Research Paper

Mediation: A Thematic Review of the Acas/CIPD Evidence
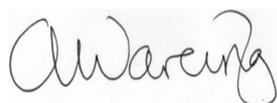
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FOREWORD

The growing policy interest in mediation mirrors Acas' ongoing commitment to encouraging and supporting early dispute resolution in the workplace. Yet the evidence base on mediation, at least in Britain, has been patchy. The Government's recent consultation Resolving Workplace Disputes called for evidence on how mediation is used in the workplace and this report is therefore timely in providing a contribution to that debate.

In 2009, Acas was fortunate to receive support from the Economic and Social Research Council (ESRC) under the Placement Fellowship scheme, to host Dr Paul Latreille from Swansea University, to undertake in depth research on this area. This report is the third output from Dr Latreille's period at Acas. Other reports can be found on the Acas website www.acas.org.uk/researchpapers

The report provides an overview of the key issues relating to mediation – its benefits, risks and the challenges in establishing effective mediation arrangements at work. It draws on empirical evidence set in the context of the wider literature, much of it from the US, on mediation and conflict management more generally. A key finding is that whilst mediation is recognised as an approach that has the potential to tackle complex workplace and relationship tensions, on the ground, use of mediation is relatively limited. More information on what mediation involves, and how it can be maximised as an approach to addressing conflict are important to ensuring wider use. This report provides an important contribution to the evidence base and a valuable resource for promoting better understanding of mediation.

Acas is keen to promote the benefits of mediation in the workplace and is working with fellow providers of mediation through the Civil Mediation Council and with representative bodies such as CIPD to raise awareness among employers and employees of the real advantages mediation can provide compared with more traditional approaches to dispute resolution.

Acas is grateful to Paul for his work, and to the ESRC for its financial contribution to the Research Fellowship.

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ACKNOWLEDGEMENTS

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EXECUTIVE SUMMARY

This report provides a 'thematic review' of the implementation, nature and operation of workplace mediation based on secondary analysis of a series of eight case studies. The study – carried out by Paul Latreille from Swansea University – was undertaken as part of a programme of work while the author was the ESRC Visiting Research Fellow at Acas, previous outputs from this programme having also been published in this series. These case studies cover a range of organisational types and sizes, and involved in-depth interviews with a range of key institutional actors appropriate to context, all of whom had direct experience of introducing mediation into their workplace. The case studies were undertaken by Acas staff and independent researchers on behalf of Acas prior to the author's Visiting Fellow period. Crucially, the research was conducted at a relatively early stage in the diffusion of workplace mediation among organisations, offering important insights into a range of issues. The main findings from the thematic review are summarised below.

The mediation context

- The employment relations climate in most of the organisations in the study was described as positive, with evidence of generally productive relationships with unions in those organisations where these were present. Where employment relations problems did emerge, they often appeared to result from the introduction of significant change(s), sometimes caused, or at least exacerbated, by poor (line) management or particular managerial styles and approaches.

- The main motives for introducing mediation appeared to conform to those identified in the related literature on conflict management systems, and in particular cost, crisis, culture and competition. The first two of these were highlighted by many of the case study organisations, with a number linking high numbers of formal grievances to a culture of complaints.

Introducing and implementing a mediation offering

- One important feature evident from the case studies was that the nature of their mediation offerings varied to suit their circumstances. At one end of the spectrum the approach was one of *ad hoc* facilitated discussion by the single HR professional, while several had established formal schemes, the largest involving 40 trained and accredited mediators.

- Mirroring the US conflict management systems literature, the main stages in setting up a formal mediation scheme included design, starting to use, getting people to participate, and evaluation and improvement (Conbere, 2000). Introducing a formal scheme was reported as a time-intensive exercise, with the lead time being of the order of 12-18 months.

- Several of those introducing schemes did so initially via a pilot, with others adopting a low-key initial introduction so as to ensure resources could meet demand. In practice, take-up was often lower than anticipated and

such fears proved unfounded; if anything, further work was needed to promote the use of mediation.

- Crucial to the introduction of mediation was the role of a 'champion', an individual who took the lead in persuading the organisation to use and to promote mediation to management and other stakeholders, and to secure appropriate resource. In several cases this person was new to the organisation and brought positive experiences of mediation elsewhere to their new role. A danger however, is that the continued success of, and institutional memory surrounding a mediation scheme may depend vitally on this single individual.

- The 'buy-in' of key stakeholders was also essential to scheme success, with several of those interviewed identifying mixed levels of awareness among managers and a need for further work in publicising and promoting mediation both with this group and with other staff, who often misunderstood the nature of the process.

Mediation in practice

- Most of the issues brought to mediation among case study organisations were reported as involving relationship problems/breakdown. These often stemmed from the absence of, or ineffective communication or differences in working styles etc., some of which might have been perceived by one party as discrimination issues. Such issues were seen as those suited to mediation, in line with previous CIPD work. Few reported mediating cases involving matters that might be justiciable and hence the potential subject of Employment Tribunal applications.

- The practice of mediation itself generally took a day, beginning with discussion with the individuals followed by joint meetings between the mediator(s) and the parties. The event typically took place in a neutral space and by mediators unconnected to the events, although these idealised principles could sometimes be more difficult in smaller organisations. Nonetheless, the notion of impartiality was seen as fundamental.

- Reflecting the preferred approach of one of the mediation training providers, some of the organisations had adopted a co-mediation model, with two mediators facilitating each mediation. This approach was seen as especially helpful for a number of reasons, including acquisition and maintenance of skills, safety for parties and mediators, opportunities for support/mentoring, as well as the ability to manage mediations and to share the many demands placed on mediators during a mediation.

- Most organisations, while allowing parties to be represented during grievance and disciplinary processes, did not permit this during mediation. This seems to reflect the prevailing view among the professional mediation community, in Britain at least, and the view articulated by practitioners both within and outside the case study organisations essentially being that mediation requires self-determination by the parties, who own the solutions.

- In line with the existing literature, mediation was seen as most helpful at a relatively early point in disputes, but had been found to work even in long-standing disputes. The key was that the parties themselves were ready. Mediation was also seen as potentially helpful in repairing working relationships after formal processes had been completed. In several organisations mediation was thus integrated into disciplinary/grievance handling policies.

- Two key principles with workplace mediation in the case study organisations concerned the need for mediation to be voluntary, and to be confidential. Both were seen as absolutes and essential in securing individual trust in the process and thus participation. However, it was recognised that the dividing line between encouragement and coercion might be a fine one, especially given the hierarchical nature of organisations.

Key stakeholder views

- Stakeholder buy-in was considered fundamental to the success of mediation, including senior and line managers, trade unions (where present) and individual staff.

- Given that public sector organisations formed the majority of the case study organisations (reflecting the predominance of this type of employer among the early adopters of workplace mediation more generally), trade union backing for schemes was considered essential. Most had consulted during the introduction of schemes, and while caution was initially reported among some union representatives, most were positive about its potential benefits.

- Managerial support for mediation was also seen as critical. At the senior level this was to ensure schemes were resourced, and more generally, to demonstrate commitment to the process. However, on a day-to-day level, line managers were also seen as vital so that appropriate cases were referred.

Mediator selection and development

- A variety of recruitment approaches for mediators was in evidence, from rigorous application and selection procedures to simply training the entire HR team. While diversity-proofing did not typically enter into selection, there was an awareness that this could be(come) relevant.

- Mediator skills identified included the active listening and questioning skills, the ability to manage circumstances, emotional resilience and the capacity to be non-judgemental.

- Initial training was generally undertaken by outside organisations, and took 5 or 6 days, including a significant amount of practical (role play) work. Completing all formal elements of accreditation was commonly required before mediators were allowed to undertake mediation for real.

Training was reported as being challenging yet rewarding, with those who trained together reporting this helped develop a sense of community, something also facilitated by regular meetings between mediation teams.

- In several organisations, mediation awareness training was provided for other staff, including personnel/HR staff, managers and trade unions and other employee representatives.

Evaluation

- Most organisations with formal schemes undertook some form of evaluation, albeit this was often more qualitative than quantitative. The most sophisticated kept records of referrals and success rates of those mediations undertaken, with success articulated in terms of settlement/resolution of the dispute. However, several also described 'softer' measures such as parties seeing the other person's perspective etc.

- The absence of more formal and robust evaluation in all but one of the organisations constitutes a weakness and also a potential threat, as is the absence of attempts to measure the durability of resolutions effected through mediation. There was however, in some of the case study organisations, a recognition that such evaluation was desirable, alongside further consideration of how organisational learning might be effected in the context of mediation as a confidential process.

Barriers and facilitators

- Key barriers to greater and more effective use of mediation include lack of awareness and understanding of mediation both by staff, and managers (notwithstanding efforts to promote and educate staff about the process and its availability). Resource constraints were also mentioned, most notably (since the role was usually combined with existing day-to-day responsibilities) mediator time/availability.

- To a large extent, facilitating factors mirrored the barriers, with resource, publicity and a champion for the process seen as key among those interviewed, alongside buy-in from all stakeholders.

1. BACKGROUND

1.1 Background to the research

Mediation as a dispute resolution process has a long history, the concept having been in existence and practised in a variety of forms for several centuries (Griffiths, 2001; Wall and Lynn, 1993: 161). While it has been deployed specifically in the employment context for some time in countries such as the US and New Zealand, its use in this setting constitutes a relatively recent, albeit growing development in Britain.

Additional impetus to the use of Alternative Dispute Resolution (ADR) processes, and in particular workplace mediation was imparted by the Gibbons Review (Gibbons, 2007) and policy developments stemming therefrom. Alongside its recommendation for the repeal of the statutory discipline and grievance procedures introduced in 2004, Gibbons called for policy to encourage the more widespread use of mediation in employment disputes. The recommendation was made in recognition of the positive experiences of mediation in various countries and in diverse contexts such as civil and family disputes. The new Acas *Code of Practice*, which took effect from 6th April 2009 alongside the Employment Act 2008, exhorted the resolution of disputes within the workplace, and the use of mediation, albeit the last was only mentioned explicitly in the foreword, and compulsion was eschewed in favour of a voluntarist approach emphasising the use of processes appropriate to the organisation. Notwithstanding the shift of focus occasioned by the recession, mediation is high on the agenda, and an increasing number of organisations are introducing, or considering introducing mediation schemes, partly in response to the new Acas *Code* and partly in recognition of the potential gains from less adversarial resolution of issues. That direction of travel is likely to be reinforced by the Coalition Government's interest in workplace mediation, as reflected in the recent *Resolving Workplace Disputes* consultation, whose opening section focused on mediation.

A variety of mediation styles/models exist, although the dominant approaches in the UK workplace context appears to be what is termed 'facilitative mediation' (Latreille, 2011). This approach involves the mediator, as an independent third party, helping parties in dispute to reach their own, mutually agreeable outcome. The focus is on resolving problems – that is, in reaching settlement – and this form of mediation has accordingly also been described as 'transactional' in nature. In the US, greater purchase has been found for Bush and Folger's (1994) 'transformative mediation', most famously as the underpinnings of the US Postal Service's REDRESS[TM] scheme[1]. In this model, the emphasis is on equipping the parties to manage conflict through effecting 'empowerment' and 'recognition' shifts, with resolution considered largely as a by-product.

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[1] See Bingham (2004) for an overview of the extensive research on this programme. Ridley-Duff and Bennett (2011) discuss this and also some of the UK evidence, providing a theoretical framework for consideration of a range of conflict resolution processes which includes the two mediation styles above plus also directive mediation. For a general overview of 'narrative mediation', a more recent development, see Winslade and Monk (2000).

As the fact of multiple models/styles might suggest, while mediation is often referred to as being in some sense 'less formal' (something evident in many of the responses in the following discussion), this may convey a slightly misleading impression. Mediation is certainly likely to be less formal compared with formal discipline and grievance procedures. However, as a process mediation can itself be quite formalised and, while flexible, will often be quite structured (see 3.2.3 below). The aspect of informality might therefore be seen as referring to the more private nature of the mediation process and outcomes compared with the greater transparency of discipline and grievance hearings[2].

In terms of the uptake of mediation, evidence from 766 respondents to a Chartered Institute of Personnel and Development (CIPD) survey in 2008 revealed mediation had been used in just 43 per cent of the organisations covered, despite the vast majority of these being CIPD members and hence likely to be from larger organisations who are most likely to have explored the use of mediation (CIPD, 2008). A survey by law firm Dundas and Wilson at the CIPD conference in 2008 revealed lower usage, with just 36 per cent of firms having experience of mediation. Uptake is even lower in small and medium-sized enterprises (SMEs); an Acas/CIPD Omnibus Poll of 500 SMEs in 2008 revealed just 7 per cent had previously used mediation in the employment context (Johnston, 2008; Latreille *et al.*, 2010). The recent developments outlined earlier in this section will undoubtedly have added further momentum to the pre-existing drive, and there is some evidence for this in the CIPD's 2011 Conflict Management report, where 57 per cent of organisations surveyed said they were now using mediation to resolve workplace conflicts (CIPD, 2011).

An associated development in the field has been the burgeoning number of mediation and mediation training providers. Acas is among the foremost of these, having introduced (charged for) mediation services in 2005 alongside its free collective and individual conciliation and arbitration services. Most recently, and again following Gibbons, it has also introduced free Pre-Claim Conciliation as part of its offering, attempting to resolve disputes that would otherwise result in Employment Tribunal (ET) claims. Numerous other large and small scale private providers and individuals also offer individual mediation and mediation training, many of whom are members of the Civil Mediation Council which operates a register of accredited workplace mediation providers so as to assist those looking to source such services. In Scotland the Scottish Mediation Network operates a similar scheme.

In 2008, Acas and the CIPD jointly commissioned a series of case studies examining the experiences of organisations using mediation in the workplace, to supplement the wider insights from the CIPD and Acas surveys mentioned previously. The aim of these case studies was initially to inform the jointly published guide to workplace mediation (*Mediation: an Employer's Guide*), which sought to provide practical advice and assistance to organisations and also employees and their representatives, including trade unions considering the use/implementation of mediation. These data are reconsidered in the current paper, which covers some of the same ground, but also extends the analysis to

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[2] See the discussion in Ridley-Duff (2011) and Chapter 6.

try and identify some additional themes/issues germane to the wider debate as mediation enters the 'mainstream'.

1.2   Research aims and methods

The aim of this report is to undertake a 'thematic analysis' of the Acas/CIPD case studies, identifying key findings emerging from the experiences of the organisations involved and linking these with results from the Acas SME Omnibus Poll, the Acas/CIPD survey, earlier (unpublished) case studies of mediation and also theory/evidence from elsewhere, including the Acas small firm mediation pilot (for details see Seargeant, 2005 and also Fox, 2005).

The main Acas/CIPD case studies were undertaken in 8 organisations. These included organisations recruited both from the Acas/CIPD survey and from Acas workplace projects/training, and span a range of private, public and voluntary/charitable sectors, with organisations of varying sizes from 90 to 80,000 staff and with correspondingly different administrative resources and modes of operation. Unions were present in 6 of the 8 organisations. While all used mediation in the employment context, a variety of models was evident, from *ad hoc* facilitated discussion by the single HR professional in one organisation through to large scale, formal mediation schemes with up to 40 trained and accredited mediators. Most of the more formal schemes were still in the relatively early stages, the longest standing having been piloted in 2002 and rolled out fully in 2003, and only a limited number of mediations had been undertaken to date in the majority of these. Nonetheless, the experiences provide fascinating and useful insights for others, and also highlight some key questions for policymakers and practitioners.

A range of individuals in these organisations was interviewed, with the number of interviews depending on context and the scale of the organisation/scheme. In two organisations a single interview with the HR manager took place, while at the other extreme, five interviews were conducted, including one with two individuals. A group interview with four mediators (effectively a focus group) was also carried out in one organisation, which provided some interesting insights into the dynamics of relationships between those persons trained as mediators and the development of a community of practice/practitioners (see below).

A standard set of topic guides was developed by Acas' Research and Evaluation Section (RES) (see Appendix for an example). Interviews were undertaken by RES staff or by experienced fieldworkers contracted for the purpose. With the permission of the respondents, all interviews were taped and subsequently transcribed, from which both short (summary) and long (detailed) reports were produced (see http://www.acas.org.uk/casestudies for the one case study[3]).

The broad areas covered in the interviews included:

- Background and contextual information on the company/workplace including size, sector, activities, workforce demographics;

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[3] The detailed reports are intended for internal consumption only.

- The employment relations context including management of HR issues, union presence, formal discipline and grievance arrangements, including representation;

- Setting up and embedding mediation/a mediation scheme within the organisation and existing processes, encouraging take-up and securing buy-in;

- Selection and training, development and supervision of internal mediators (if any), and arrangements for external mediation (if used), including perceived strengths and weaknesses;

- The incidence and nature of mediations, suitability and day-to-day arrangements including confidentiality, organisational learning;

- Recent experience(s) of mediation, including outcomes;

- Measuring success and evaluation;

- General reflections including facilitating and inhibiting factors and lessons learned.

In order to ensure a systematic exploration of the resulting data, the author developed a spreadsheet grid to assist in the process of identifying key themes and sub-themes from the interview transcripts and recordings, with the aim of drawing together both commonalities and differences among the organisations. Each interview formed a separate row in the grid, grouped by organisation. The grid was developed in a two-stage process identifying first, top-level themes, and then sub-themes within these. The former were largely derivative from the topic guides and included basic (organisational) information and background; motivation for and the process of introducing mediation; suitability of issues for mediation and linkages with discipline and grievance procedures/processes; mediator selection and skills; training and development; barriers and facilitators; operational principles and processes; measurement and evaluation; the role of unions; and a residual category for any other issues of particular note.

Copies of the transcripts were then marked-up with keywords so as to identify important issues in each case study within the broad, top-level themes above. These were collated and used as the basis for the sub-themes, with the grid also populated with representative quotes as well as key features. These data were further augmented with any additional information obtained by the interviewers during/after the interviews themselves (e.g. feedback questionnaires, mediation guides for staff, etc.), and any other common patterns detected.

The resultant spreadsheet is essentially an electronic version of the 'thematic charting' approach described by Ritchie *et al.* (2003). Subsequent iterations through the grids were used to detect patterns within the data and hence to undertake 'associative analysis', identifying both commonalities and 'outliers' so as to 'verify associations' (Ritchie *et al.*, 2003: 248-252). Crucially, while from an epistemological perspective, verification and generalisation beyond the sample[4] are more difficult in qualitative research with "small, purposively selected

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[4] Referred to as 'representational generalisation' (Miles and Huberman, 1994; Arksey and Knight, 1999; cited in Lewis and Ritchie, 2003).

samples" (Ritchie *et al.*, 2003: 251), in-depth, semi-structured interviews of the type considered here have the potential to provide insights that would not be forthcoming with large-scale quantitative survey data. In particular, they provide richer, more nuanced accounts of the issues and "offer a rich resource in offering explanations of why phenomena are occurring" (Ritchie *et al.*, 2003: 252).

Anecdotal discussions with practitioners suggest many of the themes identified resonate strongly with the experiences of others. More formally, the case study evidence here is supplemented with data from Acas/CIPD surveys and linked to a wider literature, as a form of both methods and sources triangulation (Lewis and Ritchie, 2003) and to set the case studies within a broader mediation landscape.

That said, there are two particular features of the sample that are worth noting. First, all the organisations under analysis had elected to use mediation on an ongoing basis as a conflict resolution process; they are necessarily likely to be those who have found mediation to be useful, rather than those who have perhaps tried it and been disappointed at what it delivers; this would itself be a potentially rewarding line of further enquiry for qualitative investigation[5]. Second, organisations from the private/commercial sector are scarce in this sample. However, there is evidence this in fact reflects the greater incidence of (formal) schemes in the public and voluntary/charitable sectors (see for example, CIPD, 2008, 2011).

The remainder of this report is structured as follows. Section two sets out the context for mediation and its introduction in the case study organisations. This is followed in section 3 by a discussion of the way mediation operates in these organisations, views about when it is seen as suitable and how it fits with other conflict processes and procedures. Sections 4 and 5 respectively deal with how mediators are selected, trained and developed and how mediation is (or in practice is largely not) evaluated. The penultimate section, section 6, discusses key barriers and facilitators and the lessons learned, while section 7 concludes.

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[5] As Saundry *et al.* (2008: 33) note, in their case studies of discipline and grievance, "[v]iews in relation to mediation were mixed". Latreille (2010) considers this issue using quantitative survey data.

2. MEDIATION CONTEXT AND INTRODUCTION

2.1 General employment relations climate

In general the employment relations climate in the Acas case studies was perceived as healthy and generally cooperative by respondents from both sides of the relationship (i.e. HR/management and employee representatives), at least on a day-to-day basis. More than one in a unionised workplace commented that relationships with trade unions were positive, and one HR adviser/mediator highlighted the key role played by union representatives in managing conflict:

> *"we have a good relationship that we can sort of say 'Look we need to get this moved on as quick as possible' and things like that. And I've had lot of meetings where: 'Look, can you come with us and meet with this employee?'… And they've tried to work with us in resolving some things without it blowing out of proportion."*

However, a number also noted 'pinch points' around specific (commonly change) issues such as restructuring, job reductions and job evaluation. In fact, several of those taking part commented on the rapid and significant change, both structural and cultural, recently experienced in their organisations:

> *"New people coming in, an awful lot of change. A lot of work being done on trying to change the culture of the organisation. And I think it's just a lot of restructuring going on as well…"*
>
> (HR consultant/mediator)

Such change "brings tension" according to one HR advisor/mediator, and was identified in one organisation where the focus was on becoming more lean and efficient, as making it more difficult to build the same, long-term rapport in relationships that was perceived as existing previously. In another, a 'performance culture' was identified as the source of decisions whose consequences were perhaps not fully thought through. Even in a public sector organisation where relationships were reported as good however, the HR manager commented that the relationship between managers and unions could sometimes become "a bit strained because they forget the whole ethos of the partnership." In another, a shortage of union representatives, including some with greater experience was noted as an issue. Overall however, positive working relationships were very much the norm, with unions and managers working together at a variety of levels.

One feature that emerged consistently from the case studies, both from those involved in HR through to employee representatives/trade union officers/representatives concerned the role of (line) managers in, and in some cases even as a potential source of, conflict. Several commented on poor people management/personnel skills among managers, for instance:

> *"And I would say historically that there have been pockets of management and leadership within the organisation whose people skills if you like have been quite poor and have gone unchallenged."*
>
> (Mediation coordinator)

> *"A lot of these senior managers who are incredibly experienced, qualified, good at what they do … have ticked that box, that's great, wonderful… and they probably understand all the resources that go with that… But what they don't seem to be able to do is manage people."*
>
> (HR manager)

Sometimes such comments related more generally to management styles and behaviours, including "competitive personalities", but specific facets of the managerial skill-set, most notably around communication, with serious consequences in the form of formal complaints were also highlighted:

> *"… particularly against managers, where managers might have an expectation. They obviously expect something but they're not clear to the individual what they expect or how they want… and sometimes it's things like that, just not communicating properly."*
>
> (HR consultant)

The need for managers to be trained in people management was mentioned by several of those interviewed, since the operational and technical competencies needed to become a manager did not necessarily include people (management) skills.

Several respondents also commented on the tendency for line managers to:

> *"… expect HR to do everything HR-related and some of the responsibility for that has to go back onto managers."*
>
> (Mediator)

One mediation manager for example felt that the reluctance among managers to deal with conflict resulted from a lack of training in dealing with angry staff, while an employee representative in another organisation articulated the view that:

> *"Because we live in a blame culture they [management] don't want the blame for making the wrong decision or dealing with something in a different way to… Or if the outcome is… if they don't achieve the desired outcome, they're worried about getting the blame for making the wrong decision… it's just easier I think, for management to say 'Alright, here you are, you deal with this as an investigation' rather than 'Let's try and sort it out.'"*
>
> (Employee representative)

A similar phenomenon was evident in the case studies in Saundry *et al.* (2008) (see also Saundry *et al.*, 2011), who noted inexperienced line managers being particularly risk-averse and hence preferring the 'protection' afforded by both formality and by deferring to the greater expertise of HR. Saundry *et al.* (2008) argue such protection partially explained, alongside "the increasing complexity of the law" (p. 34) the tendency over recent years for greater formalisation of processes in relation to discipline and grievance. However, it was clear in the Acas/CIPD case studies that HR clearly felt managers needed to adopt a greater role in relation to people/conflict management. As one respondent put it, changes to the organisation meant that:

> *"some of our managers, rather than relying on our old HR people to manage the people for them, they're now having to learn the rules and regulations that they didn't have to learn before. And that's quite a learning curve..."*

> *(Mediator)*

Another noted that changes to the organisation's (disciplinary) procedures might be used to make it easier for managers to assume more responsibility for the process. That said, a couple of the HR respondents felt that while it was desirable for managers to do this, it was also important for HR to maintain control/oversight of the process. In one case study organisation, it was further noted that sometimes HR actually preferred issues to be passed to them given the lack of relevant managerial training and the risk that they might attempt something akin to 'quasi-mediation'[6].

Taken as a whole and in conjunction with Saundry *et al.* (2008) and CIPD survey evidence suggesting that just a third of organisations rated their managers as good or excellent at resolving disputes informally (CIPD, 2007), these responses make it clear that a major agenda item for policy/practice is the need to equip (line) managers with enhanced people and dispute handling skills. The same CIPD survey reveals that 72 per cent of participating organisations provided training for line managers in conflict management/resolution skills, suggesting a recognition of this issue and efforts to address it.

It should be emphasised at the outset also that conflict should not be seen as unequivocally a negative state/experience. In the group interview with mediators, one commented that:

> *"Through conflict and using conflict positively you can achieve positive change... the other flip side of that... is you know... everything is buried and it becomes corrosive and toxic and horrible."*

Conflict clearly can be, and often is, a necessary condition for effecting positive change, and if appropriately managed and harnessed, can be constructive rather than destructive (for example, Tjosvold, 2008; Runde and Flanagan, 2007).

2.2 Motivations for mediation

One interesting feature of the case studies concerns the factors or drivers motivating the introduction of the scheme. Motives for using mediation, whether formally or less formally, largely fall within what Lynch (2001) describes in the context of 'integrated conflict management systems' (ICMSs)[7] in the US as the "5

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[6] A danger is that well-meaning interventions by untrained staff and labelled as mediation may backfire, damaging mediation's reputation (see p. 60 below). Rowe (1997: 92) identifies a trend among some US employers to allow 'mediation' by persons "who are not designated as neutrals or trained in the code of ethics and standards of practice of ombudspeople and mediators...", arguing that "[t]his kind of dispute resolution... should not be called mediation."

[7] An ICMS is "a comprehensive, systems approach to the prevention, management and resolution of conflict... changing the philosophy (and, in many cases the terminology) of

Cs": compliance, cost, crisis, competition and culture. She argues that if any of these is present – and they are not mutually exclusive so that more than one may be relevant – such a system can become a priority. While the US context is clearly different on a number of dimensions, this model provides a useful framework for exploring the evidence in the case studies, where a number of the same motives are evident.

The *compliance* driver refers to "legislation or policy [that] may dictate that the organization must adopt new dispute resolution activities" (2001: 210). One might see the Foreword to the revised Acas *Code of Practice* and *a fortiori* the accompanying *Guidance* in this vein[8]:

> *"Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary or grievance issue. In some cases, an external mediator might be appropriate."*
>
> (Acas *Code of Practice*, 2009: 1)

None of the organisations in the case studies mentioned compliance issues as a driver, in part because at the time of the interviews, the new *Code* had yet to be published and therefore would not have informed the choices made by the organisations concerned. Whether newer schemes or organisations using mediation for the first time more recently have been influenced in their use by the recommendations in the *Guidance* remains to be seen, although as noted earlier, one would clearly expect this to provide further impetus to the underlying trend.

The second motivating factor is that of *cost*. Saving money was identified as the primary motive for adopting mediation in a wide range of settings (including employment) in the studies of larger US businesses by Lipsky and Seeber (1998, 2000) and also the American Arbitration Association (AAA) in 2003. In the US employment context, as Lynch notes "To date, costs – of grievances, litigation, and settlements – are usually the strongest factor driving an organization to make a change, and have been the causal factor for organizations experimenting with arbitration or mediation" (2001: 210). A particular facet of this is that, as Conbere (2000: 30) articulates, again considering the US, "When many people think of ADR in employment… they think only of reducing the risks and costs associated with litigation." However, these commentators also recognise that the costs of (unresolved) conflict may be more pervasive, including absence, turnover[9], lower productivity from low morale and effort/motivation, grievances and even sabotage and in-fighting.

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organizational life" (Lynch, 2001: 207, 208). Mediation may be part of an ICMS, but does not constitute a system in its own right, since it does not contribute (at least directly) to the 'front end' of disputing, i.e. prevention.

[8] Mediation was not mentioned in the main body of the *Code*, but features prominently in the *Guidance*.

[9] Conbere (2000) argues at length that turnover is especially expensive, including the transactions costs of hiring (including the possibility of having to pay higher wages and

Much of the discussion in the somewhat different UK setting of the motives for mediation has revolved around its potential benefit as a means of avoiding Employment Tribunal (ET) claims. For example, Fiona Colquhoun of the Centre for Effective Dispute Resolution (CEDR), notes that:

> "Mediation is particularly well suited to employment disputes where emotions run high, careers and reputations are at risk, and where litigation will always prove more costly and distract from other business priorities… From CEDR's independent research, we know conflict costs UK plc some £33 billion per year. Our calculated cost of an employment dispute, winding its way through the Employment Tribunal system, is over £270,000"
>
> (http://www.cedr.com/index.php?location=/library/articles/20071011_219.htm).

Research by the Chartered Institute of Personnel and Development (CIPD) also highlights the costs of litigation, pointing to costs of around £20,000 and 351 days of management time for each organisation in responding to ET claims (CIPD, 2007) and pointing to lower numbers of ET claims against organisations where staff are trained in mediation.

However, while such events may be important triggers for some organisations, other business benefits were often cited in the case studies, and may actually be more important. For example, there was also evidence of benefits being seen as rooted in the well-being of employees. As one of the mediators in the case studies put it:

> *"We looked at CIPD research from 2004 and 2007 and the number of employment tribunals reducing because of mediation. But I think this [organisation] is very much about its people. So anything it can do to support its people, it will do anyway."*
>
> (Mediator)

This is supported in the CIPD survey of mediation (CIPD, 2008) where reduced volumes of ET claims were seen as a benefit by 49 per cent of respondents[10], compared with 83 per cent who emphasised improvements in working relationships. Similarly, almost 6 in 10 of those in the Lipsky and Seeber (1998) and American Arbitration Association (AAA) (2003) *Dispute-Wise* surveys reported preserving good relationships as a major benefit.

Part of the reason why ET claim costs figure less prominently than other benefits of mediation may relate to the incidence of ET claims. While likely to have grown since then, data from the nationally representative Workplace Employment Relations Survey (WERS) 2004 shows that only around 5 per cent of workplaces with 5 or more employees experienced an ET claim in the previous 12 months, and of this 5 per cent, only 1 in 25 experienced more than 3 claims in the same

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other benefits in tight labour markets), the lower productivity of new hires compared with experienced staff, as well as fear of tackling performance and behaviour issues due to the fear of further staff losses.

[10] One benefit of mediation in this context may be that it reduces the uncertainty associated with external adjudication and hence provides greater control over the dispute (Lipsky and Seeber, 1998).

period[11]. This is not to say that such claims are not important and do not entail significant costs when they happen; rather that, like the iceberg, disputes (or in this case ET claims) are only the visible part of conflict.

In the case studies, mediation was widely seen as being most suitable for dealing with issues where there may be little or no basis for an ET claim (or even formal grievance), but the effect on productivity, absence etc. may be significant; more serious issues which might give rise to claims, such as discrimination or harassment, were instead typically seen as more appropriately dealt with via formal processes (see below). And as an HR consultant/mediator put it, it was not seen as a way of reducing ET claims since:

> *"The cases that end up in tribunal are normally serious cases of gross misconduct that we dismiss."*

That said, a single major high profile case or a large number of claims, may be indicative of *crisis*, the third motive on the Lynch taxonomy. As one mediator in the case studies put it: "once they start to get to an employment tribunal stage they've clearly got completely out of control." In fact, avoiding ET claims was mentioned by only two respondents in the case studies (one trade union official and one mediator), with one organisation stating explicitly that this was not a consideration. Instead the focus in terms of 'crisis' was on internal processes, with two of the case study organisations identifying large volumes of discipline and grievance events as a motivating factor in introducing mediation:

> *"We have had an increase in the number of… particularly employee complaints… And we felt there was a role for mediation that may hopefully decrease the number of employee complaints."*
>
> (HR consultant/mediator)

> *"… we were getting quite a large number of diversity and equality complaints…"*
>
> (Mediation scheme manager)

In one of these organisations all those interviewed pointed to a culture of raising formal grievances rather than attempting less adversarial resolution of problems:

> *"we seem to have had a culture of people going straight to and want to put in a complaint 'I want to put in a complaint'… we're trying to sort it out"*
>
> (HR adviser/mediator)

> *"I think we're in a… well I think personally we're in a situation where people… it's easier to put a complaint in than perhaps to talk a problem through really."*
>
> (Trade union rep)

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[11] Author's calculations. Kersley *et al.* (2006) report the figure for workplaces with 10 or more employees experiencing claims as 8 per cent (6 per cent in 1998). In contrast, organisations in the CIPD *Conflict at Work* report reported an average of 3.1 claims per annum. The WERS figure is likely to be more reliable, being based on a larger sample weighted so as to be nationally representative.

> *"I think people are very quick to go down the formal route, and I think we need to look at ways to try and prevent this culture that people put a complaint in when they've just had a disagreement."*
>
> (HR consultant/mediator)

A respondent from another organisation noted that employees might in fact (be forced to) resort to formal grievance procedures because of the very lack of alternatives such as mediation:

> *"People were forced to go to grievance because there wasn't that informal step where they could sit and talk to each other."*
>
> (Mediator)

The costs of such complaints were identified as being potentially significant. In one organisation, investigations of diversity and equality complaints could take as long as 4 or 5 months to complete and:

> *"more importantly it has a ripple effect within the workplace. So you were dragging people in as either witnesses or whatever into the investigation process. And then you were ending up with an office or a team that was polarised between the two parties."*
>
> (Mediation scheme manager)

Such situations are likely to result in the lower levels of productivity, morale, trust, etc. identified elsewhere in the literature, with all the costs these entail.

Two of the case study organisations also mentioned that mediation was seen, and being used, as a way of moving from a reactive to a more proactive mode of addressing conflict. Indeed, this might perhaps be a precursor to the evolution in the UK – following the US lead – from what Ury *et al*. (1988) describe as the third or *interests* phase towards the final or *ICMS* phase[12]. In fact, it is possible to identify in some of the organisations, a number of the 'fostering and sustaining' features identified by Lynch as distinguishing a conflict management system from a set of practices[13]. However, as will be seen later, there remains some way to go

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[12] A phrase coined by Lynch in her extension of their original three-stage model, drawing on the US experience. The first phase is *power* (i.e. autocratic decision-making by managers), while the second is the *rights* phase, where dispute resolution happens by means of legislation, collective agreements and more evaluative, formalised procedures for addressing discipline, grievance, etc. For evidence on the impact of conflict management systems on various dimensions of organisational performance in the Republic of Ireland, see Roche and Teague (forthcoming).

[13] The four main fostering and supporting elements are corporate commitment; structures supporting implementation and trust; training, skills-building programmes and coaching; and daily practices encouraging a front-end approach. Some of the organisations clearly demonstrated the first with SMT championing, consistent organisational values (e.g. use of mediation in other contexts) and incentives such as ET costs being allocated to the originating department. In terms of structures supporting implementation and trust, again several of the case study organisations evidenced elements of such practice including stakeholder participation in development, documentation of practices/processes, adaptability and improvability, safeguards in relation to voluntariness, privacy, confidentiality and impartiality (although only one included the right to accompaniment, and none representation – see below). On training, skills-building programmes and coaching, again those with formal schemes had training of mediators (and occasionally

in terms of evaluation, resources, institutional incentives, etc. before any of these organisations meets the criteria for operating an ICMS.

Interestingly, three of the case study organisations also noted that a mediation scheme was likely to make them more attractive to potential employees, although this was not mentioned as an explicit driver at the inception of the scheme:

> *"… getting better… employees in the first place, because they realise that you're an employer of choice."*
>
> (Mediation coordinator/mediator)

> *"… it's promoting the business to the outside world, to say 'Yes, we do care about our staff and we do care about, you know, everybody that works in it, because we're investing in it.'"*
>
> (Mediation coordinator/mediator)

> *"A sort of wider benefit as well is that hopefully they feel that the organisation is at least trying to support them as an employee, which obviously we want in terms of our reputation as an employer."*
>
> (Mediator)

These last three illustrate Lynch's *competition* motive – i.e. organisations competing to attract and retain the best employees. In the same way that ICMSs "are understood by some to be an essential feature in securing a healthy work environment" (Lynch, 2001: 211), so too in the case studies was mediation clearly seen as delivering better outcomes and working relationships, manifesting in a healthier workplace:

> *"… and for the business to have something like mediation is very valuable, 'cos they're investing in the staff really. Because conflicts cause all manner of problems – health problems, sick absence problems, emotional problems… other people get sick… and I just think if it's used at an early stage… and I think it's proven…"*
>
> (Mediation coordinator/mediator)

The last of Lynch's motives is *culture*, i.e. that organisations must continually develop their internal cultures if they are to achieve their core objectives (Lynch, 2003). As noted previously, a number of those interviewed identified a damaging and confrontational culture in which employees immediately escalated disagreements/issues to formal processes, pointing to the need to secure internal, cultural change in resolving problems. Those from the (US)_ICMS literature would argue that "unless the usual case-by-case, *ad hoc* approach is abandoned for a systems approach, these costs are either never fully addressed or just simply avoided" (2001: 211). At least one case study organisation

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refresher training), and several reported the development, organically of mediator development/support groups. Daily practices encouraging a front-end approach were also evident in some organisations, perhaps the most obvious being open door policies, but this was an area where perhaps supporting elements were less evident.

explicitly recognised this need and the imperative for a more preventative approach:

> *"I think we obviously also seek to do a lot of work around the culture of the workplace so that disputes don't arise in the first place you know, and we have a lot of diversity training and other work in terms of diversity which I'm also involved with. So I think you know we would prefer to avoid disputes in the first place obviously."*
>
> (Mediation manager)

Under the heading of cultural drivers for mediation, it is worth commenting that this could often be occasioned by a change of HR personnel. In two of the smaller organisations where mediation was introduced on a less formal basis, the arrival of a new HR manager with previous experience of mediation as a means of dealing with conflict was the catalyst, while a new personnel director championed its adoption in a very large organisation (see below).

2.3 Introducing the scheme

Introducing a scheme is a time and resource intensive undertaking. Those case study organisations who operated formal schemes indicated a typical timescale of 12-18 months to establish this. Such lead time was viewed as essential in terms of training, publicity, etc. and also if evaluation is to be undertaken effectively (see below).

The set up of a mediation scheme might be considered as having much in common with the establishment of a conflict management system (CMS), and involving four stages (Conbere, 2000: 33):

- Design
- Starting
- Getting people to use
- Evaluating and improving.

While he discusses ICMSs in the US setting, Conbere (2000: 35) emphasises the need at the front end for the design to "fit the organization," something that is also true for mediation and that was apparent from the variety of approaches adopted in the case study organisations. However, in many cases and respects there was a commonality of approach, perhaps reflecting a prevailing 'canon of practice' as propagated and diffused by mediation trainers.

Two of the case study organisations stated they looked initially at schemes elsewhere to identify good/best practice and to learn lessons for their own situation, and in one of these and one other organisation, pilots were introduced prior to a full-scale implementation. In one case an explicit aim was to use the pilot to consider whether the number of grievances was reduced. Several organisations adopted a 'softly, softly' approach in the early stages in terms of promotional activities (see 3.4) so as to avoid the danger of raising expectations that could not be met from current resources. In one large scale scheme, the mediation coordinator reported a steady increase in the number mediated, partly due to publicity, word of mouth on experience etc., a "ripple effect."

In a couple of cases, part of the process towards an internal mediation scheme was the previous experience of using external mediators, in one case followed by a period where internal mediation was undertaken by a staff development manager as the first trained individual in the organisation. Those with such experience of using external mediators, while positive, commented on the cost this incurred. They also raised issues of timeliness, for example, due to mediators being booked up, and the fact that external persons, while unbiased and impartial, did not know or understand the organisation and the problems, nor the individuals and "how they might react to criticism, negativity, bad news" (HR manager). Using an outside mediation service such as Acas was also seen as making the process more formal/official and/or escalating it. That said, more than one organisation retained a provision for the use of external mediators where circumstances demanded it, for example where partiality was seen as an issue.

A key role in introducing mediation concerns the need for a 'champion'. As Lynch emphasises for the US and ICMSs, although the same point is pertinent to mediation in the UK: "[i]t takes a visionary leader to get this kind of initiative started – generally a high-ranking person within the organization… [a] champion who identifies a need for change and brings the concept forward to senior management and labor leaders" (2001: 210). In one of the case studies for example, the scheme was promoted by the Director of Personnel, who had "very much bought into the Acas model and mediation" (Personnel adviser). Others also thought commitment and engagement at all levels of management was important to ensure the process was embedded and its importance recognised elsewhere (e.g. line managers) as well as in securing the resources necessary to run the scheme (e.g. rooms, release of staff, etc.).

In the more informal uses of mediation, as noted earlier, its introduction often came about because (a new) HR manager had experience from elsewhere and wanted to use in their current organisation. This reliance on single individuals to establish and maintain such processes is a potential weakness however, as one respondent highlighted:

> *"We've had people who've really championed it. So the lady who was administering to start with, [X], was very… it was her project, and she owned it and so on. Then we had one of our restructures around the county, and we weren't sure who was going to own it, if anyone was going to, whether it belonged to a team of people… Because when it's not owned by anybody we need support for admin, we're all … everybody's really busy… We had a period of time when you think I'm not convinced we're being supported … and it was no individual's fault, it was because we'd restructured and it was tried ways that didn't work. But… we need a firm support and then we can just go off and do it."*
>
> (Mediator)

A further feature evident in two of the case studies with formal schemes is that when the champion was no longer in the role or had moved on altogether, their successor and those involved in running the scheme were often unaware of the motives behind its introduction, and as such institutional memory is vulnerable.

For example:

> *"I don't know to be honest. I think… As far as I can gather just from what I've been told…"*
>
> <div align="right">(Mediation coordinator)</div>

> *"I wasn't part of the organisation – I didn't launch the scheme… But I would suggest…"*
>
> <div align="right">(Personnel advisor)</div>

Similarities with conflict management systems literature were also evident in terms of: issues around hiring/training people to run the scheme and preparing staff to use it; the risk/fear of some staff in dealing with conflict; and the potential noted above of staff turnover resulting in the loss of the 'keeper of the flame', or the person who championed the introduction of mediation. To mitigate these risks, as Rowe (1997) suggests (again in the context of US ICMSs), there is a need (excepting in very small organisations) to task a group rather than single individuals with responsibility for the scheme and its oversight.

2.4   Management buy-in

A key element for the successful introduction of mediation evidenced in the case studies, and in particular in relation to more formal mediation scheme was the level of (senior) management support. As a personnel adviser put it, strong support was essential "in order to make the mediation scheme work." In this organisation the scheme had been proposed and championed by the director of personnel, and such high level support had clearly been fundamental in ensuring the success of the scheme:

> *"I think just having the leadership put their backing behind something is a good way of making managers, particularly managers see, that something is important and it's something that they have to be aware of as part of their role. So I think we've been fortunate in having that"*
>
> <div align="right">(Equalities adviser/mediation coordinator)</div>

However, this support was not universal, and managers were sometimes described as lacking understanding of mediation or being motivated more by its transactional impact. Indeed, even in the above organisation a mediator commented that "I just think the scheme hasn't got necessarily the support or recognition that it should have."

Among case study respondents, managerial support was regarded as essential at a number of levels, not least in order to ensure it was appropriately resourced, for example in releasing staff to train as mediators and also to undertake or participate in mediation sessions. Resources, and in particular the need for administrative support were also highlighted by one mediator who argued that:

> *"… we need a focus for it for it to be successful… we need support for admin, we're all… everybody's really busy. But I haven't got time to write letters to people and things like that, so we expect that to be done, rooms to be booked, and everything to be provided for. It's almost like hit squad – turn up, do it and come away. And when we didn't really have that it*

was quite stressful 'cos you want it to be right for the people, and some of these people have been out of the workplace for a long time, and they are worried about coming in, and you don't want to be worrying about what time they're turning up or what letter they've had. You need the support to be absolutely spot on. And I think we're back there now. We had a period of time when you think 'I'm not convinced we're being supported'… and it was no individual's fault, it was because we'd restructured and it was tried ways that didn't work… we need a firm support and then we can just go off and do it.

Mediators also felt that such resourcing was needed to show that the organisation took mediation seriously and was committed to it. However, a personnel manager who also acted as a mediator went further, arguing that organisations should:

"Ensure the mediators themselves are rewarded in some way. You know sometimes it's monetary which people like, but otherwise it's just like a thank you, you know a thank you letter… Because I don't think people realise the amount of effort people do… for example I've done six in let's say the last 18 months. That's probably two days of my time for each one of them. Plus I've still got my day job. Plus it's unsociable the times you've done. I've given up my free time to go and do it. And you do… it can be a hard time, people can have a go at you, because you're not telling them."

(Personnel manager)

However, while in some organisations (senior) managers might have been instrumental in introducing and driving mediation forward, several of the respondents in the case studies suggested that further work was needed in this area. For example, some noted a rather mixed level of awareness among some senior managers and line managers about what mediation involved and its potential benefits:

"I'm never sure about is how well managers even at a senior level really understand what mediation is, really understand what the process is."

(Mediator)

This slightly arms-length relationship was apparent in another organisation, where it was perceived that senior managers were passive, essentially being content provided mediation was delivered effectively:

"… they're quite keen for us to get it done and get it sorted out. And they see it as a way of not having to deal with an employee complaint, not having to have a hearing. So I think we will get the buy-in from them if they think it's going to speed up and reduce you know… reduce the number of complaints."

(HR adviser/mediator)

One respondent involved in mediation seemed to feel that such neutrality might reflect the stage of development reached by the scheme:

"When I've spoken to managers I've never had a negative response when it's been suggested… I'm not saying they're on board with it… because I don't think we've publicised it enough. So I can't say that we've got

> *them… I can't say 'Oh yeah, we've got their buy-in', but certainly when we've discussed it, when I've had cases … and certainly managers have sometimes… when they've done investigations have recommended in the recommendations… they would recommend mediation.*
>
> (HR consultant/mediator)

This is something that has been noted in the wider literature. For example, as one commentator has noted in the US setting:

> "Organizations resist change. Frequently organizations tolerate pilot projects as long as they don't really require most people to work differently, but reject the learning from a pilot project if the implication is that people will have to change… A champion of the system has to make sure inertia does not overwhelm the organizational change process."
>
> (Conbere, 2000: 35).

Interestingly, the costs of unresolved conflict highlighted in much of the practitioner literature and mentioned by several of the respondents were used in one case study organisation as a means of getting line managers to agree to use mediation:

> *"the directorate has to pay for the pay… any costs… And they also have to let their staff out for a whole day to attend… and they quite often don't want to do that but we have to say 'Consider the risks' you know. If this person goes off sick with stress for ages that's going to be a lot longer than one day you know. Or if you get taken to court, that's going to cost you a lot more than the cost of this mediator. You know so we have to get people to weigh up… and persuade them that it's worth it basically."*
>
> (Equalities adviser/mediation manager)

In another organisation managerial buy-in was also assisted by the relative speed with which mediation could potentially deliver a resolution: (a maximum of) 8 weeks compared with 4 or 5 months for more formal (investigation) processes.

2.5 Launch and publicity

As with several features of the mediation offerings in the case study organisations, a diversity of publicity and promotional mechanisms were in evidence. Three of the organisations had launched their schemes in a relatively low-key manner and had not publicised the scheme pro-actively, concerned that demand for the service would overwhelm the resources available. In practice, that fear was never realised and, if anything, several commented that they had been disappointed at the modest level of uptake.

Among the promotional activity undertaken, four of the organisations with formal schemes reported including information on their website/intranet. All who had their own, formal in-house scheme had some form of leaflet or booklet explaining mediation for potential users and/or for marketing purposes. Other mechanisms in the case study organisations included posters, HR surgery meetings, information provided by employee well-being and also via harassment/bullying/employee relations and support advisors and workshops for union representatives. In one of the more well-established, larger schemes a

comprehensive marketing approach was in evidence, including via their intranet, leaflets, awareness raising training (including periodic refresher sessions) for both unions and managers, and also previously posters (although at the time of the interview these were being redesigned). Another organisation at an earlier stage in their mediation development was among those who initially aimed for a low key introduction until their new mediators gained experience, but planned a wide-ranging "blended approach", via HR initially, then leaflets, their organisational magazine, training/day workshops for managers and with mediation also to be built into induction. HR staff in the same organisation also wanted to integrate mediation into management training, getting managers to talk to their staff and identify problems before mediation became necessary, rather than as they put it "abdicate responsibility."

At the other end of the spectrum, those organisations who used mediation on a more *ad hoc* and informal basis undertook little or no promotional activity. In such organisations, as noted above, mediation was instead typically something that an HR manager might suggest on becoming aware there was a problem.

3. EXPERIENCES OF MEDIATION

3.1 Suitability for mediation (mediability)

3.1.1 Issues suited to mediation

The evidence from the CIPD conflict surveys in 2004 and 2007 is that the major causes of workplace conflict typically concern (in the same order for both years) behaviour/conduct, performance, sickness absence and attendance, followed by relationships between colleagues (5th in 2007, 6th in 2004), theft/fraud (6th and 5th) and bullying/harassment (7th and 8th). Interestingly, relationships rated as 4th in public services and not-for-profit organisations in 2007, where mediation has been adopted more rapidly. Strikingly also, in the 2007 report relationships between colleagues ranked only 12th in terms of the workplace conflicts considered most likely to escalate to an Employment Tribunal[14].

All of the case study organisations essentially confirmed the above views concerning the issues that mediation is suited to, and identified interpersonal conflicts, and in particular those relating to relationship breakdowns as the areas most suited to mediation and where it was most regularly utilised. The causes of such conflict essentially conformed to the typology identified by Moore (2003), namely value conflicts, relationship conflicts, data conflicts, interest conflicts and structural conflicts. In a couple of organisations such conflicts were noted as arising from the team-based nature of work, often project-focused. Several identified issues giving rise to conflict as involving some form of change, suggesting scope for improved change management processes and training, the latter to equip managers to deal with this and the uncertainty and disruption and hence potential for conflict it may entail.

Most of those interviewed felt that mediation was suited to "the day to day behavioural stuff" (Staff development manager/mediation manager), but that rather more serious issues such as *actual* bullying and harassment, discrimination etc. should be dealt with through formal procedures. Typical of the comments made were:

> "I mean I certainly don't think it's appropriate if it's anything to do with bullying or harassment when there are general, you know, concerns... I think it's more about isolated incidents when they've just had a disagreement. And that may be to do with how they may do a piece of work even. It may be to do with you know how someone has made someone feel, but not actually been aware of that."
>
> (HR consultant/mediator)

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[14] Given that mediation is widely seen as being best suited to this type of conflict, this reiterates that its potential for substantial reductions in the numbers of ET claims may be limited. That said, in the 2007 CIPD conflict surveys, rates of ET claims were lower among those with mediation schemes in all sectors with the exception of manufacturing and production (and especially so for public services), and for all sizes of organisation other than those in the range 1,001-10,000. However, whether these differences are statistically significant is, in general, unclear. Equally important is that this association may reflect other factors correlated with ET claims by sector, such as better procedures or more enlightened management styles.

"Something where there's no discipline involved… When it is interpersonal, when it is about personal style, communication skills, how they work together. I think that's where it really comes in. Once you start getting discipline involved it can get really messy…"

<div align="right">(HR manager)</div>

"I think mediation is a tool to support behaviour, and not a tool to deal with serious issues. You know you've got to be very clear that… you know when you start listing gross misconduct or even some other misconduct issues, they need to be dealt with in a formal way. And it would be inappropriate to try and bring in a formal mediation at that stage. I think what you're trying to capture is relationships; you're trying to capture behaviour."

<div align="right">(HR manager)</div>

"Probably breakdowns in communication skills, understanding why somebody's being challenged over something, the reasons why people who don't get on, but nobody knows why they don't get on… And people who really don't feel comfortable speaking to somebody and saying you know 'You've upset me because of this.'"

<div align="right">(Personnel manager)</div>

Moreover, as an employee representative pointed out:

"A lot of things that come across my desk in particular are basically the two parties not understanding on an equal footing. They're quite often both right, but just can't see the other's point of view."

However, several noted that interpersonal and communication difficulties often lay behind *perceptions* of bullying/harassment, and were thus amenable to mediation:

"I mean it's got interpersonal conflict, perceived discrimination, harassment and bullying, differences of working style, approach, communication breakdown, inappropriate use of power, status… A lot of the ones we get its perceived… the way somebody behaves you know… perceptions in somebody's behaviour, the way they're treated by somebody. So it's usually communication… a lot of them can be communication, behaviour… and the perception of that behaviour towards them. They perceive it in a certain way."

<div align="right">(Mediation coordinator/mediator)</div>

"It can be, you know, a difference in personalities but the complainant may find it a bit more severe than that and put it down to bullying and harassment… A difference in management style can also contribute. Or you know, the working style of their colleagues for example."

<div align="right">(Personnel adviser)</div>

One of the reasons why mediation might be well-suited to relationship and communication problems was that, as an HR manager described, the resolution in mediation needed to be agreed and committed to by both parties[15].

As noted above however, more 'serious' issues where the evidence was more clear-cut that discrimination or bullying had taken place were not considered suited to mediation; such instances were instead for formal processes to deal with. In contrast, performance issues and appraisal, while ruled out in most cases, perhaps because of a perception that to allow this might undermine managerial authority, could be considered in one organisation, where an appraisal had been mediated. In others however, issues to do with performance, discipline, harassment would be dealt with under formal processes and policies for these rather than via mediation (a feature also evident in the case study organisation in Saundry *et al.*, 2011).

There was also a statement in the policy of one organisation that ruled out mediation in situations:

> "where statutory obligations, such as the law, duty of care, or safety and well being, is likely to be compromised, nor will it be used where other existing procedures such as disciplinary, capability, and grievance are more appropriate."

A key role in deciding what might be suited to mediation in several organisations therefore, was that of the mediation coordinator or other staff who acted as gatekeepers to the process:

> *"Well one of the things that we tell ER advisors is to … they have to make a judgement call about whether something is mediate-able."*
> (Equalities adviser/mediation coordinator)

Often this individual would be the same person who acted as 'champion' for the scheme and/or the 'keeper of the flame.' Mediators themselves in contrast, might have to make a judgement call once the mediation process had commenced, as to whether it might need to be stopped, or at least 'parked'. For example, a pause might be required if the session became too distressing for one of the parties, while the mediation might be terminated altogether where there was seen to be a risk to one of the parties due to bullying or other inappropriate behaviours, or where it became clear that both one side was not participating in 'good faith' and/or wanted something that mediation could not deliver.

3.1.2 The optimal timing of mediation

A further feature of mediation suitability discussed in the interviews concerned the appropriate timing of mediation in relation to the dispute. Reflecting the perceptions of the SME employers in Harris *et al.* (2008), early resolution was

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[15] Crucially, the policy in one organisation noted the need for mediated settlements to be reached without the need for approval from elsewhere.

perceived as crucial, with most stating that mediation was likely to be especially beneficial in the early stages, for example:

> *"ideally I'd like it to be at the earliest stage possible."*

<div align="right">(Union official)</div>

However, as a mediation manager in a larger organisation noted, this was not always the case:

> *And if it can be one of the first ports of call that would be good, but we live in the real world."*

That reality included the risk that, as a mediator noted, once grievance had been mentioned, parties became polarised and "ill-advised to talk to the other person till it's sorted out." Several noted that longer-standing disputes would often become too entrenched and positions hardened, which made mediating the dispute more difficult. A number also commented that they saw mediation as potentially helping avoid formal grievances, something of benefit to all concerned, not least because of the damage that such processes might occasion were they to proceed; as more than one individual in the interviews pointed out, grievances were typically not 'win-win', and led to polarised views. Interestingly, the interviewee who had experienced mediation as a party also noted that it would have been helpful to have gone through the process sooner, while a union representative in another expressed frustration that members might not request assistance early enough.

However, while most saw early intervention as desirable, one mediator described how:

> *"...ideally you'd want to capture it early to stop it escalating. But if you capture it too early people don't see the benefits of going into mediation. And so there's very much a balance."*

This reflects a view articulated in the mediation literature that the process needs to take place when the dispute is 'ripe' (Astor and Chinkin, 2002: 280; Sourdin, 2002: 110-113), i.e. when the parties are ready. Judging that point is not straightforward, and constitutes a further important facet of the gatekeeper's skills.

Several of those interviewed noted that the process allowed for some flexibility in the timing of use, in some cases after a formal grievance had been lodged or even once an ET claim had been submitted. However, as a mediator in an organisation that allowed mediation even at such a late point argued, in the later stages of a formal complaint the parties:

> *"don't feel they can be honest to the other party because of the fear that at the disciplinary [hearing] that's going to be taken out of context... albeit they know the process is confidential."*

3.2   Mediation in practice

3.2.1 Referral to mediation

One of the key stages in the mediation process is how parties are referred to mediation. In the case study organisations a variety of practices was in evidence. Some organisations allowed self-referral, while in others it was undertaken via HR, well-being/support advisers, or even union representatives. Indeed, there was evidence in some of the unionised organisations that unions were actively considering whether issues that came to them were suited to mediation and raising the option with members, albeit on a case-by-case basis, recognising that, as one union official articulated: "some people can be hostile to it." Among the formal schemes, one or more persons in the organisation would be designated as gatekeepers, responsible for contacting the other parties and making necessary arrangements such as liaising with mediator(s), dealing with diary issues and booking any accommodation needed. This was a role requiring some sensitivity, especially when approaching the other party in the dispute, who might be unaware of the referral.

In the smaller organisations with less formal offerings, the approach was typically one where the HR manager would suggest mediation, or at least some form of facilitated conversation, and would see this through, possibly also acting as the neutral third party.

Among those organisations with formal schemes, mediation sessions were generally reported as being set up relatively quickly, with two to eight weeks being the norm.

> *"I mean obviously we try to do them as quickly as possible because we know people are in the situation in the meantime."*
>
> (Equalities adviser/mediation coordinator)

As noted elsewhere, where interviewees made the comparison, the speed with which mediation could be undertaken was typically much faster than the timescale for formal processes such as investigations, which could often take several months. Diary constraints were the single most important constraint on fast mediation delivery. One organisation had responded to this by trying to use a specific day for mediations, while in another, one mediator was reported as having one day a week free ('floating'), with the result that urgent cases could be done in a fortnight.

3.2.2 Issues presented

Most of the mediations undertaken in the case study organisations were between two individuals, with a roughly even split between those involving a manager and an employee and those involving two employees. Group mediations had been undertaken in a couple of the organisations, with another having provision for

Acas mediators to undertake such mediations where required[16]. Interestingly, a number of those interviewed felt that while cases might present as single issues, they often involved multiple issues or at least multiple incidents and concerns that opened up as discussion proceeded:

> "there's lots of reasons… So the one issue is that it's communication but there's a hundred things talking around the issue… but it all results down to one big thing."

> (Personnel manager)

Most of the issues presented in fact conformed to those considered suitable in 3.1.1 above. The absence of (effective) communication was mentioned by several of those interviewed:

> "a lot of the mediations, the bulk of them we deal with is usually communication, behaviour… around that within the workplace… interpersonal conflict. It's when people don't communicate you know and the gap gets wider and wider, and… things get more and more difficult."
> (Mediation scheme coordinator)

> "… quite often it is somebody making a complaint against their line manager for either harassment or bullying. Usually it's more to do with bullying than harassment. There haven't been too many equalities related issues, it's more about interpersonal conflicts and sort of facilitating trying to make it come to a nice resolution."
> (Equalities adviser/mediation coordinator)

In some instances these communication difficulties had resulted in problems that extended over a period of years. However, one mediator identified a further underlying and potentially perhaps more worrying factor:

> "quite a few of them have had a diversity issue as a sec-… they're not presenting that as being the problem but… there's been that issue."

However, as noted above, mediation was regarded as suitable where personal differences in style or communication were *perceived* as diversity/discrimination issues, even if it was not where matters were regarded as more clear-cut.

3.2.3 Arrangements and timescale

In most organisations a full day was usually scheduled for mediation, although in the organisation that used external mediators for 'formal' mediations and also undertook more informal internal mediation, 2-2½ hours was more typical of the latter. Most organisations, especially those with more formal schemes adopted similar formats for mediation (likely reflecting the training), with individual

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[16] Interestingly, one of the organisations using a single mediator approach indicated it would double-up for group mediations due to the greater complexity in the inter-personal dynamics involved, with additional HR support also provided.

sessions taking place in the morning and joint sessions in the afternoon. The former was used in some cases not only to establish rules and expectations and what the parties wanted from the mediation, but relatedly, to establish also whether the case was ultimately mediable (see above).

In several of the case study organisations HR staff undertook mediation cases. In the schemes where mediators were from a more diverse range of backgrounds however, mediators for individual cases were selected/allocated from outside the immediate work area of the parties, although even in one large organisation, it was recognised that this might occasionally need to be relaxed to allow for greater flexibility and resource reasons. An interesting development in one organisation with parallels to other settings in the US was a plan to allow parties to select their own mediator from a list (although they would not be allowed to initiate contact).

In all of the formal schemes a key element of the approach was that mediation was undertaken in a neutral space, often away from the parties' workplace altogether[17]:

> *"I think sometimes it's easier to shake off your kind of work baggage if you're in a kind of neutral space."*
>
> (Mediated party)

In some organisations this was readily facilitated by virtue of being multi-site organisations, but in a single site organisation, a separate room would need to be found. Another organisation had found the availability of a 'breakout room' could sometimes be helpful, especially where it was necessary to take a break, perhaps due to a lack of progress, so that the mediator could "refocus" the parties.

3.2.4 The mediation model: single versus co-mediation

As noted previously, all of the organisations were essentially using forms of facilitative mediation, with a variety of models being evident, largely reflecting the mediation training provider. In the formal schemes, the two main variants were the single mediation model (primarily associated with Acas) and the co-mediation model (typically Conflict Management Plus). From the description offered by one of those interviewed, the latter appears to have a fairly tightly prescribed process with specific steps, something that appears especially important where two mediators work together during a joint meeting, the choice of who started being a key ingredient. In another organisation, mediators would work from a script, at least in the early stages.

Those who used the co-mediation model expressed very positive views about its benefits. In the interview with a group of mediators it was described as "very important", and several advantages were noted including complementarity of strengths, protection against accusations of error and also on a practical level:

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[17] One personnel adviser reported that mediation could however, take place at a party's home if medical circumstances made attending a session elsewhere an issue.

"I mean you need that balance of someone's writing, someone's listening, someone's got eye contact, someone's thinking where we've got to go next. Someone's controlling the process while the other person is dealing with the people. And you need to have… you swap roles during the session but you need to have that, 'cos there's so much going on"

(Mediator)

Additionally, for internal mediators, where partiality may be more of a concern for the parties (see pp. 50-51), it also helps avoid walking:

"… straight into the persecution triangle… You would have to be aligned with either the victim or the persecutor, one or the other – you know very difficult to play that rescuer, and that's what you'd be pushed into."

(Mediator)

Other advantages include: faster acquisition of experience and the maintenance of skills; greater safety for both parties and mediators; and the opportunity for support and feedback without compromising confidentiality.

3.2.5 Representation

An interesting issue that arises with mediation is whether parties can (or indeed should) be represented (see Bleiman, 2008 for a discussion). Most of the case study organisations explicitly ruled out representation in mediation (in contrast with arrangements for discipline and grievance proceedings) since, as an equalities adviser/mediation coordinator explained:

"it's supposed to be informal… 'cos as soon as you take someone else it's… So people have to go on their own to it. Um … yeah, I just think it's important to make sure people know what it is so that they know whether they want to do it or not."

As two mediators in another organisation also pointed out:

"And it can escalate it, can't it? If one person says they want to bring a representative, that makes another person feel defensive and if they bring someone it escalates something that could have been resolved."

"This is about I think not being judgemental and not taking sides. The whole point is trying to draw out the common ground and so on. It's about how they feel usually, more than the actual thing that's happened. It's how they've felt about that thing. It's not actually to do with 'I need to be defended.' Because it would bring in that third dynamic of that person's… 'they've got supporters in the room and we tried to not'… you sort of empathise with them don't you, but you're not allowed obviously to take sides at all. And if the sides are then it's imbalanced…"

However, two organisations did make provision for representation. In one, where the group interview with mediators took place, this role effectively amounted to acting as a companion since:

"that person cannot speak or cannot affect the process by body language or expression."

(Mediator)

Part of the provision was that the other party had to agree to this, something that was important given the risk that, as one of the mediators pointed out, the process would be seen as two versus one, with one receiving expert advice etc. The mediator above also highlighted the concern expressed by others that representation "can get in the way of the exchange between the one on one", or as one of their colleagues put it:

> "The whole point of mediation is for the two parties to talk to each other, not have somebody else acting… and that isn't what mediation is. You know it's not like arbitration… It's not like being in a court and having representation by a barrister; it's just the two parties communicating together for a resolution."

(Mediator)

In contrast however, a union representative felt that representation could sometimes be useful where:

> "Some members who are vulnerable will feel vulnerable… [and] may benefit from just having somebody in there that they trust… Maybe just for the initial stage… There for moral support but not to take any part in the proceedings, but just to go in and sort of handhold them through the first steps and then say 'Right', you know, 'are you all right to carry on?' There may be occasions where that would help."

Thus it is clear that for the case study organisations the imperative of self-determination at mediation is a dominant consideration, so that any support occurs outside the mediation or is limited to the accompanying person being purely a 'companion'. This appears to be very much norm-reflecting, deriving from a perception both that mediation requires some minimum level of self-efficacy and also that it is part of the mediator's role to ensure mediation is safe for the parties and to neutralise any power imbalances (for discussion of which, and the ethics of this in relation to neutrality, see for example Weckstein, 1997 and Coben, 2004)[18]. Of course the absence of representation may be a concern to unions, on whose role in mediation, see below.

3.3   Two canons of practice

In the literature certain issues have come to be regarded as canons of practice. Among the more important of these are issues of voluntary participation and the confidentiality of the mediation process. In respect of the former the question of whether participation should be voluntary or mandatory has occupied some attention in the US literature, and in particular whether it should be an element of employment contracts[19]. In his review, Gibbons (2007) eschewed the near mandatory approach adopted in New Zealand. The downside however, as evidenced in the court-annexed mediation schemes considered by Genn (1998)

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[18] Such a view is not however, universal – the USPS REDRESS transformative meditation offering for example, allows for full representation, with evidence that this leads to higher resolution rates and party satisfaction (Bingham *et al.*, 2002).
[19] For a discussion of the mandating issue in the court context see Ingleby (1993).

(see also Genn *et al.*, 2007), is that mediation is unfamiliar in the UK, and take-up rates are often low.

The two issues of voluntarism and confidentiality are explored below and, as will become evident, largely confirm the existing canon, while perhaps pointing to some issues in terms of operationalising the concepts.

3.3.1 Voluntarism

All those interviewed felt strongly that the principle of voluntarism was a fundamental tenet, essentially confirming the view expressed by a wider group of respondents in the CIPD survey[20]. As one individual in the case studies put it:

> *"I don't think that we would get the results that we do get if we made it mandatory, because the whole purpose is that it's voluntary, confidential; we can be open and frank. And in order to have an open and frank discussion you both need to have that I think."*
>
> (Personnel adviser).

However, mediation coordinators (where these existed) or other gatekeepers typically reported working quite hard to "persuade" potential mediation subjects to go forward. Such efforts might include explaining the process or emphasising the possible benefits such as it being less stressful and time-consuming than a formal grievance. There was some evidence that in practice this encouragement might occasionally become coercion (see below).

All of those talked to however, stated that participation in mediation was entirely voluntary, and indeed saw this as an essential feature. Typical comments included:

> *"… we do not require our employees to take part in it. We think that's essential… [mandatory participation would not be] helpful at all… because we think that people have to buy into it, and that they have to feel that they are… between them, they are coming up with the solution for their problem."*
>
> (Equalities adviser/mediation coordinator)

> *"People need to really volunteer to want to go through the mediation process."*
>
> (Mediation coordinator)

> *"I don't think that we would get the results that we do get if we made it mandatory, because the whole purpose is that it's voluntary, confidential, we can be open and frank. And in order to have an open and frank discussion you both need to have that buy-in I think."*
>
> (Personnel adviser)

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[20] See also the Acas guidance publication on mediation which, among other features, emphasises both the voluntary and confidential nature of mediation (http://www.acas.org.uk/media/pdf/t/g/Mediation_Explained_Dec_2008.pdf).

> *"I think if you make it mandatory people just go ahead, not really taking it because they've been told they've got to... So I think it's important that it should be kept voluntary."*
>
> (Personnel manager)

In one organisation the *offer* of mediation was mandatory, but again the decision to participate was entirely at the discretion of the parties. That said, attempts were sometimes reported to 'encourage' parties to enter the process. Sometimes this might simply be explaining the process to them so that they understood what it involved and were able to make a decision on the basis of informed consent.

> *"And when I went through that process with these two employees, at that point I really stressed how informal it was and how it was just an opportunity to have a chat and that I wanted to help them get through their problems so that they could carry on working on this big high profile project. And it's a situation like that where any type of sort of very formal process wouldn't have worked at all. And in the end this employee... responded very well to being able to talk about what was upsetting him and why he was getting so passionate and vocal about it."*
>
> (HR manager)

This illustrates one of the key advantages of processes such as mediation, namely their potential to support continuing relationships, and indeed to repair same by virtue of facilitating greater appreciation of the other party's interests and perspective, and allowing for those involved to develop their own solutions. This contrasts with other dispute resolution strategies such as grievance processes, which typically involve prescribed outcomes and can further damage the relationship (deLeon, 1994: 70, citing *inter alia* Kressel and Pruitt, 1989). However, it was also evident that on occasions the dividing line between encouragement and coercion to participate could be crossed, or at least pushed:

> *"I've only done one or two mediations where people have been coerced into the situation or convinced it was a good idea and the mediation doesn't work very well."*
>
> (Mediation manager)

In another organisation the gatekeeper process might occasionally have to deal with situations where:

> *"I think people are told they have to do it, but then when they do come to mediation we do go over and say it's voluntary. It's detailed in our resolution policy and like guidance to line managers of something they can use. But it is clearly stated that it's voluntary, and both parties have to agree."*
>
> (Personnel manager)

One HR manager also felt that in disciplinary settings, the desire for parties not to be seen as obstructive or uncooperative could be useful in pressuring them to agree to mediation, partly since failure to do so might mean the matter was subsequently dealt with via another route (i.e. disciplinary procedures) with potentially more serious consequences.

3.3.2 Confidentiality

A second key feature of the emergent canon of practice concerns confidentiality. This was seen as an essential feature in all of the organisations, where it was described as being crucial for the credibility of mediation and for parties to be willing to discuss matters openly:

> "But I don't think you'd get the sign-up from employees if you didn't have a sort of hermetically sealed confidential system."
>
> (Mediator)

This was evidenced by the comments of an individual in one organisation who had been through the process as a party:

> "it was between us … the session we were working on was between us… Yeah, it wasn't something that we would be reporting on formally. And I think that that's a useful thing in terms of suddenly there's this big report on the record about all these things. And I think that if… you know maintaining the… the confidentiality helps you in the process"

Some variation in operationalisation of the concept did exist among organisations however, primarily in relation to matters disclosed during mediation which might necessitate disciplinary or legal proceedings. In one organisation this had been a major consideration for the team of mediators:

> "we revised the wording slightly but actually the sort of position didn't change a lot. What they said was if it actually got to court of law that would supersede you know. Whenever law comes in that would… so if they called them as a witness then they would be a witness. However, they did think that the confidentiality of the system is more important. It's more important to privilege the space as a safe space to discuss things, so that took precedence."
>
> (Equalities adviser/mediation coordinator)

A mediator in another organisation however, expressed the view that escalation might also be appropriate, for example, because of bullying, discrimination or violence during the mediation itself, or because such behaviours were confirmed as having occurred previously and were therefore more appropriately dealt with through other processes.

In other organisations similar qualifications to confidentiality were evident, for example:

> "There are as always cases where things come up in mediation that you need to take out of the room with you. You know someone needs to go on a training course or something. So what we do is as part of that session we would get them to agree as part of the agreement to … you know I can contact [staff development manager] to get a training course set up or whatever… But if it's not part of that agreement then it can't go out of the room… The only exception to that is if they do something or advise you of something illegal in the room."
>
> (Mediator)

In this case therefore, a pragmatic approach had been adopted whereby disclosure was voluntary, occurring only with the parties' consent. In another organisation however, the confidentiality was more absolute in that anything raised in mediation could not be used as evidence in grievance or other proceedings, and neither could mediators be called as witnesses.

Common practice was for any notes taken during the mediation to be destroyed at the conclusion of the joint session:

> *"I take quite a lot of notes in mediation sessions… I think lots of people take a lot of notes… so that I can remember what people had said and try and formulate an agenda in my own mind. But we always say to people that the notes are destroyed and our memory banks are wiped and we don't go away and talk to anybody about it. And if people say 'What happened in the mediation?' we just say 'Well it took place.'"*

(Mediator)

In two organisations with less formal mediation offerings however, the practice was somewhat different. In both such organisations the HR manager undertook the mediations, and in both cases notes were kept. For one of these HR managers their purpose in more formal sessions/meetings was however, to ensure that agreed changes were acted on and sustained, and the notes were not shared. In the other, transcripts were signed by the parties and while records were kept, they were kept securely and separately from individual files. In fact in the majority of the organisations a key feature seemed to be that records were not kept and were not placed on HR files/records.

Where written agreements between the parties were drawn up in mediation, these too were typically regarded as the property of and hence confidential to the parties. The only information that might be fed back by mediators (to the mediation coordinator or equivalent and perhaps via them to HR) was simply whether the mediation had been successful or not. Evaluations of mediation/mediators, where undertaken, where also typically regarded as confidential, and were anonymous.

One difficulty with the confidential nature of mediation as a process practiced in most of the organisations and identified by some of those in the case studies concerned the issue of line managers not being in the loop. As an HR manager noted, some managers/directors were keen to know whether the mediation had worked, while:

> *"that general sense of not being in control is quite difficult for some managers."*

As one mediation coordinator observed, for health and safety reasons the manager needed to be informed that the individual would be away from their immediate workplace, but did not need to know anything beyond that. In this

case it was reported that managers had no problems with this arrangement[21]. As noted elsewhere however, such confidentiality can be problematic in potentially inhibiting wider organisational learning[22].

3.4 Links with discipline and grievance (handling)

Most of the formal schemes in the case studies were linked to another policy/set of policies, primarily discipline and grievance or bullying and harassment, although one mentioned a stand-alone policy alongside bullying and harassment and another that it was previously in their Dignity at Work document. This pattern is similar to the CIPD (2008) Workplace Mediation survey, where just 13% had a stand-alone policy.

In relation to where mediation sits within existing processes and procedures, a variety of practice was again evident. In some of the organisations it was described as being outside formal processes, simply providing "another tool we can use" (HR manager), while for others it was formally part of, and embedded in, procedures. Crucially, more than one interviewee noted the potential for mediation to resolve problems that might become the subject of grievances, and avoiding situations where parties might be tempted to 'get their retaliation in first' (something linked in one of the organisations to the culture of complaint identified previously). Several noted that the emphasis within their organisation and processes was now very much one of promoting interests based forms of resolution (where appropriate), with the use of disciplinary and grievance processes seen as very much a last resort.

In one organisation where mediation might be the first step in a process (but equally did not have to be), any formal applications and internal processes would be frozen pending the outcome of mediation. In this organisation a benefit was cited as that:

> *"there might still be some damage done at the grievance stage, so that the mediation stage would be really to try and bring all the positives out."*

Other respondents similarly identified mediation's flexibility and its value on conclusion of formal processes when parties "are trying to settle things back to normal" (Equalities adviser/mediation coordinator), with a mediator in the same organisation describing mediation in terms of "repairing" and "healing." Indeed, in one organisation mediation could in fact be a recommended outcome from a formal process.

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[21] However, as one individual commented, there might be issues around confidentiality in open plan office settings, especially when trying to arrange a mediation, and some sensitivity to this was needed.
[22] It also opens up mediation to the criticism that it "silences social criticism by hiding the process of conflict resolution from public scrutiny" (Ridley-Duff and Bennett, 2011: 114; see there for further discussion).

3.5 Unions and mediation

For some commentators, a common view is that unions "discourage creativity and take an antagonistic approach to conflict management in the workplace" (Donais, 2006). Indeed, as Donais discusses in the context of ICMSs in the US, this may be because unionised settings tend to be weak in what he terms the 'engagement' (buy-in and involvement) and 'efficiency' (interests, cost, timeliness). Most importantly in terms of the latter, he highlights the lack of flexibility in structure(s) "built to house an adversarial rights-based system of conflict management" (Donais, 2006).

Others however, are of the view that:

> "[d]esigning a conflict management system seems to work *best* when the process is participatory, involving representatives of the various constituencies who will use the system. In organizations in which management has decreed a new system without employee input, it is not uncommon for employees to distrust and refuse to use the system."
>
> (Conbere, 2000: 34, emphasis added)

Many but not all of the same considerations apply equally in the context of specific dispute resolution processes such as mediation, and thus in a number of the case study organisations, several of whom, as noted previously, were unionised.

In the organisations analysed here, unions were generally viewed positively in relation to their role in mediation, and themselves expressed positive views about its benefits. A number of those organisations with formal schemes and where unions were present had made a point of consulting or otherwise involving them in the design of the scheme[23]. This was seen as helpful where for example they had:

> *"…questions about, you know, what would happen if someone admitted to something in a mediation that would go against them. And we've written all those things into the scheme about things that happen in a mediation that are not to be taken into any formal procedures afterwards."*
>
> (Mediator)

In some instances it had been anticipated that unions would be suspicious about mediation, reflecting a view articulated in the existing literature that unions might have "suspicion over alternative methods of resolving disputes" (Donais, 2006). However, experiences in the case study organisations were generally positive, albeit with some initial wariness in some instances. In one larger organisation for example:

> *"originally when we were first new to mediation within our organisation the unions could be suspicious because you think that's an area they're*

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[23] See Saundry *et al.* (2011) who discuss how the involvement of unions as full contributors in the design and running of a scheme in an NHS Primary Care Trust proved transformative of the climate and culture of employment relations.

> *involved in and it's been taken away from them; you're encroaching on their area. But I think when you get a better understanding of what mediation is about then… and when they do… you do that workshop, you know with the trade union, trade union reps have actually been trained as mediators… you break down those barriers."*

<div align="right">(Mediation coordinator/mediator)</div>

The same individual also highlighted that part of the concerns expressed to them had revolved around a perception that mediation might 'get someone off' a disciplinary. However, as was evident from the discussion above concerning the 'fit' of mediation with discipline and grievance, this was not the intention in any of the organisations. In fact, more commonly it was reported that unions:

> *"… could see exactly where it fitted with the process, and I think they felt comfortable with where their role started and ended."*

<div align="right">(Mediator)</div>

Perhaps part of the reasons for the absence of problems with unions in the implementation of mediation schemes is that organisations where unions were present typically involved them from the outset, including the design of the scheme[24]:

> *"part of our procedure that when we're revising … making any major changes or making any new policies, that we will always involve [the union]… you know consult with them and make sure that the best that we can that they're happy with it before we do it. Because again that's a way of avoiding conflicts isn't it?… Obviously we want their buy in because we want people to see it as a useful tool, and we made sure we got their buy-in when we were revising it."*

<div align="right">(Equalities adviser/mediation coordinator)</div>

In one of the larger schemes a union representative reported having been involved in the introduction of the scheme and widely consulted, and even described it as "one of the more positive initiatives here."

Overall the perception seemed to be very much one of:
> *"… they're [the unions] quite pleased with it, and the feedback we get from them is positive. They're quite happy with it going ahead"*

<div align="right">(Mediation manager)</div>

In this organisation union representatives were reported as sometimes referring potential cases, and some were also trained as mediators (see below). In another where an HR adviser/mediator also reported a union rep had been trained "and bought into the idea that mediation is a good idea", and where union reps might again refer, it was noted that while external union reps might wish to proceed through more traditional routes:

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[24] Experiences in the sample very much confirm Conbere's (2001) view that engaging employee representatives in the process has two benefits: that it addresses employees' suspicion and concern about the system, and that those involved with the design can act promote its use.

> *"our in-house unions are working together with this to try and persuade people 'Let's try and go down the informal route where possible.'"*

In another relatively long-standing scheme, the level of support was again demonstrated by employee representatives/unions referring cases and also recommending it to individuals. Clearly local knowledge and trust is essential. Among the reasons why union representatives were typically positive about the use of mediation was a perception that it might have the benefit of reducing the number of time-consuming formal complaints and hence reducing the workload of representatives who were sometimes stretched (in one case due to a shortage of representatives). As one mediation coordinator/mediator put it:

> *"I think the amount of work the trade union reps have really, I think they're grateful for anything that will you know assist them and assist their members of staff really, you know the people that they're helping."*

Trade union representatives themselves in the organisations shared this view, albeit with some qualification:

> *"I personally think it's a good thing and I think it's better for local stewards if you can… because it's time consuming for us, as well as people that do it as a job. So… but it would really depend on circumstances. And I wouldn't say that mediation was a be all and end all of every complaint that we ever get. But in certain situations… well I'm all for it if it stops complaints but… It's just I would hate for anybody to be forced into a mediation if they really wanted to go down a complaint route."*
>
> (Union representative)

An HR adviser/mediator in the same organisation confirmed this: while unions wanted to try and resolve issues using mediation, they were reluctant to do so once matters had progressed to a formal investigation. However, while the union representatives were generally reported, or themselves articulated positive views about the potential of mediation, in a couple of the organisations the scheme was sufficiently new that they were waiting to view developments before formally endorsing it.

Among the potential benefits of mediation for unions, alongside the early resolution and reduction in case load that it might effect, was a view that mediation might also have advantages in situations where both parties to a dispute were union members. Thus:

> *"I think the big thing for the trade union at times is that if you have a grievance, because of the reasonably high union membership, it's quite possible they're both union members. So if [there is] one union member – once another union member takes a grievance out against them, you know the union doesn't necessarily want to be hung out to dry. They'd rather mediate it and move it forward that way."*
>
> (Mediation manager)

Mediation might also be beneficial where the situation might be one that for various reasons might be difficult to pursue as a formal grievance/complaint:

> *"we did welcome it… One of the things about it is that a number of cases I've dealt with for example you know when people have come to see me, you kind of think 'yes there's a problem here, but the problem… it's not that defined, there's no clear evidence base, and you're not really going to get a particularly positive outcome'"*

One possible issue in relation to unions and mediation concerns whether employee/union representatives should act as mediators. Divergent views were expressed in relation to this issue. As noted above, some organisations had trained representatives to act in this capacity. As a union representative pointed out, this could be important in terms of lending credibility to the process. However, several interviewees were conscious of the potential for conflicts of interest:

> *"You couldn't go in there as a trade union rep… Because you would take sides… and [with] mediation you can't do that because you've got to listen to both sides."*

> (Union representative)

This representative was therefore reported by the mediation manager as having indicated they could not mediate in cases involving their own members. As another representative in a different organisation described however, it might be possible to mediate outside of one's own area, but that:

> *"it depends on how easily one can sort of separate out role activities… It would come down to being absolutely sure that you're able to avoid conflicts of interest [and] how far a union rep would be able to kind of step back from the usual, you know in the usual approach."*

In another organisation with more than one set of employee/union representatives present, it was indicated that representatives would therefore mediate on a cross-functional basis. However, a personnel adviser in the same organisation suggested that this did raise some issues, since the need to avoid any conflicts of interest had the effect of restricting the mediations that could be assigned to such individuals. This was not seen as problematic in the early stages, but was more of a consideration subsequently where demand for the service had increased. Another issue raised by a mediation manager was the potential even where mediators were conscious of their "two hats" for them to be seen negatively as management instruments, and also for representatives to be seen as impartial. However, provided direct conflicts of interest were avoided, this did not seem to be a common concern among those interviewed.

4.   MEDIATOR SELECTION, TRAINING & DEVELOPMENT

4.1   Mediator selection and skills

One key feature of mediation at work is the process by which mediators are recruited and selected. In the case studies a variety of practices was evident in this regard, partly reflecting the underlying choice of who was to act in this capacity. In one organisation the role of mediator was simply assumed by the HR manager by virtue of her role and a belief that conflict should be resolved by informal means if at all possible. The same was true in a small employer, the single HR professional having previously trained as a mediator. In contrast, in another organisation the whole of the HR advisory team was sent for training, since "it was a role we felt we were falling into... anyway" (HR consultant/mediator), while both HR staff and line managers were trained in yet another instance.

In three large organisations, much more formalised recruitment and selection processes were enacted, involving some combination of application forms, sifting/scoring and interviewing. In two of these organisations, an awareness training event was used to allow interested individuals to attend and discover more about the role before submitting a formal application[25]. As one of the interviewees said of this:

> *We asked them to complete an application form which was partly skills based, partly competence based and partly what they think they could bring to it.*

> (Mediation manager)

Once formal applications were submitted in the three organisations that used them (in one case with line manager support required), a selection exercise followed, with varying success rates. In one such organisation 170 attended the initial awareness event with 10 volunteering to become mediators subsequently. In another, 38 applications were shortlisted to 12 with a reserve list of a further 12, while in the last of the 'selection' organisations the 15 candidates who attended the training event all applied but 8 were shortlisted (although others were deemed suitable too and the intention was to allow these to train subsequently). Two of the organisations used interviews as part of the process and to identify the required skills and qualities (see below).

One of these selection organisations, which gave its applicants a scenario to discuss as part of the interview process, generously shared an anonymised version of the scoring sheet it used, and this is included below with some fictitious values to illustrate the criteria utilised:

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[25] Interestingly, gender differences were apparent in motivations for becoming mediators, as evidenced by the fact that in the initial recruitment drive which emphasised the intrinsic value of the role around facilitating communication etc., a predominance of females volunteered. In a second round, where the potentially positive career development aspect of mediation was stressed, more males were enticed to come forward. Although anecdotal, this identifies an interesting pattern.

Applicant First name	Applicant Surname	Experience	Personal attributes	Understanding	Total
	weighting	*60%*	*30%*	*10%*	
		4	4	4	4
		4	3	4	3.7
		3	3	4	3.1
		2	3	3	2.4
		2	2	4	2.2
		2	2	3	2.1
		1	2	2	1.4
Experience					
5 = fully trained and qualified, with recent experience					
4 = strong track record of conflict and / or mediation experience					
3 = previous experience in conflict resolution					
2= some comparable experience					
1= little evidence given					
0= no experience					
Personal attributes					
5 = displays all skills identified in mediator skills set					
4 = displays most of the skills identified in mediator skills set					
3 = displays the **key** skills from the mediator skill set					
2= displays some mediator skills					
1= little evidence given					
0= no skills identified					
Understanding					
5 = displays complete understanding of all aspects of mediation					
4 = displays understanding of the majority of aspects of mediation					
3 = displays understanding of the **core** aspects of mediation					
2= displays some understanding					
1= displays little understanding					
0= no skills identified					

One important issue highlighted in the recent literature concerns the extent to which mediator characteristics reflect the wider workforce. This relates both to diversity issues and to role/grade. A particularly strong view of this is taken by Moreno (2009) who argues that "Mediation is losing its effectiveness because mediation panels are not diverse and do not reflect the gender and race of their employees." In the case studies, as noted previously, some selected mediators from just HR, while others recruited more widely. While the qualities of the mediators were perhaps more important considerations in the sift of applications – "it's mainly what they can bring" (Mediation manager) – and selection was not typically diversity-proofed in any formal sense, there was an awareness in some organisations of the desirability of the mediators being broadly representative. Several of the organisations noted that diversity was a central part of their ethos and practice, and that this was reflected in a mix of mediators that emerged naturally. However, one mediation coordinator commented that it could become an issue if this ceased to be the case, while a personnel adviser suggested that their organisation might have considered positive action had this proven necessary.

One individual also intimated that such considerations might also be factored into the choice of mediators allocated to a specific case – what might be thought of as 'fitting the faces to the fuss' to adapt Sander and Goldberg's (1994) phrase –

although to date this had not been a consideration. While some might find requests for mediators with specific demographic characteristics difficult as a matter of principle, this could however be appropriate where there are particular sensitivities (e.g. cultural or sexual issues) or where there is an evident power imbalance that makes one of the parties uncomfortable and hesitant to enter mediation[26]. It may also be relevant where mediation is perceived as protecting the interests of the organisation (see Van Gramberg, 2003: 14-15; Balc, 2002). Overcoming such reluctance and balancing the concerns of the parties is of course part of the mediator's (and/or mediation coordinator's) skill set, but as Dolder (2004: 339) puts it: "power and coercion" are issues. In such circumstances, co-mediation and selection of mediators matched to the parties may have much to commend it in overcoming hesitance and ensuring a perception of procedural fairness.

An interesting and perhaps related issue that emerged from a couple of the interviews was that mediation might be a gendered process. That women might be more likely to agree to participate in mediation was noted by mediators in two separate organisations. Moreover, even where males entered the process, mediation was sometimes seen, to some extent reflecting gender stereotypes, as:

> *"more difficult... And the one that failed, the woman was still like participating, the guy wasn't... I think it's perhaps down to personal communication skills – women are quite happy to talk and resolve, whereas men maybe aren't."*

> *"And it took a long time to get them to move together. They were both gentlemen... You know how difficult it is sometimes for them to admit they're wrong."*

There is also an impression, corroborated by a small-scale survey of CMC workplace Providers (Latreille, 2011), that in-house mediators are more likely to be women.

Participants in the case studies articulated a range of skills that mediators should possess. A couple highlighted that mediators might come from backgrounds involving managing conflict situations, and/or where 'softer' skills might be part of their role (e.g. a welfare officer was cited). Perhaps not surprisingly, highly developed interpersonal skills were mentioned by almost all, most commonly (active) listening skills and questioning skills, including the ability to:

> *"ask the right questions... "*

<div align="right">(HR consultant/mediator)</div>

and to:

> *"... pick up on bits that are coming out."*

<div align="right">(HR adviser/mediator)</div>

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[26] For a discussion of such imbalances and the tensions inherent in mediation between neutrality and balancing party power, see for example Coben (2004) and Green (2006). Dolder (2004) comments on this and wider justice issues in workplace mediation. See also Wiseman and Poitras (2002).

Or as a personnel manager colourfully expressed it:

> *"It's the ability to almost work out what the issues are outside, like, all the white noise, you know."*

As an individual who had been through mediation recalled:

> *"my recollection is of a very sort of understanding soft kind of person, not someone who was kind of really you know businesslike… like kind of… listening rather than speaking too much… I opened up more than I expected. In terms of the questions that she asked and so on…"*

While this 'softness' might be interpreted as fitting some of the stereotypes around mediation, several of those interviewed made it clear that mediators actually needed to be strong mentally and emotionally so as to manage and calm highly charged situations and individuals:

> *"assertive in the sense of being able to manage a set of circumstances and keep control of them… "*
>
> (Mediator)

> *"you need to be assertive but in a … in almost a passive way"*
>
> (HR manager)

> *"I think it's ability to control a situation and move things forward so they stay focused."*
>
> (Personnel manager)

The ability not to take the emotions personally was also articulated, even though mediators might 'internalise' many of the emotions, and many noted the intense, affective and draining nature of mediation.

Reflecting the canon of practice that exists in mediation and hence the training most mediators in the organisations received, impartiality and an absence of bias or favouritism were noted by many as essential to the role. Being non-judgemental was also seen as important, even where this might be difficult given the nature of the situations/behaviours being discussed and the human inclination to sympathise with an apparently aggrieved party:

> *"I know we have to be unbiased but you've still got in your head what you think… although you don't… you try not to come out with sometimes, you can… So it's like making sure you do go with an open mind and that you are unbiased. And just because it sounds like… 'Oh, that sounds dreadful!'… In your head: 'Oh it's awful!' And even though you might not show it, not to go… when you see the next person to think 'Oh you're a horrible person', but in your head you don't tell them that, but you sometimes have… you do have perceptions and you know you don't bring them out, but sometimes you've got it in your head that you do."*
>
> (Personnel manager)

In addition to these skills, problem solving, or at least the ability to generate options was noted by several of the participants as part of the mediator's skill set.

However, mediators had to remain non-directive, reflecting the ubiquitous facilitative mediation mode adopted in all of these organisations.

4.2   Training and development

Among those with formal mediation schemes, organisations had without exception arranged for potential mediators to receive formal training from an external provider (in four cases through Acas). The formal instruction component of such training was usually 5 or 6 days, either completed in a single stretch, or split into 2 or 3 day blocks over a period of time. In all cases this training led to a formally accredited qualification, and mediators were not typically allowed to undertake mediation until they had successfully completed all elements necessary for accreditation.

While the training varied among providers, all included elements of role play. One organisation also initiated role play subsequent to the formal training so as to refresh mediators' skills, adapting the notes provided during the training. In the case of training provided by Acas the accreditation required the completion of a portfolio; this was not always the case with other providers. There was some evidence in the case studies that respondents perceived the portfolio as a significant undertaking, and in one case this had acted as a disincentive to an individual to be trained.

A number of those who had been through the training described it as challenging due to having:

> *"… to be prepared to open yourself up, your inner self, and that can be quite… you know it's exposing your weaknesses."*
>
> (Mediator)

Nonetheless, as one mediator put it, the experience was:

> *"a hugely life changing experience, and I don't say that lightly."*
>
> (Mediator)

For those individuals whose organisations had commissioned dedicated training events for those selected to act as mediators, the training seems to have engendered an important sense of camaraderie. In the interview with a group of mediators whose organisation operated a co-mediation model, this was very evident from the case study interviews, both in terms of what was said and from the internal dynamics:

> *"We've stayed a very close-knit team, and that's part of… because we found out through the training that we all had different strengths and weaknesses…"*
>
> (Mediator)

> *"You know these folk I would trust with anything. And when you step into mediation, if you can't do that, then you shouldn't be doing it."*
>
> (Mediator)

This group had also developed a shared culture and humour, and had also taken to:

> *"meet[ing] on a regular basis just to chat through cases that we've had and support and see how we move it on. If there's anything... we had some issues over confidentiality so we needed to readdress how we would process that and different things."*
>
> (Mediator)

The use of periodic (most commonly quarterly) meetings between teams of mediators was common to several of the organisations with formal schemes. In some cases these emerged organically to provide a means of mutual support and to foster ongoing dialogue about good practice, although it was emphasised, still respecting confidentiality. In another, while it was at the time perceived by an HR adviser/mediator as perhaps too early for systems to develop and support mediators, such feedback sessions were nonetheless planned. These might be thought of as facilitating a 'community of practice' (see for example Wenger, 1998, c2007). There was also evidence in some of the organisations of mediators debriefing one another and offering feedback/peer evaluation. In smaller organisations however, where perhaps a single individual had been trained, such opportunities were largely absent.

In one larger organisation the importance of such sessions was partly to facilitate the sharing of effective practice with less experienced mediators:

> *"because we've got different levels of experience within the mediator group. So anything that they could offer in terms of advice and guidance really. Sharing of complex matters and complex cases with suggestions of 'if you get something similar then this is you know how we did it...'"*
>
> (Personnel adviser)

In a number of the organisations, including those where a co-mediation approach was not formally taught, development of inexperienced mediators was also undertaken by 'double-teaming' of less with more experienced practitioners. In the organisation above, mediations were initially undertaken with the Acas trainer/mediator, and subsequently a mentoring arrangement was introduced whereby newer mediators would begin co-mediating with a more experienced colleague. As a personnel manager in that organisation put it:

> *"I think you still need the practical experience that you're not going to get unless you do that buddying up"*

Ultimately however, as a mediator in the same organisation expressed:

> *"you can't learn off anybody else, you've just got to go and do it"*

However, as the manager of a mediation scheme in another organisation described when referring to the partnering of less with more experienced practitioners:

> *"it's a gradual development of their skills as well. I mean even though somebody's had a course and they're accredited, it doesn't mean that they're able to mediate the next day on their own."*

Co-mediation however, may have benefits besides simply the learning and gaining of insights from more experienced mediators (see p. 34 above). Among these are a more rapid acquisition of experience and, as mentioned by the manager above, opportunities for mediators to maintain their skills. This is essential if the skills are not to atrophy, and may be more problematic if relatively few cases present for mediation. In a number of the more formal schemes, small numbers of cases was identified as a problem, despite initial fears that the scheme would be over-run with demands resulting in relatively low-key roll-outs. The difficulty it appears, is in determining an appropriate number of mediators: too many might mean "them not doing any for two years..." (Mediator), while on the other hand:

> "... unless you've got the capacity to deliver around raised expectations, then you'll be failing people. So we've been in a bit of a Catch 22."
>
> (Mediator)

However, as one mediation coordinator in a large organisation pointed out:

> "I think the fear is you're going to get inundated. Once you've sent out your leaflets... you think 'Oh everybody's going to want it and we're not going to have enough people'. But I've been told that doesn't happen, it just doesn't... It's the drip feed effect really."

That said, over time there was evidence of increasing demand for mediation in several organisations, and in some of these, in conjunction with changes to staff, further rounds of training had been required. Interestingly, one public sector organisation had expressed an interest in offering their mediation services and knowledge to outside organisations.

Alongside the formal training for mediators, some of the schemes also included more 'basic' mediation awareness training for personnel and line managers, trade unions and other employee representatives, explaining what mediation is and how and when it might be used.

Post-training support was also evident, although variation in the precise arrangements was apparent. For example, in addition to the Acas mentoring co-mediation role noted above, in another organisation the Acas trainer provided call-off support terms of ideas and the setting up of a formal scheme.

Again the role of the mediation coordinator was central to the larger, more formal schemes. Besides acting as a central focus and attempting to encourage parties to enter mediation, they are also a source of support for both mediators and the conflicting parties.

5. EVALUATION

5.1 Defining and measuring success and evaluating mediation

A fundamental set of issues in the wider mediation literature concerns attempts to define and measure success in mediation and (hence) to evaluate its benefits. Perhaps the question *primus inter pares* is to determine how to define the 'success' of such interventions. The easiest and arguably "the ultimate criterion of effectiveness or success" (Kochan and Jick, 1978: 211), albeit imperfect, is the rate of settlement – i.e. whether the parties reach agreement. However, as noted in Urwin *et al.* (2010), there is no simple, single index of success in mediation and a variety of measures have been proposed including reduction of cost, degree of movement from initial positions, proportion of issues resolved, extent to which parties hold back on concessions, 'fairness' of outcome, parties' satisfaction and whether they would recommend the process to others, the nature of agreements, rates of compliance, improvement in post-mediation environment, etc (Kochan and Jick, 1978; Kressel and Pruitt, 1989; Henderson, 1996; and the survey by Mack, 2003). While these have all been used as possible metrics in the wider mediation context, not all are perhaps relevant in respect of workplace mediation.

The difficulties with identifying a suitable criterion for evaluation, were illustrated by one case study respondent who argued that:

> *"… that's one of the difficulties when you look at … we've looked at it a few times and we're still looking at it at the moment, is measuring success, for want of a better word."*
>
> (Mediation manager)

Among the case study organisations, a much narrower set of criteria was referred to than the above list, some being what might be termed 'soft' measures in nature. Perhaps the least demanding criterion, albeit one that should not be undervalued given the reluctance among many to enter mediation, was that articulated by the mediator who said that:

> *"When you're on your training you're told very clearly that it's a success if the people turn up. That's a success in mediation."*

It is worth noting too that this is used as a formal target in the highly successful US Postal Service's REDRESS scheme, where a 70 per cent target participation rate was initially set as the primary goal, and subsequently raised to 75 per cent (Bingham, 2003). For the individual above however, this was clearly not enough and he went on to comment that:

> *"… when you're actually a mediator you just want it to work you know…"*
>
> (Mediator)

What was meant by 'work' is, of course, crucial. For example, another interviewee defined success in terms of:

> *"… how the employee feels afterwards… If they feel it's helped, that's the most critical success factor…"*
>
> (Equalities adviser/mediation coordinator)

Many of those interviewed from a range of organisations described success in terms of parties developing an awareness/understanding of the other person's feelings or perspective, usually alongside the hope that this would effect a change to a more positive working relationship:

> "Our goal is hopefully that the parties can be aware of how each other feels. That's the first thing, so that that's out in the open. And then they can talk to each other about what effects they have on each other, and hopefully at the end of the day they'll be able to work together at a better level."
>
> (Mediator)

> "My hopes as a mediator are always that I can make the other... help the other party to see the other person's point of view. And to get them so that they can come to work without feeling threatened or unhappy or worried about having to face that other person; they can be comfortable and professional in their presence even if they can't be their friend."
>
> (Staff development manager/mediation manager)

> "Success in mediation I think is if they're working together and they're happy in their work."
>
> (HR adviser/mediator)

> "I think successful to me is when they've actually both raised the issues in front of each other and they've talked about it. Whether they agree or not, I don't think you can make people agree. And I think as long as they agree there's an issue and look for ways forward … they may not have a written agreement, so it's not been successful that they've got a formal … well an informal formal written agreement … but they've gone away realising what their actions are against each other."
>
> (Personnel manager)

> "For me it's bringing about some sort of resolution that allows the two individuals to have a relationship at work. It doesn't have to be a friendly relationship, it's just a professional relationship at work."
>
> (Mediator)

One mediation manager expressed success with more than a passing reference to the 'pareto principle', articulating that:

> "it's the greatest happiness of the greatest number."

A difficulty with such conceptualisations of success of course, is the difficulty of measuring the outcome, despite one individual's view that it was possible to do so in terms of individuals working together. Part of the explanation for this more qualitative assessment was articulated by one public sector mediation coordinator who highlighted the 'duty of care' in such organisations, which rendered such considerations paramount. However, some respondents saw improvements in relationships alongside more 'tangible' outcomes, most notably the resolution of and longer-term reduction in the number of formal grievances/complaints. As the equalities adviser above added:

"And obviously if a case… you know, if a case is resolved and the complaint goes away then that's great for everybody concerned as well…"
(Equalities adviser/mediation coordinator)

It is however interesting in this instance that the resolution of the case (complaint) was seen as very much a secondary, albeit welcome, consideration, and that the emotional (affective) rather than any transactional element assumes primacy. Another was similarly of the view that:

"… if anything we're hoping that it minimises our work in terms of dealing with formal complaints. Whether it will or it won't, we still think it's a valuable…"
(HR consultant/mediator, emphasis added)

For most in the survey therefore, the evidence was primarily:

"qualitative, rather than quantitative… But I think… I think you know, people can see the benefits… Maybe because it's a public organisation you know they do put a big emphasis on duty of care and looking after the employee, so I think they see why it's important."
(Equalities adviser/mediation coordinator)

While the benefits of mediation may appear self-evident in the employment context, for example in better working relationships as well as savings in management time dealing with conflict, lower productivity losses from absence, turnover and stress/health problems, quantification of the gains relative to (measurable) costs is critical in a policy environment where mediation is being promoted by both policymakers and practitioners and as yet the evidence base remains underdeveloped. However, "[a] review of the literature reveals that companies often fail to monitor their internal ADR programs or to keep records of the time and costs involved in these processes" (Varma and Stallworth, 2001: 79), and as the more qualitative measures above might suggest, this was substantively the situation in the case studies. This remains therefore, an area of challenge to the mediation community both in the case studies and more widely, but also an opportunity in that robust, well-designed evaluations have the potential to cement the case for mediation and hence persuade organisational decision-makers of its value.

In some organisations there were signs of a recognition that managers and senior staff might increasingly look for more formal, 'harder' evidence, perhaps in the form of cost-benefit analysis. Only one of the organisations had undertaken such an analysis[27], concluding that mediation merited its adoption/use and also that formal investigations typically cost six times as much[28]. A second had not undertaken such analysis formally, but did have to make a case for additional

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[27] Details of this were provided as part of a preliminary case study undertaken with this organisation by Acas staff at an earlier point in its development. Interestingly, the mediation champion and coordinator when mediation was introduced had since left the organisation and their successors did not seem to be aware of this analysis, nor was it continued. This demonstrates clearly the need for a more distributed approach to information to ensure continuity and that organisational learning is retained.
[28] Unfortunately, the basis for this ratio does not survive.

resources from the business client, setting out the benefits, costs, risks, etc. A third had looked at evidence from elsewhere on this issue and while mediators already completed self-reflection questionnaires, the organisation had plans to collect a further, extensive range of statistical data including: cost-benefit analysis as well as evaluations from line managers, participants and mediators; details of suggested and implemented changes to the process; utilisation data (cases opened/closed/outstanding); types of complaint; length of time needed to resolve the dispute (from initial request for mediation); origin of the case; job roles of disputants (broad general grades to assure confidentiality); outcome of the mediation (full/partial/no agreement); mediator capability (as assessed by participants); cost of mediation; and durability of mediation. Another which collected records on date of referral, outcome and mediator, identified the need for improved records of engagement and party demographics, and at the time of the interview was looking to compile an 'out-turn statement' identifying the characteristics of referrals and to identify trends so as to:

> *"ensure that the scheme we're providing is beneficial to the parties who are actually engaged in it as well as reducing our grievances"*

(Personnel adviser)

5.1.1 Short and long-term success and durability of outcomes

The issue of durability of outcomes is interesting, since none of the organisations appeared to have considered longer-term success. One definition of this used in the wider literature is that:

> "[l]ong-term success is concerned with delayed outcomes that are observable after an interval of time has passed since the hearing, for example, whether the parties complied with the agreement, and whether there was an improvement in their relationship and an absence of further problems several months following the mediation."

Zubek *et al.* (1992: 547)

Examining the longer-term outcomes is argued to be especially important where there is a potential power imbalance between the parties (Wade, 1998). In the case studies however, follow-up at 3 months was the longest among the sample. One organisation also made provision for 'review mediation' after this interval, although to date no parties had taken up the offer. There were concerns that reviewing the issues in a case for the purposes of evaluation would be like "opening up the can again" (Mediation manager), "revisiting the emotions" as well as revealing an absence of change (Mediation coordinator). The absence of longer term evidence is however, not atypical of the wider mediation literature, where many of the empirical studies, as with the organisations in the case studies, consider short-term measures only such as satisfaction of the parties in either an exit survey or closely following, the conclusion of the mediation[29]. This

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[29] In one set of studies of divorce mediations for example, this follow-up has extended over 12 years (see Emery *et al.*, 2005), although this is very much exceptional, with 3-24 months being more common. Studies of long-term outcomes sometimes also consider rates of compliance, the 'quality' of the (ongoing) relationship between the protagonists,

is one dimension in which the evidence base in respect of workplace mediation in particular is singularly lacking. A concern about the lack of durability of mediated agreements may be one reason why organisations do not collect such data: i.e. a fear that it may actually undermine the very process and its perceived value[30]. That said, the organisation planning to collect the barrage of statistics noted above was planning to include a 12 month follow-up in its data gathering.

Those who collected shorter-term evidence typically did so by means of information on case outcomes (full/partial/no resolution or some variant thereon) or from feedback questionnaires (known colloquially by some in the field as 'happy sheets'). Where details of what was collected where made available, these included information in relation to the mediators and their activities, the process of mediation, outcome and overall satisfaction. These were collated in some instances but not others, often for reasons of confidentiality (see below). In one case mediators saw their own feedback forms, which were retained in a folder but not used other than as a measure of the mediators. For the organisations where mediation was used less formally however, little feedback concerning or evaluation of mediation was undertaken. In one such organisation where no evaluation was done the HR manager nonetheless felt that they would otherwise have faced more resignations, which they were keen to avoid. In another, the HR manager said that while no formal evaluation was undertaken, there was a clear sense of the benefits. Developing robust evaluation of mediation, and in particular in relation to costs and benefits to the organisation is crucial however, both in securing ongoing support from senior management for resources and also line managers and other employees in participating when appropriate. It is also essential to ensure ongoing improvement to the offering (as argued by Conbere, 2000 in relation to systems approaches to conflict).

5.2 Learning from mediation

One of the difficulties, even where feedback is collected, is the potential tension between the confidentiality of that feedback and the sharing of information required to identify patterns and to facilitate organisational learning[31]. To the extent that mediation does not produce solutions applying beyond the dispute in question or establish precedent, it is thus 'non-normative' (Sturm and Gadlin, 2007), something concerning those who see it as 'privatising' justice, especially for women (see for example, Scutt, 1988; and in the workplace (sexual harassment) context, Harkavy, 1999).

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and in family dissolution/divorce settings, the impact on children. These measures may of course change over time, and the appropriate elapsed duration following resolution at which these follow-ups should be undertaken remains moot. In part this choice may depend on context and whether the relationship is an ongoing one (for example, job separation).

[30] There are other factors that may also inhibit development of the evidence base – see Bingham (2007) for a discussion.

[31] To the extent that mediation does not produce solutions applying beyond the dispute in question or establish precedent, it is thus 'non-normative' (Sturm and Gadlin, 2007), something concerning those who see it as 'privatising' justice, especially for women (see for example, Scutt, 1988; and in the workplace (sexual harassment) context, Harkavy, 1999).

In the case studies, an HR manager/mediator in an organisation which used co-mediation was clear in their view that while mediators might learn from a debriefing session with the other mediator on a case, HR could not impose learning elsewhere in the organisation since doing so would compromise confidentiality and hence buy-in. The same individual also highlighted a potential issue with (line) managers who found it difficult when they were not privy to the outcomes emerging from mediation. In the group interview, mediators also expressed a desire to know more about the eventual outcomes in cases:

> *"We don't really get to know what happens after the mediation… but it's another thing around learning and support is that… you know for us to feel validated and valued we take our own satisfaction from it, but it would be nice to see wouldn't it, you know, did any of them end up going to harassment? Did any of them go to tribunal and stuff?"*

<div align="right">(Mediator)</div>

A union representative also expressed an interest in being able to get information on the issues at mediation, although like the mediator above, also recognised the need to preserve confidentiality. As the mediator eloquently described, there exists a tension between confidentiality and (organisational) learning:

> *"There's an ongoing issue I think that we've discussed as well around mediation, and that is: how do you transfer the learning from each individual mediation into learning for the organisation? And we've never cracked that. Because you're bound with the confidentiality of the mediations which is absolutely right and appropriate if you're going to hold credibility, but you do see patterns and themes of incompetence – managers and intransigent … if that's the right word … employees. And you think 'Got to do something about this.'"*

Mediators also expressed some frustration with this inability to use the information gleaned from mediation directly to effect change/improvement. As another expressed it:

> *"… you do pick up poor management or poor staff behaviour or whatever, and it would be nice to be able to go back and say: 'I know it's not my part to do this… but you're just like, if you'd only done this…'"*

As a consequence, while learning about the practice and process of mediation might emerge from the mediator feedback forms, debriefings and meetings (for instance, around confidentiality and legal evidence in one organisation (see section 3.5.2)), the ability to take issues arising back to the work environment was more problematic. While in one case a quiet word might be had if there were serious issues, others sought to effect learning using information from formal grievance processes (which might instead be routed into mediation) rather than from mediation itself, or from generic issues discussed at a working group with a very senior staff member. Interestingly, a personnel adviser in a large public sector organisation actually felt that mediation had:

> *"improved employee relations, because we're finding out a lot more from informal discussions, as I say, than we necessarily would have done from a formal investigation process. And I think that's what embeds the culture is a lot of the informal stuff rather than the formal stuff. So we're finding*

out what … to use the cliché … iceberg approach – what's underneath the water. And then in terms of employee relations and HR matters, we are able to address those issues because we're being more … we're becoming more aware of them."

As Sturm and Gadlin (2007) describe, conflict resolution can be a powerful agent for change, but requires the explicit integration of "systemic thinking" into individual cases, combining looking at root causes and also multi-level thinking. Exploiting the learning that can arise from mediation to effect more systemic change, while continuing to preserve party confidentiality, remains a challenge, although there is anecdotal evidence from discussions with practitioners to suggest the sort of change advocated by Sturm and Gadlin is beginning to emerge.

6.   BARRIERS, FACILITATORS AND LESSONS LEARNED

Conbere (2000) identifies the key issues in "making the [conflict management] system work" (p. 36) as: rewards for using the system, how people can be assured it is safe, how parties will be held accountable, and how awareness will be effected. The case study interviews sought to identify barriers to and facilitators of the use and success of mediation in the workplace, and here a number of common themes emerged that echo Conbere's view. In respect of the former these can be thought of as revolving around three key sets of issues: awareness of and attitudes to mediation by employees; managerial knowledge, perceptions and support; and resources. A small number of other, related issues were also mentioned less frequently around voluntarism and confidentiality (elements of safety).

Awareness

In respect of the first of these, a number of those interviewed felt that the level of awareness and understanding of mediation among staff was relatively low, and pointed to a need for more promotion to address this. As one mediation coordinator pointed out:

> "I think the biggest weakness is just that people don't know about it… Which is one of the reasons why we're really trying to launch it alongside the [harassment and bullying] policy."

In a couple of organisations it was recognised that this might stem in part from the low-key way in which some schemes were introduced (as described in section 3.4). Thus, as one personnel adviser opined in terms of lessons learned:

> "… marketing it to the key people is vital, because you can have a fantastic scheme in place, but if it's not being used, it may be that it's because those people who are told of complaints or of disputes – internal disputes – don't necessarily know the scheme is in place."

In one organisation without a formal scheme and where mediation was used on a more *ad hoc* basis it was felt on reflection that the option should have been publicised more since the lack of awareness had probably resulted in missed opportunities.

Understanding

However, perhaps the greater barrier concerns a lack of understanding of the process and its benefits rather than simply of awareness. This manifested itself in several forms. For example, in several organisations it was reported that employees misunderstood mediation to the extent they perceived the process as being about punishment or that referral was related to some form of disciplinary issue or complaint:

> "what you find is when you're actually mediating a case people feel… it's almost like a punishment or it's… If they don't do this there's something going to happen to them, rather than seeing it as a positive aspect to employee relations."

> (Employment adviser/mediation coordinator)

"... we had one who wanted to know more about what the complaint was prior to mediation. So... it's got to be seen as a good thing rather than a punishment, do you know what I mean?"

<div align="right">(Union representative)</div>

This might reflect the underlying culture within the organisation and in particular the previously described tendency for employees to pursue formal complaints/grievances, something mediation was seen as having the potential to address and part of the rationale for its introduction. Strikingly, a couple of those interviewed noted that parties could sometimes feel under some obligation to attend mediation. One mediator saw this as a clearly negative factor:

"when people feel they're under pressure to go where somebody has ill advisedly along the way said 'Well you need to go and do this' or 'You've got to do that.' Then you have to work at, you know, making sure they're there voluntarily and trying to get them to actually engage in it voluntarily."

As one mediation coordinator expressed it:

"And quite often they say 'Oh I don't feel mediation's appropriate you know, I've been told to come to mediation'. So I discuss it with them and we go through it and I try and pinpoint some of the benefits to themselves as a person and also you know to the team etc. And I give them thinking time. I don't pressurise them, because that's not what it's about..."

Perhaps not surprisingly given such perceptions, it was suggested by a union representative that mediation might be regarded with "a bit of suspicion" by employees. In another organisation a personnel adviser highlighted suspicion in relation to partiality and confidentiality, while noting that the formal accreditation of the scheme had largely allayed such concerns, although as one employee representative noted, the issue might sometimes be the parties who have been involved in mediation breaching confidentiality.

A related misunderstanding but from the opposite perspective revolved around (unrealistic/inappropriate) expectations of what mediation would deliver. Thus:

"[quoting parties] 'I want compensation.' 'I want this person hung drawn and quartered'... 'I want this, I want that.'"

<div align="right">(Mediation manager)</div>

"...mediation is not about apportioning of blame, it's about moving forward and rebuilding that relationship. So if somebody's wanting a formal action or a formal sanction then they won't engage; they'd rather go straight down the formal route."

<div align="right">(Personnel adviser)</div>

"I mean I did a mediation where I tried to explain to them that I'm not here to lay blame, I'm here to look at moving things forward. And they went 'No you need to tell her that she's wrong'. And it's like 'No, this is what the process is about.' And it was I think after the third or fourth time explaining, you could tell that they'd just switched off and goes 'Yeah yeah, whatever', thinking that it's not..."

<div align="right">(Personnel manager)</div>

Even where such misunderstandings about the directive nature of mediation were absent, organisations reported the need to overcome perceptions that referred employees would get nothing from mediation or hear something they did not like. Perhaps because of the emotion involved, one HR adviser/mediator commented that employees could sometimes be scared of the joint meetings. Interestingly, and reflecting the discussion in section 3.6 above, employee representatives/unions were not identified as being problematic in establishing or using mediation in any of the organisations where they were present, despite the fact that one organisation, at least, had anticipated some difficulties.

Important in all these respects therefore, are informing parties' expectations of mediation (Guthrie and Levin, 1998; Herrman *et al.*, 2004): indeed, it seem likely satisfaction will be lower where parties come to mediation with an unrealistic set of expectations about what it may be able to achieve. Preparation for, and the introduction to, mediation by the gatekeeper are thus key components. For example, a key feature of the small firm workplace mediation pilot offered by Acas, with high levels of client satisfaction, was that effectiveness was higher where Acas staff had met with the parties beforehand to explain what was involved and the "scope" of mediation, partly because this helped frame expectations (Seargeant, 2005). Such preparation is also argued to be part of ensuring "fair treatment" with all parties entering the process properly informed about its practices and protocols (see Stulberg, 1998: 914-915).

Managers and resources

Turning to managerial barriers, interviewees again identified a lack of awareness as being important:

> *"Probably a large proportion of our managers across all the different work places don't know that this is a tool that's there."*
>
> (Equalities adviser/mediation coordinator)

Across the organisations however, more mixed views about the extent of managerial awareness or understanding of mediation were expressed:
> *"I think sometimes they [line managers] don't understand what it is and what the benefits are."*
>
> (Personnel manager)

> *Whether they actually know the ins and outs of what mediation is, I think sometimes..."*
>
> (HR consultant/mediator)

However, mixed views could be expressed even within the same organisation, as revealed for example, by the last quote above and an exchange between three mediators in the group interview undertaken in the same organisation:

> *"I don't know if they [managers] really know."*
> *"I don't know if they know what we do."*
> *"Mine do."*

One mediator also commented that managers might see mediation as undermining their authority, something that they saw as rendering mediation inappropriate for situations involving bullying and performance. Reflecting the

earlier discussion, the same individual also felt that managers sometimes passed things to HR before they were ready for mediation ('ripe' to coin the phrase used by Astor and Chinkin, 2002).

A further important factor impeding more widespread use relates to resource constraints, most notably time. Mediators typically undertook this role alongside their normal work, and consequently it could be more difficult to arrange mutually convenient diary slots. This was perhaps rendered more difficult where co-mediation was concerned (one of its potential drawbacks) and especially where employees worked shifts. One of the larger organisations also suggested that finding mediators who did not know the parties might be problematic in organisations smaller than their own.

Facilitators

Not surprisingly, when asked about the factors that might help to facilitate mediation use and success, many of the points raised related to the same sets of issues as the counterpoints to the barriers. Thus, to secure employee engagement in mediation, information on what mediation involves is a necessity:

> *"I think it's just important to have the right information. 'Cos obviously the first thing a member of staff or a manager wants to know when you say there's mediation, there's: 'What is it, what does it involve?' You know, so we've got some little summaries … information that we can send to people, frequently ask questions, that kind of thing, which we send along with the letters inviting them, so that they know exactly what to expect."*
> (Equalities adviser/mediation coordinator)

An individual who had been through mediation also felt that organisations needed to convey a better sense of what mediation would entail, as both parties in the case were actually rather anxious at the outset. Relatedly, as another individual put it in the context of getting buy-in, parties needed to understand the voluntary nature of mediation:

> *"… it's voluntary and that we put the emphasis on you are creating the solution for yourself. And it's kind of empowering people to see how they are in control and how they can cooperate together to get what they need from each other. 'Cos quite a lot of the time it is about misunderstandings. So when people understand where each other's coming from they're more ready to work with each other."*
> (Equalities adviser/mediation coordinator)

In other words, ensuring the parties came to mediation in 'good faith':

> *"But if you don't feel that that's what you want to do, there's no advantage in a mediation, or very few advantages in mediation, if one party's there pays either lip service to it, or just doesn't participate. So it's important that both parties want to be involved."*
> (Mediation manager/coordinator)

A couple of those interviewed felt that getting that willingness to engage would be helped by awareness of examples (case studies) in the organisation. In one of these organisations a successful mediation had resulted in one of the parties

acting as an advocate for improved communication and informal discussions in their workgroup (a 'word of mouth' route) to try and overcome difficulties at an early stage:

> *"to say that the mediation, she felt 12 months ago had really worked so brilliantly for them, she'd actually gone to her colleagues and said 'Look if we ever have any problems or any disagreements between us, let's go into a room and sort it out' you know."*
>
> (Mediation coordinator/mediator)

Promotional/publicity/marketing activities were seen by several as important to the success of a scheme, together with ensuring staff were trained. Failure to do so might result in what one interviewee described as "semi-mediation" (or quasi-mediation as it was described above). As a mediator in the same organisation pointed out in the group interview, mediation's reputation could be fragile if one or two turned out to be problematic (see also Latreille, 2010). Overall, as a union representative put it very succinctly: "There's a lot of educating to go on I think."

Comments were also made, as a counterpoint to the barrier noted above, that resources were crucial, not least to demonstrate organisational commitment to the process. This reflects the view of commentators in the field. For example, Donais (2006) argues that "Proper investment shows the company is serious about conflict management thus increasing participant buy-in." In the case study organisations it was emphasised in a couple of cases that it might be helpful to look more closely at the business benefits of mediation. This was considered especially valuable in relation to securing managerial buy-in, since they might be more persuaded by the cost-benefits of mediation than by any demonstrated impact on staff welfare.

However, it was stressed by a mediator that while mediation might be about costs and benefits, it was important to see benefits for all. And as another mediator put it:

> *"I think the organisation needs to have an idea about what it wants to get out of it. Because I think at the earlier stages, I think there was an expectation that there would be a lot of information flowing from the process and you know you'd be able to count successes."*

The research also revealed a key role for a mediation champion in the organisation to establish and promote a scheme, for securing buy-in at all levels, and for engaging unions (where present) with the design and operation of the scheme, the last being particularly important in overcoming any employee concerns about the process:

> *"It's got to have somebody like the coordination mediator driving it. You've got to get the whole of the business on board, from the top down to the bottom. The top so that they endorse it, the bottom so that they participate in it as well, and they don't just see it as another policy or another statement from up above."*
>
> (Mediation manager)

The (often related) gatekeeper role was also vital, both in identifying situations suited to mediation and in steering a fine line between encouraging participation while ensuring this was completely voluntary.

Given the critical nature of such roles, and of the mediators themselves, support for those engaged in providing mediation was seen as an important factor underpinning (continued) success. One element of this was the need for continuing professional development, and in a number of the formal schemes regular meetings were held among the mediators to share experiences and needs. Those with experience of a co-mediation approach, either routinely or for specific cases/circumstances, perceived this as a significant benefit for a variety of reasons, including the greater opportunities afforded for mediators to practice, maintain and develop their skills, especially where the number of cases was modest.

In respect of individual mediations, an important lesson was that timing was vital, along with location. Regarding the former, as noted elsewhere in this review, "the longer these things become entrenched the more difficult they are to resolve", while in respect of the latter the place where the mediation took place needed to be appropriate to the case in question or the individuals concerned.

7. CONCLUSIONS AND THE FUTURE

The case studies undertaken as part of the Acas/CIPD research and used as the basis of this thematic review, provide a rich picture of the use of workplace mediation, and in particular the drivers, approaches and practices across a range of organisational types. Importantly, given mediation's comparative novelty in the British workplace context, they do so at a relatively early stage in the mediation diffusion process. As such, they provide fascinating and valuable insights for others, some of which was evidenced in their contribution to the Acas/CIPD *Employers' Guide* (Acas/CIPD, 2008)[32].

This review has sought to extract additional insights through a systematic and thematic examination of the experiences of these organisations and by embedding evidence from the wider literature. As the previous sections document, a wide variety of motivating factors (consistent with those articulated in Lynch, 2001 in the ICMS context), approaches and arrangements was in evidence, reflecting the particular circumstances of each organisation. At the simplest level, the dichotomy between a formal mediation scheme and a more *ad hoc* use of mediation was essentially a function of size, with the former being restricted to larger organisations. Variations were also clearly related to which mediation training provider the organisation had chosen for training its in-house mediators, an example being the adoption and use of co-mediation. Other differences, for example in relation to how mediation was linked to or dovetailed with existing processes and procedures, or how in-house mediators were recruited and selected, reflected the nature of the adopting organisation, its employment relations climate and context, and the factors driving them to embrace mediation. Such diversity reiterates Rowe's (1997) point made in relation to ICMSs but also relevant for mediation: one size does not fit all.

Notwithstanding such differences, formal in-house schemes were characterised by a number of similarities, most notably in relation to the practice of mediation itself. The style of mediation practised was of a facilitative type in each of these organisations, most commonly to tackle interpersonal/relationship problems, and with the typical process involving individual sessions with parties followed by a joint session, the whole taking place over the course of a day. Some of this commonality is likely to be a consequence of the small number of (common) training providers among organisations participating in the research, but certain fundamental principles of mediation, and in particular voluntarism and confidentiality were also shared across all organisations, along with the notion of mediator neutrality. All organisations made strong efforts to ensure adherence to these principles, and in the main appeared to have succeeded in this. That said, sensitivity to the hierarchical nature of some work relationships that present at mediation and the potential tensions that exist where mediators are part of the organisational infrastructure is clearly an ongoing requirement.

While all of those interviewed were positive about the value of mediation, a number of challenges were identified in the review. One is that numbers of cases

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[32] Corresponding guidance was subsequently produced for trade union representatives (Acas/TUC, 2010).

proceeding to mediation are typically modest, with corresponding issues in terms of retaining and enhancing mediators' skills. An interesting development in this regard was the development in several instances – sometimes by design, sometimes organically – of mediator groups/networks, with periodic review meetings, in what can be seen very much as 'communities of practice'. Responding to the low numbers of cases, and as described in the previous section, some organisations recognised a need to work further on promoting mediation and on educating staff, including managers, so that its use became 'routinised'.

A second challenge was in dealing with privileged issues (i.e. information communicated during the mediation that may not be disclosed without a party's consent), with possible serial complainants and/or respondents and, in the wider context, with securing organisational learning from a process that by its nature must be confidential. A related matter identified as a weakness in this review, is the lack of robust evaluation of mediation. While feedback from participants in the form of a questionnaire was typically requested following a mediation, and some organisations kept a count of referrals, mediations undertaken and success rates, rigorous evaluation (for example, using cost-benefit analysis) was very much the exception. While 'softer' benefits are important, not least for those who participate, persuading senior managers to resource mediation appropriately is likely to be contingent on demonstrating its value against a financial 'bottom line', especially in periods of austerity such as at present. Crucially, such evaluation needs to focus on measuring the wider costs of conflict rather than simply those which manifest as (formal) disputes.

Formal measurement may also help ensure that mediation's success is judged in terms of the bigger picture rather than the outcome of specific/recent cases, something that has been described as an additional facet of Feuille and Kolb's concept of 'fragility' (Latreille, 2010). One interesting issue here will be whether organisations introducing mediation out of a desire to comply with the new Acas *Code on Discipline and Grievance* (or at least its Foreword) are less committed to its use than the early adopters here, leading to greater "difficulty of building buy-in for the new approaches" (Lynch, 2001: 210).

While workplace mediation remains relatively in its infancy in the British workplace setting, the evidence suggests it is gaining increasing purchase. If the experience of the US is any indication, it seems likely that among larger organisations especially, the case-by-case response to conflict using stand-alone dispute resolution mechanisms such as mediation, will be overtaken by a more holistic approach in the form of more integrated systems for managing conflict (Lynch, 2001). Such systems are inclusive of people and issues, involve multiple access points and options, both interest and rights-based, have extensive support systems and seek to foster a 'conflict-competent culture', in which employees at all levels feel confident in dealing with conflict, and where conflict is viewed (and managed) positively (see for example Runde and Flanagan, 2007; Lipsky *et al.*, 2003). To date however, the evidence of introducing a more holistic approach on organisational outcomes and the relevant 'bundling' of (strategic) practices that deliver competitive advantage remains limited, but is clearly overdue (Lipsky and Avgar, 2008; but see Roche and Teague, forthcoming)

In a couple of the case studies (including from some more recent contact with two organisations) there is some tantalising evidence of the emergence of more

systemic approaches, with changes to the organisational philosophy around conflict. One of the organisations in particular has – subsequent to the case study interviews reported here – introduced a number of changes that certainly move it closer to this, including multiple dispute resolution processes such as a form of early neutral evaluation. This may be part of an evolving approach to HR that emphasises people as core and focuses on healthy workplaces (Saundry, *et al.*, 2011). It is also likely to be of some import to the work of Acas, whose contributions may increasingly become "better understood as fitting into a wider paradigm which includes dispute resolution, but equally promotes strategies for improved workplace relationships and conflict prevention" (Dix and Oxenbridge, 2004: 512).

Finally, it is perhaps worth noting two possible extensions to the research. The first echoes the conclusion in Harris *et al.* (2008) that "Whilst the 'in depth' nature of this research provides many insights… [with a couple of exceptions] it does not explore these from the perspective of employees and their experiences." This is crucial but not straightforward, since it involves securing consent from the individuals concerned (who may be reluctant to revisit emotive and sensitive matters) and from organisations (who may fear such reflection will re-open issues). Nonetheless, such research seems key, not least since other evidence suggests experience is a major (if not the) determinant of attitudes to mediation (Latreille *et al.*, 2010; Latreille, 2010). The second extension is to examine more closely the role of managers and how they can be supported in preventing unnecessary conflict and be equipped to respond to and manage that which does occur more constructively. Both are consistent with the current government's aim of resolving workplace disputes at the earliest point and fostering ongoing and productive working relationships.

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APPENDIX

**Acas/CIPD Mediation Research
Case Study Topic Guide**

MANAGER

OPENING

Introduce self
Confidentiality – data handling
Tape record clearance

Issue of whether company is to be named

Information to collate during visit:
Annual Report
Records of number of mediations
Records of D and G
Absence records
Any feedback information/data from those involved

SECTION A BACKGROUND AND CONTEXT

1. Workplace

Workplace size – no of employees
Part of larger organisation – size of organisation – no of sites
Age of company
Growing /static
In your own words, what do you do here? Ie produce or service
Who is the service for – public/other services/public sector
What occupational groups are at this workplace? (*professional etc*)
UK/Foreign ownership
Senior management and governance arrangements (*for buy in to any mediation initiative*)
Total annual budget/turnover/profit

2. What about you?

Your role in the organisation
Your link with HR/dispute resolution
Length of time at organisation and in this role

3. Employment Relations context

3.1 HR and TU
How are human resource issues managed here? (*department, here or elsewhere in organisation, size, outsourced etc - some covered above*)
Trade union presence (which unions, recognition, density)
Other employee representation arrangements

3.2 Conflict and conflict handling
Experiences of disputes: ET claims; D and G incidence
Absence
Turnover
ASK ALL How would you describe the employment relations climate in this workplace?
Procedures: formal discipline and grievance procedures and practices – incidence, what
is the nature (probe: *procedure written down, involve: meetings, writing to individual, appeal*)
Investigations, enquiries – incidence and nature
'Quiet word', dialogue
ASK ALL Would you say this is a place where people feel able to raise their concerns about working here?

3.3 Representatives
What role do employee representatives play in disciplinaries, or grievances?
Who can represent?
What role do they play?
In your opinion, how helpful is it for employees to be accompanied?

(Note to interviewer: trying to establish extent to which conflict handling is embedded in the company – proactive/reactive; philosophy, expedient/minimum)

SECTION B GENERAL USE OF MEDIATION/PRESENCE AND NATURE OF SCHEMES

4. Mediation

ASK ALL I want now to move on to consider your experience of mediation. Can I start by asking how mediation first started to be used in this organisation? (*probe: when start using mediation, why*)
Who initiated?
Why start?

4.1 Arrangements in the Organisation

ASK ALL Can I just check: do you have mediators within your workplace or organisation?
Have you used external mediators for instance from Acas, or another organisation? If so, who?
If both, why both?

Where internal mediator scheme:
How many and who are they *eg HR, line managers or others*
are they trained and how chosen
What in your view are the necessary skills and attributes for being a mediator?
Evaluation of the training: Who provided the training? How good was the training in preparing people for acting independently as a mediator? How might it have been improved? What systems are in place for development and supervision of mediators?

ASK ALL Strengths and weakness of arrangement

Where used external mediator:
Who used
Why used this provider
How heard about it
How is confidentiality handled
Do they charge (*care here for Acas not to overstep commercial sensitivity*)
What kind of contract do you have with x provider (*call off, ad hoc*?)
ASK ALL Strengths and weakness of arrangement

4.2 A Formal scheme?

Is there a formal scheme here for mediation? (*applies to own scheme, or some kind of contract with a provider*)
Is it part of the D or G procedures? *(if so, describe how it fits in)(probe whether perceived formality is important)*
How long did it take to set up mediation here (*as relevant:* either setting up a scheme of mediators, or finding a mediator to help with individual cases)

4.3 Embedding the Scheme/Mediation into the workplace

How did you go about introducing scheme? (*practical steps taken*)
ASK ALL What level of support do/did you get from Senior management? What about support from employee representatives, or the union? How important are any of these? (*relevance, how did it*)

How do you tell employees about the presence of the scheme/or mediation at the workplace? (*probe communication methods: induction, handbook, website, direct communication, team meetings, newsletter etc and establish how actively the scheme is promoted*)

And what steps did/do you take to inform line managers about mediation?

How did you /do you go about encouraging take up? What steps do you take to get people to engage in mediation? What are the barriers?

SECTION C. THE INCIDENCE AND NATURE OF MEDIATIONS

5.   Incidence

ASK ALL How many mediations have taken place at this workplace
... over the last year,
... and over the last three years (*or since the scheme was set up*)?
Is use of mediation increasing/ descreasing?

Gender/job role of parties
Subjects of mediations

ASK ALL What kinds of conflict most suited to mediation? *(eg bullying etc)*

ASK ALL What types of conflict are <u>not</u> suited to mediation? (*probe: mental health problems, disciplinary matters, performance, dismissal*)

ASK ALL Are there some groups of employees for whom mediation is not suitable?
In general do mediations involve: Single or multiple issues
In general do mediations involve: Single or multiple parties

ASK ALL To what extent is mediation here 'mandatory'? (for either party). Your views on the extent to which a mandate to mediate might help/be problematic?

At what point in the dispute is mediation considered appropriate? (eg before or after other resolution methods had been tried, last resort, or early intervention?) *probe interaction between mediation and time limits associated with ET cases*)
(*Strengths and weaknesses of using mediation at different times in conflict resolution?*)

Where are mediations held? (eg at the workplace, off site, neutral territory)
In general how much time does it take to set up a mediation take (from suggestion to completion)

How long should be allowed for the mediation itself?
What records are kept?
How is confidentiality handled? Who has access to records or knowing what goes on?
How does the organisation learn lessons from mediation cases (especially where confidentiality is promised)

6. Experience of mediation (CASE SPECIFIC if multiple cases in the workplace)

I would like to talk in a bit more detail now about cases. Perhaps its easier to focus on the last/or most significant case. Thinking about an example of when mediation has been used here...

Who first raised the idea of mediation? (e g employee, manager proposal, or HR proposal?)

ASK ALL Were the parties/a party considering submitting an ET claim?

Revisit some of the above about timing, initiation, nature of conflict etc, role of representatives

7. Outcomes of mediation

(case specific, then generalise)

ASK ALL What were you hopes when the idea of mediation in this case was considered in terms of resolution of the conflict?
What was the actual outcome/s of the mediation? (ie nature of agreement reached, if any)

If appropriate: did anyone go on to submit an ET claim in relation to this conflict?
How was the outcome recorded and who was made aware of the outcome?

Was it successful in resolving the conflict?
What happened if not? (probe *immediate and longer term outcomes*)
And if successful, what happened? (*probe, short and longer term outcomes: hard outcomes, were the terms upheld, do employees/manager still work here*)

Are there arrangement in place for following up parties regarding the agreement?

Overall, how was the mediation outcome regarded? Where both parties content?
What about you and other managers here?
(*probe: win / win, compromise, fairness, sense of justice*)
How lasting a resolution does mediation provide?

(back to general)

ASK ALL What is 'success' in mediation, from your prospective'.
What happens if mediation breaks down?

SECTION D FINAL ISSUES

8. Process for Evaluating mediation

How, if at all, do you go about evaluating mediations/your scheme of mediation in this workplace?
How is information used in developing the scheme/mediation here?
How and what is measured? *(probe critical success factors)*
Have you considered the cost benefits aspects of mediation? If so, what are the results?

9. General reflections

In summary:

(Aim to establish overall value of mediation)
In general, what would you say are the barriers/and success drivers for making mediation a success
… in terms of take up
… in terms of providing a lasting resolution to a conflict?

What lessons have you learned from establishing mediation at this workplace?
And can you think of any wider implications for the workplace of mediation being used to resolve disputes?
What advice for someone introducing mediation at their workplace?
What elements of mediation would you like to see in a Guide for Employers?
Hindsight: what would you do differently?