Research Paper

The Acas small firms’ mediation pilot

Research to explore parties’ experiences and views on the value of mediation

Ref: 04/05

2005
Prepared by:
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On behalf of Acas Research and Evaluation Section
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Finally, the views expressed in this report are mine and should not be taken to reflect those of the Acas Council.
## Contents

Acknowledgements

1. Executive Summary ........................................................................................................ 1

2. Background ....................................................................................................................... 3

1.1 The growth of mediation ................................................................................................. 3
1.2 The Acas mediation pilot ................................................................................................. 5
1.3 The evaluation .................................................................................................................. 6

3. The firms .......................................................................................................................... 9

3.1 Types of firm .................................................................................................................... 9
3.2 Problems for small firms ............................................................................................... 9
3.3 Procedures for dealing with disputes .............................................................................. 10
3.4 The state of employment relations ............................................................................... 10

4. Parties, disputes and mediations ..................................................................................... 12

4.1 The parties ..................................................................................................................... 12
4.2 The disputes .................................................................................................................. 12
4.3 Arranging the mediations ............................................................................................... 15
4.4 The role of Acas ............................................................................................................. 15

5. Parties’ understandings and expectations of mediation ................................................... 17

5.1 Understandings ............................................................................................................. 17
5.2 Expectations of mediation ............................................................................................. 18
5.3 Concerns about mediation ............................................................................................. 21

6. The mediation process ..................................................................................................... 23

6.1 The mediation day ......................................................................................................... 23
6.2 The strengths of mediation in resolving disputes ............................................................. 24
6.3 Difficulties with mediation ............................................................................................. 27

7. The impact of mediation .................................................................................................. 33

7.1 Impact on the disputes ................................................................................................. 33
7.2 Wider impacts within firms ........................................................................................... 36
7.3 Impact on perceptions of Acas ..................................................................................... 37
7.4 Impact on views on mediation ...................................................................................... 38
7.5 Satisfaction with mediation ........................................................................................... 40

8. Conclusions ....................................................................................................................... 41

References ........................................................................................................................ 43

Annexe 1: Topic Guide ........................................................................................................ 45
1. Executive Summary

Acas established a mediation pilot project in 2003 to evaluate the effectiveness of mediation in disputes in small firms, initially in East London and the Yorkshire and Humberside Region and later extended to the whole of London, the whole Northern Region and the Midlands. Over a period of one year 26 mediations were carried out and 134 firms also received advice on employment matters.

The pilot offered an appeal service, two types of mediation and employment law visits (ELVs). The appeal service would involve a mediator hearing an appeal from final stage grievance or disciplinary proceedings. Mediation took two forms: facilitative mediation and directive mediation for disputes where the parties wanted a mediator to review the dispute and make proposals. ELVs were visits to firms by Acas staff to give employers information on employment law and good practice and to assess and offer a mediation service if appropriate.

In July 2004 Acas commissioned a qualitative evaluation of the mediations in the pilot and this report present the findings from that evaluation. The qualitative evaluation explored the pilot participants’ expectations and experiences of mediation and the impacts of mediation both on the disputes and on employment relations and business performance. Both short term and long-term impacts were assessed.

The overall aim of the evaluation was to assess the value of mediation for disputes in small firms. Exploring parties’ experiences of mediation enabled assessment of the strengths and weaknesses of the different features of mediation and the suitability of each feature for different types of dispute and different situations.

The evaluation was of 17 mediations carried out in 16 firms, 14 of which were facilitative mediations and 4 directive mediations. The fieldwork was carried out from July to October 2004. 37 employers and employees were interviewed in depth about their experiences using topic guides designed specifically for the research. Interviews were taped and transcribed and transcripts were analysed to develop a detailed account of parties’ experiences of their involvement in the mediation pilot.

Of the 16 firms in the study, three were private sector businesses, four were in the public sector and nine were charities. In size they ranged from around six, to around 50 employees, with half having less than ten employees and a single premises. Nine disputes were between employer and employee, five between supervisor and supervisee and three between employees of equal status.

Of the four directive mediations one was a disagreement over pay and the other three arose at the request of employees, from various uses of disciplinary and grievance procedures. Disputes mediated without recommendations were to some extent about unsatisfactory grievance and disciplinary procedures, but much more about interpersonal relationships, performance and accusations of bullying.

Most firms in the sample had a full set of developed employment relations procedures at the time of the disputes, although employers in the smaller firms had little or no experience of dealing with disputes. Employees were more likely to attest to problems in employment relations than were employers and in two cases employees expressed concern about a pattern of disputes.

In all but one case employers had sought to resolve disputes internally before seeking help from Acas. In many cases this involved what employers saw as ‘informal’ methods of resolving disputes: discussions and meetings with the parties often over long periods. Although there were several parties who were aware of the Acas mediation pilot before
contacting Acas, almost all first contacts with Acas were to seek general help from Acas, rather than specifically requesting help from the mediation pilot.

Levels of understanding of mediation were quite high, the most common view being of an external intervention to promote a resolution to a dispute. Parties who knew little of mediation learned about it mainly through contacts with Acas and discussion in their firms during the preparation phase. Parties saw the main value of mediation as having a skilled external mediator who would come into the situation and help to sort things out with voluntary participants. This view was slightly different for parties taking part in directive mediation, who were likely to describe directive mediation as a form of adjudication.

Employers also expected mediation to be quick and to involve much less resources than internal procedures. Employers also expressed some concern that internal procedures required judgments about blame and so on and carried the risk that employees valued for their skills could feel obliged to leave. Employees often shared this view, hoping that mediation would re-establish for them a tolerable working environment, without which leaving the firm looked like a serious option.

Agreement to take part was not always wholeheartedly given in the case of some employees. The main reservation was the desire for some form of investigation of the dispute, rather than a facilitated agreement process. Some employees felt that refusal to take part would not be in their interests, even though they would have preferred an adjudication of some sort.

For most parties the mediation went according to their expectations and the experience was positive. The key positive feature of mediation was identified by parties as the external mediator, whose role in enabling parties to set out their case to each other and to find a way to reach agreement was seen as invaluable. Other features of mediation identified as contributing to the value of the process, included being obliged to spend time with the other party, listening, explaining, negotiating and also the iterative process of composing the agreement. In constructing an agreement point by point, parties were enabled to find solutions in small steps rather than all at once.

Negative experiences were about the length and stress of the meetings, the problems of confronting the other party and the persistent problem of the mediation format not being the investigative form desired. Some parties felt that they were not as skilled as the other party at setting out their case and acting in their own interests.

An agreement was reached in eleven of the thirteen facilitative mediations in the study. All four directive mediations were successfully concluded. Mediated agreements were made up of explanations and apologies, changes in behaviours, changes to working practices, procedures and policies and, less commonly, changes such as the proximity of desks. These agreements effected changes in the disputes immediately and these were partly sustained over the longer-term in all cases. In several cases disputes had begun to recur and employers were anticipating further actions using internal procedures.

Improvements gave employers a breathing space in which to reflect and coupled with the confidence and extra knowledge gained through contact with Acas, some employers felt better able to deal with disputes than before. Mediation also saved a lot of time for firms, not only by removing the need for further actions, but also by using fewer resources. Mediation also avoided the unpleasant prospects of further internal disputes, with associated blame and possible departures from the firm. Employees benefited from improvements because of the reductions in day-to-day conflicts and also because it became possible for them to remain at the firm.
The service parties received from Acas was widely praised and parties' knowledge and use of Acas services increased following mediation. Most parties were similarly impressed by mediation as a tool for employment dispute resolutions and confirmed their willingness, if necessary, to use mediation again in that context.

2. Background

2.1 The growth of mediation

Alternative Dispute Resolution

The term Alternative Dispute Resolution (ADR) covers a range of processes in which a neutral third party brings the parties to a dispute together to seek a solution that does not involve litigation. ADR may take many forms and is usually thought to include conciliation, mediation, arbitration, early neutral evaluation, expert determination and ombudsmen schemes (Brown & Marriott, 2000), some of which have a long history in the UK (Goriely, 1997).

More recently, ADR was given a boost as a key element in the reforms to the civil justice system introduced in 1999 by Lord Woolf (DCA, 1996) and since 2000 the UK government has shown an increasing desire to promote ADR not only as one way of resolving disputes, but possibly as the first and most appropriate way of so doing. This recent shift to a stronger emphasis on ADR is a significant change in the culture and the activities of both the courts and tribunal systems and the evidence now is that ADR is spreading across more and more fields as time goes on: all Government contracts now include an ADR option in the procedure for resolving disputes and indications are that use of ADR by central government departments is on the increase (Partington 2004).

In the last two years there have been a growing number of ADR initiatives from organisations concerned with the administration of justice, from legal and advice organisations and from consumer representatives. A number of websites now offer libraries and current information bulletins that provide a solid overview both of the history of ADR and the most recent developments (ASA, CJC).

ADR and mediation

Mediation is the most widely used ADR process and has developed in a variety of areas of dispute, including divorce and separation, special educational needs issues, small claims, business disputes, neighbour and boundary disputes, clinical negligence and personal injury, workplace, consumer, community care, education, youth crime, housing disrepair and tenancy deposits as well as international and cross-border disputes.

There are different ways of categorising mediation. A clear account of types of mediation is offered by the Advice Services Alliance: evaluative mediation; facilitative mediation; and rights based mediation (ASA, 2004). The mediator in evaluative mediation will propose or suggest ways forward and may make assessments of each party’s ‘case’ in terms of likely tribunal or court outcomes, typically through separate meetings with parties. By contrast the facilitative mediator does not direct the parties towards any particular settlement, but manages the process, while the parties remain in control of the content. Facilitative mediation, in this categorisation, may also be called ‘interest-based’ mediation, as parties develop a sense of what is in their own interests. Finally, the mediator in rights-based mediation ensures that any mediated agreement reflects statutory rights and legal entitlements.

Baruch describes a further type of mediation that had developed more recently as a form of therapeutic intervention: transformative mediation (Baruch-Bush, 1994). Transformative mediation places great emphasis on the process of mediation and the
empathy of parties, the primary mediator role being to enable the parties to make their own changes through joint meetings and to decide their own outcomes.

Mediations differ in other ways, notably in how much time is spent on the process. Family mediation is typically conducted face-to-face over two to three days, with a limit of half a dozen sessions (FMS, 2005), whereas the Disability Conciliation Service offers a single meeting, with other discussions conducted on the telephone (DCS, 2005).

**Strengths and critiques**

Reliable evidence about the effectiveness of mediation is not available as a limited amount of research has been done in this field. A recent review of the value of mediation in the civil justice system in Scotland (Macdonald, 2004) concluded that whilst mediation might be useful for many civil disputes, enjoyed a degree of support among the population and was anecdotally useful in civil disputes, there was no consistent availability of mediation, access to what did exist was poor and there was very little reliable research evidence about effective mediation.

Views about mediation, both pro and anti, are strongly held. Both the proponents of mediation and its critics contrast mediation with litigation and almost everything that mediation’s advocates point to as a strength is highlighted as a weakness by its critics. A clear account of the strengths of mediation is offered by the Centre for Effective Dispute Resolution (Roberts, 2000):

- mediation can work quickly and therefore more cheaply, than court or tribunal processes
- mediation is confidential - avoiding publicity and protecting reputations
- because mediation is conducted without precedents, it is flexible and hence potentially more creative than other solutions
- because mediation seeks to look forward, rather than to make a judgment about the past, it is more able to consider and develop solutions
- mediation enables a relationship between parties to continue, rather than to end
- mediation can succeed where direct negotiations have reached a stalemate

Advocates of mediation also describe it as achieving a win-win negotiated result, rather than the win-lose model inherent in litigation, or the “all or nothing” approach inherent in the courts (CEDR, 2004; DCS, 2005). Especially when parties need to have an ongoing relationship - for example in family disputes, neighbour disputes and employment disputes - this feature of mediation is thought to assume much greater importance.

Mediation is also seen as having the capacity to explore what the parties both want and need, rather than focusing on their rights under the law, although this perhaps applies to some forms of mediation more than others. But generally in mediation it is the parties who are thought to remain more in control of the content and outcome than would be the case in a court or tribunal.

There are values associated with mediation that are also seen as strengths. Because participation in mediation is voluntary, there is a better chance that an agreement will be satisfactory and respected by both parties. Because mediators must be neutral and impartial, they can work more creatively towards agreement. Because mediation is confidential there is greater leeway for parties to set out their ‘case’ and to explore a wider range of possibilities for agreement (CEDR, 2004).

A coherent broad critique of mediation, offered recently, contrasts mediation unfavourably with the judicial process, characterising mediation as under-researched, with no clear and transparent goals, no settled rules or procedures, no openness to
scrutiny, no precedent or evidence base and no standards against which to judge either quality or effectiveness (Dolder, 2004).

Dolder sees mediation as a closed process, in which fairness, transparency and openness can be entirely lacking without anyone realising it. Because mediation is confidential, it is not possible to test the consistency and perhaps the ‘reasonableness’ of mediation outcomes. According to Dolder, combined with the lack of precedent, confidentiality allows the parties in theory to make any sort of decision and critics see this situation as giving the mediator far too much unscrutinised influence.

Representatives are common in commercial mediations but much less so in the more ‘personal’ forms of mediation, such as family and neighbour mediation. Critics point to a potential imbalance of power between any parties to disputes, including those involved in mediation and when parties are not permitted to have representatives who might help to redress the balance, it may well put some parties at a great disadvantage. The right to representation is seen as fundamental to the judicial process and critics of mediation express discomfort about the lack of clarity about when representation is and is not allowable in mediation.

Finally, the judicial process is characterised as examining the ‘history’ of a dispute and establishing the ‘facts’ as the basis of its judgments, whereas mediation emphasises ‘going forward’, looking to the future and in so doing may ‘mask’ problems, preventing these from surfacing and being dealt with and so denying justice to parties. The risk then is that accountability, the righting of wrongs and suitable compensation for hurts will all be dispensed with (Dolder 2004).

2.2 The Acas mediation pilot

The Acas mediation pilot was established in September 2003 to explore the value of mediation in disputes in small firms. In establishing the pilot, Acas was responding to recommendations from the Better Regulation Task Force (BRTF, 2002) and the Employment Tribunal Systems Task Force (HMSO, 2002).

The pilot was aimed at firms with fewer than 50 employees and offered help with grievance and disciplinary appeals, mediation and advice on employment law and was set up initially in two geographical areas: Yorkshire and Humberside and East London.

The pilot ended in September 2004.

Evaluation of the pilot was in terms of the costs and benefits to small firms and to public funds. Evaluation would also consider, should the policy decision be to mainstream these services, whether Acas should provide mediation free of charge or charged for on a cost recovery basis.

The pilot services

The pilot offered three types of intervention:

- **Independent Appeals**

Acas mediators provided an independent party to hear an appeal at the final stage of firms’ procedures. Independent appeals required parties to agree Terms of Reference setting out the issues in dispute, the hearing process and a commitment to adhere to the recommendations made by the mediator.

- **Mediation with and without recommendations**
Two types of mediation service were offered: directive mediation and facilitative mediation. In directive mediation the mediator would set out a range of formal options or make recommendations about the resolution of the dispute. In facilitative mediation mediators would offer help to parties in identifying the issues themselves and in reaching their own mutually acceptable resolution by agreement.

- Employment Law Visits (ELVs)

Acas staff provided ELVs to give employers information on employment law and good practice. In addition, ELV visits were intended to assess and offer the mediation service if appropriate.

**Acas mediators**

Appeals and mediations were carried out both by Acas individual conciliators and by mediators from Acas’ Independent Panel, depending on the type of mediation.

Acas has a statutory duty to provide conciliation in all employment tribunal claims, with the aim of settling the case without a full tribunal hearing. This service is provided by Acas conciliators, who gain experience in mediation skills and who were therefore used to provide mediation under the pilot in cases where parties did not require either formal options to be identified or recommendations to be made.

Appeals and directive mediations, where formal options or formal recommendations were required by the parties, were undertaken by panel mediators, to avoid the risk of compromising the conciliator role in conciliating in employment tribunal cases.

**Training**

An important aspect of the preparation for the pilot was an extensive programme of workshops and other training for Acas staff involved in delivering pilot services, to ensure the best possible services under the pilot.

**Publicity and Promotion**

Publicity was in the form of postcard mailshots, articles in trade and professional journals, press coverage, presentations and an information letter supported by the Advice Services Alliance. Materials were aimed at business and professional organisations, including the local Citizens Advice Bureau, in the pilot areas. An information leaflet was produced for potential clients and information was posted on the Acas website. To help generate greater volumes of cases staff on the Acas Helplines in London and Leeds were trained to identify potential clients for the pilot services.

**Take up**

The pilot closed in September 2004 at which time a total of 26 mediations had been completed: 9 appeals/directive mediations and 17 facilitative mediations. In addition, 109 Employment Law Visits had been completed of which 18 were followed by mediations. In a further 25 firms advice had been given entirely over the telephone.

**2.3 The evaluation**

**Overview**

Evaluation of the pilot had three strands: telephone interviews with all employers who took up an Employment Law Visit; collection of data on the activities of Acas mediators
in providing the service; and face-to-face qualitative interviews with a sample of participants in mediations. This report sets out the results of this qualitative work with mediation participants. For the results of the analysis of the other two strands of the evaluation see Fox, M, *Acas Mediation Pilot in Small Firms: Evaluation Report*, Acas 2005.

The qualitative evaluation of the pilot mediations was commissioned by Acas in June 2004. This aspect of the evaluation sought to explore what the parties to mediation thought it had achieved, what their concerns about it were and what impact it had on the disputes and in the firms more widely and was carried out from July to October 2004.

Qualitative research methods are especially useful for gaining an in-depth understanding of the experiences of participants. Although not providing statistically valid associations, qualitative methods can provide detailed and carefully drawn insights into the meanings of events for those involved in it.

The detailed aims of the qualitative research were:

- to explore parties’ expectations and understandings of mediation and their decisions to opt for mediation
- to gain an understanding of the types of issues and types of parties involved in these disputes
- to examine the short term impact of mediation in resolving disputes between individual employees, or between employers and employees in small firms
- to assess the longer term impact of the mediation on employment relations and business performance
- to explore parties’ perceptions of success and failure in mediation
- to evaluate Acas’ role in providing the service

**The report**

This report begins with an account of the current development of Alternative Dispute Resolution (ADR) in the UK and the place of mediation in the spectrum of types of ADR. This is followed by a brief overview of the views of the proponents and critics of mediation which provides the context in which the Acas mediation pilot was established. A brief account of the pilot itself is set out to enable the reader to understand the context for the qualitative evaluation described in this report. An overview of the qualitative research concludes the chapter.

The first part of the findings describes the firms involved in the research, the disputes that were mediated, the different approaches to dispute resolution and the process of getting help with mediation from Acas. This chapter provides a background and context for the analysis that follows.

The analysis itself falls into three parts. The first analysis chapter, on parties expectations of mediations, looks at what parties wanted from mediation, what their concerns about it were and how well they expected it to address the issues in the disputes. This is followed by an account of parties experiences of going through mediation, including the most effective features of mediation, and what gave cause for concern or did not always work well.

Finally, the various impacts on mediation - on the disputes, on the firms in a wider sense and on the individuals involved - is set out in some detail. A short conclusion chapter picks out the main findings and the Annexe provides the text of the topic guides used for the interviews.
Research methods

- Contacts with firms to arrange interviews

Letters introducing the researcher were sent by the Director of Operations at Acas to the parties to the mediations and where relevant to employers who arranged the mediation but who were not parties to it. To allow for the assessment of longer-term impacts of mediation, firms were only contacted for evaluation interviews once a minimum period of three months had gone by since the mediation.

In total, researcher attempts at contact with mediation participants were made with 17 firms about 18 mediations and interviews were successfully arranged in 16 firms about 17 mediations.

- The interviews

In all, 37 in-depth interviews were conducted, 19 of which were with employers and 18 with employees. Of the employers, nine were in the position of having arranged the mediation without being participants in the process itself and one employer was a party to one mediation and had arranged another. The pattern of interviews was complex: in some firms there was an interview with only one of the parties and in others four parties were interviewed.

Topic guides for the interviews were developed and piloted with a small number of respondents. The topics covered in the interviews were:

- parties’ expectations and experiences of mediation
- parties’ experiences of Acas’ role
- the impact of mediation on the specific disputes
- the costs and benefits of mediation to the firm and to the parties
- the impact of mediation on wider employment relations in the firm
- the impact of mediation on the health of the firm in more general terms
- the future intentions of firms in relation to mediation

The guides were semi-structured around open questions, allowing respondents to convey their views in their own words, without the types of response constraints imposed by more closed questions:

- what sorts of disputes were involved?
- what was done to resolve these prior to mediation?
- what did parties know of and/or expect from mediation?
- what was taking part in mediation like?
- did mediation make a difference to the dispute and if it did, what and how?
- did mediation have any wider benefits to the firm?
- what were parties’ experiences of and views on Acas both before and after their involvement in the pilot?

Different editions of the topic guides were developed for employers and employees and for guides aimed at participants in mediations with and without recommendations. (Annex 1 provides the text of the Topic Guides).

- The analysis

Interviews were tape-recorded and transcribed for analysis. The analysis method involved extracting from the interview transcripts the common themes and issues in responses and setting these out using a series of grids. Themes and issues were
recorded in columns and cases in the rows of the grids. In this way, the columns offered a picture of the common themes and issues, with case-based scenarios available by reading along the rows. This was an iterative process, involving combing the transcripts for the nuances of responses, both for their coherence and for their dissonances. The depictions of the disputes, the parties and the mediations built up in the analysis were detailed and relational.

The aim of the analysis was to develop an understanding of the types of impact that mediation had on the disputes, the firms and the individuals and to associate these detailed impacts with specific circumstances and specific scenarios. In this way both how mediation could be helpful in disputes and how best to shape mediation as a tool for better employment relations were explored.

**Research issues**

- **Respondents’ recall**

Interviews were conducted from four months to one year after the mediations had taken place and respondents’ ability to recall events with confidence varied, not only because of elapsed time, but also with individuals’ personal capacities. Major issues such as the benefits of mediation or the character of any difficulties with the process were recalled with clarity and confidence. Recall was less certain with some of the detail, especially from the period leading up to the mediation, with limited recall for some parties about the origins of their knowledge of the Acas mediation pilot, their expectations of mediation before it took place and the specifics of their telephone, letter and face-to-face contacts with Acas.

- **Strong feelings about the dispute**

Some disputes were very strongly felt by parties and in some cases these feelings were expressed in the research interviews. When this happened respondents were very likely to talk at length about the dispute, taking up a lot of the interview time with this topic and as a result responded less than fully to other interview topics.

**3. The firms**

**3.1 Types of firm**

Of the 16 firms in the sample, 3 were private sector businesses, 4 were in the public sector and 9 were not-for-profit, charitable businesses. Firms varied in size from under 10 to around 50 employees. Around half were in fact very small - less than 10 employees - and operated from a single small premises.

**3.2 Problems for small firms**

As part of the background to the mediation of the disputes, both employers and employees were asked for their views on the sorts of problems they considered more likely to occur in small firms, on particular difficulties for small firms when trying to deal with disputes and on employment relations in their own firms.

Smaller firms were much more likely to experience stresses caused by the sizes of both workforces and premises and employers were more likely to attest to their inexperience and lack of skills in dealing with employment matters. The most frequently mentioned difficulties described by employers were:

- cramped premises and lack of privacy, both causing friction and limiting options such as moving staff apart
• a small workforce limits the options for dealing with clashes between staff: for example in larger firms staff could be transferred to a different section
• a lack of clear management structures, HR staff, or time, to deal with issues adequately
• a general lack of management training and skills

In charitable companies with overlapping roles for senior employees and employer-trustees, employers could find disputes very difficult to deal with. Trustees were usually off-premises and involved only in a voluntary capacity. They often lacked the time to deal with disputes and some had been thrust into their employer role with no training and little knowledge of management.

Employees often shared employers’ views on the problems of small premises and working in close proximity to each other. Many employees also described their employers as having only limited abilities to deal with disputes and in some cases as exacerbating problems through inept handling of disputes. Employees were also more likely than employers to emphasise the difficulty of finding employment elsewhere in the event of a dispute, leaving them stuck in a situation that was difficult and stressful.

3.3 Procedures for dealing with disputes

Most firms in the sample described their employment procedures and practices as well developed. For example, most employers were aware of the new regulations of the Employment Act 2002, requiring employers to put in place formal procedures for grievances and discipline by October 2004 (SI 2004). Two firms were in the process of drafting written grievance and disciplinary procedures for the first time, under the influence of these impending legal changes. There was in addition a single example of mediation already written into a firm’s employment procedures, although mediation had not been used before the Acas pilot was approached.

It was common for disciplinary and grievance procedures to be based at least in part on Acas guidance. Other sources of guidance on procedures were the wider networks firms were involved in, which either required them to have ‘approved’ employment procedures and practices, or provided them with models for adaptation to their own circumstances. Examples of this included agencies that were part of the National Health Service, or of national charities’ support networks. A further source of guidance was where firms had bought in external employment advice and support services, part of whose provision to them was an employment procedures service. Some firms relied for their employment advice and support on external professionals such as accountants and solicitors who may well not have been best equipped to give such support.

Practical experience of dealing with employment matters was however quite rare. In only one case did a firm have experienced human resources staff and disputes in all other cases were the responsibility of either a senior manager, a senior professional, or in some cases a charity trustee.

3.4 The state of employment relations

Most employers considered employer-employee relations to be either good or marred by disputes in only minor ways. Where employers did express concerns about employment relations, this tended to be about the specific dispute, which they saw either as a one off, or a problem of difficult personalities:

"We’ve never had any grievances before. We have terminated people’s employment and people have left the company but it’s never resulted in a grievance procedure ever before - in 18 years, with probably 200-300 employees. So we’re new to the whole grievance procedure.” Employer, directive mediation, employer-employee dispute
In most cases employees described employment relations in the firm as reasonable, although employees were more likely to mention problems than were employers. The two most common criticisms of employers were that firms were not very well organised or run in general and a key aspect of this was the employer's inability to deal effectively with disputes:

“I used to work for Social Services and I line managed staff myself, a lot of them, You have guidelines and it takes time to go through them, but it’s important that you do. But here, people don’t make time to keep up to date with things and they don’t necessarily think things through before they act. They don’t have the skills. I do think it’s possible to run small organisations effectively and in a more managed fashion. But I think that’s about the individuals who manage - for example in this firm the management structure wouldn’t go on training courses - a very sort of blinkered approach - and there’s no formal management training whatsoever.” Employee, directive mediation, employer-employee dispute

“I just think they should have dealt with this problem themselves. They’re upstairs here and most of us are downstairs and they sit up there and they don’t listen when there are problems. I’ve tried to tell them, but they just do nothing…” Employee, facilitative mediation, employee-employee dispute

It is important to point out, however, that most employees did not suggest that employers had not tried to resolve disputes, but that often despite considerable effort, they had not been successful. There was dissatisfaction expressed by employees about these perceived failures, especially when the employee felt that they were the aggrieved party in the dispute.

There were two firms in which employees had more serious concerns about employment relations, which they characterised as poor, describing a series of disputes over time involving different employees and a pattern of disputes all with the same cause - poor management.

“There are loads (of disputes), constantly. I could go on forever. The place is just a bit nuts. They don’t work to a normal structure like any other organisation I have ever worked for. And because of the way it works, people have a lot of issues and because they don’t have a clear structure, they don’t have clear policies, everybody does their own thing and you’ve got people who are not qualified to do jobs, it’s just so vague really.” Supervisor, facilitative mediation, supervisor-supervisee dispute
4. Parties, disputes and mediations

4.1 The parties

Disputes were between employer and employee, between manager/supervisor and supervisee and between employees of equal status.

<table>
<thead>
<tr>
<th>Parties</th>
<th>Number of disputes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer and employee</td>
<td>9</td>
</tr>
<tr>
<td>Manager/supervisor and supervisee</td>
<td>5</td>
</tr>
<tr>
<td>Employees of equal status</td>
<td>3</td>
</tr>
</tbody>
</table>

4.2 The disputes

What disputes were about

Of the 17 mediations 13 were facilitative and 4 were directive. Of these 4, one was initially allocated as an appeal, but was not conducted as such on the day. They addressed the following problems:

- an employee grievance about unfair treatment in relation to a newly created senior vacancy
- a grievance appeal about employer conduct in relation to correct rates of pay for sickness absence
- an employee grievance about workload, that arose in disciplinary procedures against that employee for bullying of other staff
- a disagreement over the rate of pay of the employee

Parties also identified interpersonal difficulties as an issue in two of these four directive mediations.

The 13 facilitative mediations addressed a range of *overlapping* problems:

- unsatisfactorily concluded grievance procedures
- unsatisfactorily concluded disciplinary procedures
- interpersonal relationships
- performance
- bullying
- pay - correct amount of contractual pay

Alongside the specifics of disputes, some parties also saw situations of change as likely to promote disputes. The main example given in interviews was the problems caused by the arrival of new staff - either senior staff or new co-workers - who, when coming in to an established work situation, often upset an existing set of working relations or arrangements, notably where old and new staff appeared not to get on personally with one another. A variant of this was the addition of a supervisor where previously staff had not been supervised.

In cases where a supervisor came into the firm ‘above’ a longer-serving member of staff, they fell into dispute over supervision. Such disputes also occurred with the addition of co-workers to share tasks previously undertaken by one staff member only.

Some employers identified such changes as triggers, although not fully as ‘causes’ of the disputes, which in most cases employers tended to see as personality issues (see below).
Grievance and disciplinary issues

Grievance or disciplinary proceedings were either currently part of the dispute, or had been used in the past in the dispute, in 14 cases, leaving only three cases where formal proceedings had never been used.

As already described above, three of the directive mediations arose directly from difficulties with disciplinary or grievance procedures and both employer and employee in these cases saw mediation as an alternative to the continued use of formal internal procedures. There were also two facilitative mediations where requests for help from Acas arose directly from unsatisfactory uses of disciplinary proceedings.

The remaining cases had involved employee grievances, but employers described these as part of the character of the dispute, rather than the direct stimulus to seeking external help. Disputes of this kind could be between employer and employee, between manager/supervisor and supervisee, or between employees of equal status. In these there was often a pattern of overlapping complaints, with both parties having taken out grievances against each other.

Interpersonal relations and performance issues

In 15 of the 17 cases interpersonal relations were an element of the dispute. Interpersonal issues were a stronger feature of disputes between employees than between employer and employees, although there were two employer-employee cases where feelings ran high.

Interpersonal disputes between employees were characterised by arguments, refusals to speak to one another or to co-operate, refusal to be on the firm’s premises at the same time as the other party and complaints from both parties about the other. Of the two employees with interpersonal issues with their employers, one described bullying and the other extreme rigidity, but not arguments or overt friction.

Performance issues arose in disputes between employer and employee and between manager/supervisor and supervisee. Disagreements between supervisors and supervisees over appropriate ways to judge and monitor work were typically accompanied by quite bitter feelings towards one another. In some cases both parties felt that these situations were made worse by inconsistent or ineffective employer interventions, or lack of interventions.

It was rare in the case of ‘interpersonal’ issues for both parties to hold to the same account of the dispute. In disputes between employees of equal status, each party saw their own role as that of the innocent party and the other party as guilty of bad behaviour. In disputes between manager/supervisor and supervisee the manager/supervisor tended to see the employee as a difficult person who refused to be supervised and who was not always competent and the supervisee view was that they were bullied by the supervisor.

In the two disputes between employer and employee with an interpersonal element, employers showed no awareness that their employees had identified interpersonal relations as an aspect of the dispute.

Bullying and harassment

Complaints of bullying were very common in many of the disputes dealt with through facilitative mediations. Most were against either supervisors or fellow employees and in
only one case was an employer accused of bullying. In some cases both parties felt bullied, but in others only one felt bullied.

Parties to disputes that did not directly involve employers had often complained of bullying to their employer. With two exceptions, in which aggressive behaviour was routinely displayed in front of others, employers did not appear to accept that bullying was taking place:

"I just think they were both doing normal things and it irritated the hell out of both of them. My view was that their own personal relationship, because of disputes about practical things, had just broken down to such an extent that they just couldn’t stand the sight of each other. And as I said, any minor little transgression that one or the other did would just be seen as being "something that you are doing deliberately to harass me". But it was pretty much the same on either side, both reported to me that there was a campaign of harassment by the other person." Employer, facilitative mediation, employee-employee dispute

Pay

The two disputes over amounts of pay were very specific in comparison to other types of dispute. However, one of the two was linked in to other personal issues and included conflicting accounts of events and complaints about an employer’s conduct.

How employers had dealt with disputes

Where employers were not parties to disputes, they rarely shared parties’ assessments of the nature of these disputes. In most cases of complaints either of poor performance, uncooperativeness or bullying, employers were most likely to attribute problems to both parties’ personalities:

"They are similar personalities, similar ages, but the manager has gone further in her career and was a strong leader. Both were at fault, it was a personality issue.” Employer, facilitative mediation, supervisor-supervisee dispute

As a result of this sort of assessment, it was common for employers to rely in the first instance on what they described as informal approaches to disputes, outside of their formal employment procedures, to try to mediate what were seen as personality issues. Informal approaches tended to be discussions with staff and practical steps to change working arrangements such as supervision and line management responsibilities.

"It was more in-house, in-depth, discussions about what we could do to help the staff - with changes to various working practices. We were also keeping an eye on what the (parent body) maybe ought to offer them in the future in terms of staff training...” Employer, facilitative mediation, supervisor-supervisee dispute

Some employers even described this as ‘informal mediation’, which in practice appeared to consist of meeting with the parties and discussing the issues. None of these informal ‘mediations’ was described as successful to any extent. Such approaches were most common in very small firms whose employers were professionals delivering a service, with little or no management training.

Employers also relied on informal processes in part because they were unaware of, or misunderstood, their powers as employers to act in disputes. A good example of this was where employers felt that they could not act without deciding first which of the parties was responsible for the dispute.
Employers were not always clear about whether and how to operate disciplinary and grievance procedures and in some firms there was confusion and mistakes in identifying stages of procedures and the relation between these stages. Examples of these confusions included starting at stage one of a disciplinary procedure when dealing with what was gross misconduct and hearing a grievance twice using the same stage of the grievance procedure, rather than following the first hearing with an appeal.

Lack of experience, lack of training and lack of confidence were all cited by employers as causes of such confusions and were one aspect of the weakness of small firms in dealing with employment disputes. Formal procedures were also seen as risking either the departure of one or more employees, or of Employment Tribunal applications. Employers who valued the employees involved in such disputes were also concerned about losing them and about the difficulty and costs involved in their replacement.

In some small firms the professional employers saw themselves as primarily, or even solely, as service providers and lacked either the skills or indeed the interest in acquiring those skills necessary to the management of the employment relations side of the business. The strongest impression given by employers in these cases was that they had hoped things would improve, but doubted that they would.

4.3 Arranging the mediations

Parties made their first approach to Acas for help with these disputes through Acas helplines. In most cases employers were seeking general help from Acas rather than specifically asking for mediation:

"I didn’t know about the pilot when I first contacted them. I phoned and said would it be possible to speak to an adviser, as I wasn’t quite sure what the best next step was and he said we actually do have a mediation pilot and I don’t know if you feel that would be of use.” Employer, facilitative mediation, employee-employee dispute

However, there was some awareness among employers of the pilot when they contacted Acas and in two cases mediation help was asked for:

"I was aware that they were piloting it because I do get information through on new schemes for companies - I get updates of legal matters... and the lawyers sent us information about ACAS mediation for small companies.” Employer, facilitative mediation, employee-employee dispute

"I went along to an ACAS workshop at Euston Tower and then I met a couple of ACAS people who at the end of the workshop were advising clients that they were going to be running the pilot service and we could take advantage of it for a period of time, should we need mediation help. So that’s when I first heard of it.” Employer, facilitative mediation, supervisor-supervisee dispute

Most first contacts with Acas were from employers, who described getting in touch with Acas as straightforward and as raising no major issues. Indeed access to the pilot appears to have been simple and direct in most cases. In several cases employees had also approached Acas about the dispute, although the offer of mediation was only made when employers in turn got in touch to request mediation.

4.4 The role of Acas

In preparing the mediation, Acas staff had four roles:

- to explore the nature of the dispute
• to advise the parties about options for resolving the issue and the pros and cons of these to help them decide the best way forward
• to agree on and make arrangements/preparations for the mediation
• to advise and explain on employment law and good practice (an ELV)

The original pilot model expected that Acas staff would identify the need for mediations and appeals in the course of an ELV. However, when employers initially contacted Acas for help with disputes it was clear at this earlier stage whether mediation, or an ELV, or both was the best option.

Acas Mediation Co-ordinators evaluated the employer’s request for help, assessed the sorts of pilot help employers needed and then made a referral to Acas staff, who in turn made contact with firms and made the necessary preparations for the mediation and the ELV, as appropriate.

The patterns of contact with Acas staff reported by the parties after the initial agreement to mediation varied from firm to firm. Contacts were through telephone discussions, letters and emails and in some cases staff visited firms prior to the mediation. These were described by most parties as very useful contacts, through which they had understood the key features of mediation.

Acas staff used this preparatory phase to acquire an understanding of the character and history of the dispute or disagreement, often in writing, to arrange the mediations, obtain the parties’ formal agreements to take part and respect its rules and if relevant to provide employers with advice on employment law. For directive mediations, formal terms of reference were drawn up and signed by the parties and staff had the additional role of ensuring the collection of adequate data on the dispute or disagreement for forwarding to the mediator.

Overall employers had clearer expectations of mediation than employees and this appears to coincide with whether employees had pre-meetings with Acas staff. There were several employees who were unsure about the detail of the mediation until the mediator took everyone through the process at the start of the mediation, on the day and none of these uncertain employees had had a pre-meeting with Acas. Employers also misunderstood the details of mediation in two cases and in neither was there a pre-meeting, suggesting the importance of pre-meetings in getting parties to the point where they are absolutely clear about what will happen.
5. Parties’ understandings and expectations of mediation

Parties’ assessments of the value of mediation depended in part on their understandings and expectations of what mediation could achieve for them. If such expectations were unrealistic, or based on misunderstandings of mediation, this would influence their assessments of how well it worked for them. To address this issue, the interviews explored with respondents: what they had expected from mediation; what they had hoped to get out of it; how they expected it to work; and what if anything they had thought might be difficult about it.

In this chapter the report sets out parties' understandings and expectations in detail, indicating both why they had positive expectations and what the negatives were.

5.1 Understandings

Most parties described mediation as a way of dealing with disputes through a process of developing insights with the help of an external party:

"Well, I was expecting to have a third party review of the situation to enable the employee and myself to view it through someone else’s eyes. It was just grinding to a halt and I thought if someone on the outside could listen to both of us and be able to help assess the issues involved, or exactly what was going on, so we could find a way forward." Employer, facilitative mediation, employer-employee dispute

There were, on first contact with Acas, a few parties who did not know what mediation was:

"Well, we just thought we needed outside help really and at that stage we didn’t know what mediation was, arbitration, what was external assessment if you like." Employer, facilitative mediation, supervisor-supervisee dispute

Through contacts with Acas and discussions within the firms, most parties had a fair grasp of mediation by the time of the mediation day itself:

"I think by the time I’d actually got to the mediation I did understand it. I think the issues for me before the mediation was I felt it was likely to be quite heavy handed, forced, quite formal. And I think with a combination of the literature I received and the conversations I had, I think some of that began to dispel itself, so I was more clear by the time I got to do it.” Employee, facilitative mediation, employee-employee dispute

Employees who had not initially heard of mediation made efforts to find out for themselves, supplementing their Acas contacts with discussions with friends and relatives, or in one case through a local advice agency. Visits to firms by Acas staff in advance of the mediation seem to have played an important role in this learning process.

Parties involved in directive mediations did not share the expectation that the mediator would lead them to an agreement, but that there would be some form of alternative dispute resolution, involving notions of recommendations, or on occasions, arbitration, by the external mediator.

"And (mediation) was exactly the sort of thing that I seemed to be looking for - to get somebody who would come in, speak to me, speak to all parties involved, would sort of review the whole thing, then go away and come back with ways to go forward...” Employee, directive mediation, employer-employee dispute
It was only in cases of directive mediation that parties had any recall of explanations about the different types of mediation available in the pilot, although parties sense of the differences were less than perfect:

"Yes, it was mediation, as opposed to conciliation, which I think looks to resolve a situation where an employee stays in a company, or arbitration. There was a fine line between these three and I’m not sure about them. The whole point was that the mediator was going to come to a conclusion and we knew he was going to come to a conclusion.” Employer, directive mediation, employer-employee dispute

"Acas said that they could mediate it in two ways. I can’t quite remember the terminology, but one way would bring the parties together and the other would be to assume there was a chasm between the two parties. I didn’t want a conciliatory end to this, I wanted a complete break from it, because I felt things had broken down to such an extent that there was no way that I could continue to work for the company… “ Employee, directive mediation, employer-employee dispute

A handful of the parties had direct experience of mediation, gained through the workplace in two cases, with both an employer and an employee having had some experience of mediation through their trade union or employer representative roles. Other mediation experiences were involvement in community and education tribunal mediation and as parties to family mediation:

"I’m separated from my son’s natural father and he took me to court for custody and there’s been a bit of a mediation service around that, family mediation - just to try and work with both parties to try and formalise an agreement in terms of access - where he was going to live, that kind of thing.”

By the time the mediation day arrived, everyone involved had got to the point of broad understanding of the purpose of mediation and the processes involved. In terms of the detail however, there were some discrepancies between expectations and what happened in practice, that are described later in this chapter.

5.2 Expectations of mediation

Reasons for seeking mediation help

Both employers and employees described a mixture of reasons for seeking help with disputes. These were of several kinds. Some were very practical: mediation was likely to be done quickly:

"In the pilot, mediation could be offered quickly and the speed of mediation was attractive.” Employer, facilitative mediation, supervisor-supervisee dispute

Internal efforts to resolve disputes had failed and external help was the next step. Unlike formal procedures, mediation did not carry risks of attaching blame, or of causing distress to employees who might well leave the firm as a result, or of leading on to Employment Tribunal hearings:

"I wanted to try mediation because the formal procedures all took so long. The employee had made the grievance against us and we had gone through that process and it was going to go to an appeal, but I knew he didn’t want to appeal and it was becoming more and more difficult... And that’s basically why we agreed to the mediation - it could all happen much more quickly”. Employer, directive mediation, employer-employee dispute
"The procedures have been followed - like verbal warning, written warning and I've got to my second written warning - and I didn’t want to give him anymore. I thought 'Well this mediation could be something that'll make him sit down and see sense.' “ Employer, facilitative mediation, employer-employee dispute

"I made it quite clear I wasn't getting involved in a situation whereby I would go down an industrial tribunal path, I didn’t want to see a solicitor... The reason I wanted to go down the path (of mediation) was because it seemed more informal. I didn't want it to become a dispute, I really didn’t.” Employee, Directive mediation, employer-employee dispute

For some employers seeking external help was part of a management culture of commitment to trying all options to resolve disputes, of a desire to demonstrate reasonableness in the event of future formal proceedings. Some employers also wanted to ensure that they could demonstrate that they had tired to resolve disputes in the event of future formal proceedings:

"It was also because we wanted to make sure, to try everything possible to sort this out. It’s a sort of principal that we, that underlies our service, that we are a caring organisation and that also goes for our team. So mediation was a chance to resolve it…” Employer, facilitative mediation, employee-employee dispute

Some employees wanted the external mediator to ‘investigate’ and so resolve the dispute in their favour:

"I thought initially that observing - to solve the problem - maybe someone should observe the situation, then decide, because I was fed up of trying to prove myself. That’s what I aimed at first. And then that didn’t come about and then mediation was offered.” Employee, facilitative mediation, employee-employee dispute

Employees were also aware that taking part in mediation would not be used in any subsequent disciplinary proceedings:

"Also, the thing that swung it for me, I was assured that whatever I said in a mediation session couldn’t be used against me in a disciplinary way.” Employee, facilitative mediation, employer-employee dispute

**The intervention of Acas**

Parties were helped to see the importance and value of the mediation because it was set up and led by Acas, a respected agency whose skills and experience in employment matters were appreciated by many employers and employees alike. Acas’ involvement made mediation seem both more weighty and more likely to be effective as an approach to dispute resolution.

Parties also expected Acas mediators to be skilled, knowledgeable and experienced not only in mediation, but in employment relations more widely, adding to their confidence that change was possible.

**The neutral mediator**

Bringing an external mediator into a dispute was the key factor for all parties in giving mediation a chance of helping resolve the dispute. An external mediator was seen as someone with no stake in the dispute, no knowledge of the firm, the history of the dispute, or the parties and so capable of acting independently.
"Well, I hoped it would be somebody that was going to be very fair and didn’t have an idea about what was going on prior to that. So it was basically the fact that it was a person who didn’t know either of us or the situation.” Supervisee, facilitative mediation, supervisor-supervisee dispute

"Well, I just assumed it was someone from the outside sitting on the fence and just trying to negotiate really, that’s really how I understood it. Just a neutral party there, that’s how I understand it.” Employer, directive mediation, employer-employee dispute

**Commitment to the process**

Most parties described their participation as a choice or commitment to look at the dispute together and with the independent mediator’s help to try to resolve it through a compromise or an agreement. Voluntary participation was in itself expected to make a difference, because in giving it parties were actively seeking to resolve the dispute:

"My understanding was that (the mediator) would sit down with warring parties or factions or whatever, or people who had a dispute, who’d agreed to give it a try and look for some kind of compromise…” HR person, directive mediation, between employer and employee dispute

"…just getting the problem parties to agree to sit together and letting them air their views and see if you could come to an agreement.” Supervisor, facilitative mediation, supervisor-supervisee dispute

The mediation process was not expected to transform problem situations, but rather to make sufficient difference to allow viable working relationships to be re-established. This modest expectation was by far the most common account how parties expected facilitative mediation to work:

"I wasn’t thinking that they would solve the problem but I thought that mediation would be a start. I don’t think mediation could solve the conflict, but it does serve a purpose - to defuse the animosity, to make things more workable.” Employer, facilitative mediation, employee-employee dispute

**Different degrees of optimism**

The extent to which parties hoped or expected that mediation could make real changes varied considerably. Some saw mediation as a positive choice with a good chance of resolving the dispute, others as ‘worth a try’ in situations where nothing else had been successful. In some very difficult situations mediation was seen as a tool which might just ‘unblock’ an intractable stalemate, although little was in practice expected in the way of success.

"I felt I’d got to the end of my management abilities in terms of dealing with that and we should try something else…”

"It might be a way forward for both of my employees…”

"We were at the end of our tether…”

"We were stuck, at a brick wall and maybe we could unglue it… ”

The type of dispute, the duration of it and the parties to it exercised an influence on the degrees of optimism expressed by the parties. Both employers and employees were especially pessimistic about the chances of mediation achieving change in disputes
between employees that had a long history and where personal antagonism was a serious problem.

Doubts about the likelihood of change identified two linked features of these disputes: their intractability in the past, over quite long periods and the apparent impossibility of getting disputing parties to change.

Directive mediations were more likely to be viewed with optimism by the parties. This type of mediation dealt with issues that were more specific than those dealt with by facilitative mediations. In addition, three of the four directive mediations were initiated through employee requests for outside help and the fourth through a joint decision, making employee commitment stronger from the start. Employees were much less likely to have such an active role in seeking help from Acas in facilitative mediations.

5.3 Concerns about mediation

Both employers and employees had concerns about mediation. Some of these were general in nature, others were more about doubts over whether mediation could be of help in the case of a specific dispute. Overall, employers, as the principle drivers of attempts at dispute resolution, were more likely to be positive and employees were more likely to feel concerned that mediation might not meet their needs. Such employee concerns were expressed only about facilitative mediation.

Employee reluctance and management power

The most common general concern expressed by employees was a sense that they had had less than a free choice; that they felt unable to refuse. Not all of these employees had strong objections to participation: some viewed it either neutrally or in some cases with mild optimism. However, some employees did see agreement to take part as a judgment about what was in their best interests within the firm:

"Nobody actually asked us: ‘Do you agree, or would you rather not take part in this?’ We had a meeting with the manager and (name) said that due to the problems what was happening, they couldn’t solve it and it was affecting the whole business and that a mediator needs to come and we’ll be notified of it. “ Employee, facilitative mediation, employee-employee dispute

Where employees were reluctant to take part in mediation but agreed to do so, this led some to see mediation as in the control of the employer. This was especially so in disputes between employees where parties considered that the other party was responsible for the dispute and that the employer should address the other party’s behaviour (see below).

The sense of employer control of mediation was also enhanced when employees considered that the dispute should have been resolved internally by the employer and that the employer’s lack of skills was the reason for their opting for mediation. In these cases mediation was seen as a continuation of the employer’s unsuccessful attempts to resolve the dispute, in effect as an extension of the employer’s own internal procedures. These employees assumed that as with other employer efforts, mediation would have little chance of success.

Despite some concern about a lack of ‘informed consent’, no employees experienced the mediation process itself as in any way biased towards either the employer or the other party.

Aggrieved parties
Some employees involved in facilitative mediations were also concerned that what was on offer was a process that might require them to reach a compromise in a situation where they saw themselves as the aggrieved party. These concerns overlapped with the desire of some employees for a different kind of external intervention, typically for an investigation of the dispute and a judgment or decision about the rights and wrongs of it. In cases where employees did feel this, their participation in an agreement process was genuinely reluctant:

"I asked for observation - I thought that someone should observe the situation, then decide, because I was fed up of trying to prove it myself. The problem was how (the other party) was behaving and this kind of problem isn’t going to be solved by getting people together.” Employee, facilitative mediation, employee-employee dispute

"I think the mediator should have heard the story with witnesses, especially about the bullying. The employer should have taken part, because they’d have heard what went on, they’d have known that I was right.” Employee, facilitative mediation, supervisor-supervisee dispute

**Intractable disputes**

Where a dispute was long standing and involved personality clashes, mediation was perceived as less effective for resolving the dispute. These types of disputes, usually but not always between employees, were assessed by all parties as likely to be resistant to mediation:

"To be honest, it’s been going on for so long, that we didn’t really think it would work. With different personalities, maybe it would have a chance, but not with these employees.” Employer, facilitative mediation, employee-employee dispute

**Facing the other party**

Several parties were daunted by the prospect of facing someone whom they felt had been treating them badly for some time. This occurred in disputes between employer and employee and also between supervisor and supervisee.

"Yes, I was very, very nervous about meeting with my employer again. The disciplinary had been very traumatic, but the employer hadn’t got what they wanted because the Board didn’t back them. So my concerns were that mediation was giving them another chance to have a go at me, so I nearly didn’t do it for that reason.” Employee, facilitative mediation, employer-employee dispute
6. The mediation process

6.1 The mediation day

Most of the mediations in the sample took place on a single day, beginning typically between nine and ten in the morning and varying in length from around half a day to an entire day. Several mediations lasted more than one day, although these were not consecutive days because of parties’ diaries. Directive mediations were shorter than most of the facilitative mediations, the shortest time being around one hour. Mediations were held both on and off the firm’s premises, in some cases at Acas offices and in others at nearby premises hired or borrowed for the occasion. 15 mediations were conducted by a single mediator and 2 by co-mediators.

Venue was decided by the parties themselves. Reasons given for holding meetings off premises were about private space and confidentiality. This issue of privacy arose in all eight off-premises cases and these firms had more or less no private space at all. Most used Acas premises as an alternative, others using other nearby premises if these involved less travel.

In directive mediations mediators had discretion to run the mediation in the ways best suited to resolving the dispute. One of these mediations followed a ‘hearing’ model to decide on rates of pay and consisted of a single joint meeting. In the three others there were separate and joint meetings between the mediator and the parties, followed by agreement between the parties. For facilitative mediations, there was only one process: separate and joint meetings at the end of which an agreement was composed by the parties. There were also variations in the numbers and length of mediation meetings.

The mediations were started off when the mediator brought all parties together to check that they understood what the mediation was about and what in practice would happen on the day. In this initial meeting the mediator also set out the ways in which the parties would need to behave for the mediation to have a chance of success - to listen, explain and discuss. Specifically, mediators asked parties to act reasonably in presenting their side of the story and in their wider interactions with each other. Parties described these explanations as ground rules.

Where mediations were solely between employees, mediators also met employers at the start of the day, if the mediation was on the firm’s premises, both to run through the process with the employer and in several cases to offer advice on aspects of employment relations and suggest what further Acas help the employer might usefully access. In cases where mediation was off-premises, these contacts were either by phone or took place through pre-meetings.

Representation was treated differently in the two forms of mediation on offer in the pilot. Representatives were not encouraged for facilitative mediations where parties were expected to deal directly with each other, but in directive mediations and for appeals, employees typically would have had rights to representation under grievance or disciplinary procedures, or through statutory entitlements.

In directive mediations, employees were accompanied in three cases: one by a trade union representative, two others by a close relative. Employers were accompanied in one case only, by a senior manager, but in a second, two employer-partners took part fully. In two facilitative mediations employees were accompanied by, in one case, a fellow employee and in the other by a close relative.

One party who had raised the possibility of representation in a facilitative mediation described being discouraged from this by Acas. The roles played by these additional
participants varied from providing individual support to a full representative role within directive mediations.

In most cases the two sides used different rooms for their separate discussions with the mediator and the mediator shuttled between them, rather than the parties changing rooms at intervals. However, there were also examples of single rooms, with parties using them alternately in separate meetings with the mediator. Such differences appear to have been based on what space was available.

6.2 The strengths of mediation in resolving disputes

The key positive features of mediation, as a tool for dispute resolution, identified by the parties were:

- the role of the skilled external mediator
- the commitment to change implicit in taking part in the process
- the insights gained through a structure in which parties both told their own story and listened to the other party’s story
- working on composing an agreement

The mediator role

The role of the mediator was identified as the single most important factor in helping the mediation achieve something:

"I think I’ve just got more insight into how skilled the mediators have to be to do this.”
Employee, facilitative mediation, employee-employee dispute

Parties were very positive about the role of the mediator, with a number of common themes. The position of the mediator as an outsider was a key aspect: the mediator was described broadly as bringing a fresh viewpoint, impartial, with the ability to suggest ways of understanding or thinking about issues that had not occurred to parties before. The mediator was also the ‘representative’ of an external agency of some importance and in taking the dispute seriously and spending time on it, lent weight to the parties’ own efforts to do the same and further encouraged change.

Mediators were also widely praised by the parties for their personal qualities and skills in working with them to clarify and set out their views. Parties described how well the mediator had understood the dispute, had been able to see their point of view clearly. Mediators were described as calm, pleasant, unflappable, very sharp, clear, persistent, and intelligent.

In some cases parties were genuinely surprised that mediators could remain so calm and focused in the face of the difficult behaviours going on in the mediation. This quality of mediator presence provided an important foundation for the process:

"She was great. She had a way of normalising things. She was getting to grips with stuff. I thought ‘We’ve got a mediator who’s trying to get a grasp of things.’ She had a completely different background, but she worked very hard and really tried to get to grips with things.”
Employee, facilitative mediation, employee-employee dispute

"The mediator was very professional, obviously very good with people, I mean you need to be if you’re a mediator. She was very focused and was very sympathetic …”
Employer, directive mediation, employer-employee dispute
Parties found the mediators very helpful and supportive and were generally enthusiastic about how good the mediators were, including in cases where they might feel that overall the process had not gone well, or where no agreement was reached.

In the individual mediation sessions, parties saw the mediator as seeking to help them set out their ‘side’ of the case, asking questions and rephrasing until both mediator and the parties themselves were clear as to what the dispute was about and what each party wanted by way of change and in any agreement. Mediators’ actions in these sessions were described as listening, probing, summarising and in particular as helping parties to find positive and realistic requirements to contribute to an agreement. This was the mediator as facilitator in their reality-testing role:

"I think the mediator has taken a listening role, by listening … and being independent, was able to say: 'Well, can we do this differently, can we do that differently or can we improve upon that?' So he was not imposing anything. He was making suggestions for ways forward." Employer, directive mediation, employer-employee dispute

"I think I perhaps was expecting somebody to offer their opinions at the same time, but he just listened and made notes and then came back and just, told us 'This is how I see the situation'." Employer, directive mediation, employer-employee dispute

Several parties described how they had begun by setting out what they wanted and found the mediator suggesting that the other party was unlikely to agree to such a 'demand'. Extreme examples of this were demands for written full apologies dictated by the ‘aggrieved’ party:

"I said to (the mediator), 'The only thing to change this problem is that (the other party) admits she is being very bossy with me, bullying me.' And (the mediator) said, 'You cannot expect people admit they are bullying you." Supervisor, facilitative mediation, supervisor-supervisee dispute

This process of moderation of parties’ requirements was important in reaching agreements. Mediators offered alternative accounts of the points being made by the other party, encouraging each party to see the other's viewpoint:

"The mediator said things like: 'I think what she is actually saying is...'. She made it very clear, so you could think about it. Then she would say, 'Well do you think that might have happened because the other party was busy and maybe that's why she sounded a bit curt to you?' That I thought was quite good too." Supervisor, facilitative mediation, supervisor-supervisee dispute

An important second aspect of these separate meetings was the mediator role in helping each party to decide what they wanted to be conveyed to the other party and whether this was to be done by themselves or the mediator, as the ethics of mediation prevent mediators from telling the other party anything without the explicit agreement of each party:

"My understanding was that the mediator would only actually say to the other party what you wanted and he did, he said what I wanted him to say. If I didn't want him to say anything then he wouldn't. So I was quite clear that I could be confidential with him and then say: 'Actually could you tell them this, or could you tell them that?'" Employee, directive mediation, employer-employee dispute

In joint meetings the mediator role was described by parties as taking a lead in getting each side to say to the other what they had agreed was their ‘case’ and then leading the process of drawing up an agreement often point by point. In most cases this process was subtle, but was described as very direct in others:
"And that’s what she said: ‘You say your story and then she will have her turn’. She clarified it all and we took it in turns.” Employee, facilitative mediation, employee-employee dispute

The degrees of difficulty in achieving this varied considerably and in several cases the mediator role in joint sessions was described as difficult. Particular problems were caused by emotional and confrontational behaviour.

"It was so difficult. We couldn’t move from stage one. We came to one (point of) agreement, because I remember saying, ‘I don’t have a problem with this, yes, I agree with that, let’s move on’. Then it took such a long time to go to the second point and then get to agree at the end, because the other party was very rude and accusing in the meeting…” Supervisee, facilitative mediation, supervisor-supervisee dispute

Taking part

The act of taking part in the mediation was seen by many parties as in itself evidence of their commitment to resolving the dispute. Most parties felt that since both parties had agreed to take part, this in itself gave them a good chance of success. Taking part required both parties to spend a considerable amount of time on the dispute and to share responsibility with the other party for what happened in the process. This joint effort was seen in itself as a factor in encouraging change:

"I think it worked partly just through the fact that (the employee) and I had committed to having some kind of breakthrough in our difficulties. We took this time and we knew something was going to change because we both felt very strongly about getting things to change.” Employer, facilitative mediation, employer-employee dispute.

Insights

It was common for parties not to either have told the whole story from their perspective, or listened to the other party without interruption, before the mediation day itself. Mediation therefore offered a new opportunity for both sides. Parties experienced the process of setting out their own case, discussing and re-casting this with the mediator and working out what they would find acceptable in an agreement, as the development of insight into the dispute and their role in it.

At the same time, the process of listening to the other party and understanding what their views and requirements were, often for the first time, was equally revealing and helpful in reaching an agreement:

"I think I perhaps looked on it as a sort of ‘Well who’s right and who’s wrong and then what do we do about it?’ Which it wasn’t, it was much more just looking at all the issues involved really and listening to both sides and trying to come to a reasonable decision about a way forward.” Employer, directive mediation, employer-employee dispute

"I think we would have just got stuck at a stalemate and I’d probably still be there. It certainly gave me insight, which is what I wanted, into my role in the dispute, how much of the dispute I was creating.” Employer, facilitative mediation, employer-employee dispute

"It was remarkable how much I learned about his position and how he saw things because it enabled me to stand in his shoes and see things from his perspective and to see that he really believed that he was being unfairly treated and why he believed that.” Employer, facilitative mediation, employer-employee dispute
Composing an agreement

Mediated agreements were composed of around six points of agreed changes in behaviours and working arrangements, which might also include specific actions such as writing a letter to another party. Agreements were developed as separate points and parties described how dealing with points separately made reaching agreement more certain.

Rather than having to move from an unresolved position to agreement in a single stage, parties were enabled by the process itself to construct a solution in small steps. This iterative process was also described by parties as helping them to believe that an agreement could be reached, when some had started from a position of extreme doubt about this.

"And the mediator said 'Right, we can agree to this then’ and so we made that agreement. And so we went on to the next one and I wasn't sure about that, but we did eventually have the whole agreement.” Supervisee, facilitative mediation, supervisor-supervisee dispute

6.3 Difficulties with mediation

Parties had a number of general difficulties with their mediations and a series of specific problems on the day. These can be summarised as follows:

- preferences for an investigation rather than a facilitative mediation
- expectations of the length, format and content were not what happened in practice
- overlong, stressful meetings
- difficulties in confronting the other party
- limited or unequal abilities to think and act in their own interests
- difficult behaviours in joint sessions
- difficulties with some representatives
- premises and breaks problems
- reaching agreement
- the mediator role
- wanting more sessions
- when employers were not parties

Parties who wanted some form of investigation

There were six cases in which seven of the parties involved, plus an employer who was not a party, expressed a preference for an investigation by an external party and a decision about the dispute. This was, for parties involved in the mediations, because they saw the dispute as caused in the main by the actions of the other party. These parties had described their participation in the pilot mediation as less than wholehearted and found that the anticipated problems of mediation were borne out in practice when the mediation took place. All but one of these parties were in supervisor-supervisee or employee-employee disputes.

Although most of these parties found that mediation had been helpful, none had abandoned their view that some form of investigation would have been more appropriate. Of the six mediations where parties had wanted more investigation, four reached agreement and two did not. An employer in one of these two commented that a decision or recommendations by the mediator would have been preferable to failure to agree:

"Maybe because it was a pilot they could only do a certain piece of work, which was mediation and that seemed a little bit inflexible. Having got to that point where they had
almost got a final agreement, the mediator at that stage had a wealth of knowledge and information about what had gone on and so it should be possible to provide what you’d call an arbitration decision - someone to have said: this is what we’ve seen of what’s gone on, this is our opinion, these are possible courses of action you could take. And that would have been immensely helpful...” Employer, facilitative mediation, supervisor-supervisee dispute

In two of the four cases where an agreement was reached parties described agreement as the only way of concluding what they experienced as a very stressful process and not as a genuine route to resolving the dispute.

It was hardly surprising then that in these cases parties were left with a sense of justice not done. Some of these feelings were mild, others very strong. In several cases these emotions were still strongly present in the evaluation interviews, some months later, suggesting that whatever the merits of the mediation, the dispute and the strong feelings it evoked had not been dealt with fully.

**Expectations of length and content**

In most cases the length and format of the mediation was in line with expectations. Exceptions did occur, however, in several cases. Differences were of three kinds: in two cases mediation sessions took much longer than expected; in two further cases mediations took place over more than one day and in one other the mediation was not ‘about’ what one of the parties had expected.

Most parties appear to have expected mediation to take from between half to a whole day. Failures to understand this ‘normal’ span of time occurred in two cases where parties had not had pre-meetings with Acas and had not adequately digested the process. These were both mediations arranged very quickly after the employer request and the lack of clarity seems to have been part of this short time span. Parties to these two mediations had had some expectations that the external mediator would listen to both sides and then propose a ‘solution’ of some sort: a process they had expected to take less time than was spent on the day.

Two mediations, involving four parties, took place over more than a single day. Of these parties, three were satisfied with the time spent and the results achieved and one saw the mediation as having gone on far too long. This party was unhappy with both the offer of facilitative mediation and with the result of that mediation. Parties judgments about numbers of sessions appears therefore to e based on broader dissatisfactions with the process.

In a third case the employer expected to be taking part in a grievance appeal and instead the mediation was a negotiation over severance pay, leaving the employer feeling ill-equipped to deal with the mediation on the day. This mediation had particular circumstances that led the employer to misunderstand what the mediator role was to be and the discretion the mediator had in resolving the dispute.

Whilst most parties found the time they spent in mediation productive, some found it long and quite exhausting. Long sessions were experienced negatively where parties would have preferred an investigation, because both parties to these disputes spent a lot of time explaining the dispute from their side and attempted to persuade the mediator that they were the aggrieved party. Although they accepted in principle that mediation was about agreement, they nonetheless tried to steer it in a different direction. They were not successful in this, but they appear to have spent a lot of time trying.
Concern about stress was at its strongest when parties had not found the mediation in their terms a ‘success’. This included two cases where an agreement was reached and one where there was no agreement. Parties felt that in these cases agreements were reached because both sides wanted to put an end to a very long process and that spending very long times in mediation had not really contributed much to resolving the dispute:

“I mean a whole long day and then another day is a gruelling time to spend. In the end I just agreed to it. I just felt I’d had enough and it was getting nowhere and I wanted to leave.” Employee, facilitative mediation, employer-employee dispute

**Parties who wanted more than one session**

In contrast to parties who found mediations sessions overlong, in three cases parties expressed a desire for more than a single mediation session to resolve the dispute. This desire took two main forms.

In one case, parties felt that the mediator should get back in touch after several weeks to check that the agreement was still holding and to intervene again if there were problems:

“Well, I think we needed a mediated follow up - the mediator thought that too, but the pilot doesn’t allow for it. We would have paid for it, but it couldn’t happen.” Employee, facilitative mediation, employer-employee dispute

Others felt that to succeed, more than a single mediation session was needed:

“I actually felt the firm had gone for a cheap option rather than sorting things out properly. Although I thought the mediation was quite valuable, I felt there was a chronic difficulty and I felt that we were only allowed one mediation session - that was part of the pilot deal, you only get one session - and there could be no follow-up visit because we actually asked. I think the mediation was negated because it needed more than one session…” Employee, facilitative mediation, employer-employee dispute

There were also some employers who were not in the mediation would have liked a follow-up briefing from the mediator giving an outline of what had taken place and a broad indication of the result.

**Confronting the other party**

Joint meetings presented problems for some parties in cases where disputes were especially personal or acrimonious and not all parties were willing to attend all of the joint meetings proposed. However, initial reluctance to face the other party was at least partly overcome in the course of the process in most cases and there were no instances of parties failing entirely to meet jointly at least once.

Some parties found it especially difficult to tell the other party how badly treated they felt. This was most noticeable where disputes were long-standing and strongly felt and was also linked to the difficulties for some of facing someone they felt bullied over long periods.

“But as soon as we got in that room again, the three of us, I completely freaked out. I became distressed and couldn’t handle it. The mediator felt I needed to say to the employer how hurt I’d been. I felt the employer had never understood this, but we never got to it and we had to call it a day.” Employee, facilitative mediation, employer-employee dispute
The capacity to think and act

In some cases the capacity of parties to mediation to think, present and discuss was unevenly or unequally distributed between them. Thinking and speaking ‘on your feet’ was not easy for some people. Strong feelings most commonly got in the way of parties’ abilities to form and express their views and requirements. However, some parties also described themselves as less articulate and less bold in comparison with the other party, most often with a supervisor or employer and that this had contributed to their difficulties in putting their own case across to the other party in the mediation.

Difficult behaviours

There were behaviours that parties found quite disruptive both to the process and the outcome. Difficult behaviours included rudeness, confrontational behaviour and also simply talking too much and not letting the other party make their case. Such behaviours were described both as disruptive of the process and as causing the mediation to go on for much longer than was reasonable:

"I think mediation works if both sides agree to mediate but (the other party) didn’t show any signs of actually changing attitude or to solving this problem, so it was impossible.” Employee, facilitative mediation, employee-employee dispute

In the two cases where strong emotions or demands were expressed the mediator approach was described by the parties as to attempt to get the parties to be more reasonable, more polite, calmer and less confrontational:

"The mediator said ‘I don’t want any arguments and I don’t want any swearing: nobody has to be rude, you have to respect each other. If someone raises her voice again, I will stop this meeting immediately. You are free to say anything you want but always remember to respect each other’.” Supervisee, facilitative mediation, supervisor-supervisee dispute

In one dispute between employer and employee the employee felt strongly that the employer’s conduct fell well outside the necessary spirit of compromise that they had signed up to. In this case both employer and employee described how the employer had taken legal advice, more than once, between mediation sessions and how when the mediation was reconvened, had retreated from what had seemed to be a broad compromise almost agreed.

Representatives

Parties who sought to have an additional person with them described themselves as nervous about the mediation and as wanting some support through the process:

"I couldn’t have gone on my own. I mean my husband came with me. I just felt I needed that moral support and someone else who knew sort of what I went through. And if I’d forgotten something, he wouldn’t have.” Employee, directive mediation, employer-employee dispute

In the mediation sessions the inclusion of representatives who were close relatives was problematic for the other parties and negative comments were made about this type of representative in two of the three instances where a party was accompanied by a family member.

In these two cases, the parties who were accompanied by a close relative had strong personal feelings about the dispute and in one the other party refused to meet the
accompanying family member and the supporter’s involvement was limited to the solo sessions with the mediator:

"My husband was with me, but the supervisor refused to meet him. She said she only wanted to see me, so he helped with the mediator when I was with her, but he wasn’t there for the last part." Supervisee, facilitative mediation, supervisor-supervisee dispute

**Premises and breaks**

In employment disputes there are inevitably issues about the location of the mediation, notably because premises belong to employers and within premises different parts of buildings may be identified with different parties.

Of the eight cases where mediation took place on the firm’s premises, there were discussions and changes to selected rooms in three, because some parties associated rooms first suggested with the other party, or because rooms within building were seen as insufficiently guaranteeing privacy and confidentiality:

"Well, first of all we had to arrange which room it was and the supervisor had suggested one room, but I had said could we have it in another room, because I didn’t like that room. I was worried that people could easily hear the conversation. It’s a small room and quite often staff have to go in and out to get things, or stand outside the room waiting for the manager to be free and you can hear everything that goes on. So I chose another room that was bigger and where it would be quieter." Employee, facilitative mediation, supervisor-supervisee dispute

Where sessions were held at Acas premises there were some dissatisfaction with arrangements for breaks and especially for lunch. Some parties felt that they had to persuade the mediator that a lunch break was a necessary interlude. There were also cases where parties on Acas premises found themselves stranded and unable to work. This caused some frustration in two cases and these parties were critical of the lack of clear explanations in advance of the detail of the mediation process. In neither case had the mediator visited the firms in advance of the mediation.

"We felt like it was disorganised. We should have asked how long this would be taking, we were expecting it would probably be over by lunchtime, but we started at 10.30 and left there at around 6 o’clock at night. We weren’t told to bring food…" Employer, facilitative mediation, employer-employee dispute

**Reaching agreement**

Parties had two sorts of difficulties about the process of reaching agreement. In two cases parties saw themselves as having reached agreement by giving in. In one of these the other party was described as talking at length without saying anything new and in the other of refusing to compromise, sticking to their original position. In both cases these parties felt exhausted by this and wanted it ended by reaching agreements they were not committed to:

"I think the meeting just took so long. It went on until nearly two o’clock I think. Yes and at the end of it the mediator said that she had sort of gleaned some points from it that perhaps we might be able to agree on. So she discussed those with us and we agreed on them and she wrote them out hurriedly and we quickly signed this agreement, but that actually meant nothing; the actual things that we agreed to. It had just gone on so long, I just wanted it to end." Supervisee, facilitative mediation, supervisor-supervisee dispute
In two other cases parties made specific demands to include in the agreement written admissions of guilt and written apologies for bad behaviour in terms to be dictated by the ‘aggrieved’ party. Although mediators intervened and advised that such demands could not be part of an agreement, parties held to their positions and when the other party refused to comply, no agreement was then possible.

**The mediator role**

Criticism by parties of the mediator role occurred in one case only, where an employer expressed concern about the pace of the mediation, which they saw as too time-consuming and unnecessarily drawn out. This employer described a preference for short and pacy meetings and felt that the mediator did not push the process along fast enough.

Mediator difficulty in controlling behaviours that some parties found difficult or unacceptable was a source of concern for parties in several cases. The main issue for parties was that of rudeness and emotional behaviour - sometimes by both parties - but there were also two cases where one party felt that the other was ‘allowed’ to monopolise the joint session through repetition and constant talking:

"I certainly felt that I was so tired of the supervisor talking. She talked so much that when she started she went on and on and on and I was so tired I couldn’t be bothered arguing with her or disagreeing. I felt in a way it was partly - hopefully - the mediator’s job to do it, but I think I felt towards the end that she didn’t do that and things just sort of went on and on and on." Supervisee, facilitative mediation, supervisor-supervisee dispute

Parties questioned mediator fairness and impartiality in minor ways in two cases, both of which were concerns that in one part of the mediation the mediator appeared to spend more time with the other party. In neither case, however, were parties concerned overall about the impartiality of the mediator.

"It was just right at the end, after I had left and the employer and the mediator spent, I don’t know, a couple of hours in the room, after that and I wondered what they were talking about. I mean, I’d given in." Employee, facilitative mediation, employer-employee dispute

**Employers who were not parties**

In the two cases where no agreement was reached, employers expressed concern at their lack of knowledge of what had happened in the mediation:

"A thought I had myself actually was: if it doesn’t work, we’re not going to know anything about the process, we’re not going to have any kind of assessment from an outside person about what they think is going on here; who’s in the right, who’s in the wrong? Which doesn’t matter if it’s successful. So if it’s not successful - and it wasn’t - then you’re back to square one really." Employer, facilitative mediation, supervisor-supervisee dispute
7. The impact of mediation

The impact of mediation is examined in this chapter in a number of ways:

- on the dispute
- more widely in the firm
- on views on mediation
- on views on Acas
- on satisfaction with mediation

7.1 Impact on the disputes

Results of the mediations

As already described, 15 of the 17 mediations were concluded either with agreement or with recommendations accepted by the parties. Two directive mediations had as part of the agreement the employee’s departure from the firm, in effect resolving the disputes through the severance packages agreed.

Of the remaining 13, parties reported immediate improvements in working relations in the short-term in all but one case. In 2 of the 13, employees had left the firm before the research interviews, around three months after the mediations, leaving the other parties unable to assess longer-term impact. 3 of the remaining 11 were described by parties as having sustained all of the improvements over the longer-term and 8 had sustained some of the improvements:

"It definitely seems to have helped the relationship in the department... they’re working together well and the last few projects have gone smoothly and there haven’t been any problems. So I definitely think it has helped." Employer, directive mediation, employer-employee dispute

"In the short term, it was fantastic. They began speaking to each other, meeting with each other at the end of the (session) to talk about things, not bitching about each other all the time, communicating with the other staff, not trying to score points, not arguing about the work." Employer, facilitative mediation, employee-employee dispute

These outcomes show a clear positive influence for mediation with immediate results. Longer-term effects of mediation on the disputes show a more mixed picture, but were nonetheless reported as of real benefit to firms by the employers.

In describing how mediation had influenced the disputes most parties identified factors beyond the content of a mediated agreement or the mediator’s recommendations. Whilst ascribing a key role in effecting change to the agreements or recommendations, there was at the same time a common view of mediation as a wider intervention, with influences beyond the specifics of the agreement itself and its practical content.

The impact of agreements and recommendations

Mediated agreements were a composite of four types of change:

- explanations and apologies
- changes in behaviours and promises to avoid doing something
- changes to working practices, procedures and policies - usually supervision and line management arrangements

And, less commonly
• specific changes to the work environment - such as the proximity of desks or the location of partitions in an office

Many of the points making up an agreement were simple behaviour requirements - for employees to say good morning, to speak quietly, never to raise an issue in front of others. Parties described these behaviour changes as aimed at making day-to-day interactions between staff more considerate and less confrontational.

This aspect of agreements had some success in reducing friction or tension between parties and, as a result, brought about improvements to working relations and in the wider workplace atmosphere. However, none of the parties took the view that personality-based disputes in particular had been resolved by the mediations - nor was this expected from the mediation.

Others proposals for changes were about specific situations such as supervision. In some cases, for example, supervisors agreed to hold discussions, or to make criticisms only in private and never in front of others. Some supervisees agreed to keep supervisors better informed of their work activities. And in several cases supervision personnel were either changed or added to, in attempts to shift the dynamics of the supervision and so improve the working relationship:

"Now we both sign supervision session notes"

"Supervision arrangements have been changed and it’s now done by a different person”

"Management team meetings are to reconvene, we’ll have an external facilitator to help them along…”

"A third person now attends meetings between (employer) and me…”

"We conduct our discussions in the private office…”

Recommendations were on the whole more specific and detailed than agreements, but their effects were similarly practical and immediate and were accepted by all parties. Mediator recommendations were in one case about a specific rate of pay and in two cases, where staff had already opted to leave the firm, about severance arrangements such as pay and references.

Enhanced employer skills, knowledge and confidence

Through the wider contacts between employers and Acas staff, some employers were enabled to deal more effectively with disputes: through ELVs and in getting further help and training on employment matters from Acas. In several cases this was especially effective in enabling employers to deal with the dispute, giving them greater confidence. Where employers were anticipating that an agreement might break down, they had a better grasp of their internal procedures and clearer perspectives on how they would deal with any repetition of problematic behaviours:

"This time they’ve been disciplined for arguing, whereas before it would have just fizzled out, or we’d still be trying to work out who’s to blame. We know now that we don’t have to blame anyone, we said ‘You were both involved in an argument in a public place, in front of staff and that’s enough.’” Employer, facilitative mediation, employee-employee dispute

These effects were greater where employers’ grasp of employment law had previously been weak and internal employment procedures either not used, or misunderstood and used ineffectually.
A breathing space

When mediation did resolve disputes, even if only for a period of months, then employers also gained a breathing space in which they could see the dispute differently. Employers described having more time to digest their newly acquired understanding of employment law and practice and their powers to act and a renewed personal confidence in addressing the problems more effectively.

Parties’ insights into disputes

For some parties, the focus offered by mediation was greater clarity about the dispute and its causes:

"I think it was a really good training exercise for me, yes, the whole mediation was a very good training exercise for me because it was remarkable how much I learned about his position and how he saw things because it enabled me to stand in his shoes and see things from his perspective and to see that he really believed that he was being unfairly treated and why he believed that." Employer, facilitative mediation, employer-employee dispute

In one case employees concluded that the dispute was the result principally not of their own difficult relationship - the mediation resolved the dispute, in their view - but of the firm’s structures and embedded culture. Both decided that their best course of action was to leave the firm:

"Yeah, well we both thought we should leave. The firm was the real problem, nothing works here and it wouldn’t change we thought. So the other employee has gone now and I’ll go when I can." Supervisor, facilitative mediation, supervisor-supervisee dispute

In another, the employee began to understand that his behaviour was not acceptable:

"I’d never felt as if my job was in jeopardy, but yes, my job was in jeopardy and the person who put it in jeopardy was myself. If I had used foul language again, if things got worse, then it’s me sacking myself basically." Employee, directive mediation, employer-employee dispute

The employer in this case described how the employee had understood the implications of his behaviour, but at the same time realised that the work requirements placed on the employee were part of the causes of the dispute:

"But I think it has made (the employee) realise that I’m not prepared to put up with a certain type of behaviour. I think it’s made him realise that he can’t just behave in that way in the future because that’s just not acceptable. But also I think whereas the Director, in the past, was making demands of him, it’s made her step back and think that maybe the work schedules were just too difficult, that this had helped to create the problem..." Employer, directive mediation, employer-employee dispute

A different employer had recognised how personally she had come to experience the dispute and how this had impeded her ability to deal with it:

"I suppose the main thing for me is that I’ve become detached from the problem, emotionally detached. That’s what the mediation did for me, it detached me from the problem, because he’d really got under my skin and that’s not good for a manager to be in that situation.” Employer, facilitative mediation, employer-employee dispute
In another case, an employee was enabled to see her position within the firm more clearly and to request and then implement changes in her role within the firm, which further lessened the potential for conflict.

7.2 Wider impacts within firms

Mediation was also a marker, perhaps a point of focus, for both employers and employees. Parties described how they saw their agreement to take part in mediation with an external mediator as a formal acknowledgement that change was needed and how such recognition served as an effective lever for other changes in the firm.

Some employers were clearly pleasantly surprised when, following the mediation, there were visible improvements to the situation. Such unexpected success in the face of what had seemed intractable difficulties was a factor in energising them to deal more proactively with other disputes, as well as with the mediated dispute.

The effect on employer-employee relations

Most of the firms in this study had well developed employment procedures and the impact on these was consequently fairly limited. There were two exceptions. In one the employers drafted new protocols for dealing with bullying and in the other the employer added mediation as an option into disciplinary and grievance procedures.

Employers also described how they had gained understanding of the mistakes they had made in operating internal procedures and how they were now better able to do this more effectively, including using mediation in appropriate ways:

"It's been a good lesson for me - when I'm talking to staff now, I can really try and take on board what they're saying about the situation. So it was good for that too, a good process to go through." Employer, facilitative mediation, employer-employee dispute

"I think it was eye opening that mediation was out there for that sort of thing, I think that in future the employers would strongly direct a manager down the line of mediation before disciplinary. I think they've learned an awful lot." Employee, facilitative mediation, employer-employee dispute

Preventing employees from leaving

Some employers had been concerned that employees who were committed to the firm and whose work was of good quality might leave the firm if something was not done about a dispute. As a result of mediation, there were a number of instances of employees who had considered leaving feeling able to stay and where employers expressed relief that valued staff had not decided to resign.

Improvements to general stress/morale in the firm

In several cases parties had reported disputes as causing wider stress and some disruption among other staff, either because parties to disputes were openly in conflict in the presence of others, or when parties had been inviting other staff to take sides in the dispute. In these cases there appeared to be some lessening of tensions following the mediation agreement. Changes to the general levels of stress in firms was felt most in very small firms where a small staff team worked in close proximity:

"I think it helped because the other staff all realised this process had been going on. Something had happened and so it dissipated the heat. It enabled everyone to get on
with the work, to say, well, this has been dealt with, therefore we can stop dealing with it ourselves.” Employer, facilitative mediation, employee-employee dispute

The most common explanation offered for the lack of broader effects was the confidentiality of the mediation process, as a result of which parties often felt that others did not know about the mediation, or indeed the dispute itself and so neither had had a wider influence.

**The effect on firms’ time and costs**

Mediation was generally viewed by employers as fairly effective and both quickly and cheaply done. In contrast to the substantial time spent on internal actions aimed at resolving disputes, mediation had involved only very limited amounts of time and effort. Mediation had not involved external adviser fees in most cases, also a saving for firms.

"The mediation saved me a lot of time. I could have started down the route of investigating what person A had said and by time I got to the end of the first paragraph in terms of ticking through whatever had been discussed, she might have decided ‘Oh no I don’t want to go ahead with it anymore’ and that could take me anything from an afternoon to a couple of days. Or she might have come back the next day and said: ‘You know what, I want to retract it altogether’.” Employer, facilitative mediation, supervisor-supervisee dispute

Employers were also enabled to use their time more productively, with their enhanced knowledge and confidence, including time spent dealing with aspects of disputes after the mediation.

**Avoiding further actions**

Firms were required to put any formal procedures on hold as a condition of participation in the pilot. In one of the two cases where no agreement was reached, parties had reactivated grievances and in the one case where an agreement was reached but had not produced improvements, one of the employees was considering further action, including an ET application.

In many cases both employers and employees saw it as positive that the mediation had helped avoid the continuation of a route that might have led to an ET application:

"I think I’m quite pleased that the mediation process took place. It was our way of actually avoiding going to tribunal - that’s what it offered us. So the mediation was the right thing for us at the time. It was a quick solution to our problems, the dispute didn’t continue any further and I think the other party was happy after that.” Employer, directive mediation, employer-employee dispute

However, in one case employers had begun formal disciplinary proceedings for the first time, following repeats of the problem behaviour and in two others employers were anticipating resuming disciplinary proceedings in the expectation that the mediation agreement was unlikely to hold.

**7.3 Impact on perceptions of Acas**

As part of the assessment of the wider influences of mediation, the interviews explored the extent to which parties’ understanding of Acas and assessments of the value to them of Acas services had changed in the course of contacts over the mediation.

Knowledge of Acas and use of Acas services was widespread among the firms in the sample. Most parties understood that Acas provided services to individual employers
and employees, principally because they had used these services themselves in the past. These uses of Acas covered the full range of services: telephoning Acas helplines for advice in the context of other disputes; telephoning Acas helplines for advice about general employment issues; accessing the Acas website; requesting copies of and using Acas employment information; and accessing Acas training courses and seminars:

"Even though we don't have an HR department, we've worked hard to understand and to try and bring in proper employment contracts, proper employment policies and we've used Acas guidance on a number of occasions - the various booklets that you have to help us write those policies." Employer, facilitative mediation, employer-employee dispute

More than half of the employers and around one quarter of employees had a strong sense of what Acas provided and had used Acas in more than casual ways before their involvement in these mediations. Around one third of parties had used Acas services routinely over a long period of time and Acas was already an important point of advice and support to them.

"I have always used Acas as my sounding board if I wanted to know anything about employment law, if I wanted advice about anything. I tend to go to Acas first - I'd actually go through the website looking for any articles..." Employer, facilitative mediation, employer-employee dispute

"We have had dealings with employment tribunals before and Acas have mediated for us - they will contact both parties as you probably know and ask if we'd like them to get involved. It's because we're a small business that I got involved in Acas in the first place. I think I actually had a look at their website from time to time and I used the helpline, the employment law helpline." Employer, facilitative mediation, supervisor-supervisee dispute

The effects of this familiarity were that there were few surprises for parties to the disputes in their contacts with Acas: they expected Acas to be good at what it did and found this to be so. Parties were very positive about the quality, impartiality, timeliness and friendliness/approachability of Acas throughout the pilot.

Only four of the 37 parties had not heard of Acas and of the rest, nine saw Acas solely as an arbitrator of large-scale industrial disputes:

"I was aware of Acas and I knew that Acas were an arbitration service but I only sort of encountered it in relation to the stuff you see on TV - the major disputes between employer and employee, postal workers etc." Employee, facilitative mediation, employee-employee dispute

This view of Acas was changed by parties’ involvements in the mediation pilot:

"Previously I'd seen they were much more focused on the hard end of trade union disputes and now I see them at the early intervention end, if you like." Employer, directive mediation, employer-employee dispute

"Yes, I now have a much better understanding of what Acas do and that they play a very important role, not just in big disputes but smaller disputes as well..." Employer, facilitative mediation, employee-employee dispute

7.4 Impact on views on mediation

Would parties use mediation again and what for?
Participation in the mediation pilot was a positive experience for most of the parties and there was general acceptance by employers and employees that mediation had the potential to be used in other employment-related disputes and most parties who expressed a view on this were interested in doing so should the circumstances arise again.

Reservations about the value of mediation were expressed in several cases, although these were in the main about the disputes and whether mediation could effect change given their character and perceived intractability.

Only three parties - all employers - expressed some degree of doubt about future uses of mediation, because of their concerns about the mediation they had been involved in. One was critical of the mediator’s style and the amount of time spent in mediation, the second was dismayed to find that what the mediation was about, on the day, was not what she had expected and the third thought the type of mediation offered was unsuited to the parties and the problems in the dispute.

All three of these employers felt that mediation might be useful in the future, but all indicated that they would want to think it through more carefully in advance in future and ensure that they understood what was proposed more thoroughly and that what was on offer had a reasonable chance of success:

"Would I ever use mediation again? I think yes. I think mediation can work. I think I’d probably wisen up to knowing what I’d expect from the process, from the mediation meeting and I think I’d try to stick to that personally in the future without having the agendas shifted by other parties and that being allowed to be done by the mediator….“ Employer, directive mediation, employer-employee dispute

"I would use mediation again, I think it’s good, it’s very good. But I think I would be more demanding, I’d try to make sure what it would consist of, what they were going to do. I’d make sure that I know more about it." Employer, facilitative mediation, supervisor-supervisee dispute

**Employer views on charging for mediation**

Employers were asked for their views on charging for mediation and the likely influence on their choices of charging for the service. Employers were also invited to suggest what sorts of scales of costs might be value for money if they did have to pay for mediation.

Most struggled with this issue because the questions was hypothetical, but most succeeded in thinking it through to a sense of what effect charges might have on their decisions and what sums they thought bearable by the firm. Where mediations had been regarded by employers as successful in unlikely circumstances, employers were less hesitant about paying from mediation. And in two cases where employers had explored alternative interventions, Acas had been chosen because it was free.

But overall employers understood the differences between a free pilot and a mainstream service and were cautiously positive about charges. Most said that if they did decide that there was a dispute for which mediation could prove of value, their next decision would be about cost. A practical matter intervened in some larger firms, where budget holders’ powers of expenditure were capped.

The notion of what constituted a bearable and reasonable charge did not vary as much as might be expected. Very few employers would be willing to pay more than around £300, for a single mediation day and none would expect less that one day of mediation for this price. However, when reflecting on the actual costs of mediation, which all saw
as involving preparation time as well as the day itself, most employers thought that a cost of £300 would have to be subsidised.

7.5 Satisfaction with mediation

The research did not seek to measure satisfaction with the mediation process overall. However, overall the concerns described by the parties do show that employers were more likely to be satisfied with mediation than were employees.

Employers and employees had some shared concerns, but there were some that were only felt by employees. Specifically, those employees who felt that the use of an agreement form of mediation was unsuited to their dispute found it less successful than might have been the case. As already described, these employees expressed a desire for some form of investigation and adjudication by an external agency.

In addition, it does seem that employee participation was not always fully voluntary and employee concerns about taking part did lead some to see the mediation as less helpful than other processes that were not available to them.
8. Conclusions

Employment disputes in small firms can be either resolved or greatly improved on by mediation. Of the 13 facilitative mediations studied, agreements were drawn up and signed between parties in all but two cases and all four directive mediations were successfully concluded. Pilot mediations dealt with some difficult disputes, achieving a middling degree of success even with those that appeared most intractable. The situation was often improved to the extent that working relations had become viable again and parties were able to relate to one another within tolerances acceptable to all of them, including employers not directly involved in the mediation.

The pilot succeeded in its goal of a flexible service and both types of mediation were offered and used to the benefit of firms. The processes, goals and values of mediation present no real hurdles of understanding for either employers or employees. The key attributes of the two different types of mediation in the pilot were easily understood by most parties, with the role of the external mediator highly valued in each.

Employers are always likely to be in the lead in the resolution of employment disputes and as a result will most likely to initiate mediation as a solution. Employers are therefore more likely to be clear about the appropriateness, purpose and detail of mediation than are employees. Employees are in a secondary position in relation to the agreement to mediate and may see themselves as less than free to reject an offer of mediation, both because of this secondary place in the decision-making process and their general subordinate position in relation to their employers.

Uncertainty about the length or the content of mediation seems to be associated with a lack of a pre-visit to firms by Acas staff and difficulties of understanding, for both employer and employee, can be moderated in part by ensuring that all cases benefit from pre-meetings and that all meetings and other contacts prior to mediation are devoted equally to employers and employees and that both are giving informed consent to participation in mediation.

The likely effect of mediation on disputes depends on both the type of dispute and the relationship of the parties to it. To have the best chance of success, facilitative mediation requires that the parties have a reasonable chance of developing a shared understanding of what the dispute is about, no matter how far apart they are before the mediation. Continuing differences between parties about the nature of the dispute are at the root of failures to reach agreement. Mediation will only work where parties are reasonably on the same ground at the start of the process.

Where disputes evoke strong emotions, especially where very serious interpersonal difficulties are involved, there is a reduced chance of success. Long-standing disputes are also less likely to be resolved, although part of this is the probability that long-standing disputes also involve major interpersonal difficulties. It is possible that leading the process differently in some of the more difficult cases might have reduced the problems experienced. The strength of mediation is most clearly shown when it did succeed in making at least some improvement to the most intractable situations.

For the firms in the research, mediation was a new tool for employment dispute resolution. The mediation process of a voluntary commitment to make changes had a distinct influence on disputes where other resolution strategies had failed. The value of this voluntary participation, enhanced by the skills of mediators, is an important vehicle for change. Mediation is also about bringing people together to talk and think through the dispute from their own and the other party’s perspectives and offers a good and effective structure for doing this. As a first time experience for many, its impact was even greater.
The capacity to deal effectively with the mediation process is unevenly distributed between individuals. Facing the other party in mediation can be very stressful for some parties and may prevent people from benefiting from the process. The capacity to act in one’s own interests in a planned and sustained way over the whole mediation also varies from party to party and unless mediators are able to support and enable parties to make steady progress, the chances of both parties emerging satisfied are much less. Parties who want to engage in a process that identifies the ‘misdeeds’ of the other party are very unlikely to succeed in reaching agreements.

Directive mediations are more quickly concluded and less stressful because the process of arriving at recommendations is much more strongly guided by the mediator, putting less weight onto the actions and attitudes of the parties. Employees had asked employers to seek help from Acas in all of the directive mediation cases and as a result employee support for the process was less equivocal than in some facilitative mediation cases.

Mediated agreements worked as a compilation of a series of small changes and do not need to contain profound or sweeping proposals for change. Successful agreements are composites of quite small changes to behaviours, attitudes and work arrangements.

The impact of mediation is immediate, with improvements to behaviour and to working relationships seen in firms from the moment the mediation ends. Improvements are also likely to be sustained at least in part. When mediation is unsuccessful, this is attributable to the interpersonal stresses in the dispute.

Involvement in mediation brings with it other benefits, some of which were part of the pilot and other the consequences of the mediation itself. Even partial success, in a situation where nothing had worked previously, boosts employer confidence and also offers a breathing space in which to think through the dispute afresh, review their own actions and to deal more effectively with the dispute should it recur.

Even though small firms may have well-developed employment procedures, they are very likely to have little experience of dealing with disputes. For this reason even limited contacts with Acas improved knowledge and understanding and enabled employers to deal more effectively with other disputes. Employers who benefited from advice from Acas on employment law and procedures improved their skills and abilities to deal with disputes.

Mediation saves the resources of small firms because it works quite quickly, especially when compared to disciplinary or grievance procedures, or indeed Employment Tribunal applications.

Employers in small firms are willing to consider payment for a mediation service from Acas, although employers recognise that the real cost of providing a mediation service is likely to be more greater than what they would find it feasible to pay.
References

Advice Services Alliance website at http://www.asauk.org.uk/ has a library and a link http://www.adrnow.org.uk/ . Both provide a range of papers and updates on the development of ADR, including mediation and Acas conciliation. For an account of types of mediation see: http://www.adrnow.org.uk/go/SubSection_14.html


Colquhoun, F. (2004), Mediation in the Workplace: An Effective Management Approach, Centre for Effective Dispute Resolution at: http://www.cedr.co.uk/library/articles/FC_workplace_mediation.htm

Civil Justice Council (CJC): For an accessible overview of ADR see the website of the Civil Justice Council - http://www.civiljusticecouncil.gov.uk/ . CJC now have a separate ADR website, offering a selection of the most relevant research and consultation papers covering the varied forms of ADR currently in use in civil justice and elsewhere. For a succinct and interesting run through ADR overall see


Department for Constitutional Affairs (2002), Monitoring the Effectiveness of the Government’s commitment to using Alternative Dispute Resolution (ADR) July 2002

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Disability Conciliation Service (2005), What is Conciliation? http://www.dcs- gb.net/disabilityconciliation.html


Lewis, J. and Legard, R. (1998) *Acas individual conciliation - A qualitative evaluation of the service provided in industrial tribunal cases*. Advisory, Conciliation and Arbitration Service


**Notes**

The recent establishment of the National Mediation Helpline is a good indicator of how rapidly mediation is spreading today www.nationalmediationhelpline.com

A useful short summary of mediation can be found in *Styles of Mediation: Facilitative, Evaluative and Transformative Mediation*, Zena D. Zumeta, at www.mediate.com
Annexe 1: Topic Guide

There were four editions of the topic guide: for employers and employees and for facilitative and directive mediations. Differences were relatively minor. A single topic guide is reproduced here with differences between the editions indicated clearly in the text.

Employers who were not parties to mediations were not asked questions about the conduct of the mediation days.

Introductory statement

“Good (morning, afternoon, evening). My name is John Seargeant. Thank you for agreeing to meet me. I am an independent researcher and have been asked by Acas to help with the evaluation of the Acas small firms mediation pilot. I want to interview you today about the mediation that you were involved in (month, year).”

The interview

“The aim of this interview is to ask you about your own experience of using the mediation service and to explore your views on the value of this service to you and to the firm.”

Purpose of the evaluation

Offer to re-state if this is not understood

“One of the main aims of the Acas mediation pilot is to assess the value of the mediation service to small businesses and their employees, to enable Acas to decide whether the service should be provided as one of Acas’ general services to all small businesses. Acas is also interested in how the mediation service might be improved, if it were to become a permanent service.”

Recording

“To ensure that the record of the interview is as accurate as possible, I would like to tape record it. The tapes will be anonymous, so that I will be the only person who knows which tape is for which mediation. Neither you nor the firm will be identified through the tapes, or in the report which I will write for the evaluation.”

If the respondent is hesitant, emphasise the importance and value for the evaluation of a full record and that it makes the interview shorter. If taping is refused use the long format Topic Guide for a written record.

“Fine, I will make notes as we go along. This will be quite a bit slower than using the tape, as I’ll need to get to make notes which are as accurate as possible.”
1. Initial contacts, views, ideas

Role of Acas

- Knowledge of Acas at the time of first awareness of the pilot
- Sense of Acas independence?
- Other or previous uses of Acas - get examples with results
- Expectations of what Acas could offer in general and for this problem

Expectations/understanding of mediation

- Of the purpose of mediation
- Of the different types available
- Of the spectrum of ADR
- And its relation to formal proceedings such as discipline/grievance and ET
- And its relation to other, informal in-house processes

Awareness of the pilot - first contact

- How did you find out about the pilot - helpline, leaflets, other?
- Views on the leaflets, helpline etc.
- How easy/effective was it to make first contact and get immediate follow-up?

Purpose of the pilot

- How clear was the purpose of the pilot?
- Was it clear that the pilot applied to this firm?

2. Mediation - reasons for wanting mediation and what for

Motivations in agreeing to mediation

Probe awareness of options for dealing with disputes, including types of mediation and reasons for facilitative or directive mediation. How strong an element of choice was involved?

- Why did you agree to mediation?
- Were there other options for dealing with the dispute considered or invoked - discipline, grievance, dismissal, ET?
- Any concerns or doubts about usefulness/effectiveness of mediation?
- Risks associated with mediation?
- Did you feel in any way coerced into agreeing to mediation?

The problems or issue addressed

Get a picture of the problem - who, what, why, when, where it had got to

- Did the problem involve any specific disciplinary or grievance procedures?
- Did you think this issue might have led to an application to an Employment Tribunal?

The problems as ‘problems at work’ Employers only

- How do you see this problem in terms of common problems at work?

If necessary, prompt on performance, time-keeping, absenteeism, bullying, harassment, inter-employee relations and so on, if possible to do so without leading.
Note that it may not be easy for employers to attach labels to problems:

- Try giving more detailed examples if the above points do not elicit a response. See additional sheet for these.
- Try asking about other problems and then ask if these follow any patterns or types

Actions taken before the mediation

- Informal discussions, discipline/grievance procedures, involvements of TU or other representatives, possibilities of ET envisaged?
- Were specific stages of discipline or grievance procedures reached?

Contexts in the firm

- How did you see employer/workforce relations at the time? - get examples of good/bad
- How developed are employer/employee relations - procedures, agreements, TUs etc?
- Is mediation built in as an option in disciplinary and grievance procedures?
- (If yes) How is this to be implemented? Does it require external input? Who and what?
- Were there other disputes or problems at the time? Get examples
- Employer only Were there any effects on business performance? Prompt again on costs

Resources before the mediation

- Employer only How much time/resources had been spent on dealing with this problem before the mediation?
- Employer only Can you describe the costs to the firm both of time spent and also on associated issues

Prompt on direct costs such as amounts of as management time spent, legal advice, recruitment costs, costs of training new staff, sickness absences and indirect such as problems getting work done, poor performance.

3. The set-up phase

Details of the set-up/agreement to take part

Patterns may differ between types of mediation

- Get a brief outline of the numbers and sequences of letters, phone calls and the time period from first contact by mediator to the letter of agreement (may not recall if there has been a time lag)
- Check if employer provided a written submission in advance and if yes check the broad content and who was involved in drafting it
- Identify different people involved in set-up- Acas conciliator, Acas administrative staff, mediators? May not be aware; more types will be involved in Directive mediations
- Explore awareness of these different roles at this early stage More roles likely for Directive mediation
- Explore sequence of set-up actions and who was involved in each stage or aspect More likely that different individuals involved in Directive mediation set-up
• How was the decision to use directive or facilitative mediation reached - explore Acas recommendations Employee may not know this

Experience of the set-up

Patterns may differ for Directive and Facilitative mediations

• Ease of understanding of Acas contacts - phone calls, letters, submissions, the letter of agreement
• Ease of understanding of Acas administrative contacts - phone calls, letters, submissions, the letter of agreement,
• Ease of understanding of mediator contacts - phone calls, letters, submissions, the letter of agreement
• Did employer understand at this stage that there were different types of mediation with different purposes in the pilot?
• General appropriateness of the set-up phase
• Employer mainly, but ask of employees as well Time and effort spent by employer and others on this - was it difficult, too much, too long, too rushed?

Terms of reference

Note that this phrase more likely in Directive mediations

• Did the set-up convey what would happen in the mediation clearly?
• What form was the mediation to take - appeal, arbitration - check understanding especially of appeals and Directive mediation features and contexts
• Who would attend the mediation - parties, reps., witnesses? Some of these in Directive mediation only
• Were there agreed roles for reps/advisers/accompaniers?
• Did you ask for any results of the mediation to be binding on the parties?
• Any special needs allowed for in the agreement?

4. The mediation process and result

Detail of the process

For appeals, directive mediation and facilitative mediation there will be different points made

• Get a description of the mediation - what happened, when, who with - meetings, sequence, time from the first mediation activity to the result
• For Appeals only, what sort/stage of appeal for grievances or disciplinary actions
• For Directive only Where did the mediation fit with discipline/grievance, was it a hearing, or other format?
• Who was involved in the mediation meeting(s) and any other meeting(s)?
• For Appeals and Directive Were there witnesses and representatives? TUs, other staff, legally qualified reps
• What happened in the mediation meeting? Check sequence of actions - who asked/said what, how long it took, did it change focus, content or purpose as it went on
• Were there other meetings besides the mediation meeting? What were these for?
• Did these contribute to the results in any way? How?

The result/decision/agreement

Points will vary for facilitative and directive mediations
• What was the result/decision in this case
• How was the result reached? Check if recommended by mediator or if evolved into an agreement

For Directive
• Was re-employment part of the result? If yes, check on conciliator follow-ups on a formal (COT3) agreement
• Was a compromise agreement sought or reached - check legal rep involvement in a compromise agreement
• Was compensation part of the result?

For both types:
• Were all aspects of the result agreed to be binding by the parties?
• Was the result/decision reasonable, fair, relevant, clear?
• Did it address the issues?
• Was it acceptable to both parties?
• Any sense that it has been imposed?

5. Views on the mediation

Experience of the different activities in the process
• Check on phone discussions, solo meetings with mediator, joint meetings, meetings with reps - for clarity of purpose, time spent, content, useful/effective
• Check any other issues that may have arisen - e.g. on/off premises, availability of spaces, conduct of meeting, privacy/confidentiality, submissions, role of representatives, witnesses
• Check for preferences for different delivery methods - telephone discussions, face to face meetings, (joint, separate) and sequences
• Check for preferences for a different mediation process (may not be aware of options)
• Concerns, stresses, uncertainties raised by the process
• Any other ideas for doing it differently

Experience of follow-on actions
• Get a brief description of any follow-on actions which were identified as part of the agreement
• Check formal follow-on actions undertaken, if any - relation to formal proceedings, re-employment, compensation
• Other actions by Acas following on? - conciliator actions re COT3
• Have these been followed?
• If not, what has happened and why?

6. Views on the mediation overall
• Appropriateness, effectiveness of process overall - any other points
• Explore whether other actions would have been more effective/appropriate - using employment procedures, other
• Explore preferences for different mediation processes (facilitative or directive?)

7. The role of the mediator

Experience of the role of the mediator
• Timeliness of mediator actions in stages of contact
• Mediator conduct of mediation meeting(s)
• Appropriateness of mediator approach to role
• Contribution of the mediator to resolution
• Mediator style - pro-active, facilitative, directive, sensitive, fair, even-handed, balanced... (many may not be relevant but leave as prompts)
• Was it clear who the mediator was, where from, background?

For directive:

• Can respondent distinguish between roles of external mediators and internal Acas mediators?

8. Short-term consequences

• Did anything change after the mediation agreement? - e.g. helped to reach a good result, improved clarity for parties, modified behaviour; reduced tensions;
• Was the problem resolved - (may not know this, may not be sure, may not be able to tell)
• Did the result mean that other steps were not needed - e.g. avoided discipline/grievance, ET application, dismissal or other formal results of procedures
• Any influences on workforce and employer relations

9. Influence of ELV

Employer only

This may not have been part of the service to this firm. Check how this is described by the interviewee

• Did you consider making any changes in the firm’s employment policies following the employment advice you received from Acas?
• What were these changes?
• Have these changes had any influences on workforce and employer relations?

10. Longer-term consequences/impact

Employer and employee views may differ.

Ask employer to think back to period before the mediation Probe with employers which are attributable to an ELV and which to mediation

• General descriptions of how it may be different
• Benefits - can understand and deal with employee relations better, have better communications etc
• Benefits - improvements to workforce skills, absenteeism, workforce productivity, etc
• Benefits - changes in culture - general relations, stress, atmosphere, friction, morale
• Employer has brought in better policies, practices, procedures, employee training, (get copies of docs if possible)
• Any improvement in firm’s turnover, performance, efficiency, profitability

Get copies of AR or published accounts if possible

11. Views on employment problems experienced by small firms
See extra note on problems at work and prompt if needed

- Do you think that the employment problem you’ve experienced is common in small firms?
- Do you have an idea of what sorts of employment problems small firms tend to have?

12. Employment legislation

Check broader issues again if not emerged

Employer only
- Views on employment legislation and value to small firms

13. Future relation to mediation, Acas and other ADR

- Would you agree to mediation again? What for?
- If not, what other things would you prefer to opt for? Why?
- If yes, what kinds of mediation do you think might be most helpful to you?
- Have you considered writing a mediation option in to your discipline and grievance procedures?
- Was your understanding of Acas changed by your experience of mediation?
- How? Why?
- Prompt independence
- Would you use Acas again? Are you using Acas? What for?

14. Costs

Employer only

Costs of dealing with employee relations issues

- if mediation had not been used, can you assess the sorts of costs you might have incurred - prompt again, (as above), time on disciplinary and grievance procedures, employment tribunals, direct costs of recruitment, staff loss and training of new staff, sickness absences and indirect such as low staff morale, poor performance... other...

If the employer finds it hard to relate costs to this issue, ask if s/he is aware of costs in dealing with another specific employment problem. Use same prompts.

Paying for Acas mediation

- Would it have made any difference to your decision to choose mediation if Acas had charged for the mediation this time?
- What would you have expected to pay for the mediation?

If no figures are offered, prompt with costs information from costs sheet

- Explore reactions to costs information

If figures are offered

- What sort of basis of costs is involved in your figure? - prompt time spent, costs recovery, market comparisons

15. Membership of networks and professional bodies
• Is your firm part of a network, a professional body or a membership organisation?
• Does this bring specific benefits - to do with employee relations or other aspects of the business?

Concluding remarks

“That’s the last of my questions.”

“Are there any other points you’d like to make about the mediation, that you feel haven’t been covered?”

“Are there any questions you’d like to ask me?”

“Thank you very much for your time - this has been very useful.”

“What I will do now is get the interview typed up and when I’ve read through the text I may need to ring you to check one or two details. Is this OK with you? Thanks. Thank you again for your time and assistance.”