



In House Mediation Teams
A Partnership in response to the
new Employment Act 2009

The New Legislation	2
The Partnership Potential	2
In-house Mediation Models	3
The “Self Help” model	3
The Early Dispute Resolution model (EDR).....	3
Overall Policy	3
The Legal Connection.....	4
The Pros and Cons	4
It works.....	4
Financial Savings	4
Staff Retention	5
Absence	5
Conclusion	6
Catalyst Mediation	6



THE NEW LEGISLATION

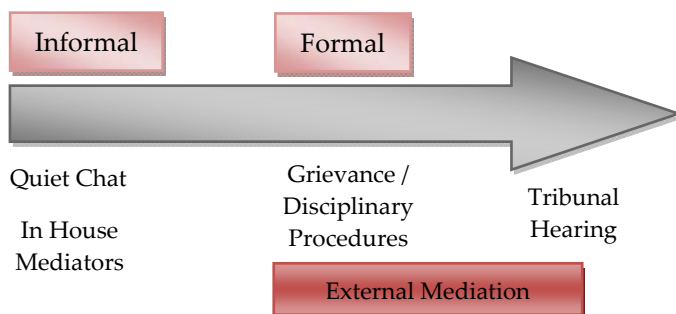
The new employment legislation, being enacted on April 6th introduces [new, less formal processes](#) which will be supported by a new statutory ACAS [code of practice](#). This gives an outline of 'fair' and 'reasonable' standards in dealing with workplace disputes, which tribunals will be able to take into account and revise awards upwards, or downwards, if employers or employees have not followed it.



The sea change for mediation – and some would argue common sense - comes in the introduction to the Code.

“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 be from outside the organization 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.”

This suggests what common sense – and research discussed later – would support.



That the earlier disagreements can be managed, the less likely they are to evolve into destructive conflict.

As mediation is by its nature voluntary, no legislation can force its use, but it can enshrine a clear steer that this is the preferred method of resolution - that formal procedures and the tribunal system should only be invoked once an informal process has been tried and failed.

And this view is shared by The Chartered Institute of Personnel and Development (CIPD) in their [Employers Guide to Mediation](#) which amongst other things suggests that

“Mediation is especially effective when used at the initial phase of any disagreement, before conflict escalates. An early intervention can prevent both sides from becoming entrenched and the difference turning into a full-blown dispute. If the disagreement is resolved early on, there is less chance of the working relationship breaking down irrevocably. This improves the likelihood of maintaining good and productive employment relations in the longer term”.

It is even possible to imagine the following situation. An organisation with no informal “internal mediation” route available has a conflict and uses a formal grievance procedure which fails. They end up in a tribunal hearing. How might the tribunal system regard their apparent reluctance to provide informal means of resolution?

THE PARTNERSHIP POTENTIAL

However much we agree that internal mediation is a good idea, there are practicalities in setting them up.

So from our experience of doing this, we offer some thoughts on how you might proceed. If you would like to do so in partnership with us, we would be delighted to work with you to adapt what follows to suit your particular organisation. You'll find more about us at the end of this paper.



IN-HOUSE MEDIATION MODELS

The “Self Help” model

If the organisation is relatively small or the levels of conflict are relatively low, the culture will tend to be good at managing disagreement and this model will probably suit them best. It uses a reasonable cross section of people at all levels to form a Self Help group who then receive a minimum of two days training a year in specific communication and resolution skills to bolster their normal “man management skills”.



**In House
Mediators**

This has a number of benefits:

- individuals have the skills to resolve disagreements in their own departments, knowing they can call on colleagues in other departments if they need to.
- it is informal, embedded in the culture, requiring little formal management.
- it sends a message to everyone that resorting to formal procedures or the law is absolutely the last step.
- the costs are mainly those of annual refresher training.
- it does not stop external mediation or legal action should they be necessary.

The Early Dispute Resolution model (EDR)

Many organizations suffer from relatively constant levels of conflict, due to a mix of size, complex structure, historical approach to “man management” or any of a myriad of other reasons.

In the EDR approach the Self Help team operates as normal, but with the knowledge that they have more highly trained colleagues who they can call on where necessary. The EDR team will normally:

- have passed a 6 day mediator skills course and
- commit to some 17 hours of CPD a year;
- have a fixed cost contract with an external mediation supplier :
 1. who would provide mentoring – preferably securely on-line – and
 2. a mediator to work with one of the team on particularly difficult cases

Their mediation process would be more structured, using specific template documents developed from European “best practice” and a specific Code of Ethics, with a clear complaints procedure, party feedback and mediator reports as a form of quality control and additional reflective learning.

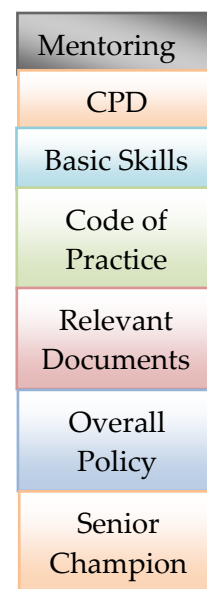
Each of these elements supports the work done by the mediators and the Self Help group. Not surprisingly the most important ones are concerned with the organization – how this informal procedure fits into overall policy and who will champion it at the highest level. We will look at some arguments they might find useful in the next section.

Overall Policy

How a culture of informal dispute resolution fits within an overall human relations policy needs to be carefully thought through and clearly explained to all employees, managers and senior staff.

For example it might contain text such as:

“We live and work in a community and recognise that from time to time, conflict will arise, causing distress to all those involved. The Early Dispute Resolution process is designed to provide everyone with the opportunity to resolve their conflicts early, confidentially and to everyone’s satisfaction.”





The Legal Connection

It will be important to involve the organization's legal advisor – the new legislation will change existing formal procedures and those changes should be clearly understood. At the same time it will be worth clearly laying down the points at which the informal mediation and more formal processes join up or overlap.

For example, if a mediation does not succeed and the dispute goes on to a more formal stage, it needs to be clearly agreed by the parties that the discussions during a mediation are confidential and the mediators may not be asked to divulge what was said at a later date.

Union Support

It would also be vital to involve union representatives at an early stage, for them to understand how this process might help them to benefit their members.

THE PROS AND CONS

To support a novel idea such as an internal mediation team, any senior member of an organization would need some convincing arguments.

So here are a few from an independent source.

It works

Research by CIPD in July 08 ['Workplace mediation – how employers do it'](#), is the result of an on-line survey of 327 member organisations who said that their company had experience of using mediation to try to resolve workplace disputes. The benefits most frequently mentioned in the survey were:

- that it can improve relationships between employees (83%);
- reduce the stress of more formal grievance or disciplinary procedures;
- it would help avoid the cost of defending employment tribunal claims (50%)

In the 16% where there was a potential or actual tribunal claim, half were withdrawn as a result of the mediation. Business respondents thought the most suitable issues for workplace mediation were in relationship breakdown or in claims of bullying, harassment or discrimination.

Financial Savings

The same CIPD research suggests some organisations spend 350 “man days” each year dealing with formal disciplinary and grievance cases and tribunal applications.

If this equates to 1.25 people, then the cost could look something like:

- | | | |
|--|-----------------------|------------------------------------|
| • a basic salary of say | £40,000 | |
| • add NI, pension and so on | £20,000 | |
| • legal costs for advice on a formal procedure | £10,000 | (say £2,500 for four cases a year) |
| • legal costs for one tribunal, say | <u>£ 8,000</u> | |
| | <u>£78,000</u> | |

We'll leave out the costs of a possible settlement, diverted management time, productivity losses and time off work through stress as too contentious to calculate.

*So it is perhaps not surprising that one organization who recently adopted the EDR model did so because they estimated it could save them **£100,000 per annum**.*



Let's compare this with the likely costs of an internal team.

Self Help team

say 10 people, training costs £6,000 (£300 per person per day for two days).

EDR Team

say 6 people, initial training costs	£20,000	(Year 1 only; 6 day course)
CPD costs	£3,000	(5 x 3 hour sessions a year at £100 / session)
Year 1 Total	£29,000	
Year 2 onwards	£ 9,000	

Compared with the CIPD survey estimate of 350 man hours, which we equated to a minimum of £60,000, presumably every year. So as a financial risk management decision, it is not one of the more difficult ones!

Staff Retention

In their annual survey, Recruitment, Retention and Turnover, CIPD present some interesting findings.

Overall, 80% of organisations reported having the same level of employee retention difficulties in 2007 compared with 78% in 2006. This high level of retention difficulties is reported across all industry sectors. Initiatives reported as having a positive impact are providing additional training to allow internal staff to fill posts (75%), providing a realistic job preview (72%) and using the employer brand as a recruitment tool (71%).

As the majority of recruitment happens within a local community to reduce travel to work time, the local "employer brand" will be boosted by word of mouth and the positive impact of reducing conflict in the workplace could be to aid staff recruitment and retention – you become a good place to work.

Absence

According to the CIPD's latest survey:

- 32% of respondents reported another increase in stress-related absence in the previous 12 months.
- employee absence is a significant cost to 90% of businesses
- on average sickness absence costs employers £666 per employee every year or
- 8 working days for every member of staff per year, representing 3.5% of working time.

CIPD suggest that

- Where employees are stressed because they have no say on how work is done, or need to do work that involves a fast pace and need to resolve conflicting priorities, or have a lack of recognition, understanding and support from their managers, there is a higher risk of the employee suffering a psychiatric disorder.
- employers should collect data to identify particular patterns of absence and underlying causes, for example, the management style of a particular manager or an increase in workloads.

So evidence of the risks we all recognise – that conflict between individuals creates stress, which causes lost productivity, which costs an organisation money, damages its reputation and risks legal action.

Nip the problem in the bud and all these risks should reduce or go away.



CONCLUSION

We started this paper with legislation and ended with what most of us probably already know. People who are happy at their work are productive and loyal. People who aren't, aren't.

The arguments for embedding in-house mediation teams to some degree or other would seem to be conclusive and independently supported.

The only real questions would be how best to do this within your own organisation.

CATALYST MEDIATION

Established in 2005 we have facilitated over 100 workplace "meetings" designed to help the individuals and organisations reach a mutually satisfactory resolution. We have worked with small charities to very large organisations, with individuals to teams in conflict. We have developed a follow up programme that often helps to embed what is agreed in the spirit of cooperation on a Friday, into the cold reality of the workplace come Monday morning.

We sit, along with ACAS and the Scottish Employment Tribunals, on the Workplace and Employment Initiative Group of the Scottish Mediation Network and we contributed to the Gibbons review of the 2004 legislation.

Our website provides information on our people, Code of Practice, processes, costs and case histories. If you would like to talk to a past client, this can often be arranged.

Finally our training company started providing support to Self Help groups and In-House mediation teams last year and we are currently engaged in developing two more.

If you believe we can help, please contact us.



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