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Research Paper

Workplace mediation: the participant experience

Ref: 02/13

2013

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ACKNOWLEDGEMENTS

EXECUTIVE SUMMARY

This paper reports on a qualitative study of the perceptions and experiences of participants in workplace mediation. In total, 25 individuals, from a variety of occupations and organisations, were interviewed by researchers. The project sought to: explore the trajectory of individual disputes and assess participants' views of the effectiveness of mediation provision and sustainability of outcomes. Furthermore, the research attempted to examine the broader impact of participation in mediation on the approach of individuals and organisations to the management of conflict.

- The bulk of the cases came from large, public sector organisations with access to HR advice and expertise. Fifteen out the twenty-five cases were mediated by Acas, with six cases managed within in-house mediation schemes and four by a private mediation provider.

- Many of the disputes within the sample were complex – for example, approximately half the cases involved allegations by one party of bullying or unfair treatment following attempts by the other party to manage performance or raise performance concerns. Therefore issues tended to involve both potential grievances and issues related to performance, capability and conduct which would typically be dealt with through disciplinary procedures.

- The initial trigger for mediation mostly came from either senior managers or HR practitioners. Problematically, it tended to be used as a last resort for particularly difficult issues, although earlier intervention was more likely in organisations with in-house mediation capacity. In general, respondents argued that earlier referral increased the chances of a sustainable resolution.

- While mediators provided parties with good information regarding the process, participants often felt isolated. In particular, confidentiality meant that seeking the support of managers, colleagues and HR was not possible. Where external mediators were contracted, there were examples of parties being left with the responsibility for making practical arrangements for the mediation which was generally seen as inappropriate and unhelpful.

- Attitudes to taking part in mediation were mixed. While some respondents welcomed the opportunity to voice concerns within a safe environment, managers were more sceptical, particularly where the mediation involved a challenge to their decisions or attempts to address performance. The evidence also raised questions over the voluntary nature of mediation. Although no participants were instructed to take part – there was a clear sense that parties (particularly managers) felt compelled to do so, believing that a refusal would be viewed negatively by colleagues and managers and senior management.

- Respondents were generally very positive about the role played by mediators – they were seen to be impartial and most were reported to have successfully developed a rapport and empathy with the parties. However the style adopted by mediators varied. While in some cases, mediators sought to explore underlying issues, in others the focus was primarily on reaching a settlement. Some respondents felt pushed towards an agreement, particularly where external mediators had been contracted for a limited period of time.

- Most respondents felt that they had benefitted from taking part in mediation but they also found the process extremely challenging. In a number of cases, participants had experienced substantial periods of absence related to the dispute which exacerbated the emotional impact of the mediation. This could be made more difficult by poor or insensitive administration resulting in parties meeting each other prior to the mediation, being left in the mediation room together or expected to have lunch together.

- In the majority of cases, mediations resulted in agreement. However, this often did not lead to any fundamental change in behaviour and/or attitude and in a round half of cases within the sample was not ultimately sustained. The evidence suggested that part of the reason for this was that some parties who had been reluctant to undergo mediation in the first place, were prepared to agree to a course of action with little or no intention of complying with this. This was compounded by a lack of follow-up, particularly in cases which were externally mediated.

- Some managers within the sample particularly questioned the sustainability of settlements in cases which involved performance issues. It was argued that while mediation could resolve relational matters between employer and employee, problems with capability would inevitably resurface at a later point. From an employee perspective, there was a danger that the use of mediation could obscure unfair treatment and shift responsibility for this away from the organisation.

- However, the findings revealed that perceptions of 'success' were nuanced – in some cases, even where there was no significant change in attitude and behaviour, mediation paved the way for a degree of pragmatism allowing the parties to continue to work together in some form. Moreover, for employees who had complained of unfair treatment, the opportunity to air their views could be cathartic and empowering, even if mediation did not deliver the justice that they sought. Importantly almost all respondents would either recommend mediation to others or consider taking part again in the right circumstances.

- There was also evidence that mediation could develop conflict handling skills among participants. For some managers against whom complaints had been made, the process caused them to reflect on, and adjust, the way they communicated with staff and approached conflict. Furthermore, for a number of employees who had complained of unfair treatment, mediation allowed them to 'move on' and deal with conflict in a more pro-active and constructive way.

- There was little evidence from this sample that mediation had a broader impact on the organisations involved. To some extent, the confidentiality of mediated settlements constrained organisational learning, but there was also frustration from respondents that senior management seemed only interested in getting a short-term settlement as opposed to learning lessons to avoid such conflict in the future.

1. INTRODUCTION

As the profile of workplace mediation in the UK has increased in recent years, a small but growing body of academic literature and research has developed to examine its role in organisational systems of conflict resolution (Latreille, 2011; Ridley-Duff and Bennett, 2011; Saundry et al, 2011; Saundry and Wibberley, 2012). This has found evidence that mediation can help to resolve issues that would otherwise be likely to escalate into intractable and costly disputes. Compared with conventional grievance and disciplinary procedures, mediation offers significant savings and helps to repair and maintain employment relationships. Furthermore, it is argued that the use of mediation can enhance conflict handling skills and have a positive impact on broader employment relations. Nonetheless, it is clear that significant barriers to the adoption of mediation remain. For small and medium sized enterprises, cost remains a substantial deterrent. Moreover, while mediation is much more commonly used in large and public sector organisations, even here, resistance from line managers threatens to limit its diffusion (Saundry and Wibberley, 2012).

Critically, the research highlighted above has tended to focus on the rationale, process and outcomes of mediation as reported by mediation co-ordinators or commissioners, mediators, senior managers, line managers and trade union representatives. With the exception of Acas' own evaluation of its services (Acas 2011b, 2012; Fox, 2005; Seargeant, 2005), the 'voice' and experiences of disputants has not been explored. Therefore, this report seeks to fill a significant and substantial gap in our knowledge by examining, in detail, the views of 25 participants in mediated disputes.

This provides an opportunity to understand and critically analyse how these parties articulate their expectations of mediation, assess their experience of the process and judge the outcome and longer term impacts. More specifically, it allows us to extend our understanding of mediation in four key respects. Therefore, this report seeks to:

- build on our knowledge of the mediation process by capturing the views and experiences of disputants;

- explore the trajectory of individual disputes and the rationale underpinning individuals' participation in mediation;

- critically assess participants' views as to their expectations of mediation, the effectiveness of mediation provision and sustainability of outcomes;

- assess the impact of mediation in enhancing the overall efficacy of conflict management, and the employer/employee relationship.

The report is structured as follows: first, a brief overview of relevant literature is provided; second, the methods used to collect and analyse the data in this study are set out; third, the findings are presented according to a number of key themes including the nature of the disputes, method of referral, attitudes to mediation, conduct of mediation and outcomes and impact; finally the key findings from the research are discussed and conclusions are drawn.

2. BACKGROUND AND REVIEW OF KEY LITERATURE

Since the publication of the Gibbons Report in 2007, workplace mediation has assumed a central position in debates over dispute resolution. It has been promoted both as an alternative to more conventional adversarial disciplinary and grievance procedures, and also as a means of transforming the culture of conflict management in UK workplaces (BIS, 2011).

Acas/CIPD define mediation as *'where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement'* (2008:8). This tends to refer to situations in which specialised trained mediators are commissioned either from an external provider or an in-house mediation scheme. However, mediation is often used to refer to less structured *'ad hoc facilitated'* discussions undertaken by a single manager or HR professional (Latreille, 2011:7; see also Saundry and Wibberley, 2012).

What we might call structured workplace mediation has a number of key features. First, it is a voluntary process, in that the consent of both or all parties is needed before the mediation will take place. Second, the process is confidential and whether the outcome or details of the mediation are revealed to managers and colleagues is a matter for the parties. Third, responsibility for any resolution is placed on the parties themselves with the mediator playing an impartial role helping the parties to examine the issues underlying the dispute. Finally, the parties are not normally represented.

Within the UK, most workplace mediators employ a facilitative approach that encourages the recognition of the respective needs and interests of the disputants in an attempt to identify areas for agreement in an attempt to identify areas for agreement (Alberts et al., 2005). The focus is on enabling participants to work together in the recognition of needs and future interests rather than resolving personality-based issues (Seargeant, 2005). However, some argue that this fails to give due attention to the underlying issues that lead to conflict (Kressel, 2007). Nonetheless, the process itself tends to follow a fairly consistent format. Once the parties have agreed to mediation they will meet individually with the mediator to discuss the dispute and clarify any issues relating to the mediation itself. A joint meeting will then be held, or sometimes a series of joint meetings at which possible resolution will be explored. At the end of this meeting, any agreement will normally be recorded in writing (in some form) but will remain the property of the disputants.

There is certainly evidence that interest in, and use of workplace mediation in the UK is growing. For example, Acas have also found that requests for structured mediation on individual issues doubled between 2004/5 and 2010/11 (Acas, 2005; 2011a). An important boost for workplace mediation was the revision of the 2009 Acas Code of Practice on Disciplinary and Grievance Procedures. This not only increased awareness of mediation but also prompted organisations to re-examine their own processes for dealing with individual employment disputes (Latreille, 2011; Rahim et al., 2011). In some cases this led to the development and introduction of in-house mediation schemes (for example see Saundry and Wibberley, 2012).

However, it is not clear whether the rhetorical volume surrounding mediation has been fully matched by adoption. Data from the 2011 Workplace Employment Relations Study found that just 7 per cent of workplaces had used mediation to resolve a dispute in the 12 months prior to the survey with little suggestion that mediation is *'embedded in the culture of conflict handling'* in most UK workplaces (van Wanrooy et al., 2013:27). In particular, the use of structured mediation appears to be generally limited to larger organisations and those in the public sector (Williams, 2011). While SMEs appear to be enthusiastic about the notion of mediation, the realities of the cost of mediation and the extent to which bringing in external mediators fits with the personal nature of small firm

employment relations, raises questions about mediation's suitability in such environments (Harris et al., 2008; Rahim et al., 2011).

The advocates of mediation point to a number of important benefits. First, it is purported to provide the opportunity for early intervention before a dispute escalates. In this way it aims to resolve disputes that otherwise might lead to the use of extensive and convoluted grievance and disciplinary procedures, long-term absence of those involved, and in some cases litigation (Corby, 1999; Kressel, 2006; Seargeant, 2005). For employers, mediation offers significant financial savings compared with more conventional rights based disputes procedures (Goldberg, 2005).

For the participants themselves, the literature suggests that mediation provides an opportunity for individuals to progress a complaint or grievance in a less confrontational manner than is normally the case (Fox, 2005). In this way, those employees who might otherwise avoid raising an issue or move to another job (Barsky and Wood, 2005; Berggren, 2006) are able to make their concerns known while staying in employment. Although the process is not adversarial, it has been argued that mediation still allows individuals to have 'their day in court', as their views and emotions can be clearly expressed, but in a more informal and relaxed environment and without the procedural constraints of organisational grievance and disciplinary processes. This allows disputants to express their emotions in a safer, less stressful and less intimidating environment (Karambayya et al., 1992; Mareschal, 2002; Corby, 1999).

There is evidence that rates of resolution and satisfaction are high (Shapiro and Brett, 1993; McDermott et al., 2000; Bingham et al., 2002). Between 2004 and 2011, annual success rates in Acas mediations varied from 80 to 97 per cent. Similar levels of success have also been reported within recent case study evidence (Saundry et al., 2011; Saundry and Wibberley, 2012). Analysis of questionnaires completed by participants within and commissioners of Acas 'charged-for' mediation suggests a more nuanced picture (Acas, 2011b, 2012). In 2011/12, only 19 per cent of participants felt that mediation had completely resolved the issue. However, 74 per cent were satisfied with the outcome. This would indicate that mediation has a wide range of positive outcomes beyond a complete resolution of the dispute. Crucially, perceptions of success were related to the timing of the mediation, with a majority of participants feeling that mediation occurred too late.

Nonetheless, there are clear problems with assessing the success of mediation. Firstly, outcomes will be inevitably influenced by the expectations of participants themselves (Fox, 2005; Silberman, 1989; McDermott et al., 2000). Secondly, workplace mediations are routinely screened and only progressed if both parties are willing and the case is seen as suitable for mediation. Consequently, it could be argued that mediation takes place when it is most likely to be successful (Greig 2005). Thirdly, there is little longitudinal evidence as to the sustainability of mediated settlements in the medium to long term.

In addition to the immediate benefits flowing from resolution, the experience of mediation has been argued to shape the attitudes of both participants and mediators themselves (Bingham, 2004; Saundry et al., 2011; Saundry and Wibberley, 2012). These 'upstream' effects have generally been examined in terms of managers – in short it is argued that exposure to mediation can change the way in which individuals manage difficult issues in their workplaces by increasing 'knowledge or resources that can greatly expand the opportunities for creative problem solving' (Kressell, 2006:747).

Importantly, mediation may not be appropriate for all individual disputes. For example, managers may be sceptical about offering mediation in disciplinary cases (CIPD, 2008). In particular there is considerable debate over the appropriateness of mediation in cases which involve, or could involve the enforcement of rights (Bellman 1998, La Rue, 2000).

Mareschal (2002:1262) argues that *'victims of discrimination should not have to 'negotiate' for the enforcement of civil rights granted by law'*. This is problematic as more broadly, mediation is seen as particularly effective in resolving inter-personal disputes. This has led some to argue that if used early enough mediation can be used to address the *'unconscious and subtle discrimination or micro-inequities'* which often serve as the basis for many, if not most, claims of workplace discrimination' (Stallworth, 2001:37). Zapf and Gross, (2001) also argue that mediation is particularly useful as an early intervention in potential bullying cases, to alert the alleged perpetrator to their behaviour.

It is also important to note that mediation may hold potential dangers for participants. In particular, the balance of power between participants may shape the conduct and outcome of the process. While the inter-personal dynamics in mediation cases are often very complex, in most instances, they arise from a complaint or grievance raised by one of the disputants. Moreover, it is common that such complaints are raised by individuals against their line managers or more senior colleagues. In 2011/12, 70 percent of charged-for mediations conducted by Acas involved a party who had authority over the counterparty (Acas, 2012). Not surprisingly, this may impact on the participation of individuals – as noted above, mediation is largely seen as a voluntary process but employees may feel obliged to take part, particularly if suggested by more senior managers (Seargeant, 2005). Critically, while mediators can maintain a degree of equality within the process, they cannot change the fundamental power relationship that exists between parties, nor can they protect the weaker party outside the mediation session itself (Karambayya and Brett, 1989; Sherman, 2003). Consequently, the 'weaker' party may be too intimidated to contribute fully to the process (Wiseman and Poitras, 2002). Furthermore, the power imbalance may not simply reside in the hierarchical relationship between the parties but also in the degree to which they are able to articulate their views providing a potential advantage to more senior, experienced and confident staff (Seargeant, 2005).

But, the way in which mediation can interact with workplace power relations is perhaps more complex. Some commentators argue that while doing little to alter basic power relations it legitimises managerial authority, stifles resistance and strengthens control over organisational systems of dispute resolution (Colling, 2004). This can occur at two levels – at the micro level, mediation could be seen as a way of internalising, re-packaging unfair treatment into interpersonal clashes for which the victim accepts a degree of responsibility. Here, conflict is caused by individual employees and not by the organisation. At a macro level, mediation can be seen as an attempt at bypassing traditional collective processes of dispute resolution. Indeed, the rise of ADR in the USA has been linked with the erosion of collective labour regulation (Colvin, 2003) with some employers using practices such as mediation as a substitute for trade union voice (Olson-Buchanan and Boswell, 2008).

In contrast, it has been argued that the safety of mediation can allow workers to question authority (Wiseman and Poitras, 2002) in a way that is not open to them through conventional adjudicative disputes procedures under which management retain ultimate control. Interestingly, recent case study evidence suggests that line managers may be particularly resistant to mediation, seeing it both as a threat to their authority and as a symbol of failure (Saundry and Wibberley, 2012). At the same time, mediation can provide an avenue through which organised labour can extend their influence into areas (such as grievance and discipline) which have in recent years, been subject to the exercise of unilateral management decision making and authority (Saundry et al., 2011). Consequently, understanding the experience of mediation participants is central not just to the effectiveness of mediation as a dispute resolution process but to the role it plays within wider employer-employee relations.

3. METHODS

The sample for the research was constructed in two main phases. In the first, the researchers were provided with the contact details of individuals who had participated in workplace mediation conducted by Acas and who had agreed (in the feedback questionnaire completed after the mediation) to take part in further research. This yielded a total of 13 subjects from 18 original contacts. In order to supplement this, the researchers contacted private mediation providers, the co-ordinators of a number of in-house mediation schemes and Acas North West, and asked whether they would be prepared to assist in identifying additional subjects. Two private providers, two organisations with in-house schemes and Acas (North West) agreed to ask previous clients whether they would be willing to be interviewed. This yielded a further 12 subjects.

Overall, therefore, the sample comprised of 25 subjects. Given that the sample was self-selecting, it cannot claim to be representative of the population of mediation participants. Therefore, we must be extremely cautious about drawing broad generalisations from the data. In particular, it might be suggested that those willing to discuss their experiences of mediation may be more likely to have strong feelings of either satisfaction or dissatisfaction. It is also important to note that, in most instances, the views of participants reflect one side of a dispute. As the research team was dependent on self-referrals, there was no mechanism through which other disputants could be contacted. Our findings therefore need to be considered with this in mind.

In-depth, semi-structured interviews were carried out with participants which lasted between 30 minutes and 90 minutes. Overall, 22 hours of interview data were collected. The interviews allowed the disputant to explain and discuss their experiences freely. However, where possible, interviewers ensured that a number of key issues were covered:

- *Biographical details and the context of the dispute*
- *Pre-existing views, experiences and conceptions of mediation*
- *The basis of the dispute*
- *Motivations to participate – source of suggestion to mediate*
- *Expectations and support provided*
- *Experience of the process*
- *Degree of satisfaction with the process*
- *Nature and outcome of mediation*
- *Sustainability of outcome – impact on working relationships*
- *Impact on attitudes to conflictual issues and practice in handling conflict*

Participants were also offered the option of being interviewed in person or by telephone. This was partly due to scheduling difficulties, but in some cases, participants preferred not to be interviewed in work premises. In total, 10 interviews were conducted face-to-face and 15 by telephone. It is important to stress that there was no evidence that this had any impact on the length, detail or quality of the data gathered.

All interviews were transcribed with identifying features removed. Transcripts were returned to respondents for approval. It should also be noted that in the findings set out below, any identifying features have been removed from illustrative quotes in order to protect confidentiality. The data was analysed by comparing responses to the key themes and questions outlined above, these themes were refined and new themes were added as issues emerged from exploration of the data. The interviews were then re-examined to assess the weight of evidence in respect of these new themes.

4. FINDINGS

4.1 Overview

An overview of the sample is provided in table 1, below. The bulk of the cases that we examined were found in public sector organisations – in fact only four respondents worked in the private sector with a further two employed by what we could broadly define as not-for-profit organisations. All but one of the organisations were large or very large with their own HR departments or access to HR expertise. To this extent, although the sample could not be considered representative, its composition reflected the preponderance of mediation within large public sector organisations.

Fifteen out the twenty-five cases were mediated by Acas, with six cases managed within in-house mediation schemes and four by a private mediation provider. It should also be noted that a small number of the organisations who had in-house mediators chose to use external providers, generally due to the seniority of the staff involved in the dispute.

The majority of respondents were female and were also in managerial positions when interviewed. Furthermore, twenty one of the twenty five cases involved one party who had authority over the other. Around one-third had been subject to a complaint of some sort (in most cases bullying) whereas the other two thirds had brought a complaint against the other party. However, many of the issues were complex – approximately half the cases involved allegations by one party of bullying or unfair treatment following attempts by the other party to manage performance or raise performance concerns. Other cases evolved from disputes between senior colleagues over policy or practice, with a small number of cases which involved allegations of bullying, harassment or discrimination, with no apparent relation to performance or conduct of the 'complainant'. In a number of cases, at least one of the parties had been absent for lengthy periods due to the impact of the disputes.

Over half the cases had involved union advice at some stage, but, there was no evidence of union involvement or representation in the mediation process. The outcomes of mediation were mixed and also complex. In the majority of cases (19) some sort of agreement had been reached at the joint mediation meeting. However, a number of these had broken down at a later point or had little impact on the behaviours that had led to the dispute in the first place. In total only seven cases were found to have resulted in a resolution that was still in place at the time of the interview.

Table 1 - Summary of Findings

Case	Sector	Size	Referral	Union advice	Nature of issue	Stage	Agreement	Sustainability
1	Public	Large	Procedure	Yes	Grievance following performance management	Prior to formal procedure	Yes	Yes, but performance issues not resolved
2	Public	Large	Senior management	Yes	Accusation of bullying	Post grievance	Yes	Yes, attitudes improved
3	Private	Large	Senior management	Yes	Accusation of victimisation after absence	Post grievance	Yes	No –no change in behaviours - complainant looking to leave
4	Public	Large	Trade union	Yes	Accusation of bullying and abuse	Last step prior to formal procedure	Yes	No - little change in behaviour – possible grievance
5	Private	Large	Occupational Health	No	Long-term absence post performance management	After long absence	Yes	Yes – sustained resolution
6	Private	Small	Senior management	No	Dispute over working practices and payment		No	N.A.
7	Public	Large	Professional body	No	Interpersonal dispute between two senior colleagues	After complaints to professional body	No	N.A.
8	Public	Large	Senior management	No	Interpersonal dispute between two senior colleagues	Last stage before grievance procedure	Yes	Yes – but no real change in behaviour
9	Public	Large	Senior management	No	Dispute within a team of three	Exhausted all in-house options	Yes – but only between two parties	No – situation is still problematic
10	Public	Large	HR Director	No	Senior managerial dispute	No formal procedures but internal attempt to mediate	No	N.A.
11	Public	Large	HR	Yes	Performance	After submission	No	N.A.

					management issues – bullying	of grievance		
12	Not for profit	Large	Senior management	No	Interpersonal – trust issues	After submission of grievance	Yes	No – agreement not adhered to
13	Public	Large	HR	Yes	Performance management and accusations of bullying	After complaint – long into dispute	Yes	Yes
14	Private	Large	Occupational Health	No	Performance management and accusations of bullying	Post Bullying and Harassment procedure	Yes	No – individual left employment
15	Public	Large	Disputant	Yes	Performance management and accusations of bullying	No formal procedures enacted but longstanding issue	Yes	Yes
16	Public	Large	HR	Yes	Accusation of bullying following performance management	Prior to formal grievance procedure	Yes	No - grievance enacted
17	Public	Large	HR	Yes	Accusation of bullying following performance management	Prior to formal grievance but after long and convoluted dispute	Yes	Yes
18	Public	Large	HR	Yes	Discrimination	Post grievance procedure	Yes	No – behaviour not changed
19	Not for profit	Large	Disputant	No	Accusation of bullying and harassment	No formal procedures but after long period of complaint	Yes	No
20	Public	Large	HR	Yes	Performance management and accusation of bullying	After submission of grievance	Yes	No
21	Public	Large	HR	Yes	Accusation of bullying	After submission of grievance	Yes	Yes
22	Public	Large	Senior Manager	Yes	Performance management and	Prior to formal procedures	Yes	Yes – but underlying performance issues

					accusation of bullying			not resolved
23	Public	Large	Senior Manager	Yes	Disciplinary issue – accusations of misconduct	As alternative to disciplinary action	No	No – one party left organisation
24	Public	Large	Union	Yes	Performance management and accusation of unfair treatment	Response to initial submission of grievance	No	No – formal grievance and ET claim
25	Public	Large	Senior Manager	No	Relationship breakdown – complaint of unfair treatment	No formal procedure	Yes	No

4.2 Nature of the dispute

While mediation is often associated with interpersonal workplace disputes, the cases within our sample revealed a high level of complexity and commonly involved issues that could have been subject to both grievance and disciplinary procedures. Most notably, a significant number revolved around very different perceptions of management action in relation to performance, capability and absence. This not only highlights the importance of power relations within mediation but also poses important questions regarding its scope and application.

4.2.1 Professional disagreements and personality clashes

Six of the 25 cases that we examined centred on personality clashes, differences in management style and/or conflict over operational strategy. The trajectory of such disputes appeared to revolve around the interpretation of the other party's behaviour. For example, one respondent explained a situation in which they 'tended to be very forthright' while their colleague 'tends to take things very personally'. For this respondent, what he considered to be normal behaviours were seen as being negative by the other party:

> *'You know, I walk past in the corridor, or whatever, and I won't say anything because I've got my head in my bag or I'm on my phone but she doesn't see me on my phone...so 'he's ignoring me now'' (Senior manager – public sector)*

Similarly a very senior member of staff was in dispute with a colleague who he considered had made mistakes in dealing with a particular situation. There was no hierarchical relationship between the two disputants in this case but a fundamental difference in approach:

> *'I knew the individual very well indeed and regarded him to be a fundamentally decent person who had made serious errors and that he would be able to see the errors he had made and apologise and resume normal business.' (Senior practitioner – public sector)*

Therefore, what this respondent saw as essentially a professional disagreement of opinion escalated into an intensely personal dispute. Critically, all the cases of this type that we examined, involved staff of a level of seniority that meant that the dispute either had an impact on key operational and strategic decisions and/or had a detrimental effect of others working in their teams. Managers and HR were often reluctant to use formal procedures or disciplinary action and hence mediation was seen as the only way to deal with such intractable issues.

4.2.2 Discrimination and bullying – suitable for mediation?

There were also four instances of alleged discrimination and/or bullying, which were seemingly unrelated to performance. In these cases, interviewees claimed that the alleged perpetrator had a history of such behaviour within the organisation but formal complaints procedures and processes were either not thought to be appropriate or had failed to produce a conclusive result.

Mediation is often seen as suitable for interpersonal disputes or employee grievances but less appropriate for disciplinary issues, particularly those where there has allegedly been an infringement of employment rights. In our sample, individuals (who had been the subject of the behaviours in question) were all sceptical about the potential impact of mediation. One interviewee, a senior manager who had been the subject of bullying behaviour from a colleague, explained this as follows:

> *'I think that a bully rarely identifies that they are a bully so, they want to get through the process as quickly as possible, they tick the boxes and continue life as normal. Which is what he did.'*

Mediation was therefore seen as the 'least worst' option available in the circumstances or because organisational procedures to date had failed to deliver a satisfactory outcome to the complainant. Perhaps not surprisingly, attribution of responsibility was a major issue for interviewees in cases such as this – in which those subject to discrimination or bullying were concerned that agreement to take part could infer some degree of blame. The following interviewee, who had made a number of complaints about discriminatory behaviour from their line manager was concerned that mediation was a veiled suggestion that he had some responsibility for the situation:

> *'because it was arranged, suggested and then arranged by HR, I was a bit sceptical but then...I didn't have much faith in HR...I saw it as another, some other attempt to fix me a bit, whatever difficulties I experience in the organisation stems from me.'*

This reflects a broad concern over the use of mediation in such situations – namely that it can be used to abrogate managerial responsibility for unfair treatment and effectively internalise conflict, re-interpreting discrimination or bullying as a personality clash. In another case, a respondent who had been involved in an altercation with a colleague was offered (and took part in) mediation as an alternative to disciplinary action although she strongly believed that she was an innocent party. Thus the decision to propose mediation meant that she was unable to clear her name.

4.2.3 Performance management, bullying and harassment

However, most of the cases within the sample involved an intricate blend of grievance and potential disciplinary issues. For example, the largest group of cases within the sample was made up of complex disputes that appeared to have their roots in attempts by a manager to raise or address perceived performance issues with a member of their team. The background in these cases was invariably one of restructuring and significant change within contexts which had until recently been relatively stable. A fairly typical example was given by a manager in a large public sector organisation:

> *'...the background was huge losses against the agreed budget, lack of the right kind of direction, lack of success, lots of unmotivated people...but with that came a lot of people that have worked for the organisation...for, maybe at that point 20 years...'*

In such contexts, staff were resistant to change while managers were under pressure to improve efficiency and quality and apply more stringent policies in terms of performance, absence and capability. This was often perceived (whether rightly or wrongly) by the member of staff as unfair and in some instances as bullying. For example, a senior manager in a private sector organisation explained how a dispute arose from his attempts to manage the performance of a member of his team:

> *'...when I first started working with him, he'd had some issues...so, I went back through the entire process with the individual and, although we made lots of progress...I was kind of really driven towards making the situation a success, so coaching, developing, training, bringing him on and setting standards...I work in quite a high pressure environment, so the individual perceived this as a bullying situation.'*

Managers, perhaps not surprisingly, appeared to react badly to accusations of bullying. They often felt that the complaint was a personal attack and in some respects was a rejection of the 'help' that they believed they were giving the other party. As a result, both parties felt aggrieved, deepening the gulf between them and attributing the blame for the dispute on the other party as opposed to their own actions or external contextual factors. The manager quoted above explained this as follows:

> '...what frustrated me the most, that you know really in my heart of hearts, I'm trying to help the individual and, and it's effectively being thrown back in my face.'

This was a common view among managers within the sample as what started as an attempt to manage performance quickly became highly personalised. This was also amplified where relationships between manager and managed had previously been close and/or where they had worked at a similar level in the organisational hierarchy.

In some respects, the evidence from our sample suggests that the distinction between disciplinary and grievance issues is too simplistic. Issues that are often referred to mediation involve a complex mix of elements often including performance, capability and conduct that may typically lead to disciplinary proceedings. This may shape the extent to which participants see mediation as an appropriate way of the dealing with the dispute in question and thus influence their attitude to the process.

4.3 Referral, advice and support

The initial trigger for mediation mostly came from either senior managers or HR practitioners. Alternatively, in fewer cases, mediation was requested by the parties or stemmed from interventions from occupational health departments and (in three cases) trade unions and professional bodies. In certain respects, the manner of referral not only depended on the nature of the case and the position of the parties but also had implications for the way in which the mediation processes was conducted.

4.3.1   Initiating mediation – the key role of HR

In around a third of the cases examined, in-house HR professionals had provided the initial impetus for mediation. This was largely due to the fact that they were more likely to be aware and have some knowledge of mediation. However, this could be problematic where participants had previously negative experiences of the role played by HR practitioners within formal procedures and therefore had little trust in their recommendation of mediation. Furthermore, if the use of mediation is often dependent on the prompting of HR practitioners, this may provide one explanation for lower levels of use among small and medium sized organisations that may not have access to specialist HR advice. In other cases, senior managers suggested mediation – in particular where key staff were involved in a dispute which had significant ramifications for the organisation. Moreover, this was most likely in the two in-house schemes within the sample, perhaps illustrating a greater organisational awareness of mediation.

However, even where organisations had in-house mediation capacity, the seniority of the individuals involved meant that this was not considered appropriate. In particular, a number of respondents argued that they did not feel comfortable being mediated by a junior colleague. This highlights two limitations of in-house mediation schemes. Firstly when dealing with high profile staff, finding a mediator who is impartial and has no prior knowledge of the individuals may be difficult. Secondly, it may be difficult for senior staff to have confidence and trust in a mediator who does not have sufficient organisational status.

Although trade unions representatives were involved in providing support and advice to at least one party in most of the cases examined, they were only directly responsible for referring two cases within the sample. Interestingly, in two cases, mediation was suggested by the occupational health department of an organisation, as a way of paving the return to work of a member of staff who had been absent for a lengthy period of time.

4.3.2 Mediation – a last resort?

Importantly, mediation was rarely suggested at the early stages of a dispute – instead, it was often seen by organisations as a way to resolve very difficult situations in which procedures had failed and often where there was a potential for litigation. The objective was essentially pragmatic – to simply get the parties working together again:

> '...they [the organisation] don't expect these two to be bosom buddies ever but they just need them to be able to conduct each other in a way....a professional manner that allows one to draw on the expertise of the other and vice versa.' (Senior manager – public sector)

Thus, mediation seemed to be generally used as a last resort. Even when procedures had not been enacted, disputes had typically gone on for some time and had become increasingly intractable. This led to two main problems. Firstly, by the time that mediation occurred, the parties had developed extremely entrenched and 'frozen' views of the issues. In one case, mediation had only taken place nine months after a complaint was made:

> 'I think perhaps we might have got to mediation sooner, in which case...perhaps feelings might not have become quite so entrenched...I think we hopefully might have had a better outcome.' (Senior manager – public sector)

Another respondent explained that it was difficult to reach a resolution as mediation had occurred only after formal complaints of bullying had been made:

> 'I think it would have been great to do, or to try and do mediation ahead of formal complaints of bullying...you've almost, set your ...stall out at that stage haven't you, from both sides...So he's said 'you're bullying me', I've said 'no I haven't' and it's quite difficult to recover from that regardless of how successful the mediation is.' (Senior manager – private sector)

Secondly, one or other of the parties had already lost (or felt that they had lost) – in that the grievance had been either upheld or dismissed. Inevitably this threatened to shift the balance of power between the participants and thus shape attitudes to mediation. Alternatively, if mediation was used in advance of formal procedures, there was an opportunity for individual parties to take some degree of control over the resolution and avoid the blame implicit in traditional adjudicative processes:

> 'I would definitely say go to mediation before you go to grievance. Because you can, I think you can, you can award yourself a win in mediation rather than waiting for something from people who have nothing to give, who will give you nothing.' (Manager – public sector)

There was some indication that cases were more likely to be referred at an earlier stage where there was an in-house mediation scheme – this may be explained by greater managerial awareness or also by the fact that contracting external mediators may have greater one-off cost implications.

4.3.3 Advice and support – the problem of isolation

Participants generally received sufficient information regarding the process prior to mediation taking place. This mostly came from the mediators themselves who commonly provided written guidance in advance of mediation meetings. Furthermore, in some cases, individuals contacted mediators directly to clarify specific issues.

Interestingly, while HR practitioners were often the instigators of a referral to mediation, they rarely provided the parties with detailed advice or support around the process. For managers, against whom a complaint had been made, the experience could be an isolating process. One respondent explained that she felt quite 'alone' having to deal with the emotions involved with mediation and felt that more support could have been provided. This was particularly difficult due to the confidential nature of the mediation process which meant that she could not discuss the issues with senior colleagues and other colleagues:

> *'…that bit was very tricky, so there's confidentiality, blanket confidentiality you aren't supposed to even tell anyone that it's happening…So you're reliant on your friends and family for emotional support…' (Senior manager – public sector)*

In addition, whereas within formal grievance processes, the details of the allegations would be provided to the parties, this was not necessarily the case within mediation. Another senior manager working in the public sector explained that this had caused significant uncertainty and stress as mediation had made it difficult for individuals to defend themselves against allegations that they considered unfair:

> *'…allegations were made, but I was never provided with any information…I did eventually get the letter that [name] had written, just prior to mediation, but, you can imagine, we had quite a few months in between that…I never actually had all the information of what the accusations were about, and I think that's wrong.'*

There were also cases in which the disputants themselves were left to organise the recruitment of external mediators and/or deal with administrative arrangements:

> *'I agreed to get sandwiches, I booked the room…whereas I'm not quite sure who would have done it if I hadn't have taken that lead. I drove all the way up to [location] because I was trying to be supportive and help the situation…in hindsight, I probably wouldn't do that again and probably wouldn't book the room again'. (Senior manager – not-for-profit organisation)*

This was not only onerous but also left the individuals concerned uneasy as they felt that they should not be expected to take ownership of the process.

> *'I think that actually put me in a position where I felt like I was having to be responsible for things, instead of being able to take a full active part in the mediation …I was holding back a little bit and I was having to check with [name] if that was okay and was she happy to go and meet at this place and so I was having to do all the legwork…so that made it awkward.' (Senior manager – public sector)*

While it is difficult to draw generalisations, it may not be a coincidence that where individuals were provided with more detailed guidance as to what to expect from mediation and a point of contact within the organisation, their experiences tended to be positive and they entered into the process with reasonable expectations.

Overall, the findings suggest that organisations need to be aware of the challenges faced by disputants and provide sufficient organisation support. Even where external mediators

are used, this is undoubtedly helped by having organisational mediation capacity and specialist knowledge. This helps to provide a framework within which participants can feel secure and confident in the process.

4.4 Attitudes to mediation

Interviewees within our sample had relatively little awareness of workplace mediation before their disputes were referred. Initial attitudes were mixed – although the general view was positive, some managers were initially resistant, believing that mediation compromised their authority. Consequently, while they were not told to take part they felt compelled to do so. This in turn was argued by some interviewees to make a positive outcome more unlikely.

4.4.1 Positive views – resolution, safety and justice

For the most part, interviewees had little prior knowledge of mediation and little understanding of the process and how this fitted with more conventional procedures and approaches. Some had experience of mediation outside the workplace such as family or community mediation. Others tended to see mediation as indistinct from informal discussion or facilitation conducted by HR practitioners or senior managers. Even in the organisations in which in-house mediation schemes were available, respondents were not aware of how these operated.

Despite this, most interviewees were reasonably positive about entering mediation. They welcomed the opportunity for resolution and the chance to discuss their concerns with a third party outside the immediate organisational environment:

> 'My thought was, it takes it out of the context of the [organisation], it takes it out of the context of personalities and it actually says, okay, two people are going to find out what's wrong, what the root of the problem is, and see if there's a way forward, so for me, in a way, it was a breath of fresh air.' (Senior practitioner – not-for-profit organisation)

> 'I felt that mediation might just be what we both needed…to talk openly about what was going on and maybe come out feeling much better and be able to take things forward. So after thinking about it I thought well I'd welcome that. I think I'd welcome anything other than you know the grievance and the long processes of going through what went in the end anyway.' (Manager – public sector)

For complainants, even those who were sceptical of the process, mediation offered a relatively safe environment in which they could have 'their say' which they perhaps felt had been suppressed within conventional grievance or disciplinary procedures. In one case, a respondent who felt that she did not have enough evidence to prove that she was being bullied saw mediation as a forum through which she could speak directly to her manager in a safe environment:

> '…what I wanted to get out of it first was to be able to express my feelings and what I saw as the link between my illness and the situation at work…and also to get my manager to accept, I wouldn't say responsibility, but accept that her behaviour had a role in what had happened to me, and basically to go forward from there.' (Manager – public sector)

Perhaps more fundamentally, participants had an initial perception that mediation would provide an opportunity for justice, to correct what they felt were wrongs that they had suffered at the hands of the other party. In the following example, a very senior member

of staff within a public sector organisation explained that mediation was not what he was expecting:

> 'because what hurt me most was the fact that…such a fundamentally serious criticism had been made dishonestly, not a single shred of evidence…and it hurt me badly. And it was the fact that someone can do so much harm and get off scot free which was the ultimate injustice to me, and what made me seriously upset.'

However, this could cause problems when such illusions were dispelled on meeting the mediator. For example, the interviewee cited above, quickly felt that the mediator was simply aiming to 'call an end to hostilities'. In some cases this problem was exacerbated by organisations, which, in trying to persuade participants to enter into mediation, exaggerated or misinterpreted what mediation could achieve.

4.4.2 Scepticism and resistance

Managers against whom complaints had been made had mixed views - some questioned whether participating in mediation was in effect conceding that they had mishandled the situation in some way. In the following case, a senior public sector manager who subsequently agreed to mediation refused to take part on the grounds that he felt he was simply managing a poor performer and that the complaints being made by the individual employee were groundless:

> '… this person had a history of running to unions, anybody that would listen in HR, and… I don't think I've done anything wrong.. I know it seems a strange thing to say but, what is the benefit to me…as a manager?…I actually felt that maybe part of that was the issues about what was in her head from a whole history in prior to me joining the service and I was just the focus of that…'

Most of the line managers within our sample, had little expectation that mediation would deal with what they saw as the underlying problem – the performance and/or capability of the other disputant. This was partly related to the stage at which mediation occurred but also with the suitability of the process for examining managerial evaluations of capability or conduct:

> '…my concern was could mediation resolve this, when actually the issue was a performance issue? Okay, that wasn't what she was raising, she was raising that I was bullying her …but I couldn't see how we could separate the two, so kind of, have mediation around our relationship and how she felt I was bullying her, while trying to keep the performance issue out of it. (Senior manager – public sector)

Interestingly, in this case, the fears of the manager quoted above were in part realised and while an initial settlement was reached, this was not sustained.

A number of respondents also felt that while mediation had its advantages, they were more used to, and therefore comfortable with the certainty of formal procedure. One senior manager from the public sector found the intangible nature of mediation difficult compared with formal grievance procedures which had clear boundaries and were systematic and transparent:

> 'I felt really anxious about just having to be in a space with anything that was something that wasn't going to be the usual formal process because actually a grievance on many terms is very much more straightforward to deal with….You do your paperwork, you submit your papers, someone hears your evidence…Nicely defined clear boundaries around it, you've either got the evidence or you haven't and then there will be an outcome.'

Nonetheless, managers tended to rationalise their involvement in mediation by claiming that while they did not expect to benefit from the process they were prepared to enter into mediation 'if it would help' the other disputant:

> '...if it helps to try and cap some of the noise and move forward then maybe I will consider that. So when I spoke to the mediator I said my first reaction was no, right, if it helps this individual to move forward, saying what they need to say, and I get the opportunity to respond and say well I need to say and that improves the working relationship... there's nothing in it for me really but if there's something in it for that individual, that individual moves on, the work place environment is better, therefore it is easier for me to manage the work place because I've responded to that, then okay, so I agreed to enter the mediation.' (Senior manager – public sector)

In this instance, an agreement was reached and to large extent sustained with both parties remaining in role and being able to continue a working relationship. However this attitude tended to reflect a broad reluctance to compromise and question their own actions and decision making.

For some respondents who had complained about the actions of a colleague or manager, there was also a lack of enthusiasm to enter into mediation initially as they believed that their rights had been breached and therefore there was nothing to mediate. In short it was up to the manager or the employer to remedy the situation. One respondent, working in the public sector explained that when mediation was first suggested by HR:

> 'I didn't want it ...I wanted to hold them to account in the way that I'm always held to account, you know?'

However, in this case, after discussing the situation with an HR manager, this respondent was persuaded that mediation might be a positive step forward:

> 'I thought, let's go for it, let's see if it will resolve my grievances. You know, will I get the answers to the questions I hadn't been getting and be able to have some honest, open dialogue about the way I've been treated?...Ideally, I wanted to be told why decisions had been made, because they had affected me.'

4.4.4 A voluntary process?

Importantly, the data questioned the extent to which participation in mediation was voluntary. As mentioned earlier, the majority of cases resulted from a complaint from one member of staff regarding their line manager. There was a clear sense in which managers were reluctant participants. This is not to say that they were forced into mediation but that they felt that their co-operation was expected by their superiors and HR. The following response was typical:

> '...it was put to me very nicely, and it, it wasn't insisted upon. I think it was just from my own point of view, in that it would go on file that I wasn't willing to undergo mediation. Although that was understandable, I just felt that it would work against me somehow. So, I sort of felt pressured ...' (Senior practitioner – public sector)

Other interviewees felt that if they did not agree to mediation that this would reflect poorly if the matter escalated to a formal grievance or an employment tribunal. The following comment from another senior public sector employee was fairly typical:

> *'…if I hadn't have gone, I think I would have been putting myself in a very difficult position because…if she had complained about me again or raised issues and I hadn't made the effort to go along with this…then I think I would have been in a very awkward position to explain myself.'*

However, there was a clear belief within the sample that if parties felt obliged to attend this would have a negative impact on the possible success of mediation. One interviewee explained that while she had felt as though she had little choice about taking part, in similar cases she had dealt with since, she had insisted on individuals taking their time in deciding this:

> *'I've been very clear, clear from the outset that, actually, you meet with the mediator, you meet with those individuals, and then you both decide whether, actually, you feel that you want to move to the next stage, to get together. That was never said to me, it was always, right, you're going to go for mediation, so therefore it was always about, you will be getting together. Whereas, actually, I think individuals should have the opportunity to talk to the mediator, then make a decision about whether they go to the next step.' (Senior Manager – Public Sector)*

Thus, there was general agreement that mediation was problematic where one or more of the parties was not willing to fully commit to the process. One senior manager in the public sector described a case in which the mediation failed largely due to the fact that one of the parties adopted a confrontational and aggressive attitude within the mediation itself:

> *'I think if you have people that are willing to fully participate in mediation…it would probably be a very good thing, I think, our problem was that we had someone who was not prepared to take part in, or was prepared to attend but was not prepared to enter into the spirit of mediation.'*

Therefore, the attitude of parties to mediation is shaped by the nature of the dispute, their expectations of the outcome, and importantly, how this will be viewed by others in the organisation. The evidence certainly suggests that the notion of mediation as a voluntary process is an ideal that does not reflect the reality facing participants. For most, mediation is not something that they actively seek out. However it could be argued that the key issue is the extent to which participants, having agreed to take part, are then prepared to play a constructive part within the mediation process.

4.5 Conduct of mediation

The model of mediation that was used in the cases examined in our sample was relatively consistent. However, the style of mediation varied with some interviewees concerned that the focus was on settlement as opposed to resolving underlying issues. Consequently some respondents felt pushed into hasty and ultimately unsustainable agreements. Almost all those interviewed found mediation to be extremely challenging – however this could be ameliorated to some extent by sensitive administration of the process. In the bulk of the mediations examined there was a lack of follow-up, particularly where external mediators were used.

4.5.1 The structure of mediation

A similar structure was used in respect of all the mediations explored within the sample. A single mediator was employed from outside the organisation. In each case, individual meetings were held with participants which aimed to: clarify any issues regarding the process; explore the participants' views of central issues in the dispute; examine the

potential outcomes sought by the participants; and set ground rules for the conduct of the joint meeting. The following example given by a director within a large organisation was typical:

> 'The first meeting with myself and the mediator… I'd thought out and I'd written out what I felt the problems were, where I thought the solutions could be, what I thought the future might be, and my intention was to talk to the mediator about that… to see what was considered to be perhaps reasonable, or where I might have overstepped the mark, or where I might not have understood something. And that really, I think, worked relatively well. The mediator listened well, seemed to understand what I was saying, seemed to take on board what I was saying…she'd thought about how the two of us could come together, what was going to happen, and she handled it very well. I can't really fault that at all.'

On the whole, respondents welcomed the first meeting as a chance to talk to someone impartial about the issues that they had been dealing with. One respondent, a senior public sector manager, who had been off work after making a complaint explained that:

> '…it was a relief to be able to talk about it…because, obviously, the confidentiality, you can't talk to people…you're kind of sat in this little bubble with all this stuff and unable to share it with anybody, so actually it was quite a relief to be able to talk.'

There could be a danger that where the individual meetings are solely used for the individual to explain their case and set out what they want from mediation, this may simply reinforce and entrench viewpoints. However, in some cases the initial meeting appeared to gently begin to challenge the assumptions and perceptions of the individual. In the following example a private sector manager who had been accused of bullying when in his eyes he had simply been trying to manage performance, explained that the process provided a degree of objectivity and an opportunity for reflection:

> 'it was actually an opportunity for someone to playback at quite a personal level…how they interpreted the behaviours that I was displaying… it's really quite powerful because it, certainly for the following day, for the joint session, it allowed me to think oh I sound like a bit of an arse there… so I think it really helps sort of set the tone and, and a good opportunity to reflect on, you know, just to be sure as sure that I wasn't bullying. That's always something that's in your mind, you think god am I a bully… so it sort of helped allay those fears a little bit but really understand how that perception could have come about as well.'

In all cases, a joint meeting was then arranged with the mediator and the disputants. At the conclusion of this meeting, where a resolution had been arrived at, participants were given the responsibility of putting this in writing in some form. However, it is important to note that in most cases this was seen as a matter for the participants and no-one else. In a small number of cases a written agreement was drawn up by the mediator and signed by the participants, but this was not typical.

No representatives were present in any of the mediations although one participant had requested that their union representative attend. However, this had been rejected by the mediator. Interestingly, although this was the mediator's decision, the other party had made it clear that they would not have proceeded if a representative had been present.

4.5.2 The role of the mediator – the importance of trust and rapport

In general, disputants were happy with the role of the mediator. They were felt to be impartial and to have allowed both parties to explain their positions. Even where the

situation between the participants was very difficult, most respondents felt that mediators did all they could to diffuse the situation – even if this was ultimately to no avail.

Nonetheless, it was important that mediators were able to inspire confidence in the participants:

> *'they have to be able to get trust and confidence of both parties so that no matter what the behaviours they're seeing in the room whether it's eye rolling, whether it's people showing signs of distress that they will give some empathy where that's appropriate but actually they are not taking sides, what they are doing all the time is repeating what you have said or commenting on what they are observing.' (Senior Manager – Public Sector)*

This was particularly the case for complainants or more junior members of staff – as there was a danger that they could feel that the mediator would 'side with the employer'. Indeed, this was the accusation in three cases in which the interviewee had been dissatisfied with their experience of mediation. In each instant, this had been the perception of the 'junior' member of staff. For example, one complained that the mediator, although externally contracted, was disorganised and lacked authority and as a result *left me with the feeling that he was utterly and completely in [name of disputant's] hands'.* In another case, the respondent felt that mediator had not enforced ground rules regarding talking over and interrupting resulting in what was described as an 'onslaught' from the other participant. This undermined the faith that this individual had in the process:

> *'I did think, 'what was the point?', you know, that was horrific and to me it just demonstrated the kind of person that is line managing me and why I'd got to the stage that I'd got to.'*

Therefore, for these respondents, there was no sense that the mediator had remedied any power imbalance and was instead influenced by the relative seniority of the participants. While this was a minority view, the importance of mediators establishing rapport with participants cannot be under-estimated:

> *'...if ever, God forbid, that I have to be in a mediation situation again, I would insist on that rapport – you know, feeling that at least I wasn't going to be fighting the mediator to try and get my view, get the understanding of what really mattered ...' (Practitioner – private sector)*

4.5.3 Facilitating settlement or transforming relationships?

While the mediations in our study appeared to broadly fit into the facilitative style, they fell into two categories. In the first, the focus was very much on the issue that had triggered the mediation and in finding a workable solution. For some respondents, this was frustrating as they did not feel that the underlying issues were explored and that the mediator was directing parties to a solution that was fundamentally unsustainable. For example, one respondent felt that the mediator seemed to be in *'a big hurry to get home'* and did not provide the parties with a opportunity to discuss the issues fully. Instead he explained that both parties felt that they had been pushed into making an agreement:

> *'...he was very keen on resolving it and I think at one point he said something along the lines of, your company has to pay for this service, I could contact head office or HR or whatever and see whether they're willing to pay for another day...' (Manager – public sector)*

This seemed to be more prevalent in cases in which an external mediator had been contracted. Consequently, further time meant additional cost. Another respondent felt that they were placed under significant pressure to move towards a resolution, before they had had the opportunity to examine the issues that underpinned the dispute in sufficient detail:

> 'the mediator said 'right, let's put an underline under everything, you know, let's underline it, how can we move this forward…how can we make things different?' I'm thinking 'well, actually I haven't really explored my grievances yet. I haven't had my satisfactory answers', and there was a lot of pressure…' (Manager – public sector)

In contrast, other mediators made a conscious attempt to explore factors that shaped the relationship between the parties, examining a broader range of issues. On the whole it appeared that the disputants we interviewed were very positive about this type of approach, which also encouraged a degree of self-reflection:

> 'we had everything from individual positioning, to a bit of a dust up, to some agreement, to some disagreement..I just played out the whole thing in a very succinct period which was interesting, for me at least, because then I could see where I was being potentially difficult, not deliberately but you can feel it and you can see it…She [the mediator] did two things which was brilliant, she almost asked us to step outside of the situation and she played each character for a short while and then went back to the completely neutral role. So you get a chance, it's like watching kids argue isn't it? You get a chance, god that's not, that doesn't look so good, or you know, and it was great because you can think, just gives you the view and then, obviously, in the neutral role, she was fantastic.' (Manager – private sector)

This appeared to allow perceptions to be discussed and challenged and for managerial decisions or the behaviours of individuals to be explored and placed within some sort of context.

4.5.4 The impact on participants – power and perspective

For almost all of the participants that we interviewed, mediation was extremely challenging. A practitioner working in the public sector explained her feelings at attending a mediation session with a colleague who had been accused of bullying:

> 'I felt very nervous and very anxious because I hadn't worked with this colleague for nearly three months.'

In another an employee of a large private sector organisation who had been suffering from work related stress explained that returning to work to undergo mediation was a very difficult experience:

> 'I wouldn't like to be too melodramatic in talking about a matter of life and death but you know, it was touching some very vulnerable points for me… I think the anticipation was probably you know worse than the actual meeting but it was nerve wracking.'

This was particularly the case for those participants of lower organisational status; for them meeting face-to-face with their managers was intimidating. Respondents used words such as 'draining', 'horrible', 'awful'. Parties from both sides felt that they were at a disadvantage in the process; those employees who had made a complaint saw themselves as defending their grievance, while those complained against felt that their actions, often in terms of managing performance, were being questioned.

This also extended to participants' perceptions of the conduct of the joint meetings. Typically, they felt that they had explained their case in a reasoned and respectful manner but that the other participant had taken a much more adversarial and emotive stance. For example one respondent claimed that they had spoken from a *very rational, ordered point of view* while the other participant had been *personal and emotive and quite vicious in some of the things he said, bringing other people in and all sorts of things'*.

Managers tended to complain that the other party raised a large range of, what they perceived to be irrelevant, issues which had not been mentioned previously and were often historical. In contrast, interviewees who had brought complaints against managers often felt that managers used the mediation meeting to express their anger at having a case brought against them. Indeed, one respondent claimed that this was a simple extension of bullying behaviour into the mediation room. It was suggested that this may have been because managers felt obliged to attend even if they were not prepared to take any responsibility for the situation. This clearly illustrates that stark differences between the parties' perceptions of events can remain even after the mediation has concluded.

4.5.5 The importance of 'administration'

Issues such as the location and timing of mediation meetings were important to participants in shaping their experience. One respondent reported that on arriving at the mediation venue, she had 'bumped into' the other disputant in the car park which was extremely difficult and only heightened pre-existing concerns. Mediators also had different approaches in respect of how breaks were handled. For example in one case, a mediator left two participants alone while going to make a cup of tea. In another, the mediator asked the participants if they wanted to have lunch together. This was highly problematic:

> *'I had to sit next to the person that I hadn't worked with for three months who had been causing me such anxiety and upset for nearly, well nearly twelve months, by the time we got to [mediation]…I felt that, at lunch time, we should have been able to do our own thing' (Practitioner – public sector)*

Time-frames were also important, respondents who had waited a significant time for mediation to take place found this particularly stressful:

> *'I think it was more stressful than I'd ever imagined…because it took quite a long time to arrange, the feeling of depression and feeling of worthlessness and total demoralisation hit home more than I ever thought it would'. (Practitioner – not-for-profit organisation)*

In one case, the mediation process took two to three months to arrange with a long gap between individual and joint meetings. This not only caused the respondent in question additional anxiety and worry but undermined her faith that the other party was fully committed to the process.

At the same time, there was a danger that participants could feel rushed in cases in which individual and joint meetings were held on the same day. Here, respondents felt that having time to reflect would be valuable. Instead they could go straight from explaining their own views in detail to the mediators into a joint meeting. In these circumstances, shifting into a position where they were expected to listen and potentially understand the views of the other party could be very difficult.

An important issue that emerged from interviews was the lack of any follow up after the mediation process either from the organisation or the mediator. A number of respondents thought that this could have been useful, particularly given the concerns over the sustainability of agreements:

> *'I think that [a follow-up] would benefit both colleagues or both people that have gone under the mediation because if it hasn't improved, a second lot of the mediation would make the people or, or the persons involved, sit up and take notice of that moral agreement…it would afford another forum for somebody to go in or both colleagues to go in and say 'look, this hasn't worked, how do we move forward'?' (Practitioner – public sector)*

It was clear that the potential cost and inconvenience of further sessions was something that organisations who did not have in-house mediation capacity were reluctant to incur. Moreover, it was even argued that a one-off day could be problematic as it allowed a lot of difficult issues to be aired without necessarily providing the time and space for resolution:

> *'I think the only way that this would truly have worked is not having a one off day, but having perhaps two or three, or maybe even four and I know that is extra expense and I know that it's extra time and everyone's overstretched, but in terms of actually initial ideas, beginning to flesh them out, putting them into practice and making sure they're sustainable I think that more meetings would have been extremely useful…I wouldn't necessarily say that a one off day is going to do much other than open a can of worms and let you look at them on the table.' (Practitioner – not-for-profit organisation)*

This was certainly seen as an advantage of in-house mediation schemes – both in terms of having the flexibility to offer follow up meetings and perhaps hold more than one initial individual meeting (to discuss the viability of mediation) before the joint meeting could take place.

The findings above reinforce the crucial role played by the mediator and suggest three key factors that influence the experience of participants and the outcome of mediation. First, there is a need to explore underlying issues and not to force participants into a hasty, and ultimately unsustainable, agreement. Second, to achieve this, mediators need necessary time and resources. Third, what may seem like minor administrative issues can have a significant impact on participants who find themselves in a highly challenging and emotional environment.

4.6 Mediation outcomes – a complex picture

The evidence from this research provides further insights into the claims of high success rates in mediation. While most cases ended with a settlement of some kind, this often failed to result in any significant change in behaviour and in around half of the cases was not ultimately sustained. Despite this, most respondents felt that the process was beneficial and would recommend it to others in the right circumstances.

4.6.1 Success and failure

The outcomes from the mediations within the sample emphasised the difficulties in assessing the success of mediation. Sometimes, a resolution had been agreed and this had been sustained, although this had not always involved significant behavioural change. In the following example, despite a relatively traumatic mediation process, the

relationship between a senior practitioner in the public sector and her line manager had improved considerably to the point where they were able to work together in a constructive way:

> 'I can honestly say, if we had not have had that mediation, we would not be in this position. It was entirely because of the mediation from ACAS, and I don't believe that that would, even if they'd have tried to have done it in house, I don't believe that it would have worked.'

A crucial feature in a number of cases was restarting communication between parties who had stopped talking to each other or were unable to deal with each other in a professional or constructive manner:

> '…it was a case of communications, because at some point this person stopped talking to me, even blanking me as I was going past. So communication resumed and I was resuming kind of normal behaviour of asking her how she was… I was always very cautious around her… about the kind of banter I had with her but the usual pleasantries took place, we talked about business and what was happening on our area and I treated her the same as I treat everybody else. I haven't got an axe to grind with her. I actually wanted her to move on and I wanted her to be part of what we are doing.' (Senior manager – public sector)

However, in other cases, mediation had ended with no agreement at all. In each situation, it appeared that either the issues were too intractable to make a resolution possible or one or both of the parties had no interest in reaching any kind of settlement. One interviewee, a very senior manager in a public sector organisation, commented that:

> '…some problems will not be solvable and that with the best will in the world …experience shows if two people are at loggerheads to this degree, that we might not be able to achieve anything.'

In such cases the mediator was seen as having an impossible task. An experienced employee working within a large public sector organisation believed that in her case, mediation was doomed to failure:

> '…however good her mediation skills are, she was not going to budge [name] or me, because we both think we're right. [name] thinks she's right for telling me them comments, she thinks it's being taken out of context…she thinks that what she'd said is right and I think what she's done is not nice.'

Interestingly, this case involved (among other things) a dispute over a manager's assessment of performance. In similar cases, in which the source of the disagreement (among other things) revolved around a managerial decision as opposed to the behaviour of the parties, there appeared to be less scope for movement and hence resolution.

4.6.2 Success and sustainability

Although most mediations concluded with an agreement, it was clear that respondents were sceptical about the sustainability of settlements. This was particularly the case where performance issues were involved. Managers in these situations felt that while progress had been made on the relationships between them and the other party, they or another manager would have to revisit the issue at a later stage and were rarely convinced that the employee's reaction to this would be substantively different. In short, there was a view that mediation was delaying the inevitable grievance or the departure of one of the parties from the organisation.

In particular, managers felt frustrated that the discussion tended to focus around the complaint about their behaviour rather the underlying performance issues. For example, one manager felt uncomfortable talking about the return to work of a member of staff during mediation, when they felt that this was not going to be possible due to outstanding concerns over the individual's capability. In such cases there was a pervasive view that while mediation had resolved the initial complaint and in that sense led to resolution – it was a sticking plaster on the fundamental problem. Furthermore, managers against whom complaints had been raised felt that the focus of mediation was inevitably on the other party's grievances, therefore it was difficult to explore their own feelings about the accusations that had been made. A senior public sector manager explained this as follows:

> 'I sit in a room in mediation...as this person's line manager, so therefore I can't fully explore my feelings around the other person, in terms of being accused of being a bully, and I've got very strong feelings around that...how can I explore that with an individual that's accused me of that...how can I possibly join an equal process? It is about that person...'

In some cases, parties admitted to reaching an agreement in mediation in the full knowledge that matters had not been resolved – here participants had gone on to pursue a grievance at a later stage or had simply left the organisation. For example, a senior manager in a not-for-profit organisation had entered into mediation with little expectation that the other party would change their behaviour:

> '...they suggested that it might take four hours, well I know the individual concerned, you know, wouldn't sit in a room with me for four hours so it didn't take that length of time, but, it just felt a little, little false really... Just like a sketch.'

Her fears were realised – there was little improvement in the situation and the other individual subsequently left the organisation.

At the same time, most of the respondents who had brought complaints against line managers were sceptical as to whether their managers' behaviour had fundamentally changed. For one respondent mediation was *'a waste of time'* because *'it didn't do anything to him [the manager] did it?'* This respondent argued that his manager was simply *'jumping through the hoops that he felt he had to jump through because HR told him he had to do this'.* Indeed, some were concerned that managers saw mediation either as a soft option, or something they had to do, and had no intention of adhering to any consequential agreements.

Importantly, outcomes within this sample revealed that there were varying degrees of success. For example, in some cases in which there was no fundamental change in attitude or behaviour, mediation still provided a breathing space in conflict and a way of finding a pragmatic solution so that the parties could continue to work together:

> '...if I was in the same position again, I would go for mediation but not necessarily because I think it's the be all and end all, but actually because it was a constructive process...or could be constructive...if you're working with people, you've got to try everything you can to make that relationship at least bearable during, in your daylight hours. (Senior practitioner – public sector)

Another respondent also explained that while the mediation had little effect on what she saw as her colleague's sub-standard performance, she had changed her approach by increasing the amount of supervision. At the same time, both participants had made a significant effort to improve communication. In short, mediation had not resolved the

dispute but provided one of the participants with the tools to be able to navigate their way through the issues.

4.6.3   A source of voice and empowerment

Interestingly, despite the mixed evidence in terms of generating clear and sustainable resolutions, the vast majority of interviewees felt that their participation in mediation had been beneficial. Even where there was no settlement, taking part in mediation had provided disputants with a voice. For example, one interviewee who had subsequently left the organisation, claimed that the process was beneficial in giving her the opportunity to air her views:

> '...I was glad we done it because, anything that works towards resolving this is a bonus...I didn't leave there thinking oh it's a total waste of time, I didn't think that for one instance, I thought going there, it was good to air what [name] had to say and to air what I had to say and to have a third person there to try and resolve it. So I thought it was really beneficial...' (Practitioner – public sector)

In another case, a disputant, who had made a claim of discrimination against a colleague, did not believe that mediation had any impact on the behaviour of the colleague but had allowed him to be able to express their feelings and to deal with any future issues without the debilitating impact of formal procedures.

> 'Well I was sceptical about going forward, but I thought there was, what do they call it in the Middle East? A roadmap...however well we were going to get on...we won't jump to, I won't jump to a grievance...we can have these conversations without a mediator, so I can say to him...you're doing it again.' (Manager – public sector)

Thus, even for those participants who claimed to be victims of bullying and discrimination, access to mediation could be empowering:

> 'I think it's helpful because it gets your mind-set in the right place...because she had been bullying me and making me feel very uncomfortable at work, I had to turn the situation round...I've tried my best to make this situation better, I've done all I can, it's up to her now and if she can't um see that then it's her problem and I can't own her problem. I feel more empowered...I know that I can move forward...' (Practitioner – public sector)

Furthermore, managers who were the subject of complaints welcomed the opportunity to place their decisions in some sort of context. A senior manager in the public sector who had initiated a significant degree of change in his organisation felt that the mediation process allowed him to explain the rationale for his actions:

> '... I was able to just put it in the wider context of how I was.. I've been seen as the kind of like the axe man...and I was able to explain...as a manager there's things you have to do that are unpleasant, it's how you go about and deal with them... I felt I was able to explain the wider context of how I operated, how that person perceived me and how I wasn't out to get [them]'

4.6.4 Confidentiality and sustainability

Respondents reported that confidentiality over outcomes was generally observed. However, this could mean a lack of transparency over the consequences of mediation which in turn generated suspicion and mistrust. In one case, a public sector manager who had participated in a mediation that was unsuccessful believed that the outcome

had a negative impact on her career progression, although the mediation was never discussed with her managers:

> 'there was no follow up or anything, obviously, there's this confidentiality thing, I don't know what went back to my managers, I don't know what the outcome was or anything, the only thing I know was that it affected me…if I'd gone through a disciplinary and there would have been some feedback in terms of what they found out or what they've decided… it was like a process I went through and there was no outcome.'

It is also important to understand that any agreement reached in mediation may have implications for other team members who are not directly involved in the process and in many cases may have no knowledge that mediation is taking or has taken place. As a result, while participants could come to a settlement in good faith, the extent to which other colleagues and team members understood and would also comply with changed behaviours could be problematic. This placed the issue of confidentiality at centre stage. In one case, the participants had agreed that team members would not be told of the mediation or the outcome. However, according to the manager involved, this caused problems within his team as it appeared that the other party was subsequently being treated more favourably:

> '…the whole way the team worked, worked, teams work, anything that's not open, honest and on the table, in my mind was a problem…because it causes other conflicts, accusations of favouritism, development issues, all sorts of things.'

Overall, this research provides valuable context to claims of high success rates made by mediation providers and organisations with in-house mediations schemes. Outcomes are complex and metrics of success rates are debatable. But, this does not mean that mediation outcomes are not valuable – even where the dispute in question may not have been resolved, it can result in improved relationships or simply help the individuals concerned come to terms with the situation that they find themselves in.

4.7 Mediation – transforming attitudes and conflict management?

Much of the literature examining workplace mediation has suggested that its use can have important 'upstream' benefits by improving the skills of managers, changing worker attitudes and even contributing to the cultural transformation of the workplace. While the evidence provides a number of examples of participants developing new perspectives there was little suggestion of deeper organisational impacts.

4.7.1 Changing attitudes to conflict – pragmatism and development

It has been argued that the process of mediation can shape the attitudes of the participants to conflict situations. For example, managers may adapt the way in which they approach performance or disciplinary issues. The evidence within the sample was very mixed. From many of those who had brought complaints, there was a view that the other parties were complying with the agreed resolution rather than making any attempt to change their behaviour. One respondent gave an example of a colleague who had stopped being (in their view) abusive and intimidatory but now only communicated with them in writing.

Other interviewees accepted that even though the other party had not changed their attitudes in a fundamental way, mediation had helped them to develop strategies for dealing with and working with the other party:

> *'...we wrote an agreement by the end of the day...I don't think either of us have really looked at it since, but I know what narks her and she knows what narks me and I think we avoid those things and we try not to work together very often because, to be honest, it's accepting, that we're just not two people that are ever going to work together...'. (Senior Practitioner – Public Sector)*

> *'I mean it was successful, there's no doubt about it, we couldn't work together before...and we can now. But I would certainly recommend mediation, yes. I think even if it's just an opportunity to let it all out and be honest without fear of reprisals.'*

This was not only important for the parties involved but minimised the negative impact on other colleagues so that, in the words of the respondent above, *'it's not destructive for everybody else now.'*

For some participants (albeit a minority), mediation had a profound impact on the way that both parties felt about and conducted their working relationships with the other. The following public sector employee explained that having the chance to explain how she felt to her manager not only altered her manager's attitude but increased her confidence:

> *'I have, sort of, turned a corner because I've said what I had to say and because in the first place, I've been able to do so and I was brave enough...from my manager's point of view, I think she was probably pretty shocked by what she heard...I do feel it has changed her as well.'*

A private sector manager had also changed the way in which he approaches his role, adopting a much more reflective attitude and improving communication with colleagues and staff:

> *'I learnt so much during the process of mediation and really thinking about the situation subsequently, I handle lots of things very, very differently now...one of the best things is to try and step outside...and be an observer...that is priceless...I have issues regularly I guess with people and I try and use that sort of technique to step outside of, better assess the situation and also I'm much more open to talking to people about issues...I'm just more aware of other peoples' perspective. (Manager – Private Sector)*

Furthermore, a public sector manager, who had been initially sceptical about mediation found that it forced him to think about the importance of listening and considering the perspective of others. He had subsequently decided to engage in post-graduate study in coaching:

> *'I kind of felt okay maybe I need to think about one or two things, I think it really struck me about the power of listening to what that person said, I got the opportunity to ask some questions I suppose as to why do you think that? What is it I do? So I wanted to do some low level coaching and then the opportunity came up, I did okay on that and the opportunity came up to go to the next level...So I then went onto do a post-graduate study and I have to say now if I was asked about mediation again I don't think there would be a hesitation. Purely from the perspective that, trying to understand the issue, trying to get to the roots, trying to see it from that person's perspective, irrespective of whether they are right, wrong or whatever, if you can deal with that that does help you to put out another whole load of fires that are there.'*

4.7.2 Impact on organisational approaches to conflict

Unfortunately, our research provided little evidence that the use of mediation had led to any deeper organisational learning. In most cases, mediation was a pragmatic response to a particular problem. Participants believed that senior management were not particularly interested as long as the dispute did not cause them any further difficulties. One respondent explained that the parties had agreed to inform the senior manager who had suggested mediation of the positive outcome of the process, but the e-mail was never acknowledged. Another commented that the attitude of others in the organisation was:

> '...they could chuck some money at it and resolve it and great and we asked for that, they ... we gave them a solution so they said, 'Yeah, pay for it just to get it sorted'.

It should also be acknowledged that there could be longer term negative consequences for participants in mediation. As discussed above, in many cases mediation focussed on finding a practical solution to a dispute. However, scars from the process still remained, leaving some respondents with a sense of unfinished business. This was eloquently explained by a senior manager who had been accused of bullying:

> 'I think the other thing that the mediation didn't do was provide closure, in some respects. You could say we got closure, because it went through grievance...But, for me, that's not closure, I'm still left with, actually, I was the one that was accused of bullying and never really feeling I got any closure on that one...I don't think the fallout was discussed, at all... the aim is, you get the person back to work...So, therefore, actually, then, my feelings don't count.'

In some respects, this emphasises the lack of follow-up in most cases from HR or senior management. A number of interviewees were frustrated that what they felt were valuable lessons were not necessarily being learned by the organisation. Of course, this is hampered by issues of confidentiality, but given the investment undertaken by the organisations in commissioning mediation and the emotional investment on the part of participants, this would appear to be a missed opportunity.

5. DISCUSSION AND CONCLUSION

The last five years have seen a significant increase in the interest in workplace mediation in the wake of the Gibbons Review of 2007. Indeed mediation has provided a central strut of the Coalition's government approach to employment dispute resolution. The government sees workplace mediation as having the potential to promote the early resolution of disputes and improve the culture of conflict management within UK workplaces (BIS, 2011). There is also a growing (although still small) body of research evidence which has provided important insights into the use, application and impact of workplace mediation (Bennett and Ridley Duff, 2011; Latreille, 2011; Saundry et al., 2010; Saundry and Wibberley, 2012; Seargeant, 2005).

However, there has been limited research into the perspectives of disputants themselves and also the nature and sustainability of mediation outcomes. This is hardly surprising given the sensitive and (often) personal nature of the issues involved and also the centrality of confidentiality to the mediation process. While the research reported in the paper is constrained to some extent by the same issues, it represents an important step in building the evidence base in this area.

Before discussing our findings, it is important to fully acknowledge the limitations of the study and hence emphasise the need to view the conclusions set out below with some caution. The sample is made up of just 25 cases and therefore cannot claim to be representative of the wider population of disputants. In addition the sample was self-selected which meant that in most cases, we only interviewed one of the disputants and were therefore unable to develop a rounded view of the disputes within the sample. Furthermore, it could be suggested that those agreeing to discuss their experiences are more likely to have strong opinions of mediation - either high levels of satisfaction or very negative views of the process. However, this did not appear to be the case and the overall profile of the sample was relatively indicative of Acas' own post mediation evaluations conducted in 2010/11 and 2011/12 (Acas, 2011; 2012). Therefore, while one must be cautious in drawing generalizable conclusions from the data, we suggest that it does provide a number of important insights which are relevant to the on-going debate over the use and impact of workplace mediation.

An important issue within this debate is the scope of workplace mediation. In particular, some suggest that while mediation is an effective way of dealing with interpersonal disputes, its use in disciplinary issues, or disputes involving a clear breach of employment rights, is more problematic. Within our sample, disputes rarely involved simple or straightforward interpersonal matters. Instead, most were laced with struggles over performance management and consequent issues of managerial authority and sometimes behaviours that would routinely lead to disciplinary action. Most disputes may have involved a clash of 'personalities'; however, this appeared to be as a much a function of the dispute as opposed to a trigger. It is also important to note that there was little evidence that disputes involving performance issues were more or less likely to result in a sustained agreement.

Therefore, our research suggests that mediation may have a wider application than previously thought. Nonetheless, there was clear concern on the part of managers as to whether performance issues could be adequately handled through mediation processes. Acknowledgement of this problem and the development of strategies for approaching and dealing with such issues is arguably something that mediators and mediation providers need to consider. At the same time, we would argue that it is important that mediation is not used to shift the responsibility for conflict from the organisation to the individual. For example, there is a danger that in cases that involve bullying, harassment or discrimination that an apparent settlement through mediation can mask the continuation of behaviours that are unacceptable and require more formal action.

There was little doubt that managers often felt under pressure to agree to mediation. This echoes Seargeant's (2005) investigation of mediation in SMEs which found that many individuals were reluctant participants. Within our sample, respondents were concerned that a refusal to take part could lead to criticism or possibly formal disciplinary action. This suggests that we perhaps need to adopt a realistic (and possibly pragmatic) view of the voluntary principle of mediation. It is important to note that in some cases, a lack of enthusiasm for the process did not prevent a positive outcome. This was perhaps less likely where individuals were simply going through the motions of mediation to forestall criticism from their superiors. Clearly, when deciding whether mediation is appropriate, the extent of potential co-operation with the process is crucial, but in reality, mediation may still be warranted even if one or both of the parties are reluctant participants.

In such cases advice and support would appear to be particularly important. This was a major problem within our sample. There was no criticism of the mediators in this respect but organisations themselves sometimes left participants feeling isolated. This was made more difficult by confidentiality issues which made it impossible for disputants to confide in, or seek support from, colleagues and/or line managers. Support was more extensive where mediations were conducted in-house or in organisations that had in-house mediation capacity. However, it was clear that robust support and information reduced defensive attitudes and managed unrealistic expectations, providing a basis for resolution.

The findings also question how far mediation is used as a means of *early* dispute resolution. Within our sample, even where it was used prior to the onset of formal procedures, it tended to occur only after both sides had developed quite entrenched positions. It was generally seen as a last resort – when managers or HR practitioners had exhausted all other possibilities. This may reflect the nature of the sample in that disputes referred to Acas and other external providers may be more likely be protracted and difficult (see also Latreille, 2011). Despite this, there does appear to be a contradiction at the heart of the evidence. While most interviewees felt that mediation would be more effective if used at an earlier point in the dispute when parties were perhaps more open to compromise, they also found going through mediation stressful and daunting – in short not something to be entered into unless absolutely necessary. It could be argued that this suggests a need for a two-speed mediation process. For example, a relatively light touch informal discussion facilitated by an individual with mediation skills and knowledge could be deployed quickly to nip emerging disputes in the bud, while the more extended and formal mediation process could be reserved for more difficult and complex disputes.

Perhaps most importantly, the data provides key insights into the outcomes of mediation. As outlined above, mediation research to date has generally reported high rates of success and satisfaction (McDermott et al. 2000; Bingham et al. 2002). However, while most mediations in our sample led to an agreement between the parties, the extent to which these represented sustainable resolutions was much less clear. A number broke down relatively quickly with suggestions that parties were simply going through the motions in order to complete the process, again reflecting Seargeant's (2005) earlier study. Furthermore, some interviewees expressed frustration that they felt rushed or pushed towards an agreement with insufficient attention being given to underlying issues.

To a certain extent, this casts doubt on some of the more optimistic claims of mediation success rates. A number of the cases that we examined would probably have been seen as resulting in an agreed outcome, even though there was little likelihood of that agreement being sustained. However, it could also be argued that success can be defined in different ways and that to expect deep underlying conflicts to be resolved through mediation is unrealistic. In some cases, finding a pragmatic way of individuals

being able to work together or at least stay in the organisation may be the best that can be achieved. Furthermore, the benefits of mediation can extend beyond an agreement or settlement – even where there is little chance of a sustained resolution, the simple fact that individuals have an opportunity to voice their concerns and exert some control over their situation can help to maintain the employment relationship.

The evidence in relation to the wider impact of mediation was mixed. There were signs that participation in mediation could shape attitudes among managers who had been subject to complaints and accusations, causing them to reflect on their management style and change their approach to conflictual situations (see Kressell, 2006). For some individuals who had made complaints, mediation could be an empowering experience reducing or removing the need for individuals to seek redress through formal procedures. Against this, those respondents who looked to mediation to provide a source of justice and/or closure were generally disappointed. Furthermore, there was little evidence that the mediations that we examined had broader organisational effects – this was partly due to confidentiality which provided something of a barrier to organisational learning. But there was also a sense that senior management too often saw mediation as a pragmatic way to dispose of difficult issues and had little longer-term interest as long as the dispute did not resurface.

Overall, this research provides crucial insights into mediation processes and outcomes. While it identifies a number of positive benefits, it also underlines the impact on those who participate and points to the complexity of the issues that mediators confront and the ambiguity of consequent outcomes. In doing this it suggests that organisations and mediation providers need to ensure that participants are supported and also that careful consideration is given to when mediation is used and how it is designed. Furthermore, this small study highlights the need for more detailed research which not only seeks to assess the longer term sustainability and consequences of mediated settlements but also explores the way in which mediation interacts with conventional disputes procedures and broader processes of conflict management.

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