



Survey report

Workplace mediation

How employers do it

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Summary of key findings

This report is based on a survey exploring how organisations use mediation. There were a total of 766 responses, including 327 by people whose organisations had used mediation. It is the responses of these 327 people that are mainly reflected in this report. However, those people whose organisations have no experience of mediation were asked why they thought this was, and their responses on this issue are also included in the report.

Handling conflict

- The most widely adopted practice for handling conflict is training of HR managers (80%).
- About half of respondents say that an external mediator is used when needed.
- Two in five say that line managers are trained to deal with conflict.
- Thirty-five per cent of organisations train either managers, employees, or employee representatives to act as mediators.
- Fifty-one per cent use external mediation.

Effectiveness of different methods of resolving conflict

- Asked to identify up to three methods most likely to be effective in resolving disputes, more than nine out of ten organisations see informal discussion between those affected as one of the most effective methods.
- Mediation is seen as the next most effective method (76%), while almost two out of three see grievance procedures as among the most effective.
- Compromise agreements are regarded as one of the most effective methods by 23% of respondents.

Employers' use of mediation

- Two out of three respondents report that mediation has been used between one and five times in the last 12 months.
- Sixteen per cent have not used it in the last three years and 17% have used it more than five times.

- Nearly half of respondents say their organisation is now making more use of mediation than it did three years ago, and a further 20% did not make use of mediation at all three years ago.

Business benefits

- The benefit most frequently mentioned is that of improving relationships between employees (83%), followed by reducing or eliminating the stress involved in using more formal processes (71%).
- A majority of organisations that currently make use of mediation do so primarily for what might be called 'soft' or cultural reasons.
- Almost half of respondents (49%) see mediation as giving benefit in avoiding the costs of defending employment tribunal claims.

Which issues are the most suitable for mediation?

- The most suitable issue for mediation is judged to be relationship breakdown.
- Bullying and harassment come second, with three in four respondents seeing them as either very suitable or suitable to be dealt with by mediation.
- Discrimination issues are also judged suitable or very suitable for mediation by a majority of respondents.

What are the outcomes of mediation?

- Mediation is said to follow an actual or threatened employment tribunal (ET) claim in 16% of instances, but was not related to a claim in 83% of cases.

- In 9% of instances where mediation was used, ET claims were withdrawn.
- In more than half of cases, both parties stayed in the same job following mediation.
- In almost nine out of ten cases, respondents feel that the issues the mediation was designed to address were resolved either partly (58%) or completely (30%).

Why don't more organisations make use of mediation?

- Of the 766 respondents who accessed the survey, more than half (57%) say their organisation had no experience of using mediation to deal with issues affecting individual employees.
- Nearly two out of three of these respondents say they have no problems, or none that would suit mediation.
- One in ten respondents don't believe it's appropriate to involve third parties in disputes at work.
- Significant minorities either feel mediation is too expensive or don't know any mediators, or an organisation that helps with mediation.

What inhibits organisations that do use mediation from making more use of it?

- Cost is seen as the biggest single issue inhibiting the greater use of mediation.
- Lack of trust by employees is also an important factor referred to by 16% of respondents.
- Lack of understanding about the process (21%), lack of interest by senior management (13%) and difficulties in finding a mediator (12%) are also significant factors.
- Resistance by line managers is seen as inhibiting the use of mediation by 12% of respondents.

Building mediation into workplace procedures

- Fewer than one in ten organisations currently incorporates mediation in the employment contract.
- Grievance and disciplinary procedures are the main instruments by which organisations communicate their policy towards mediation.
- Stand-alone mediation policies are relatively unusual (13%).
- Mediation is written into policies on diversity, harassment or bullying in nearly half (46%) of organisations.

- Two in five respondents see it as undesirable for an employee to be accompanied during mediation.

Costs of using mediation

- Two in five organisations have incurred costs in using mediation, in addition to management time; more than half have not.
- Of those organisations that have incurred costs in using mediation, 75% say they have been incurred mainly in using a mediation service, while the majority of the rest (13%) say they were incurred mainly in taking legal advice.
- Others say costs were incurred mainly in training mediators (5%), use of accommodation at a neutral venue (5%) and travel expenses (2%).

Use of external mediation

- More than half of organisations (56%) have used an external mediator; 36% have not.
- Almost nine out of ten respondents that have used an external mediator are either very (47%) or fairly (41%) satisfied with the service provided.
- Three-quarters obtained their services through advice from or contact with either Acas (27%), a commercial organisation specialising in mediation (25%) or a business contact or colleague (25%).
- One in four respondents used a professional mediator from Acas, one in two used an organisation other than Acas, while 10% used an HR consultant.

Promoting mediation

- Twenty-five per cent of respondents say that communicating the aims and benefits of mediation to all staff is the single most important thing that could be done to promote the wider use of workplace mediation.
- Other factors identified by respondents are training managers in the use of mediation (15%), with a further 7% opting for (unspecified) training.
- Eleven per cent of respondents focus on the need to raise awareness of how to access mediation, with a further 6% emphasising the importance of easy access to mediation.

Employers' use of mediation

Managing conflict

Respondents were asked which practices are adopted in their organisation for handling people problems and conflict.

Table 1: Which practices are adopted in your organisation for handling people problems and conflict?

	%
HR managers are trained to deal with conflict	80
An external mediator is used when required	51
Line managers are trained to deal with conflict	43
An investigator is appointed to report on an employment conflict	27
Employees are trained to act as mediators	17
Managers are trained to act as mediators	17
Employee representatives are trained to act as mediators	12
An independent third party considers claims... (arbitration)	10

By far the most widely adopted practice for handling conflict is training of HR managers (80%). About half of respondents say that an external mediator is used when required, and two in five say that line managers are trained to deal with conflict. Investigations to establish the facts are used by more than one in four organisations, and arbitration by one in ten.

Significant minorities of respondents reported that managers (17%), employees (17%) and employee representatives (12%) are trained to act as mediators. These are each methods of which the public sector appears to make significantly more use than the private or voluntary sectors.

Further analysis of the responses shows that 35% of organisations train either managers, employees or employee representatives to act as mediators, while 15% undertake such training and also use an external mediator when required.

As a result of their experience of mediation, 59% of organisations have provided additional training for managers and 16% for employee representatives. Sixty-three per cent have revised disciplinary or grievance procedures, or both.

Frequency with which mediation is used

Table 2: On how many occasions in the last 12 months have individual issues been referred to mediation?

	%
None	16
1-5	66
6-10	12
11-15	2
16-25	2
26-50	1
50+	-

Asked on how many occasions individual issues have been referred to mediation in the last 12 months, two out of three respondents report that mediation has been used between one and five times. Other responses are almost evenly split between those who report that no issues have been referred to mediation, and those reporting issues have been referred on more than five occasions. Unsurprisingly, larger organisations are more likely to report more frequent references.

Changes in use of mediation

Table 3: Looking back over the last three years, how much use would you say your organisation now makes of mediation?

	%
A lot more use	15
Slightly more use	32
About the same use	21
Slightly less use	2
A lot less use	2
Organisation did not use three years ago	20
Organisation has abandoned the use of mediation	1

Nearly half of respondents say their organisation is now making more use of mediation than it did three years ago; a further 20% did not use mediation three years ago; while only 4% say they are now making less use of it. Two in five respondents in the public sector report making slightly more use of mediation, while one in six report making a lot more use of it.

How often is mediation likely to be suitable?

Table 4: When workplace problems arise, how often do you believe mediation is likely to be suitable?

	%
In most cases	21
In some cases	61
In only a minority of cases	18

Three in five respondents see mediation as suitable for resolving workplace problems in some cases, with the rest fairly evenly divided between those who see it as suitable in most cases and those who see it as suitable in only a minority of cases. Those where the most recent mediation had resolved the issue either completely or in part were more likely to say that mediation was suitable in most cases.

Business case for mediation

What are the benefits of using mediation?

Table 5: What are the benefits of using mediation?

	%
To improve relationships between employees	83
To reduce or eliminate the stress involved in using more formal processes	71
To retain valuable employees	63
To reduce the number of formal grievances raised	57
To develop an organisational culture that focuses on managing and developing people	55
To avoid costs in defending employment tribunal claims	49
To reduce sickness absence	33
To maintain confidentiality	18

The benefit most frequently mentioned is that of improving relationships between employees (83%), followed by reducing or eliminating the stress involved in using more formal processes (71%). Together with developing an organisational culture that focuses on managing and developing people (55%), this is evidence that a majority of organisations that currently make use of mediation do so primarily for what might be called 'soft' or cultural reasons. However, almost half of respondents (49%) see benefit in avoiding the costs of defending employment tribunal claims, while 57% say that mediation reduces the number of formal grievances raised.

One in three of all respondents say that a benefit of mediation is to reduce sickness absence, while the proportion in the public sector who say this is almost twice that in other sectors. Maintaining confidentiality is seen as a benefit by 37% of respondents in organisations employing 50 or fewer employees, but by

only 18% in organisations employing between 5,000 and 25,000 and as few as 4% in organisations employing more than 25,000.

Organisations that use mediation to develop culture or relationships are more likely to report that their most recent experience of mediation has led to the issue being resolved, either completely or in part.

Effectiveness of mediation

Table 6: Which of the following methods are most likely to be effective in resolving workplace conflict?

	%
Informal discussion between those affected	94
Mediation	76
Grievance procedures	64
Compromise agreement	23
Acas conciliation/COT3	6
Employment tribunal hearing	2

In terms of their effectiveness in resolving conflict, more than nine out of ten organisations see informal discussion between those affected as one of the methods most likely to be effective. Mediation is the next most effective method (76%), while almost two out of three see grievance procedures as among the most likely to be effective. Compromise agreements are regarded as effective by 23% of respondents, 6% identified Acas conciliation and 2% tribunal hearings as effective.

Issues most suitable for mediation

Table 7: What issues is mediation most suitable for dealing with?

	% saying suitable or very suitable
Relationship breakdown	86
Bullying or harassment	74
Discrimination on grounds of race	55
Discrimination on grounds of sex	54
Other forms of discrimination	48
Conditions of employment	36
Discipline	31
Pay	28
Dismissal	26

There is a clear hierarchy of issues in terms of their perceived suitability to be dealt with by a process of mediation. Outstandingly the most suitable for mediation is judged to be relationship breakdown. This underlines the value of mediation as a method of leading parties to re-evaluate their feelings towards one another, where financial compensation is less likely to be appropriate. Bullying and harassment come second, with three in four respondents seeing them as either very suitable or suitable to be dealt with by mediation. Discrimination issues are also judged suitable or very suitable for mediation by a majority of respondents. Issues about pay and conditions are in general less likely to be seen as suitable for mediation.

The scores for discipline and dismissal are particularly interesting. Managers are unlikely to want to surrender their discretion in relation to disciplinary issues where they believe that a point of principle is at stake. However, the line between disciplinary and grievance issues may in specific instances become blurred, in which case the employer may prefer to tackle underlying relationship issues by means of mediation rather than impose a disciplinary solution. Where an employee has been dismissed, or is threatened with dismissal, the relationship will often either be at an end, or levels of mutual trust will be very low, so that mediation may be considerably less likely to have a positive outcome.

What are the outcomes of mediation?

Table 8: What actions were taken following mediation?

	%
Both parties stayed in the same job with partial resolution of the issue	37
Both parties stayed in the same job with full resolution of the issue	27
One or both parties left the organisation	18
One or both parties withdrew a claim to an employment tribunal	9
One or both parties moved to another job within the organisation	7
One or both parties made a claim to an employment tribunal	3
One or both parties signed a compromise agreement and remained in the organisation	3
Other	8

In almost nine out of ten cases, respondents feel that the issues the mediation was designed to address were resolved either partly (58%) or completely (30%). Complete resolution of issues is reported in a higher proportion of cases where internal mediation is used.

Although mediation was said to follow an actual or threatened employment tribunal (ET) claim in only 16% of instances, in 9% of instances ET claims were withdrawn, suggesting that, in the majority of those cases where mediation is used, it is effective in resolving issues that would otherwise have had to be resolved at a tribunal.

It is notable that, in more than half of cases, both parties stayed in the same job following mediation, with either full or partial resolution of the issue.

What inhibits the wider use of mediation?

Why don't more organisations make use of mediation?

Of those respondents who accessed the survey, more than half (57%) say their organisation has no experience of using mediation to deal with issues affecting individual employees (excluding statutory conciliation by Acas). These respondents were asked why they thought their organisation had not used mediation.

Table 9: Why don't some organisations use mediation?

	%
Haven't had any problems that would suit mediation	49
Considering using mediation	23
Too expensive	15
Haven't had any problems	15
Don't know any mediators	15
Don't believe it's appropriate to involve third parties	11
Don't believe it would work	4
Not interested in mediation	3

Nearly two out of three respondents say they have no problems, or none that would suit mediation. Some of these organisations are presumably either small, or particularly well managed, or lucky. In other cases, respondents may simply have failed to recognise issues that could usefully have been dealt with by mediation.

Other responses suggest more principled objections to mediation, including one in ten respondents who don't believe it's appropriate to involve third parties in disputes at work. However, significant minorities either feel mediation is too expensive or don't know any mediators, or an organisation that helps with mediation (15% in each case). Reliable information and advice about sources of mediation could clearly be helpful in these latter cases.

Encouragingly, more than one in five organisations that have not used mediation say they are considering doing so.

What inhibits organisations from making more use of mediation?

Table 10: What inhibits organisations from making more use of mediation?

	%
Cost of using mediation	22
Lack of understanding about the process	21
Lack of trust in mediation process by employees	16
Lack of interest by senior management	13
Difficulties in finding a mediator	12
Resistance from line managers	12
Risk of undermining management's ability to use disciplinary sanctions	9
Lack of support from workforce/trade union	5

Respondents whose organisations have experience of using mediation were asked if they are inhibited from making more use of it by a range of factors.

Cost is seen as the biggest single issue inhibiting the greater use of mediation, but is significantly more important in the public and voluntary sectors (27%) than in the private sector (15%). Lack of trust by employees is also an important factor (referred to by 16% of respondents) – substantially more important than lack of support from the workforce or trade union (5%). Where employees lack trust in the process, mediation is less likely to have been seen as successful in resolving issues referred to it. Employee mistrust in the mediation process is a significantly more influential factor in the public sector (20%) than in the private sector (12%).

Lack of understanding about the process (21%), lack of interest by senior management (13%) and difficulties in finding a mediator (12%) are other significant factors inhibiting the use of mediation. Resistance by line managers is seen as inhibiting the use of mediation by 12% of respondents.

Managing mediation

Building mediation into workplace procedures

Table 11: Is the use of mediation written into employment contracts or procedures?

	%
Grievance procedures	58
Procedures on diversity, harassment or bullying	46
Disciplinary procedures	36
Employee handbook	31
Stand-alone mediation policy	13
Statement of employment particulars/employment contract	8
Collective agreement	4

The Gibbons Review recommended that employer organisations should consider encouraging the use of mediation as a standard provision in contracts of employment. Respondents were asked if the use of mediation is written into employment contracts or workplace procedures.

Fewer than one in ten organisations currently incorporate mediation in the employment contract. Grievance and disciplinary procedures are the main instruments by which organisations communicate their policy towards mediation. Stand-alone mediation policies are relatively unusual (13%). This suggests that most employers still see mediation primarily as a response to conflict, rather than as an integral part of the management culture.

It is, however, encouraging that mediation is seen to be a natural component of policies on diversity, harassment or bullying in nearly half (46%) of organisations. This is particularly the case in the public sector, where 62% of respondents say mediation is written into such procedures. These positive findings reinforce the priority given to the same issues in response to the question about which issues are most suitable to be dealt with by mediation (see Table 7).

Recent experience of mediation

Respondents were asked about their most recent experience of mediation. Mediation was used in response to the threat of an ET claim in only 8% of cases, and after an ET claim has been lodged with the employer in another 8% of cases. In the remaining 83% of cases, mediation was *not* related to an ET claim at all.

Table 12: Did the most recent experience of mediation take place...?

	%
In response to the threat of an employment tribunal	8
After an ET claim had been lodged by the employee	8
It was not related to an ET claim	83

In three out of four cases, use of mediation is initiated by the HR department, with line managers responsible for initiating its use in 12% of cases. In just over half of all cases, the mediation is between one or more employees and their manager.

The amount of time spent on the process of mediation is fairly evenly distributed between cases where mediation took less than a day (22%), one day (28%), two days (22%) and longer than two days (28%). Mediation tends to take more time in larger organisations, in the public sector, and where an external mediator is used.

Table 13: How much time is spent on the process of mediation itself?

	%
Less than a day	22
1 day	28
2 days	22
More than 2 days	28

Costs of using mediation

Two in five organisations incur costs in using mediation, in addition to management time.

Table 14: How are costs incurred in relation to mediation?

	%
Use of a mediation service	76
Legal advice	13
Training mediators	5
Cost of accommodation at a neutral venue	5
Travel expenses	2

Of those organisations that incur costs in using mediation, 75% say they are incurred mainly in using a mediation service, while the majority of the rest (13%) say they are incurred mainly in taking legal advice. Others say costs are incurred mainly in training mediators (5%), use of accommodation at a neutral venue (5%) and travel expenses (2%).

By way of comparison, the CIPD survey of conflict at work in 2007 found that:

- businesses spend almost ten days on average dealing with an individual tribunal claim (including 7.7 days senior managers' time)
- 33% of employers also reported non-financial negative effects of claims.

Line managers' attitudes

In answer to a question about how line managers feel about the use of mediation to resolve workplace issues, responses are fairly evenly split between those saying managers support the use of mediation (29%), support its use in principle but can be reluctant to agree in practice (29%) and have a neutral stance (24%). Just 2% report that line managers are hostile to the use of mediation. Organisations where line managers support the use of mediation are more likely to have made increased use of mediation over the last three years.

Use of external mediation

More than half of respondents (56%) say they have used an external mediator. Almost nine out of ten respondents that have used an external mediator are either very (47%) or fairly (41%) satisfied with the service provided.

Of those who use an external mediator, three-quarters obtain their services through advice from or contact with either Acas (27%), a commercial organisation specialising in mediation (25%) or a business contact or colleague (25%). Thirteen per cent of those who use an external mediator obtain their services through a professional adviser, such as a lawyer.

Having obtained advice about where to find an external mediator, one in four respondents use a professional mediator from Acas, one in two use an organisation other than Acas, 10% use an HR consultant, 6% use a lawyer, 2% use an independent/trained mediator, and 3% use someone else.

Should employees be accompanied during mediation?

Table 15: Is it desirable for an employee to be accompanied during mediation?

	%
Yes, by a trade union representative	15
Yes, by another employee representative	19
Yes, by a friend or colleague	25
Yes, by a lawyer	2
No, it is undesirable	39

One of the practical benefits seen by respondents in using mediation (see Table 5) is its relative informality. If employees are accompanied in the mediation process, this may add to the degree of formality, and to the time and costs involved.

Not surprisingly, therefore, two in five respondents see it as undesirable for an employee to be accompanied during mediation. Of the others, most believe an employee should be accompanied by a trade union or other employee representative, while a significant minority (25%) believe they should be accompanied by

a friend or colleague. Only a tiny percentage (2%) believe that they should be accompanied by a lawyer, with none in either the public sector or the larger organisations (employing more than 5,000) responding in this way.

Attitudes towards mediation

Table 16: Attitudes towards mediation

Mediation improves line managers' ability to manage conflict.	3.8
There is a clear business case for organisations to use mediation.	4.1
More widespread use of mediation will reduce the volume of ET claims.	3.7
Use of internal mediation has a positive impact on workplace culture.	3.9
Some employees see mediation as denying them access to justice.	2.8
Some line managers see mediation as interfering with their authority.	3.1
Mediation produces win-win solutions that leave both parties satisfied.	3.6
Use of mediation shows that organisations are committed to recognising individual dignity.	4.0
Mediation improves parties' understanding of each other's position.	4.2

Note: figures represent mean scores, where 'strongly agree' scores 5 and 'strongly disagree' scores 1.

Attitudes towards mediation among organisations with experience of using mediation were very positive. Strongest levels of agreement were for the statements that 'Mediation improves parties' understanding of each other's position', 'There is a clear business case for organisations to use mediation' and 'Use of mediation shows that organisations are committed to recognising individual dignity and showing respect for their employees'.

The percentage of respondents agreeing with the suggestion that 'some employees see mediation as denying them access to justice' was smaller than that who disagreed. Attitudes among the smallest organisations, employing fewer than 50 people, were consistently more positive than in larger organisations.

Respondents in private sector services were significantly less likely than those in other sectors to believe that mediation improves parties' understanding of each other's position.

The significant level of support for the proposition that 'Mediation produces win-win solutions that leave both parties satisfied' is reflected in the high percentage of respondents who said that both parties were able to stay in their jobs following mediation (see Table 8).

Learning about good practice

Respondents were asked what are the most important lessons learned about the use of mediation or about running a mediation scheme.

The most important lesson for most is the need for all parties to buy in to the process of mediation. One respondent commented on '*the need to have line management buy-in to the mediation scheme and senior management support to ensure mediators are trained and released from normal duties to carry out mediation*'.

There was also strong support for the need for mediators to be independent/objective/impartial and well trained.

Some respondents advised against assuming that mediation could be an all-purpose solution, still less a 'quick fix':

'It can be very successful in certain situations but not all issues can be dealt with by mediation.'

'It is only an additional tool available to resolve workplace conflict and is not something that can be offered wholesale in every case. The climate of the organisation needs to be appropriate already: it will not work if...there is an undercurrent of mistrust. Something to launch when things are going well, not when they start to go, or are already, not healthy!'

However, other respondents felt the most important lesson they had learned was about the effectiveness of mediation as a means of resolving disputes:

'It works and brings about cost-effective resolutions.'

'It encourages individuals to understand other people's viewpoint and knowledge of the impact your own actions have on others.'

'Mediation helps to keep the channels of communication open so that they do not escalate to formal procedure and costly claims.'

'How powerful it can be in achieving a resolution and leaving individuals with their dignity intact.'

What works?

Other respondents offered advice on 'what works', based on their own experience of managing mediation:

- *'Use the process early – leaving it until there is no other course of action generally means that trust has broken down and mediation is unlikely to be effective.'*
- *'Set the ground rules about behaviour during the meeting.'*
- *'Trust and confidentiality are crucial.'*
- *'As a mediator, leave it to the parties to solve their own problems.'*
- *'More role-playing with real situations during training.'*
- *'Ensure you continue to promote the services on a regular basis – try different methods of communication to ensure messages are heard.'*

The corollary of the need for all parties to buy in to mediation was the insistence that mediation must be voluntary. *'There is no point in anyone taking part if they feel they have been "conscripted" – they need to understand the process and willingly engage.'* The importance of frank discussion, honesty and openness were underlined.

The basic argument for making use of mediation was succinctly put by one respondent:

'A lot is gained from people talking about their problems before an employee with a grievance goes to the law. Many conflicts are escalated by external involvement. When employees go for external advice additional claims are always added... Too much formalisation leads to escalation of problems, which leads to stress for all concerned and costs.'

Promoting mediation

Table 17: What is the single most important thing that could be done to promote the wider use of workplace mediation?

	%
Communicate aims/benefits to all staff	25
Train managers to use mediation	15
Raise awareness of how to access mediation	11
Emphasise benefits of early intervention in solving grievances	8
Improve quality of/access to training for mediators	8
Training (unspecified)	7
Role-play/case studies on positive aspects	7
Clear explanation of mediation written into policy	7
Ensure access to mediation is easy/cheap	6
Endorsement from senior management	6

Respondents were asked, 'What is the single most important thing that could be done to promote the wider use of workplace mediation?' These responses are grouped together into common themes. A full 25% opted for communicating the aims and benefits of mediation to all staff. Several people commented on the need for employers to raise awareness and understanding of mediation, and actively promote it as a means of resolving issues. This underlines the need for employers to get the message across to their workforce – starting with managers – at all levels if they want to improve take-up.

The next most important factor identified by respondents is training managers in the use of mediation (15%), with a further 7% opting for (unspecified) training. One respondent suggests the need to 'improve the access to training of HR and/or line managers in mediation techniques. If a professional

body like the CIPD ran mediation courses that were of a recognised and respected standard, then selling mediation within an organisation would be easier and employees would have more confidence in the process.'

Eleven per cent of respondents focus on the need to raise awareness of how to access mediation, with a further 8% emphasising the importance of easy access to mediation. This suggests that a reinforced Acas helpline, drawing attention to the role of mediation and giving information about providers, will be an effective way of helping many employers and increasing the use of mediation.

A number of respondents suggest that the single most effective method of promoting mediation is to build mediation into existing procedures for dealing with grievances and disputes, or bullying and harassment. However, there are also concerns that mediation should not simply be seen as part of a formal process, but part of the company culture and '*the framework of people management, not an isolated process*'. One person suggested that the important thing is to '*ensure that mediation is part of the language used in conditions of employment [and] insist it is a stage before formal grievance*'. A number of respondents draw attention to the value of informal approaches to resolving conflict, and the need to create a willingness to work outside set formulae.

Several responses point to the need for mediation to be used at an early stage and not be seen primarily as a means of discouraging recourse to an employment tribunal. One believes that mediation '*is still considered as something of a black art...and is commonly believed to relate to tribunals only*', while another stresses that '*it is a stand-alone process [and] not a stepping stone on the way to a tribunal*'. Only a handful of respondents suggest that mediation should be made compulsory by changing existing legislation.

Conclusions

There is strong support from employers for the use of workplace mediation. The business benefits include retaining valuable employees and avoiding the costs of defending tribunal claims. Mediation can be seen as simply a better way of dealing with workplace conflict than other, more formal processes and is a key element in the conflict resolution process for a majority of respondents. But importantly, mediation can also contribute to building an organisational culture that focuses on managing and developing people. It is seen as a means of improving relationships between colleagues and can offer a solid basis for sustainable high-performance working.

The survey finds strong support for the use of both internal and external mediation. The CIPD survey of conflict resolution in 2007 found that one in five employers uses external mediation, including through Acas. It might have been expected that there would be a link with organisation size, with smaller employers more dependent on using external mediators, but this appears to be so only in relation to the largest employers (those employing more than 25,000 people) and those employing between 50 and 250 people, which make significantly less use of external mediation.

The survey shows that employers' use of mediation is increasing. Few appear to have principled objections to its use, though a small minority don't see it as appropriate to involve third parties. Concerns about costs and the ability to identify a suitable mediator put off some organisations from considering using mediation. It is hoped that such concerns will be addressed by the increased resource that the Government is committing to reinforce mediation and conciliation services. Lack of understanding about the process (21%) and lack of interest by senior management (13%) are other significant

factors that are being addressed by improved information and support (including this research).

The survey doesn't make possible any final judgement about differences in the approach to mediation as between the private and public sectors. However, the proportion of those respondents who completed the survey and who work in the public sector is 43% – significantly above the one-third of CIPD members who belong in the public sector. It seems likely that the private sector relies more heavily on HR managers to resolve internal conflict, and makes correspondingly less use of mediation, than the public sector. If so, this might reflect the fact that professionalism in HR has come relatively late to many parts of the public sector, leading some employees to be reluctant to trust management processes for dealing with conflict. Management resistance to third-party intervention may also be greater in the private sector.

Mediation should not be seen as a universal default option for tackling the whole gamut of workplace issues. One in five respondents thinks it likely to be suitable in *most* cases, while three-fifths see it as likely to be suitable in *some* cases. Employers also see it as more suitable for dealing with some issues than others, with relationship breakdown, bullying and harassment and discrimination issues high up the list of those where mediation is likely to be helpful. It is used in relation to disciplinary issues but not to the same extent as for grievances. And clearly some care may be needed to ensure that mediation does not undermine disciplinary procedures, particularly where issues of principle are seen to be involved.

This underlines the need for employers to look broadly at a spectrum of methods for managing conflict, including training HR and line managers to

deal with conflict. Informal discussion between those affected, or 'dialogue', is seen by survey respondents as the single most important method of resolving workplace conflict. It is when dialogue has broken down that mediation needs to be considered, alongside other options including settlements following Acas conciliation or compromise agreements.

The findings of this survey represent a challenge to the Government's aspiration to develop mediation as a preferred alternative to employees making claims to employment tribunals. Although many employers already use mediation and see it as a means of discouraging tribunal claims, according to the survey most current mediations have no relationship to any actual or threatened tribunal claim.

If mediation is to have a significant impact on the volume of tribunal claims, therefore, it will have to develop in one of two main ways. One is by identifying potential tribunal claims, either before they reach the tribunal service or before a hearing takes place, and offering claimants and employers mediation as a more attractive alternative. This has to be a voluntary process, both to protect individuals' statutory rights and because mediation will not otherwise be effective. This survey is helpful in indicating those issues where mediation is seen as particularly likely to be effective.

The second route to building up mediation as an effective substitute for tribunal claims is for employers to adopt mediation as the core of their conflict management processes, and use it to reinforce a trust-based culture, which will mean that few if any disputes reach a critical stage. Short-term results cannot be expected in this area, but the CIPD will continue to promote the value of a mediation culture as a component of effective people management and leadership.

Background

Mediation has been defined as a form of dispute resolution in which a neutral third party, from inside or outside the workplace, helps people reach a mutually acceptable agreement. Mediation can be distinguished from arbitration, where an independent third party considers claims made by each side and produces an opinion based on the strength of their respective cases. Mediators don't impose a solution, but help the other parties settle their differences on their own terms.

The Gibbons Review of workplace dispute resolution published in March 2007 recommended the use of mediation and other forms of alternative dispute resolution to settle disputes at an early stage. The review challenged employer organisations to promote early resolution as a management tool and provide advice, guidance and training to empower managers to resolve disputes in the workplace; and to improve understanding and awareness levels among their members of the value of third-party mediators to help resolve internal workplace disputes.

As part of its response to Gibbons, the CIPD is working with Acas on research to fill gaps in current knowledge about mediation. This will include case studies of the use of mediation in both private and public sectors, to help in developing guidance for employers on good practice.

As a first stage, the CIPD has conducted an online survey exploring how organisations use mediation, what they see as the benefits, factors influencing its use and the attitudes of employers and employees. To get an informed response, the survey was targeted at CIPD members and other people who have some experience of the use of mediation in their organisation.

A total of 766 people attempted to complete the survey, of whom 327 said their organisation had experience of using mediation to settle workplace disputes. It is primarily the responses of those 327 people with experience of mediation to draw on that are reflected in this report. However, those respondents who said their organisation had no such experience were asked why they thought this was the case, and their responses are shown in Table 9.

The CIPD is very grateful to all those people who downloaded the survey and to those mediation bodies that encouraged their clients to download the survey. They have all helped towards building up a unique picture of employers' current use of mediation in the UK. Particular thanks go to Acas, who contributed substantially to the design and implementation of the surveys, drawing on their unparalleled experience in the area of conflict resolution.

Reference

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