



DEVELOPING THE CONVERSATION ABOUT WORKPLACE MEDIATION

Treasa Kenny

Abstract

This article examines some of the latest writing and research in relation to conflict in work and workplace mediation. It considers three specific issues of size and sector of organisations, the attitude of organisations to conflict and the employee relations environment in organisations. It reviews the various views in relation to fundamental aspects of mediation such as the neutral third party, voluntarism, informality and confidentiality to inform thinking as well as practitioner and academic conversations. The most recent research in relation to the use of workplace mediation, the agreement reached and satisfaction is also presented. Research into the use of workplace mediation demonstrates that there are differences across countries and sectors. The broader issues related to evaluation of workplace mediation and organisation culture implications of workplace mediation for conflict management are then considered.

Keywords

Development, conversation, mediation, workplace, conflict

CONFLICT IN ORGANISATIONS

Conflict in workplaces is a reality and the employment relationship can be seen to be offering incentives for both cooperation and conflict between employer and employee. In organisations people often avoid conflict without knowing it and organisations, work teams or work groups are likely to develop a conflict culture or climate over time (De Dreu et al 2001, Lewin 2001, Teague, Roche & Hann 2012).

Of the many definitions in the literature, the following one is recent and preferred by the author:

Workplace Conflict involves differences in views and conflict between individual employees and their employer; among individuals; and between groups of employees, whether unionised or not, and their employer. It is recognised that the resolution of workplace conflict can have beneficial effects for employers, employees and other stakeholders in the business. (Teague, Roche and Hann, 2012: 589)



The types of issues which can arise include:

‘managerial relations’ such as the exercise of managerial authority and decisions made by managers and issues related to poor communications, ineffective leadership, conflicting priorities and disciplinary action by managers to address bad behaviour by employees, for example, aggressive behaviour. (Lewin, 2001; De Dreu et al, 2001; Lipsky & Seeber, 2006; Starks, 2006; Ma et al, 2008; Singleton et al, 2011; Teague, Roche & Hann, 2012; Gross et al 2013), market relations’ such as pay and conditions of employment (Teague, Roche & Hann, 2012); intra-managerial rivalry including power struggles (Singleton et al, 2011; Teague, Roche & Hann, 2012); and disputes between employees within workgroups or involving work groups including differences in goals, work methods, personality, perspectives based on age, gender, race (Lipsky & Seeber, 2006; Singleton et al, 2011; Teague, Roche & Hann, 2012).

The complexity or intractability of these conflicts can vary considerably depending on the issue itself, the time period over which it has existed without resolution and the frustration levels of those involved. Unaddressed or unresolved conflicts over issues may transform or escalate to conflicts over relationships.

Unaddressed dysfunctional conflict can also become accepted as normal over time and spread through a work group or organisation (De Dreu et al, 2001; Kuzstal, 2002; Starks, 2006; Singleton et al, 2011). There are myriad costs of conflict for an organisation and its employees identified in the literature (De Dreu et al 2001, Burton et al 2004, Starks 2006, Suppiah & Rose 2006, Andrade et al 2008, Lang 2009, Singleton 2011, Teague, Roche & Hann 2012; Gross et al 2013). All of this in turn affects the “bottom line” or financial performance of organisations with destructive conflict accounting for more than 18 percent (Hignite et al, 2002), 20 percent (Suppiah & Rose, 2006:1905), 13 percent (7 weeks) in Fortune 1000 companies of managers’ time and 42 percent in employees’ time or 1.8 days a week for employees in the UK (Saundry & Wibberley, 2012). Conflict costs \$35.4billion in the US (di Martino 2003), \$6million per Fortune 1000 company for absenteeism, lost productivity and turnover or £24million per year in the UK in 2008 (Saundry & Wibberley, 2012).

WORKPLACE MEDIATION

Mediation has been in existence and practiced in a variety of forms for centuries (Griffiths, 2001) and mediation has been used in workplace industrial disputes in the US since the 1930s (Herrman, 2006). Academic and policy interest in the application of alternative or appropriate dispute resolution (ADR) within the workplace is more recent and largely comes from dissatisfaction with conventional rights-based disputes procedures and litigation as well as the time and money costs associated with these (Reynolds, 2000; Herrman 2006; Manzor, 2010; Bouchier, 2013). The use of mediation, as a form of ADR, in organisations may be motivated by cost, crisis, culture and competition (Latrielle, 2011). It has also been identified that as people learn about mediation and its benefits (Wall et al, 2012:24) this increases its use.

There is still no universally agreed definition or general theory of mediation (Banks & Saundry, 2010; Zariski, 2010). Moore (2003) defines mediation as:



‘the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power, [and] who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issues in dispute.’ (Moore, 2003:15)

The emphasis is on the voluntary, informal, neutral and negotiated outcome principles of mediation (Schutte, 2007; Lipsky et al, 2003; Teague, 2005; Wall et al, 2012).

Mediation is identified as relevant for use in workplaces for a variety of issues where there are ongoing working relationships including resolving interpersonal disputes (Mayer, 2004; Monberg, 2007) at a relatively early stage, progressing grievances in a less confrontational manner (Fox, 2005), expressing feelings in a relatively safe and secure environment (Seargeant, 2005; Sulzner, 2003), dealing with problems that are not appropriate to resolution through formal procedures (CIPD 2004) and after more formal processes to facilitate a return to people working together. Some of the literature argues that mediation is unsuitable for bullying and harassment or where formal sanctions should be used (La Rue, 2000; Mareschal, 2002) while others argue that early mediation (Berger, 2003; Fox, 2005; Greig, 2005; Wall et al, 2001; Wall et al, 2012) may be useful in resolving disputes that could develop into cases where formal sanctions would be unavoidable (Stallworth et al, 2001:37). Mediation emphasizes the importance of seeking a jointly agreed resolution and so participants find mediation more satisfying than traditional methods and are more likely to uphold any agreement reached. (Reynolds, 2000).

Workplace mediation is a form of early resolution and can be conducted more quickly than traditional processes (Bingham and Pitts, 2002), is more likely to restore the employment relationship and offers financial savings with costs five times lower than often lengthy grievance or disciplinary procedures as well as reducing the possibility of long-term absence and resignations (McDermott et al, 2000; Bingham et al, 2002; Kressel, 2006; Goldberg, 2005; Latreille, 2011; Saundry et al, 2013). Some of the UK evidence, however, suggests mediation is still seen as a last resort (CIPD, 2008).

What we can say about the use of workplace mediation at this point in time is that there is some evidence of an upward trend in its use. UK organisations show an increase from 42.7% in 2008 to 57.3% in 2011 (CIPD, 2008, 2011) with higher use among public sector employers at 82.8%. The translation of this into actual mediations appears limited though with either 43 percent of ‘large’ organisations in the UK using mediation between one and five times in the previous year or 3.42 mediations in larger organisations in the previous 12 months (CIPD, 2008) despite the presence of disputes (Latreille, 2011). Just 5 percent of private sector businesses had used mediation, falling to 4 percent in Small and Medium Enterprises (SMEs) (Williams, 2011) or in just 7% of private and public sector workplaces (Van Wanrooy et al, 2013). There are signs that the use of mediation across EU states is increasing (Eurofound, 2010) and a 2011 follow-up survey of US Fortune 1000 companies shows that the use of workplace mediation in the previous three years had risen from 78.6% to 85.5% (Stipanowich & Lamare, 2013; Lipsky et al, 2012). In Australia, 50 percent of employers had used mediation in the past (Van Gramberg, 2006) with a rise in the inclusion of clauses in workplace agreements and “anecdotal reports of an increasing propensity of employers to utilize workplace mediation” (Forsyth 2012:484). In New Zealand, the use of



mediation appeared initially to increase in the wake of the introduction of the Employment Relations Act 2000 but appeared to have levelled off (Woodhams, 2007).

The Table below draws together the elements identified in the literature to date in relation to the practice of workplace mediation.

Table 1: An Overview of Workplace Mediation

What happens in Workplace Mediation	What Mediators do	What benefits exist for the parties to Workplace Mediation
structured, step- by-step process. Confidential and speedy. Pre-mediation to educate parties about mediation. Formulating a strategy to guide the mediation. Defining the dispute and the issues. Joint meetings and separate (caucus) meetings as appropriate. Issues are clarified. Issues are explored one by one. Generating and exploring options for possible ways forward. Assessing the suitability of these options. Win/win solutions are sought. Attempting to craft a final agreement.	Remain impartial. Listen and help people listen to one another. Create a safe environment. Help people communicate through questioning and summarising. Manage conflict constructively through reframing. Help people think more creatively about solutions through reality testing.	Less adversarial/confrontational. Addressing issues rather than leaving the job. Low risk. Confidentiality. Speed and informality. Clarification about misunderstandings which may fall outside formal procedures. Opportunity for emotional catharsis. Understanding/information that can improve future relationships. Problem-solving orientation. Maximises party autonomy. Possibility of integrative, customized win/win solutions that meet the needs and interests of both parties. Opportunity to restore and improve the relationship between the parties. Stimulates healthy change. Fosters dignity at work. Improves understanding of how to prevent conflict and how to handle disputes. Better communication if future problems occur. Enhances communication between the parties. Agreements. Non-monetary savings (reduced anxiety and stress). Monetary savings (rights and power-based options) Does not preclude participation in other dispute resolution processes.

(Berger, 2003; Berggren, 2006; Bingham & Pitts, 2002; CIPD, 2004, 2008; Crawley & Graham, 2002; Fox, 2005; Goldberg, 2005; Herrman et al, 2001,2000, 2000, Kressel, 2006; Manzor ,2010; Mareschal, 2005; Moore 2003; Schutte, 2007; Seargeant, 2005; Sulzner, 2003; Teague & Thomas, 2008)



The literature identifies that the introduction of workplace mediation requires consideration of a number of issues.

Organisation Type/Sector and Size

Organisation type/sector and size (Banks & Saundry, 2010; Latrielle, 2011; Wall et al, 2012) is a factor, with larger organisations in the UK, particularly in the public sector having extensive procedures for dealing with individual conflict, that include mediation (CIPD, 2007; 2008, 2013) and 53 percent of public sector organisations train employees in mediation skills (Banks & Saundry, 2010). Small and Medium Sized Enterprises (SMEs) viewed mediation as a good tool for resolving disputes but only a small percentage had used it and the cost of using an external mediator was a concern (Harris et al, 2008; Johnston 2008).

Attitude of the Organisation

The attitude of members of an organisation to conflict may be influenced by the three broad strategies identified as contend, settle and prevent (Lipsky & Seeber, 2007). An organisation's responsiveness to mediation may be particularly affected if conflict is viewed as "emotional" as opposed to acknowledging the link between conflict, employee behaviour and work outcomes (Banks & Saundry, 2010, Suliman & Abdulla, 2005). Mediation may be implemented in some organisations as a management process to control dissent and assert control (Colling, 2004) or a solution to the "problem" of conflict which must be eliminated (Budd and Colvin, 2008). Trust and confidence in mediation may be developed through discussions between senior HR managers, operational managers and trades union representatives (Banks & Saundry, 2010, Bingham 2004, Green 2005, Saundry et al, 2013). Organisational attitudes may also dictate whether participants have a choice of mediator (Bingham & Pitts 2002), the types of acceptable cases and the timeframe/process for suspension of grievances (Bingham et al 2002). A succession of studies has found line managers to view mediation as a threat to their authority (Seargeant, 2005; Saundry and Wibberley, 2012) although, in the US, over 90% of equal employment opportunity (EEO) cases were decided in favour of the supervisor (Bingham et al, 2009).

Employee Relations Climate

The employee relations climate (Latrielle, 2011) is a factor to consider. In the UK, the use of mediation is viewed by some as a privatizing of dispute resolution from the state to the workplace (Colling, 2004). In the US, the rise of ADR is described as mirroring the erosion of collective labor regulation (Colvin, 2003) with some employers using practices such as mediation as a substitute for trade union voice (Olson-Buchanan and Boswell, 2008) and possibly a union avoidance tactic (Lipsky and Seeber, 2000). Unions may, therefore, view mediation with scepticism (Bleiman, 2008) although, in the US, there is some evidence of public sector unions embracing ADR (Robinson et al 2005) and in the UK active involvement in mediation potentially offers trade unions and their members an ability to ensure



mediation is demand led (Bleiman, 2008) and to shape resolutions of individual employment disputes (Saundry et al, 2013).

Some specific barriers to the uptake of ADR, including mediation, in Ireland were identified as the existence of the Rights Commissioner service which provides an informal and confidential service and is cheaper and quicker than litigation, litigation costs in Ireland are not as substantial as in the US, employers in Ireland cannot be compelled to use in-house conflict management practices as in the US, and union density in Ireland averages 28 percent in the Irish private and commercial State-owned sector (Teague, Roche & Hann, 2012).

The Continuing Conversation

The continuing conversation in relation to workplace mediation needs to consider the various views as they relate to some of the fundamental tenets of mediation.

The Mediators

The literature reflects on the characteristics of mediators including acceptability, credibility, perceived neutrality or omnipartiality, experience and emotional intelligence (Arnold & O'Connor, 2006; Bowling & Hoffman, 2003; Cloke, 2001; Kydd, 2003 and 2006; Mareschal ,2002; Mareschal ,2005; Schreier, 2002; Wall et al, 2001) as well as the skills and strategies employed by the mediator including their ability to establish rapport and trust, gain the confidence of the parties (Goldberg and Shaw, 2007), and their level of empathy with the disputants (Poitras 2009). The style of mediation practiced by mediators is also discussed from problem-solving to relational. The problem solving styles include evaluative with its roots in labor- management disputes and settlement (Ridley-Duff and Bennett 2011, Banks and Saundry, 2010), facilitative with its emphasis on recognizing the needs and interests to identify areas for agreement that will be sustainable (Alberts et al, 2005; Seargeant, 2005), and strategic where mediators may depart from a neutral position in order to direct participants to the roots of the dispute (Banks & Saundry, 2010; Cloke, 2001; Kressel, 2007). The relational styles include transformative where the focus is to educate and empower participants to resolve all conflicts with a long-term, lasting solution (Bingham & Novac, 2001; Bush, 2001; Della Noce, 2004; Hallberlin, 2001) and narrative which concentrates on developing a relationship that is incompatible with conflict (Banks & Saundry, 2010; Winslade & Monk, 2001; Winslade, 2006).

The importance of settling disputes and getting the participants “back to work” can make more relational approaches difficult to justify (McDermott et al, 2001) and, while the facilitative approach is most commonly used for workplace mediation (Herrman et al, 2003; Mareschal, 2005), no single style has become predominant. Mediators may use a range of different approaches within the same mediation (Riskin, 2003) in the interests of the participants, the mediator and the mediation context (Picard, 2004).



Internal or External Mediators

The literature also discusses the use of both internal and external mediators and identifies that a number of organisations in the US and UK have established in-house mediation services, while others use external mediators, and others use a combination of both. In the US, credibility is identified as a potential challenge for internal mediators with settlement rates reported as higher when external mediators were used (Bingham & Pitts, 2002; Nabatchi & Bingham, 2010) although internal mediators may have greater insight into the context of a dispute and potential solutions. Neutrality may be a challenge for internal mediators (Sherman, 2003) and some of the literature refers to managers taking on the role of mediators as having benefits but also inherent risks (Banks & Saundry, 2010:12). Latrielle (2011) reviewed UK practice and found the use of external mediators to be costlier, subject to time delays and associated by parties with the formalization of the dispute. He also found resolution rates to be lower which he suggests could reflect that external mediators are involved only when conflicts have become more intractable.

Voluntarism

The principle of voluntarism is based on parties accepting mutual responsibility for, and being willing and committed to, seeking a resolution (Sergeant 2005, Poitras 2007) although individuals may feel obliged to take part in mediation, fearing reputational damage or other ramifications if they refuse (Latreille 2011). This may be particularly true for managers who could feel compelled to be seen to support organisational policies and values. Some organisations may prefer issues to be resolved quickly in order to avoid cost and disruption and may pressure parties into agreeing to mediation and encourage both mediator and participants to settle (Coben 2000). The voluntarist nature of workplace mediation in the UK and Ireland – as compared to the legal and institutional framework of dispute resolution in the USA and New Zealand - is questioned in the literature in relation to the incentive for organisations to use mediation (Banks & Saundry 2010:18).

Informality

In workplaces, mediation may be defined as relatively informal facilitated discussions as well as structured processes involving a neutral, trained mediator with the use of external mediators being associated in the UK with the formalisation of the conflict (Latreille, 2011). It is also the case that, in the UK, representation within mediation is seen as neither desirable nor necessary (ACAS/TUC 2010:3) with representatives seen as potentially obstructing compromise and resolution. On the other hand, representatives could be crucial in addressing power imbalances between workers and their managers (Dolder, 2004). However, the literature also suggests that participants with representation were more satisfied with the fairness of the process (McDermott et al 2000) and that agreement rates are higher where parties are represented, particularly when that representation is provided by trade unions or professional associations (Bingham et al, 2002; Bingham and Pitts 2002).



Confidentiality

Assurances of confidentiality are seen as protecting the parties and providing an environment in which individuals can express themselves freely. However, confidentiality may be difficult to maintain within a working environment and it may restrict the extent to which organisations can learn from disputes to review and improve workplace practice (Fox 2005). It may also obscure serious and/or persistent misconduct and allow organisations to present management failure as interpersonal conflict (Bush and Folger, 2005).

Evaluating the Effectiveness of Workplace Mediation

Evaluating the impact of workplace mediation is discussed in the literature with no single measure of success being identified (Urwin et al, 2010) although the rate of settlement is still viewed as the primary measure of effectiveness (Latrielle, 2011).

Settlement or Agreement

Bouchier (2013) identifies that 87.5 percent of mediations result in a mediated agreement with 75 percent confirmed as sustained. This is consistent with available statistics in Ireland of 80 percent for statutory-based, workplace mediation (Labour Relations Commission 2004:21) and 81 percent for mediation of construction disputes (Law Reform Commission, 2010:150-151) as well as the US EEOC mediation at 64% and more generally for mediation at 80 percent (Wall et al, 2012). In New Zealand, the Department of Labour has a settlement rate of 81% (Department of Labour, 2012). In the UK, resolution rates (full or partial) of around 90% are reported (CIPD, 2008) but a more negative attitude from employers is found where the most recent mediation did not result in resolution (Latreille, 2010).

Satisfaction

The US Equal Employment Opportunity Commission (EEOC) found that in 59 percent of cases the participants were satisfied with the outcome, 85 percent were satisfied with the fairness of the process and over 90 percent would use mediation again (McDermott et al, 2000, Banks & Saundry, 2010). High levels of approval were also found in relation to mediation within the Massachusetts Commission Against Discrimination (MCAD) (Kochan et al, 2000). The US REDRESS scheme found that over 90% of participants were satisfied with the mediation process, while 64% of employees and 70% of supervisors reported satisfaction with the outcome (Bingham 2009). Because participants' expectations of mediation impact their satisfaction with mediation, preparation for, and the introduction to, mediation are important (McDermott et al, 2000; Herrman et al, 2003).

Integrated Conflict Management and a Conflict Competent Culture

The US literature suggests that organisations should develop integrated conflict management systems (ICMS) arguing that this approach has the potential to transform organisations rather than simply



manage conflict (Lipsky et al, 2003; Lynch, 2001, 2003) while acknowledging that organisational culture plays a role in whether the workplace environment is conducive to integrated approaches being introduced.

In the US, a detailed, longitudinal study at the US Postal Service linked culture change to the use of transformative mediation which developed the communication and conflict management competencies of participants (Bingham et al, 2009; Bush and Folger, 2005). For organisations, satisfaction beyond the resolution of individual conflict can include a fall in the number of informal complaints filed of 30% from their peak before the introduction of mediation and a decrease of 17 percent in formal complaints (Bingham, 2004). The UK government claim that the extension of mediation can help to develop organisational culture and high- trust relationships (BIS, 2011) and the introduction of mediation at a public health organisation provided a conduit through which workplace relations and the way in which conflict was managed could be reframed (Saundry et al 2013).

The literature also identifies that the introduction of in-house mediation schemes resolve conflicts, support participants in mediation changing the way that they deal with conflict, and managers who undertake mediation training improve their ability to handle workplace conflict (Bingham, 2004), enhance their reputation (Reynolds, 2000) and gain skills for creative problem solving (Kressel, 2006). In the UK, organisations that provided mediation training were subject to lower levels of employment tribunal cases than those that did not (CIPD 2007, Banks & Saundry, 2010). Evaluation of mediation in small firms in the UK found evidence of a sustained improvement in employer-employee relationships (Seargeant,2005).

If a more integrated approach to conflict management is to be taken in organisations then measuring the success of workplace mediation in terms of agreement is too simplistic (Greig, 2005) as partial agreements in complex cases can have long-lasting organisational benefits (Fox, 2005) and impacts on the overall culture of the organisation. Mediation success may be viewed as a continuum measuring success not in terms of agreement but offering opportunities to increase employee confidence in dispute resolution and make them more likely to report problems and make complaints (Olson-Buchanan and Boswell, 2008), increase employee voice or self-determination (Antes & Paranica, 2009; Lipsky & Avgar, 2008; Young, 2006), improve participants' levels of participation and recognition of each other (Bush, 2001; Bingham, 2003), narrow the number of issues in dispute (Mareschal ,2005), recognise that change often occurs in the months following the mediation and agreement should be viewed as a step "along a path of development" (Hoskins and Stoltz, 2003:347), sustain partial or all agreements (Sergeant, 2005), and improve working relations (Bouchier, 2013).

CONCLUSION

Interest in workplace mediation continues to grow. During 2012/2013, the UK Economic and Social Research Council (ESRC) funded a seminar series entitled 'Reframing Resolution – Managing Individual Workplace Conflict, which brought together academic researchers – from Ireland, the US and



UK predominantly, policy- makers and practitioners for day long seminars to share experience and research in relation to workplace dispute and management of conflict. In Ireland in 2013, the inaugural Workplace Mediation Awards were presented by the Mediators' Institute of Ireland (MII) and highlighted the use of workplace mediation in a range of organisations (public sector, private sector, indigenous and multinational). Ongoing research is needed to understand the full extent and use of workplace mediation; the sustainability of agreements and impact of mediation on organisations and their culture over time.



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Treasa Kenny is a Fellow of the Chartered Institute of Personnel Development (FCIPD) and a Practitioner Member of the Mediators' Institute of Ireland. She sat on the Council of the MII from 2006-2013 and on the Board of the European Mediation Network Initiative (EMNI) from 2010-2012. Treasa is also a member of the International Mediators' Institute. She has M. Ed (Training and Development) from University of Sheffield and MA in Conflict Resolution and Mediation from University College Dublin.

Treasa's work in relation to conflict resolution includes the building of conflict competence within organisations including skills training and conflict coaching, policy development and implementation, facilitating conversations within organisations in relation to ensuring positive working environments particularly in times of change, and mediation between individuals or within groups. She is experienced in providing mediation to support the resolution of conflict across a range of sectors - private, public and voluntary. Treasa began a part-time PhD in workplace mediation with University College Dublin in January 2013. She has also worked with student groups as a lecturer as part of programmes provided in University College Dublin and NUI Maynooth.