

Employment Relations Comment

October 2013

Mediation – whose story is it anyway?

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In Greek theatre, the purpose of the chorus was to provide background information on characters and themes in order to help the audience follow the performance more clearly. For many years, academics and commentators have provided a similar role in offering commentary and interpretation on workplace mediation. But with the publication of a new report on the participant's experience of mediation, is it time we listened more carefully to what the individual characters have to say?

There is a lot of discussion at the moment about workplace mediation, from those wishing to promote its benefits and wider application to those offering critiques. Most of this is very welcome, as it signals a growing interest in alternative forms of dispute resolution and a greater depth of understanding. However, although there has been much discussion about, for example, what kind of disputes mediation might be used to resolve, or how workplaces can introduce mediation arrangements, much less has been heard about the actual customer experience. What do people involved in mediation – who are at the centre of often fraught and complex emotional dynamics – really feel about the process and how it works?

Despite the positive press it gets in many quarters, including from those who have actively been engaged in providing mediation at work, overall it is not widely used. Figures from the latest Workplace Employment Relations Study show that only 7% of workplaces had used mediation to resolve a dispute in the 12 months prior to the survey taking place. As the report suggests, mediation “may not be embedded in the culture of conflict handling”. Why not? What is holding it back?

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Mediation seems to make sense, from an individual and organisational point of view. It is voluntary, confidential and less process-driven and more behaviourally-driven than more traditional internal procedures. Critically, in mediation, the solutions are owned by the parties, with most mediators adopting a facilitative approach. It is a process that also appears to be ideally suited to the modern-day interest in the relationship between individual line managers and their staff.

Mediation is recognised as being particularly effective at dealing with 'relationship breakdown'. Many relationships at work can be quite emotive – for instance around managing performance – and the breakdowns can be complicated by the number of legal pegs individuals have to hang their discontent on (tribunals are currently responsible for sixty-seven jurisdictions). Many individual disputes would appear to be more suited to the 'moral justice' mediation offers than to employment law, but the complexity of many cases – often involving, for example, allegations of bullying or harassment – can make them quite difficult to unravel.

A recently updated guide from Acas and CIPD, 'Mediation: an approach to resolving workplace issues', is quick to point out that having a successful mediation arrangement at place in work is more about embracing a cultural change than simply introducing a new procedure. Although mediation often has identifiable stages – typically involving separate meetings with the parties, followed by a joint meeting and, once the issues have been fully explored, a written agreement – the process can equally be a more intuitive than mechanistic process. The overall aim is to maintain the employment relationship rather than identify rights and wrongs.

Mediation is often described as being more 'informal' than grievance and disciplinary procedures. This may reflect the fact that is less adversarial. As one respondent

to a 2008 CIPD survey said: "Too much formalisation leads to escalation of problems which lead to stress for all concerned, and costs." But this sense of informality should not be misinterpreted as producing 'weaker' outcomes. Often, when working at its best, mediation can dig quite deep into personal workplace problems. Indeed, many commentators argue that, by getting at the deeper underlying problems, mediation has the power to be truly 'transformative' in the way it changes individual behaviour and attitudes.

The majority of parties in the recent Acas research paper, 'Workplace mediation: the participant experience', took part in facilitative mediation. Interestingly the process was criticised by some as being too challenging and by others for not looking deeply enough at underlying issues. This may reflect the lack of established norms about what parties can expect when they enter mediation. Although the majority of the twenty-five mediations in the report were successful, the evidence from participants does raise some serious questions. Primarily, are our expectations of mediation too high? Are we realistic about the skills and resources that are needed to make it successful, particularly when it comes to training and follow-up action? And are most participants likely to have the emotional resilience and maturity it takes to make it work?

Almost all of the participants interviewed in the research found mediation "extremely challenging" and used words such as "draining", "horrible" and "awful" to describe how it felt. There were clearly issues around how mediation affected the balance of power between managers and staff. Sometimes it was perceived by managers as undermining their managerial responsibility, for example around tackling performance issues. Other times it was seen by employees to legitimise institutional failings, by apportioning responsibility for a relationship breakdown with individual employees and not looking at

bigger, organisational problems, for example, around failures in communication. Moreover, in most of the cases analysed in the report, mediation was used as a last resort.

Nevertheless, the report does identify some notable successes, particularly when mediators got individuals to reflect more deeply on their behaviour. As one manager said of the mediator he worked with: "she did two things that were 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 we got a chance..., it's like watching kids argue isn't it?" Respondents were also 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.

The report does, however, identify two fundamental problems that might stand in the way of a more widespread use of mediation. Firstly, the complexity of so many of the issues mediation attempts to address, means that the whole process needs highly skilled mediators and a great deal of trust and emotional resilience. As one manager accused of bullying said: "it was actually an opportunity for someone to playback at quite a personal level ...how they interpreted the behaviours that I was displaying." This degree of psychological analysis has to be handled very sensitively and tactfully and, in common with psychological therapies, to be successful and change behaviour long-term, it needs follow-up sessions. This was something the report found was often missing, with many organisations regarding the issue closed once the mediation had finished. The cost and inconvenience of further interventions may have inhibited organisations without a trained in-house mediator, but it left many participants feeling sceptical about the sustainability of any progress made, with a fear that old behaviours would soon re-emerge further down the line.

Secondly, the confidentiality of the process is highly significant in such an emotional setting. Because mediation exists in a kind of sealed box, there is no real opportunity for organisational or team learning. It also means that participants often feel isolated. Being left to deal with very powerful emotions on your own can be quite intimidating, as one employee reported: "I wouldn't want 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." This isolation was sometimes compounded by administrative delays in starting mediation which left some participants feeling demoralised. Another consequence of the confidentiality is that the benefits of mediation do not get the chance to influence an organisation's culture, or help spread a deeper understanding of psychology.

Organisations may need to become more open about talking about emotional aspects of relations at work. Otherwise, mediation may remain thwarted by the perception that it is 'complex in a box'. In other words, it requires too much emotional resilience to be truly effective, in terms of what it takes out of an employee to disclose a personal problem and work towards a resolution in such a closed, private and, sometimes, unsupported setting.

Ultimately, mediation is about exploring individual stories and perceptions. By considering and learning from the experiences of the participants in this report, lessons can be learnt about how and when mediation works best and the support and training employees and managers need to make it a success. Either way, mediation is clearly worthy of more widespread interest and debate, not least because of the potential it has to radically change attitudes, and, consequently, prevent future conflict. As one manager in the report commented: "I handle lots of things very differently now ... one of the best things is to try and step outside ... and be an observer ... that is priceless ..."