager sees mediation as a way of tackling problems without stamping too much authority and, where appropriate, avoiding formal procedures. To him, at its lowest level, it should be part of the management process. It is about getting people in the same room to discuss problems together at an early stage – 'a common-sense approach in trying to work out differences'.

In the HR manager's view, there are many potential benefits to using mediation. It:

- provides an opportunity for employees to talk in detail about their experiences and express how they feel
- allows a fast response to dealing with conflict, so ensuring that parties do not become entrenched
- is especially valuable when dealing with relationship breakdowns, both between employees and between an employee and their manager
- provides a confidential method for dealing with conflict
- is suited to the small, informal environment of an SME where problems can quickly become transparent
- removes the damaging impact that formal procedures can have on individuals' careers
- allows parties to fully understand the perspective of others
- allows parties to identify a way forward
- gives parties a sense of ownership over the outcome of mediation, which enhances the sense of autonomy, trust and responsibility
- addresses conflict that is underpinned by allegations rather than evidence.

Part 5: Implementing mediation in your organisation

'The training was great, very very challenging but positive. It sets you up to understand mediation. When you walk into the room in a mediation you don't know what you are going into – and that's the great thing about the training, it does prepare you for that.'

Mediator, Customer Service Direct

The way in which mediation arrangements are introduced and embedded within an organisation is crucial to ensuring their effectiveness in resolving internal conflict. This requires a range of factors, including senior and line manager commitment, gaining trade union support where unions are recognised and having in place the appropriate resources to manage the scheme on an ongoing basis. It also means getting the buy-in of staff for mediation.

Mediation needs to be promoted to employees as an informal alternative to settling workplace disputes, and its potential advantages emphasised. The support of trade unions and employee representatives can be particularly useful in lending the use of mediation credibility and promoting trust in the process. Ultimately, it is the effectiveness with which mediation is perceived that will encourage its take-up by increasing numbers of employees who are locked in conflict.

Choosing a suitable approach

Mediation is not introduced into an organisational vacuum, and the chosen approach should suit the organisation. The degree of formality or informality will depend on the characteristics and needs of the organisation. For example, a larger organisation may opt for a more structured approach and invest in the development of its own internal scheme, which may be more cost-effective in the long run. For a small organisation, it may be more appropriate to buy in the services of an external mediator when necessary. Some organisations choose a combination of the two to suit their particular needs. Impartiality is a crucial element of the mediator's role, and it may be more

difficult for someone in a small company, where everyone knows everyone else, to remain independent.

The case study research revealed a wide range of mediation arrangements, each one suitable for the particular needs of that organisation. Salisbury Cathedral does not have a formal mediation scheme in place, for example, but will refer those cases that are considered appropriate to internal mediation. Similarly mediation has not been formally described as such at the marketing solutions company MRM, the HR manager using the approach as a way of dealing with cases of conflict that were brought to her by managers or staff. The HR manager encourages line managers themselves to use a mediation approach to address conflict between individuals.

In contrast, the Ministry of Justice has a formal mediation scheme that has been rolled out across the country and includes 40 internally trained mediators.

Internal or external mediators?

There are different options for introducing mediation into an organisation: one is to develop an in-house mediation scheme, with trained internal mediators. Another possible approach is to call on the services of external mediators when necessary, possibly as part of a call-on/call-off arrangement where a contract is agreed with a provider to provide their services as and when is necessary. These two approaches are not mutually exclusive, and can be used alongside one another.

Some of the factors to consider when deciding whether to opt for internal or external mediation arrangements include:

- cost – setting up an internal scheme is likely to demand more upfront investment
- size of the organisation – it may be more appropriate for a small organisation to use external mediators, who will be perceived as independent
- the amount of experience mediators will get, if an internal scheme is thought to be the best approach.

The CIPD 2008 survey on workplace mediation found that over half of the organisations surveyed had used an external mediator, and nine in ten of these were either very or fairly satisfied with the service provided. There are a number of organisations offering mediation in employment. As well as Acas, there are a number of commercial and not-for-profit organisations to choose from.

There are other organisational factors that need to be taken into account before deciding which mediation model is most suitable. It will be easier to introduce mediation into an organisation that already has a culture that is supportive of staff and where the management style is more open and consultative. If there are well-established policies and processes for promoting diversity and well-being, and dealing with bullying and harassment, for example, mediation is likely to sit naturally within the organisation's approach to people management.

The geographical spread of the organisation also needs to be considered at the outset. If there are several sites, nationally and/or internationally, the employer needs to decide how mediation will be made available to all staff located in regional offices. If there are groups of mediators in different company locations, there will need to be systems and processes in place to monitor and support them. Similarly, if external mediators are being used, thought needs to be given to their regional availability.

Company policies and procedures

Mediation will be most effective if it is consciously introduced as part of the organisation's approach to people management, and reflected in the culture,

policies and processes of an organisation. In this way, it will be viewed by managers and employees alike as a legitimate means of resolving conflict. If there are collective consultative arrangements within the organisation, mediation should also be discussed and agreed with employee representatives.

The 2008 CIPD survey on workplace mediation found that grievance and disciplinary procedures are the main ways by which organisations communicate their policy on mediation. Stand-alone policies on mediation are relatively rare.

Whether or not mediation is incorporated explicitly as an approach within some of the organisation's procedures is a matter for the organisation to decide. There are a number of different ways in which reference to mediation can be included within company policies, as our case study organisations indicate. For example, at Customer Service Direct (a joint venture between Suffolk County Council, Mid Suffolk District Council and BT), Suffolk County Council's mediation policy is written into its bullying and harassment policy and the main unions have ratified the policy.

The University of Central Lancashire, meanwhile, was just about to launch mediation as part of its updated grievance procedure. The procedure now identifies mediation as part of the informal stage – mediation can be used before a formal grievance has been lodged, at any time during the grievance procedure (by freezing proceedings by mutual consent) or at the end, if working relationships need to be repaired.

At West Midlands Police, mediation is mentioned in the published resolution procedure materials. It is stipulated that mediation is a voluntary process and can be used as an additional tool prior to, or at any time during, the resolution procedure to resolve a breakdown in workplace relations, but it does not take away an individual's right to the formal procedure.

It is worth considering the potential implications of writing mediation into the organisation's procedures. Such an approach could put pressure on parties to use mediation when they are reluctant to do so, something which goes against the grain of mediation being a

voluntary process. There is also the potential risk of turning what should be an informal process into something more formal. But some employers may wish to write mediation into individual employment contracts; however, mediation is a voluntary process and it is crucial that individuals are not pressurised.

Allocating resources

Mediation is not a quick-fix, nor a one-off commitment in terms of time and resources. If a call-on/call-off arrangement is in place for an external mediator, for example, the anticipated cost for mediation needs to be built into the budget. Ongoing support and supervision of the mediation arrangements is needed, particularly if the organisation is operating its own scheme. If internal staff are responsible for conducting mediations, adequate time off needs to be factored into their working week. Mediation responsibilities should be reflected in job descriptions and role profiles. Consideration needs to be given to providing proper cover for those involved in the mediation process.

At Customer Service Direct, mediators are released from their day jobs to fulfil their mediation duties. Mediators aim to keep alternate Thursdays free for this activity, although there is flexibility around the timing of their mediation activity. Good administration and co-ordination is considered crucial to the smooth running of the mediation service. This has been facilitated by the appointment of a mediation co-ordinator, a service that is greatly valued by the mediators.

It is good practice for there to be a dedicated person responsible for overseeing the mediation arrangements. The Ministry of Justice, for example, has appointed a part-time co-ordinator to drive forward the scheme and handle the administration and practicalities, including the task of arranging the mediations. The co-ordinator also plays an important role in holding preliminary discussions with the parties to establish whether their case is suited to mediation. West Midlands Police has a network of 'first contact advisers'.

Developing guidance

Consideration should be given to developing guidance and tools to support internal staff acting as mediators, as well as more general guidance for other staff. The University of Central Lancashire, for example, has developed a guidance booklet for line managers as well as information for potential participants. The booklet for line managers, whose staff may be involved in a mediation, covers:

- What is mediation?
- Why choose mediation?
- When is mediation appropriate?
- Line manager responsibilities.
- Line manager commitment.

The guidance for potential participants covers:

- What is mediation?
- When is mediation useful?
- How do I decide if mediation is appropriate for me?
- What can I expect?
- The mediation agreement.
- What next?
- Frequently asked questions.

Commitment from managers

Gaining the commitment of senior managers to mediation is key to ensuring that line managers, in turn, buy in to the process and promote its use as an informal mechanism to resolve disputes.

At West Midlands Police, management 'bought in' to the internal mediation scheme introduced by Acas from the outset, with the director of personnel, chief constable, deputy chief constable and senior managers all recognising the value of the Acas model. This level of support, along with the involvement of the Police Federation and other unions, has been important in building and improving relationships and employee relations.

Trade union support

Where trade unions are recognised, it is possible that there could be some preliminary mistrust of the mediation. Some trade union representatives could perceive that mediation will weaken their own role, for example, or that individuals' statutory rights could be undermined. It is essential that the acceptance and support of union and employee representatives is sought from an early stage in introducing mediation, or there is a risk that it will not be viewed as a legitimate option for settling differences between employees, particularly union members. There is every indication that, where organisations work with trade unions to embed mediation, it is accepted – and even championed – by them.

'I'm all for it if it stops grievances.'

Trade union representative, Incommunities

Gaining trade union buy-in at the University of Central Lancashire

The University of Central Lancashire (UCLan) has used external mediators and one internal mediator since 2005. It has now trained a further seven mediators, plus the scheme manager, as part of its own internal mediation service.

The UCU, Unison and Unite trade unions are recognised by the university. HR and trade union interviewees describe the employee relations climate as 'healthy'. UCLan's experienced mediator cites the unions' positive attitude towards the introduction of mediation, and their constructive input into the new grievance procedure, as evidence of this. For the unions, mediation fits with their approach of resolving disputes at the lowest possible level.

Describing the unions' reaction to mediation, the scheme manager commented: 'They could see exactly where it fitted with the process and I think they feel comfortable with where their role starts and finishes'. The unions asked questions about what would happen if someone admitted to something in mediation that could go against them, but they were reassured by the explicit statement in the mediation policy that mediation is confidential and therefore would not be disclosed to anyone outside the mediation service unless it related to a potentially unlawful act or a serious risk to health and safety.

A trade union representative at UCLan says that:

'Mediation is an ideal way of dealing with ill-defined problems, where there is no clear evidence and a positive outcome from normal grievance procedures is unlikely. It also allows people to be listened to. And it will be useful for problems between peers, which the unions find more difficult to deal with than problems between a manager and an employee.'

Selecting mediators

'It's good to have a cross-section of staff trained as mediators, because then you have got all levels of the department working with mediation and promoting it. If you do have a mediation involving a senior member of staff, then it can help to have a senior mediator.'

Quote from the Ministry of Justice

If an organisation is developing an internal mediation scheme, a key question is which employees should become mediators, and how should these be selected? It is common practice for employees to either volunteer as mediators or to be nominated by their managers. If there is a system of self-nomination, the organisation should be prepared to sift through a large number of applications and disappoint a large number of people, unless the process is effectively managed from the beginning. One approach is to establish some basic criteria for nomination from the start; for example, experience or knowledge of conflict management.

Around 40 employees are trained to act as mediators in the Ministry of Justice. These are drawn from different sites and from across the workforce. Having a variety of employees involved in providing mediation is considered one of the hallmarks of the scheme since it allows some flexibility in matching mediators to parties. It also helps ensure that the mediation is always provided by people who act impartially since they have no prior knowledge of the case or individuals involved.

At UCLan, the eight mediators for the university's internal mediation scheme comprise a cross-section of academic and non-teaching staff. The mediators differ by level of seniority, grade, type of work and gender.

As part of the recruitment process at UCLan, senior managers were asked to nominate potential mediators, and around 15 people came forward. After a mini training event, all made a formal application and were interviewed for the role. The criteria for selection included experience of, and skills in, conflict resolution and an understanding of mediation. Seven of the more experienced applicants, together with the scheme manager, were accepted and training arranged for them. The expectation is that the other seven applicants will also become mediators at a later date.

It is worth considering the suitability of HR professionals to become mediators. Although many HR practitioners would make good mediators with the kind of skills they are likely to have, there could be a direct conflict with their role if they are selected as mediators. It could be that HR is responsible for handling an ongoing or subsequent grievance, for example.

Mediator skill-set

This describes the range of skills, competencies and knowledge/experience that make up the mediator skill-set – not all of these are essential, and it is unlikely that every mediator will possess all those listed. Many of the specific skills needed will depend on the context, and most mediators develop their skill-set as they build up their experience.

SKILLS AND COMPETENCIES	QUALITIES	DESIRABLE KNOWLEDGE/EXPERIENCE
Active listening	Empathetic	Theory of conflict resolution
Oral, written and non-verbal communication	Impartial	Experience of conflict resolution
Questioning	Approachable	Understanding of equality and diversity issues
Reasoning	Non-judgemental	Understanding of HR policies and practices
Observing	Professional	Knowledge of power and minority issues
Summarising	Honest	Experience of facilitating informal groups
Problem-solving	Creative	Knowledge of the mediation process
Reflecting	Credible	An awareness of the legal context of mediation
Building rapport	Flexible	Some knowledge of employment relations
Facilitation	Integrity	
Reframing		
Objectivity		
Information analysis		
Planning		
Time management		
Conflict management		
Negotiation		
Following procedures		
Organising		
Generating options		

Training for mediators and managers

For mediation to be effective, mediators need to be trained in the techniques of mediation. They need to understand their role and how it fits within the organisation's dispute resolution procedures and other policies and procedures, such as bullying and harassment and diversity policies. A knowledge of conflict resolution and the theories of conflict management should also be covered in the training. Awareness training for other employees, and for line managers on how and when to use mediation, will also help to embed the scheme.

Training staff in mediation skills generally, to encourage the right management style and the organisational capacity to deal with conflict on a day-to-day basis, is a good way to help prevent disputes happening in the first place.

Customer Service Direct

Customer Service Direct stresses the importance of mediator training and mediators being clear about their remit. All mediators receive training, which is delivered by an external agency. Training consists of two three-day sessions. The course content includes role-play activities and there is an emphasis on process and equipping mediators to deal with any situation that may arise.

Close attention to diversity issues is also important to ensure that the scheme is 'diversity-proofed'. This is helped by an emphasis on equality and diversity issues in training mediators as well as consultation with internal staff networks.

Incommunities

The four HR advisory staff who deal with disciplinary cases and formal grievances, together with the HR director, have been trained as mediators by Acas. The trade union representatives were invited to be trained too, and one took part alongside the HR staff. All the trainees thought highly of the Acas training and felt that it provided them with a good framework for future mediation sessions.

To build on this training, the mediators also worked together on mediation role-plays based on case studies supplied by Acas. The HR consultant commented on the need for mediators to have empathy and to learn to ask the right questions – 'We are going to have to work with a script to begin with'.

Acas mediation training: the certificate in internal workplace mediation (CIWM)

The Certificate in Internal Workplace Mediation (CIWM) is accredited by OCR, one of the three main awarding bodies in the UK. It enables organisations to set up their own mediation scheme and trains their employees in mediation skills. The training course contains five units delivered over five days at times to suit an organisation's needs. The number of participants is limited to 12 on each course to allow maximum individual attention.

The course provides employees with the mediation skills and strategies they need to become successful workplace mediators:

Unit 1: Understanding conflict and mediation in the workplace

Unit 2: Introducing the parties to mediation

Unit 3: Moving through the mediation process

Unit 4: Skills and strategies for managing the mediation process

Unit 5: Practising mediation skills.

Trainees are assessed – via written and practical work – to ensure they have reached the standards required to gain the certificate.

Source: www.acas.org.uk

People also need to feel well supported and confident to engage in mediation. This will require a framework to be put in place where internal mediators, for example, have access to a key person, such as a mediation co-ordinator, with whom they can discuss difficult cases in confidence. Conducting mediations can be a stressful experience and so it is vital that there is a system of support for mediators when emotional support is needed.

Launching mediation

Whether mediation arrangements represent a formal scheme or are used on an ad hoc basis, thought needs to be given to how these are launched to managers and employees. It is more likely that there will be a formal launch if there is a formal scheme in place. If the mediation arrangements involve the use of external mediators, it is just as important to promote these to managers, representatives and employees so that everyone in the organisation is aware of their availability.

Some organisations may opt for a 'big bang' approach and launch the mediation initiative in a high-profile way, while others may opt for a 'drip drip' approach to engage people.

At the University of Central Lancashire (UCLan), it was planned to launch the new internal mediation scheme quietly. The intention was to allow the newly trained mediators to gain some experience before formally launching the scheme more widely, with publicity a few months later.

Similarly, the Ministry of Justice has allowed mediation to grow gradually in the organisation. There was a view that training too many mediators from the outset could mean that each had insufficient exposure to cases to consolidate their knowledge and skills. Training fewer mediators has meant that each can gradually hone their skills through practice.

At West Midlands Police, the scheme was embedded over a 12–18-month period, during which time a succession of awareness meetings were held and marketing leaflets were distributed. It was considered essential for the success of the scheme that key personnel such as HR and staff associations were not only aware of mediation as an available mechanism but that it was at the forefront of their minds and the preferred approach in the early intervention of grievances.

Ongoing promotion

Any new organisational initiative needs to be reinforced on an ongoing basis if it is to become accepted practice. There is little point introducing mediation with a big fanfare if it then has little profile and is not actively promoted as a viable dispute resolution option at every opportunity. Thought needs to be given to the material and channels used to market the scheme.

At West Midlands Police, marketing the scheme to key people is considered vital. Awareness of the mediation scheme has been achieved via a series of communication mechanisms, including:

- a leaflet distributed throughout the whole organisation that has recently been revised and re-circulated
- regular awareness meetings for key personnel including both Federation and union representatives, and personnel managers
- an outline and overview of the mediation scheme on the website.

Customer Service Direct tries to get the timing of its communications on mediation right, working around other organisational changes taking place. Awareness-raising – integral to which is sending out messages about why mediation is useful – is considered a challenging ingredient for success that the organisation continues to work on.

Part 6: Managing the mediation process

'For me, the success of mediation is to bring about some sort of resolution that allows the two individuals to have a relationship at work. It doesn't have to be a friendly relationship, but a professional one.' Quote from personnel adviser, West Midlands Police

Mediation is not appropriate for all types of disputes. Nor should it be used to replace the role and responsibilities of line management. Above all, those participating in mediation must do so voluntarily. Therefore when an issue is referred for mediation, whoever is responsible for overseeing the process – or the mediator themselves in more informal schemes – needs to make an assessment of whether the mediation should go ahead and ask the following types of question:

- What is the conflict about?
- Do the parties want to resolve the issue or are they seeking to apportion blame?
- Is it the right time to intervene or is there a more suitable process available?
- Has the manager tried to resolve the issue?
- Are both parties willing to participate and do they understand that it is voluntary?

If mediation does seem the best way to resolve the problem, they need to ask:

- Should we use our internal mediators or would an external mediator be more appropriate?
- Have more formal procedures been invoked? Is mediation a recognised stage, and if not can they be put into abeyance?

Agreement from the parties

Once the possibility for a mediation has been raised, the mediation co-ordinator – or the mediator themselves where more informal arrangements exist – will contact the parties separately. These meetings, which may be face-to-face, over the phone, or even via email, are not part of the mediation process but are an opportunity to:

- explain the mediation process
- discover what outcome each party hopes for from the mediation

- ensure, once again, whether the issue is suitable for mediation.

It can be helpful to provide some documentation about mediation at this point, especially where people are unfamiliar with the process.

Voluntary process

The CIPD 2008 survey found that nearly one in ten employers had written mediation into individual employment contracts. However, mediation has to be a voluntary process and it is crucial that individuals are not pressurised into participating. They should also have the opportunity to opt out if they are unhappy with the process.

Ensuring voluntary participation at the Ministry of Justice

'Sometimes people need time to consider whether to participate. This is particularly true in cases of a dispute between a manager and one of their staff where the member of staff has not been able to discuss it with the manager before requesting mediation. The manager can be cold-called by the mediation co-ordinator to say somebody wants to do mediation with them. They might want time to think about it, as it is voluntary, and they need to be aware of what the process is before they enter into mediation. However, they might be unhappy about going through mediation. The co-ordinator will then speak to them confidentially to discuss the issues with them, and talk through the process and benefits. The co-ordinator does not pressurise them to participate.'

Quote from mediation manager, Ministry of Justice

Choosing and contacting the mediator

Internal mediation

Where an internal mediator is used the most important consideration is the impartiality of the individual selected. It can help the perception of independence if the mediator is not known to the parties and they work in a separate part of the organisation.

If mediators are also union representatives it may be preferable if they do not mediate between individuals who they might represent in the organisation's formal procedures in the future.

If a mediator is an HR manager, it may not be appropriate for them to mediate in situations where they may have to deal with the same individuals on the same issue but within more formal procedures.

Impartiality

In communities HR mediators believe that impartiality is as important as confidentiality, so they will only act as mediators in those parts of the business where they do not usually operate.

At West Midlands Police, mediators are assigned to cases outside of their own departments or units. Police Federation representatives trained as mediators do not mediate in cases involving police officers, whom they may later represent in a formal process.

In a small organisation it is clearly more difficult to achieve the same level of detachment as can exist in a large organisation with different sites and departments. It may be more appropriate to bring in an external mediator, but it does not mean that internal mediation is impossible.

If there is sufficient trust in the process and potential users are confident that mediators are trained, impartial and professional in their role, then it is possible to use mediators who are known to the parties.

Other considerations in the selection of mediators might include:

- Would it be appropriate to match the gender and ethnicity of the parties?
- If a senior manager is one of the parties to be mediated, should a mediator of a more senior grade be selected?
- What is the availability and location of potential mediators? You may have to balance the need for a mediator who is not known to the parties with the need for the mediation to happen as swiftly as possible.

External mediation

If there is no internal scheme in place there will be no choice but to use external mediation. However, even where there is an internal scheme it may be more appropriate to use an external mediator for a specific case, for a number of reasons:

- Absolute confidentiality is a priority because, for example, those involved in potential mediation are senior managers in the organisation, or the issue involves a very sensitive situation.
- An internal mediator is not available quickly enough.
- The internal mediator has a conflict of interest.

Choosing the right provider

If the decision is to use an external mediator then there is a range of options. As well as public and not-for-profit sector providers such as Acas and the Centre for Effective Dispute Resolution (CEDR), there are a growing number of private sector mediation providers offering workplace mediators and training for in-house mediators. To decide which provider will offer the most appropriate service for your organisation, it can be helpful to consider some or all of the following:

- What model of mediation do you want to use (facilitative, evaluative, and so on)?
- Does the provider have a cultural fit with your own organisation?
- What is their track record?
- Do other employers you know have experience of using the external mediator?
- Do the mediators have a professional qualification,

such as the Certificate in Workplace Mediation?

- Are they accredited by a professional body?
- What is their expertise in employment-related disputes?
- Where are they located? How quickly can they provide a mediator?

Discussing contracts and practical details

Once you have decided which external provider you are going to use, you need to discuss with them:

- contact details of the parties so that the mediator can contact them direct
- contract letter
- costs
- timing.

Co-mediation

Some organisations use co-mediation, and although it requires a greater number of available mediators, it is seen to have a number of advantages:

- One mediator can take the lead and the other can pick up on issues that are missed, areas of agreement, or areas that need further exploration.
- Where parties have become stuck, they can be separated into different rooms and the mediator can help them recap, and refocus on why they are there.

Timing

From set-up to completion

Mediation can be a far speedier process overall than a formal disciplinary or grievance procedure. If it is to be successful there needs to be fairly tight control over the time it takes to arrange the mediation once the parties have agreed to take part. Mediators at Incommunities commented that 'mediation must be offered quickly or it won't achieve its objective of discouraging formal complaints'.

How quickly the mediation can be arranged will be determined, to a degree, by the number of parties involved, the nature of the complaint, availability of internal or external mediators, and availability of parties themselves.

Although it is difficult to be prescriptive about the timeframe, a process that is too drawn out will risk the conflict escalating and making a mediated settlement far harder to achieve.

How long do mediation meetings last?

The time taken for the mediation itself, as with the overall process, will vary depending on the number of people involved and the nature of the complaint. For those taking part it can be an intense experience, and they will need time to move through different emotional states in order to reach a position where they can empathise sufficiently with the other party to reach a lasting agreement.

In the CIPD online survey, researchers found that: 'The amount of time spent on the process of mediation was fairly evenly distributed between cases where mediation took less than a day (22%), one day (28%), two days (22%) and longer than two days (28%). Mediation tended to take more time in larger organisations, in the public sector, and where an external mediator was used.'

Once the mediator has spoken to the parties they may have a clearer idea of the minimum time needed. It may be that several different meetings are needed over a period of a few weeks, but it is advisable to set aside a whole day in the first instance.

Timing

University of Central Lancashire

UCLan's experienced mediator says that she expects to complete a mediation within two weeks of being asked to take on the case. If she contacted the parties on a Monday she would expect to do individual pre-meetings with each participant by Thursday or Friday of the same week. She would then need: a couple of days to 'get my head together and look at the connections between both sides, decide that it is appropriate to go forward, and conduct the mediation [by the end of the following week]'.

Ministry of Justice

At the MOJ, the usual format is for the mediators to speak to each party separately in the morning, and then bring them together after lunch for the mediation. The morning sessions are to set the guidelines, talk with each party to hear their side, and to ask again what the party hopes to achieve from the day. Sometimes one party will also tell the mediator some background circumstances that they do not want the other party to know (personal problems, for example). The morning sessions will affect how the mediator is going to conduct the afternoon mediation, depending on what permission the party gives them.

Location

Where the mediation takes place is fundamental to the process. Finding a suitable room off site, in a neutral location, can help protect confidentiality, and removes parties from the environment associated with the conflict. There should be a break-out room if things become heated to allow parties time out from what can be a demanding process.

If a neutral location is not available, then at the very least it is helpful to have the meeting in a different office.

Involvement of representatives

Involving representatives in mediation is not generally encouraged, whether that be a lawyer, a trade union representative, employee representative or friend. The

central tenet of mediation is, after all, to provide an opportunity for those in conflict to find their own solution to the situation they find themselves in, and for the parties to remain central to the process. Restricting mediation meetings to the parties themselves can allow more open and honest discussion.

Pitfalls of representation

Some of the pitfalls involved in using representatives include the formalisation of the process. Moreover, there can be a tendency for representatives to shift the emphasis from joint problem-solving to negotiating for the best deal for their candidate to the detriment of the other, instead of parties finding their own solution that will benefit both sides. Having said this, the mediator is there to ensure that this does not happen.

Flexibility around representation

There are exceptions, however. The Ministry of Justice, for example, does not allow representatives to participate but parties can have representatives in the room with them for moral support. Trade union and employee representatives can also, for example, play an important supporting role behind the scenes without being directly involved in the mediation itself.

The role of representatives at UCLan

At UCLan mediators may allow representation in certain cases if both parties are in agreement. The scheme manager commented, however, that someone from outside the organisation can 'muddy the waters', as they only have one side of the picture and don't understand how a situation can impact on the rest of the organisation. And: 'If one person says they want to bring a representative then that makes the other person feel defensive and they bring someone, and it escalates'. (UCLan mediator)

When representation is needed

One situation when a 'representative' may be unavoidable, is where you have a disabled employee or non-English-speaking employee:

- A disabled employee may need to be accompanied by a carer or, in the case of a deaf employee, for example, by a sign language interpreter.
- A non-English speaker, or someone who does not have sufficient command of the language to express complex feelings and emotions, will need an interpreter.

In these cases you will need to ensure that the representative clearly understands their role and that they, like the mediator, have established practice standards that guarantee their independence, impartiality and commitment to confidentiality.

What happens when mediation breaks down?

If at any point during the proceedings one of the parties wants to withdraw from the mediation, for whatever reason, the mediator will inform the co-ordinator that the mediation will not proceed but will not indicate why or who has decided to pull out.

There might also be situations where the mediator feels that mediation should be stopped. This might happen if:

- it becomes clear that the situation is serious enough that it should be a formal grievance, rather than a mediation
- one party's behaviour is unacceptable
- one party becomes too distressed to continue.

Using mediation – Linda's story

Linda and Jean were both on the management team in one part of a small public sector organisation. Linda, the more senior member of staff, had been in the organisation for four years and had been appointed from outside over the head of Jean. The job that Linda took on had been created following a restructuring, which had also resulted in a more constrained role for Jean. The relationship did not recover from this poor start. Linda was not initially aware of the full history of the structural changes and said that she 'inadvertently rubbed Jean up the wrong way'. Around two or three years after her initial appointment, the situation 'came to a head' when Linda challenged Jean about her style of management. Jean reacted angrily and subsequently accused Linda of bullying.

Deciding to go to mediation: Linda initially went to HR to get advice about how to 'have the next conversation'. She said that over the time that she had been working for the organisation she had tried a range of strategies to try to improve the relationship with Jean and to enable a more effective line management relationship between them. However, none of these had worked and she needed to find a solution, not least for the rest of the team. Linda also had concerns with Jean's style of management and communication, which, because of the poor relationship, she found hard to address.

Outcome and agreements

A mediation may end in an agreement between the parties or there may be no agreement even where there has been no breakdown in the process. However, the line manager or mediation co-ordinator will not be informed of the outcome or content of any agreement unless the parties have both agreed to it.

It may be that the manager notices an immediate improvement in relations or relations may improve over a period of weeks or months, or it may not improve at all, or even deteriorate further. It may be worth using mediation again in the future, or it may be that more formal procedures need to be brought in.

At the end of a successful mediation, the individuals involved may not be firm friends but they will have a professional working relationship.

Linda's story (continued)

The HR manager proposed Acas mediation to her as a possible way forward. She was given copies of some case studies of mediation to help her to make a decision. She found these helpful as she did not really have any prior understanding of how the process worked. In fact she said that it would have been useful to receive more information at this stage to enable as strong an understanding of what to expect. She decided to 'give it a go' and was reassured that the mediation would be run by someone who 'had no baggage'. She described her decision in the following way:

'Well I think that we'd had quite a lot of one-to-one dialogue. I'd tried things and it had just never really ever been that successful. And so it was like this feeling that there was a real problem... this person had a real problem with me as well... we have to make the things work in a team, this is becoming an issue, we really need to try something different.'

Despite the fact that the decision to involve a third party was a voluntary one, Linda was quite anxious in the run-up to the mediation meeting. A further background factor that made her think that mediation might work in this case was that she and Jean had recently been involved in an awayday at which both had undertaken an exercise in management profiling. This had made a start in giving both parties an understanding of the differences in their personalities.

The mediation process: The only contact with the mediator in advance of the mediation was to arrange the time and place of the meeting. The session started with the mediator talking to Linda and Jean separately for about half an hour to set out how the day would go and to gain an understanding of the issues from the perspective of each party. The day was then split into two joint sessions with a break ('we both became quite emotional at one point'). Each party talked about how aspects of the other's behaviour made them feel and how it was perceived, and also what had sparked their recent problems.

The discussion was 'not specific, more general with the focus on feelings'. For example 'I said to her "you said that I was bullying you; that made me feel awful"'. Linda said that she felt that doing this was particularly difficult for a manager because 'you are not really supposed to say how YOU feel'. However the mediator's style made this easier. 'The style she adopted was kind of, you know, very factual... not taking a view... very balanced in terms of, you know, you see it that way... She... sat back from the conversation more than I thought that she would... my recollection is of a very sort of understanding soft kind of person, but businesslike.' This approach, which was more facilitative and less directive than Linda had anticipated, helped her to 'open up more than I expected'.

The outcome: The outcome of the mediation was an agreement on particular ways that they would deal with each other in the future. A brief note sent to them by the mediator was the only record of what was agreed. Linda said that as a result of the mediation the working relationship had greatly improved and there was a lot more trust and understanding between the colleagues: 'We realised that we did not need to be close friends to work together effectively'. Following the mediation Jean was more 'aware of aspects of Linda's communication style as a manager and had a better understanding of her role'. Linda herself was also 'much more attuned as to what I do that can upset her'. (medium-sized public sector organisation)

Part 7: Evaluation

Evaluating a mediation scheme can be more sensitive than the evaluation of other company policies because of the confidential nature of the process. Asking for feedback from participants too soon can prove unfruitful because they may not feel like filling in forms directly after what can be a highly charged and emotional experience.

Although no records are kept of the detail of the mediation, an evaluation is necessary to assess:

- satisfaction of participants on their experience of the process
- quality of the scheme
- independence and professionalism of the mediators
- the effect that mediation has on any reduction in formal discipline and grievance procedures
- costs and benefits of using mediation.

The central focus of the evaluation will be on the experience of the mediators, participants and line managers. Separate questionnaires for these stakeholders might include questions such as:

- Were you satisfied with the process?
- Were you satisfied with the outcome?
- Would you use mediation again?
- How skilful was the mediator? How did they help to facilitate an agreement?
- Was the case suited to mediation? And why?
- Did the mediation have any unintended consequences?
- How long did the process take from beginning to end?
- How long did the mediation itself take?
- Has mediation improved the working environment?
- To what extent have resolutions reached at the time lasted?
- Have you any suggestions about how the process could be improved?
- What costs were involved?

Monitoring participants

It can be useful to collect profiling data on participants themselves including age, gender, race, disability and so on, their grade, role, area of the organisation in which they work, and the type of complaint. This can help to establish whether mediation arrangements are being accessed equally by different groups of people.

For a large organisation this may pose no problem for confidentiality, but in smaller organisations or smaller units there may be too few cases to protect the anonymity of participants and it may be preferable to limit data collection to the experience of mediation and its impact on the organisation.

If there is any chance that you cannot protect the anonymity of the individual, then don't monitor.

Improving the service

One way to improve the service is to use feedback from participants on the mediators themselves:

- The Ministry of Justice gives evaluation sheets to all participants at the end of a mediation that ask for the individual's views on how the mediators conducted the meetings. These are then sent to each of the mediators to give them feedback. The mediation scheme co-ordinator also looks at the forms to check that there are no issues they need to address with the mediators.
- At the University of Central Lancashire, the questionnaire for mediators focuses on the effectiveness of the processes and, if appropriate, the reasons why issues could not be resolved. Mediators' comments on these questionnaires will be used in action learning sets – groups of mediators meeting together to report back on mediations (without breaching confidentiality) and discussing how to improve the service.

- West Midlands Police has an anonymous feedback scheme for those engaged in mediation and also holds mediator network meetings where mediators can bring forward issues and concerns that have arisen during mediations to share best practice. This is considered especially useful by the mediators.

Debriefing for mediators

Where internal mediators are involved, it is important that they have the opportunity to sit and discuss how the mediation has gone immediately following its completion. Those participating in the mediation are frequently upset and emotional, and sometimes aggressive, and this can cause considerable stress for the mediator managing the meeting. An opportunity for some form of debrief is important for their own health and well-being.

Such a meeting should be held with the mediation co-ordinator, or HR manager, although they will need to take care not to breach the confidentiality of the parties. If mediators work in pairs this can offer an informal way to evaluate how the process has gone and what they might have done to improve the process or outcome, and has the added advantage of allowing them to discuss the case in detail without breaching confidentiality.

Revisiting cases

It can be useful to revisit cases a few months or even a year on. At the University of Central Lancashire, it is intended to go back to participants 12 months after the event to ask them how they are getting on. And if a line manager has referred the issue to mediation, the mediation co-ordinator may contact the manager to see if the mediation has had a beneficial outcome.

Mediations that for one reason or another break down can in fact improve relations over time as individuals have the space to reflect more fully, as the following case at the Ministry of Justice illustrates.

Care should be taken when contacting the parties who have previously been involved in mediation, however. For some, having to reflect again on past conflict can open up old wounds and ultimately prove counterproductive.

Revisiting a case at the Ministry of Justice

'Just by having an awareness of how the other people are, they can move forward. Even though at the time they may not agree... but listening to what that other person said, it might filter through to them and they might start to actually think about it.'

'[In a specific case, one party] made it clear that they wanted to try mediation to resolve long-term issues with another colleague... The mediation in this particular case was abandoned. But funnily enough a month later I was speaking to the manager about something different and I said, "Oh how is everything?" and the manager said, "Would you believe, since they attended that mediation, I don't know what happened, but they're now speaking together and their working relationship is good."'

The broader picture

Having collated data from individual mediations, it is useful to consider:

- time taken to resolve disputes via mediation compared with traditional dispute resolution procedures
- whether certain cases are more suited to mediation
- whether mediation provides more creative solutions than formal procedures
- whether mediation results in greater or lesser compliance with settlement agreements
- the costs and benefits of mediation – is there a link to reduction in formal procedures, absence, turnover, productivity of employees?
- benefits of internal versus external mediation
- what can be done to improve the mediation process and improve its take-up.

Reporting the findings

Findings on the use and effectiveness of mediation should be reported at least once a year and shared with key stakeholders, including trade unions, employee representative bodies, line managers and mediators. You may decide that it is worth communicating some of the findings directly with all employees, either by email or at team meetings, as a way of publicising the scheme.

Conclusions

Mediation is not a remedy for every situation where there is conflict between individuals in the workplace. In some cases there will be no choice but to use a formal procedure. In other disputes, one or both of the parties may not want to take part in mediation.

The success of mediation lies partly in the fact that it is voluntary and the parties enter the process as willing participants with a common goal of wanting to sort out their differences. Forcing people to use mediation, or incorporating it as a mandatory part of a grievance procedure, could be counterproductive and worsen already difficult relations between those involved.

The earlier that mediation is used in an employment dispute, the greater the chance of success in resolving the conflict. The longer the conflict situation continues, the more entrenched the parties become. Once there is a deadlock it can be difficult to open up the situation and widen people's perspectives.

But the beauty of mediation is that this is a process that can be introduced at any stage of a conflict. Even after a formal procedure has been completed, or an employment tribunal claim has concluded, for example, mediation can be used to help repair relationships and encourage teamwork.

For mediation to be effective, organisations need to consider a range of different factors when thinking about introducing it into an organisation. A decision needs to be taken as to whether internal or external mediators should be used. There are a number of critical success factors to using mediation. No scheme will work unless the workforce, managers and representatives are aware of it as a viable option in settling disputes. And trade unions can play an important role in giving the mediation process credibility and building trust.

Mediation cannot be introduced as a quick fix to sort out differences in the workplace: its benefits need to be properly evaluated and marketed to staff, and adequate resources devoted to its ongoing promotion within the organisation.

Introducing mediation: good practice points

- Mediation has many potential benefits for the organisation; for example, reducing the stress involved in using formal procedures and improving relationships.
- Mediation is not a universal remedy for conflict between individuals, and there are some situations where it will not be suitable – for example, if an individual bringing a discrimination claim wants it to be investigated.
- Mediation is a voluntary process and should only be used where both parties are willing to try and resolve their differences in this way.
- Confidentiality is a key element of mediation – anything said during the process should stay in the room and not be disclosed to line managers or HR.
- There is no one best approach of mediation, and the type of arrangements in place should suit the organisation and its culture. For some, an internal scheme is more appropriate, while for other workplaces external mediation may be the only viable option. Others may choose to use a combination of the two.
- Some of the factors to take into account when deciding whether or not to opt for internal or external mediation arrangements include cost and the size of the organisation.
- There are no strict rules on when mediation can or cannot be used – it can potentially be used at any stage in the conflict cycle, including after a formal dispute has been resolved to rebuild relationships.
- Mediation is most effective when used in the initial stages of a disagreement in the workplace, before the parties become too entrenched in their views.
- Some workplace disagreements are particularly suitable for using mediation, for example relationship breakdowns and some bullying and harassment cases.
- Setting up mediation arrangements involves setting aside an ongoing commitment in terms of time and resources.
- It is vital that any organisation introducing mediation gains buy-in for it from employees, managers and trade union and employee representatives.
- Mediation arrangements need to be promoted across the organisation and managers encouraged to use them.
- If launching an internal scheme, mediators should be drawn from across the organisation and trained and supported in their role.
- Evaluating a mediation scheme can be more sensitive than the evaluation of other company policies because of the confidential nature of the process.

Useful contacts

External mediation providers and trainers

Acas – provides mediators and mediation training including the Certificate in Workplace Mediation (CIWM). Contact Acas regional offices direct, phone the helpline on 08457 474747, or visit their website at **www.acas.org.uk**

Centre for Effective Dispute Resolution (CEDR) – provides mediators and mediation training accreditation. Tel: 020 7536 6000; fax: 020 7536 6001; website: **www.cedr.com** email: info@cedr.com

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