

The role of workplace mediation: a critical assessment

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Introduction

There has been a growing interest within the field of HRM in recent years in the process of alternative dispute resolution (ADR), and specifically the utilisation of mediation, in seeking to resolve disputes in the workplace (ACAS, 2011b; CIPD, 2011b; Latreille, 2011). Mediation is not a new concept. It has its origins in the resolution of family and community disputes (Kelly, 2004) and more recently has been used successfully for many years in the United States, particularly in resolving employment disputes in the public sector (Mareschal, 2003). Its increased prominence in the UK, it can be argued, has resulted in part from the repeal in 2009 of the legal obligation for organisations to have formal grievance and discipline procedures (Davey and Dix, 2011) and, influenced by the Gibbons report (2007), in a move to a more informal and it can be further argued less confrontational method for seeking to resolve disputes in the workplace. Significantly, the timeliness of this article is evident in the British government's decision to promote mediation as a key employee relations strategy (BIS, 2011). This approach is more explicitly apparent in a subsequent decision to pilot a scheme to provide funding to train employees from two groups of SMEs, one in the North and one in the South of England, to provide teams of trained mediators to support other organisations in their respective networks (BIS, 2012).

It is clear then that the government is giving high priority to mediation as an ADR in the UK. Which raises the questions, 'how successful might such an initiative be?' and 'what do we currently know, academically and practically, about how mediation is currently practiced in British workplaces?' Higher education (HE) has the most developed model of mediation in the UK, and it is currently utilising to a degree the practice of networking (PMA, 2012). Therefore, it is seen as a highly appropriate sector to explore the implications of these and other questions relating to workplace.

In order to contextualise the research, the article also draws on the well-established field of conflict management (Costantino, 2005; Goldberg, 2005) derived from studies of how ADR processes, such as mediation, have come to symbolise the increasingly individualised nature of the employment relationship in the US (Lipsky, 2007). There have also been some studies on the development of mediation in the UK, where investigations have reported on the degree to which mediation is being used more generally in the workplace (ACAS, 2005, 2011a; CIPD, 2008, 2011). Others have focussed on the key themes arising out of single or multiple cross-sectorial case studies (Saundry et al., 2011; (Latreille, 2011).

However, with the exception of Ridley-Duff and Bennett (2011) and Latreille et al (2012), there are no other academic studies on workplace mediation in the UK. The aim of this article is, therefore, to extend that knowledge through a critical assessment of mediation within the HE sector. It is important to emphasise that this is not a study of HE per se. Rather it offers, through investigating how mediation has developed in the sector, a deeper understanding of the practice in the UK currently absent in the literature. Specifically, the research considers the efficacy of mediation within a cross-section of universities in the North of England, as reported by key personnel involved in the strategy for and management of the process in their respective institutions. The research took place over a six-month period in 2011 and is based on the views of thirty-six representatives from sixteen universities in the region, and four senior managers from UK mediation providers who have worked in the region and the sector.

The key finding of the investigation is that through comparing and contrasting universities elements of mediation specific to the sector have been identified. These include: the ethos of

the sector, the nature of the academic labour process, its potential client base and a desire to network with others within the sector. The limitations of mediation are also recognised in the analysis. The paper commences with a critical review of the current literature. The methodology adopted is then discussed and the research findings subsequently presented. The article concludes with an analysis of those findings and a reflection on the implications for researchers, practitioners and current government policy.

Literature review

Given its relatively new role in conflict resolution, it is only recently that research has focussed on the extent and effectiveness of mediation in the British workplace. Furthermore, with the exception of Ridley-Duff and Bennett (2011) and Latreille et al (2012), there have been no academic investigations of mediation in the UK. In contrast, policy or practitioner focussed studies have dominated the field

Given this paucity of academic investigation into ADR, and mediation in particular, in the UK it is of value to consider the literature on conflict management systems that has been critically developed over a number of years in the United States; which in contrast to the UK has seen significant changes in the way disputes are managed in the workplace, and reflects the changing nature of 'the social contract' between employer and employee (Lipsky, 2007). This development in employee relations practice heralded a refocus by academic researchers on how contemporary conflict management systems could be more effectively conceptualised (Costantino, 2005; Rowe, 2005) and, crucially for the topic of this article, which new types of ADR processes were being integrated into these management systems (Lipsky and Seeber, 2001). Where ADR can be defined as, 'the use of any form of mediation or arbitration as a substitute for the public judicial or administrative process available to resolve a dispute' (ibid.: 37).

The potential efficacy of mediation was identified in early studies of its utilisation in traditionally dispute prone industries (Brett and Goldberg, 1983). Subsequent experimental research noted the propensity of 'third parties' to adopt dispute resolution approaches more associated with mediation when made aware of the option (Karambayya and Brett, 1989; Karambayya et al, 1992).

More recently, Costantino and Stickles Merchant (1996) usefully conceptualised the design of a conflict management system into eight steps in order to 'maximize incentives' whilst 'minimizing resistance'. This approach is supported by Costantino (1996) who argues that an 'interest based' approach to achieve 'buy in' from stakeholders is crucial. Other studies have rightly also assessed the degree to which the success of these initiatives can be objectively measured (Lipsky et al., 2007).

Finally, and crucially from a practical viewpoint, despite criticisms it can be argued that mediation offers potential key savings to the organisation and the individuals in dispute. Shapiro and Brett (1993) suggest that disputants find mediation a more acceptable approach to resolving their differences and, therefore, are more likely to commit to any final agreement. Furthermore, research indicates that mediation can help resolve cases quicker and reduce the number going forward to litigation, therefore realising a saving in terms of time, money and distress to the participants (Goldberg, 2005). It is of note that Bingham and Pitt's (2002) study of the US Postal Service conflict management system broke new ground by assessing the impact of mediation on litigation. Their findings show substantial drops in the

number of applications to court (nearly 4,000 cases over 2 years) immediately following the introduction of mediation. All of these key elements of managing a mediation service are considered in the discussion below.

Returning to studies in the UK, more recently, our knowledge of mediation has increased considerably. Much of this work has been policy driven by the sponsorship of ACAS in critically analysing, for instance, the findings from case study research (Saundry et al, 2011) and through thematic studies (Latreille, 2011), with the aim of establishing best practice across organisations and sectors. Findings also suggest that there remain greater barriers to the introduction of mediation within SMEs than in large and public sector organisations (CIPD, 2007).

Nonetheless, current research indicates that the use of mediation continues to grow in the UK. A survey by the CIPD (2011b) reported that in contrast to an earlier survey (CIPD, 2008), where only 43% of the 766 respondents used mediation, that number had risen to 57% in the subsequent survey. Interestingly, Jones and Saundry (2011) in their study of the dynamics of discipline cases highlight that many line managers prefer a more informal approach to handling discipline, which could be seen as implicit support for ADRs such as mediation. Saundry et al. (2011) note that, specifically with respect to the public sector, grievances appear to be the most common form of dispute referred for mediation. At this point, it is important to be clear what is actually involved in the process. Liebmann (2000:10) defines mediation as:

A process by which an impartial third party helps two (or more) disputants work out how to resolve a conflict. The disputants, not the mediators, decide the terms of any agreement reached. Mediation focuses on future rather than past behaviour.

It is of note that the decision to utilise mediation in the workplace can depend on the type of dispute, the stage of the dispute and, crucially, what type of resolution is being sought. As Shapiro and Brett rightly note in their study of ADR and perceptions of procedural justice, ‘the type of outcome obtained from a dispute resolution procedure (e.g. a win, lose or compromise) may influence processes underlying judgements of procedural justice [by participants]’ (1993:1170). Furthermore, the onus is on the disputants to identify and agree an acceptable outcome, the process is in total confidence and does not, therefore, prejudice any subsequent decision to turn to other means of resolution if mediation is not successful (ACAS, 2011b). Mediation can be used at any point in the course of a dispute, but emphasis in the Gibbons report is on using mediation at the earliest stage (2007).

Typically the actual process, following the disputants’ agreement to participate, entails the assigned mediator first meeting each person separately in order to outline the aims and objectives of the process and gain their commitment to proceed. This is followed by a joint meeting where, in the UK, the mediator facilitates the discussion, negotiation and pursuit of agreed and achievable solutions to their dispute by the disputants. In general, the process is facilitated by a single mediator. However, in some organisations it may be deemed

appropriate for two mediators to jointly, or dual, mediate in all meetings with the disputants (ACAS, 2011b).

Mediation has not been without its critics. For instance, Dickens (2008) rightly advocates caution in too readily accepting mediation without question as an alternative means of addressing conflict in the workplace. As she notes in relation to the Gibbons Report (2007) and the basis of its recommendations:

There may well be a role for mediation but it needs to be recognized that disputes in the employment context may differ from the kind of interpersonal disputes found in family cases – differences which relate to the particular nature of the employment relationship (ibid.:15).

Other critics have also questioned mediation's appropriateness specifically in relation to dealing with a prevalent cause of conflict, bullying and harassment. Branch et al. (2009), whilst recognising the potential of mediation for early intervention also argue that in some cases it can make things worse if, for instance, 'retaliatory action' by one of the parties subsequently occurs (2009: 530). Similarly, in questioning the value of mediation, Keashly and Nowell (2011) articulate some other potential criticisms of mediation which are investigated in the discussion that follows. In particular:

- Are disputants sufficiently capable of negotiating with each other as equals? (ibid: 437).
- In that mediation focuses on the future, it has no mechanism to address or 'punish' past behaviour (ibid: 438).
- 'Information shared and decisions reached during mediation are not available to anyone else' (ibid).

Some of these concerns are to a degree in concert with Sanders' review of the implications and shortfalls of the Employment Act 2008. She argues that, for some, it was a missed chance to encourage the use of 'mediation [specifically] within the statutory guidance itself' (2009: 46). However, as she further opines, this depends on ones view of alternative dispute resolution. For her, critics could equally argue that it will merely, with the concomitant removal of more formal drivers, further 'entrench the inequality of bargaining power between employers and employees' (ibid.).

In closing, methodologically to date research in the UK has focussed largely on the rationale, process and outcomes of mediation as reported across a number of sectors (CIPD, 2008, 2011b). Similarly, much of the research data has been more quantitative in nature, often focussing specifically on the use of mediation within the SME sector (Johnston, 2008; Latreille et al, 2012). A key aim of the article, therefore, is to address a limitation in current knowledge by gaining greater qualitative insight into workplace mediation through engaging with a broader sectorial sample of respondents. Specifically, there is as yet little knowledge of how practising mediators working in a particular sector of industry view: the key reasons for why mediation was introduced in their organisation, criticisms around the appropriateness of mediation for dispute resolution and to what degree sector specific issues need to be taken

into account when assessing the management and conduct of mediation in that sector. It was the aim of the study to address this under-researched aspect of mediation in the workplace. Having critically reflected on the extant literature, the discussion turns now to the methodology adopted for the study

Methodology

The North of England is the current location of the researcher and, therefore, geographically presented practical access to a representative sample of interviewees across a region which, it can be argued, reflects the rich diversity of England as a whole in terms of its types of universities, students and their location around the region (The Complete University Guide, 2012) Furthermore, through his own mediation practice and contacts, the researcher was aware of the development of three HE mediation networks across the region which suggested a degree of consistency in ethos and practice and a level of sectorial representativeness in terms of the organisations participating in these networks. Initially, the researcher contacted all universities in the North of England that searches on the internet, referrals from existing contacts and network membership suggested had developed a functioning mediation service for its employees. Thirty-six respondents representing a total of sixteen universities in the region finally participated in the research. There are twenty-two universities in total in the

Table 1 Background of respondents

Role	Number	Rationale for choice as respondent
Co-ordinator	16	Chosen as the key spokesperson for each university
Mediator	8	Chosen as representative of academic or support staff members trained to mediate
HR staff	4	Chosen from universities where HR staff also undertook mediation
Training and development staff	4	Chosen from universities where mediation developed initially through the T&D department
Equality and diversity staff	4	Chosen from universities where mediation developed initially through the E&D department
Senior manager at mediation service provider	4	Chosen to broaden the cross-sectional view of the sector
TOTAL	40	

North of England, out of a total of 91 in the country (UCEA, 2012). This equated to 72% of all the universities in the North of England and was felt to be a representative sample of the sector. Traditional and newer universities were represented in equal number. The six universities that did not participate either did not respond to email and follow up phone calls or a HR representative indicated to the researcher that they had not as yet developed a functioning mediation service and felt, therefore, that they could not really contribute to the research. As a minimum, the mediation co-ordinator was the key respondent for each of the organisations in the study, given their overall knowledge and control of the process at their respective university. In addition, the research includes the views of a cross-section of HR, equality and diversity and training and development practitioners and mediators. All respondents were practising mediators. Table 1 gives a breakdown of respondents' background.

In order to achieve further insight into the sector and the organisations under investigation, four senior managers with extensive knowledge of working in the sector and the region, and in providing mediation services generally across the UK, were interviewed to establish their views on and to draw on their experiences of working in HE. The organisations they represented are the four main providers of mediation services across the UK: ACAS, CMP (Conflict Management Plus), UK Mediation and TCM (Total Conflict Management). This increased the total number of respondents involved in the research to forty.

The research was carried out over a six month period in 2011. The majority of interviews were conducted face to face with respondents and lasted an average of one hour. Where geographical location necessitated, interviews were conducted by telephone and averaged thirty-five minutes in duration. All interviews were recorded and fully transcribed. The interview data were analysed through the use of template analysis (King, 2004). This process entailed the construction of an initial template, whereby early categorisation could be made based on the initial questions put to the respondents. The key areas of enquiry covered:

- The person's role in the organisation and their function with respect to mediation.
- The reasons for the introduction of mediation.
- What they felt were the main reasons for conflict in the workplace.
- The types of cases covered and their rates of success.
- What sort of culture they felt the organisation had
- How long mediation had been in place in the organisation
- How does it fit into the conflict management system of the organisation
- Which areas of conflict they thought lent themselves best to mediation (grievance, performance issues, bullying, harassment, other?)
- How did equality issues impact on the process

These categories formed the top level codes. The template analysis then allowed additional themes to be developed. For instance, the use of single or dual mediation, and its implications for both mediator skills development and service delivery, was not a specific question in the

original schedule. However, subsequent analysis highlighted this as a key issue for the interviewees and became, therefore, a sub-code within the top-level process category. Conversely, although equality figured as a top level code, a lack of consistency of reported issues across the sample meant it did not figure as a theme in the overall findings. Subsequent analysis of the codes identified the three most prominent areas in terms of themes and general views across the cohort of respondents to be: the main reasons for introducing mediation, the key elements of how the process worked and issues specific to their particular sector. These were then further systematically broken down and analysed in terms of the relevant sub-codes. For instance, specifically in terms of HE, the culture of universities, the nature of the academic and their respective influence on conflict management.

Having outlined the methods utilised in the study the discussion now turns to the findings of the research. Where crucially, the aim of the research was to address three key questions:

- What were the perceived key drivers for introducing mediation in the organisation
- How did the process work in practice
- To what extent does context determine sector specific elements of mediation?

The findings

The drivers for implementing workplace mediation

Discussions with all mediation co-ordinators in particular revealed a number of key drivers for introducing mediation into the organisation. The perceived need to introduce a system that pre-empted disputes becoming more formalised was particularly significant. Respondents in general consistently cited the potential of mediation to reduce the costs of disputes and, crucially, as a more effective means of repairing fractious relationships in the workplace. With respect to costs, this was seen in terms of time and the emotional distress of the disputants going through the formal process, which at its extreme could lead to a costly employment tribunal hearing.

A significant number of universities had initially introduced mediation to support their implementation of the Dignity at Work initiative. This initiative emanated from the Higher Education Equality Challenge Unit and was designed to address the issue of bullying and harassment in the workplace (2007). Once it was introduced, the mediation service then generally broadened its remit from harassment and bullying to any cases of grievance or performance management. For most other universities, implementation coincided with a drive for greater performance management for all staff but in particular academic staff. The majority of respondents reported top level support within their university for the introduction and on-going delivery of the service. In a couple of cases this was specifically based on the previous experiences of the Vice Chancellor or HR director.

The four main suppliers used for the initial training were ACAS, CMP (Conflict Management Plus), UK Mediation and TCM (Total Conflict Management). ACAS had provided the training for the highest number of higher education institutes (HEI). All four training providers delivered the facilitative model of mediation (See ACAS, 2011b). Institutions, however, differed in one key area. Two universities out of the sample had, after a detailed cost analysis, chosen to use an external mediation provider to deliver their service. A

third had initially also taken this route but then changed to internal delivery. Furthermore, 70% of the universities managed their mediation totally in house, with only a small minority 'calling in' the external providers for certain type of cases.

Equally significant in terms of costs, was the choice between training and accrediting all mediators; or having a number of fully trained lead mediators who would then be tasked in training others in house. 75% of the HEIs chose to fully train their team. Typical reasons for this were increased credibility to users and also as part of the professional development of the mediators themselves. These cost commitments were keenly understood by respondents and were to a degree measured against the success of the service. Evaluating the success of the service is considered further below.

The main reasons for conflict and the nature of cases considered for mediation

Paradoxically, although a number of universities had introduced mediation as part of the Dignity at Work initiative (ECU, 2007), since its launch only a relatively small number of harassment and bullying cases at those universities actually went through the service. Respondents felt that this was due to: the increased complexity of the cases, 'victims' greater reluctance to face the 'perpetrator' and that, in reality, grievance and discipline procedures were seen by most disputants as more appropriate. Nevertheless, mediation practice and ethos were still seen as important to this and all other types of referrals. In that, most respondents argued that the opportunity to have that first 'facilitated conversation' was of value to the parties in deciding how and through which channel to subsequently progress.

The main reported causes of disputes were breakdowns in relationships, poor management and communication problems. Grievances were the predominant type of cases dealt with through the mediation service in all the universities sampled. Fundamentally, a key strength of mediation for all of those interviewed was the opportunity to, through facilitated questioning and discussion, change when possible the perceptions of the parties with the aim of also changing their long-term attitude and behaviour. The following two contributions capture this shared conviction well:

If it is a new manager who is not experienced. You know just, 'Get on with it. Get on with it' [to their staff] You can change behaviour fairly effectively in mediation because it allows them to realise, 'You know I didn't realise someone else took it in that way' (Mediator).

If you do it early enough it is very powerful to get someone to say, 'When you say that to me this is how it makes me feel' (Mediation co-ordinator).

Performance management cases also figured in the process at all of the universities, albeit to varying degree. The most typical types of performance management cases were managing a return from absence and pre or post formal performance appraisals. Most interviewees reported that a supportive return to work strategy supplemented by mediation was highly effective in addressing the issues that caused the absence to originally occur.

There was evidence, rhetorically if not as much in practice, of the notion of academic performance management issues. In that, although there was only minimal evidence of this leading to disputes or even mediation, the feeling amongst HR respondents in particular was that given the changing nature of the sector, this could become a growing area of disputes. This is an area that warrants further investigation. Nevertheless, the majority of the respondents commented on the nature of managing academics and the challenges this presents in terms of changing attitudes regarding work practices. As one mediator typically argued:

We are constantly having to act more like a business than before. Coming from industry, finance, it does not worry me in the slightest but lots of our [academic] colleagues find that difficult.

This view of the new challenges facing the sector was shared generally by the mediation service providers. As one senior representative commented in relation to the implications of such changes:

I think the general shakeup within higher education, and it's been quite a shakeup, just lots of restructuring, lots of people who've perhaps worked in a certain way for a long period of time suddenly finding they have to work with different people, covering different responsibility puts a lot of pressure on everybody, and that naturally causes conflict.

The process

A systematic analysis of the data established that the mediation process can be seen in terms of a number of key stages through which the dispute may progress. Initially, the process begins with the referral. As one co-ordinator explained

‘I am what ACAS call ‘the gate keeper,’ I assign people to cases. Referrals are a combination of direct requests from individuals who come and see me and say that ‘I am having an unhappy time with my manager’. I can [also] get them from HR managers or I get them from the line manager’.

The co-ordinators in all of the universities received referrals from a number of sources including: HR advisers, line managers, through individual self-referrals, via bullying and harassment advisers and increasingly through the union route. As the ‘gate-keeper,’ the co-ordinator reflected initially on the appropriateness of mediation and, if satisfied, then assigned one of their team to the case, or called in an external provider. The mediator then contacted the disputants to initiate the individual procedure. Cases varied across HEIs but usually involved disputes between two individual members of staff. A number of the universities had also extended their services to include mediation between students.

Although the original trainer varied, all of the universities have adopted the facilitative model (See ACAS, 2011b). In house versus outsourcing was seen as a conscious choice by a small number of HEIs to ensure for them complete impartiality in the process. For instance, there were a number of occasions when disputes between very senior members of staff were seen to be best mediated by an outside provider. Single or dual mediation was also seen as a key issue across the sector. A number of universities carried out dual as a matter of best practice as prescribed by their original training provider. Conversely, some mediators felt that it was harder to effectively manage dual mediation. This said, given the fairly limited number of cases to date, for many universities dual mediation was a pragmatic choice to offer their

mediators on-going opportunities to practice. The investment by a sizeable number of the universities in fully accredited training was also seen as a commitment to the members of mediation teams in terms of their continuous professional development.

A key finding was that 25% of the HEIs chose not to train HR staff as mediators. This was specifically on the basis that for some, given the operational role of HR advisers in grievance and discipline procedures, it was felt that they might be perceived by some disputants as not totally impartial should a case go to mediation. The notion of commitment was also a key characteristic that respondents highlighted in relation to being a successful mediator. It was striking how passionate the mediators were as a whole in terms of what they were trying to achieve. They spoke of their role in the process in ensuring that the disputants' cases could be fairly made. They were all very clear on why the facilitative model was used. As one typical mediator stressed:

‘A key part of what we do is to make sure that the people in dispute have ownership of the process and identify solutions to which they can both sign up. It is not our job to provide those solutions’

Whilst the average size of the teams was six, attrition rates amongst universities varied and a key challenge for all was to keep a trained and committed team of mediators. At its extreme one university reported that an original team of over twenty trained mediators had fallen in four years to less than ten. As the co-ordinator commented, ‘this was due to staff leaving the university, going part-time or changing their role.’ The university in question did intend to recruit in the future but, significantly, as she further opined, ‘it would be clearer how [mediation] fitted into their other duties at the university, so that line managers were aware of what support we would expect off them in terms of time off’. Mediation co-ordinators also stressed that in order to limit attrition a key part of their role was to keep the mediators engaged in terms of opportunities to practice, keeping their skills and knowledge up to date.

Finally, on what basis a mediator was or was not assigned a case, for instance according to their occupation or gender, also figured in discussions. The analysis revealed that, whilst all universities as a norm ensured that the mediator did not know the disputants, a small number of universities where possible assigned mediators according to their occupation. That is, an academic mediator mediating between two academics. This was on the basis that they would have greater knowledge of the context of an academic dispute. In contrast, the majority saw the mediator as a generic role. As one co-ordinator opined, ‘First and foremost we are all trained and professional mediators able to take on any case objectively and effectively’. On occasion should a disputant so wish, the co-ordinator in most of the universities would, if possible, assign by gender particularly if using dual mediators between a woman and a man.

Evaluation and actions

All co-ordinators saw the need to produce some level of evaluative data. The majority at the least had simple metrics covering the number of cases handled since the inception of the initiative and some narrative on the source, issue and outcome of referrals. On average across

the sixteen universities, respondents reported a success rate in excess of 75% of cases resolved through mediation. Some universities used follow up discussions with disputants after a period following the mediation in order to gauge if the agreed outcomes were still successful. Co-ordinators reported that evaluation took place for a number of reasons, for instance to: justify the cost to management, assess effectiveness and to make changes to the service. Interestingly, and almost as informal feedback, development needs in terms of leadership style, knowledge and skills of managers involved in a case were identified and addressed through subsequent training by HR. Co-ordinators also facilitated regular discussion meetings between mediators in order to share best practice through reflection on the outcomes of cases

In terms specifically of outcomes, the more established mediation services dealt with on average 12 to 15 cases per year. The universities where the service had been established more recently had dealt with 5 to 6 cases per year to date. A smaller number of universities were re-launching their service and so had only dealt with a small number of cases. Taking into account these differences overall, there was a mean average of around eight cases per year across the region. Crucially, many co-ordinators stressed that mediation skills, as practiced for instance by HR colleagues trained as mediators, had often also been used to successfully address informally many cases that could otherwise have gone to grievance. So in that sense, for a large number of respondents, the initiative was also seeking to develop a 'culture of mediation' within the university.

Justifying an alternative approach to managing conflict: Countering the criticism of mediation

Reflecting on the earlier criticism of 'successful' outcomes remaining outside the public domain because of the nature of mediation, respondents conceded that the degree of detail of the outcome could vary depending on the willingness of disputants to share information relating to the nature of the case itself. Fundamentally, and contrary to a concern for sharing outcomes, the on-going anonymity of the parties was for all interviewees paramount in maintaining trust and commitment from the disputants and, therefore, the potential success of the mediation process. Furthermore, most co-ordinators felt that there was scope to feed back the more generalised outcomes of mediated cases into the public domain. Conversely, if it was felt that those details needed to be more specific then, for them, another dispute resolution route would be more appropriate.

All mediators argued passionately that the strength of the process was its ability to address 'power imbalance' between disputants. It was their responsibility as mediators to ensure that both parties understood that the discussions, negotiation, behaviour and outcomes agreed were all on the basis of being equals in that process. In response to the further 'charge', 'that mediation focuses on the future and not past behaviour', all of the mediators felt that if 'punishment' or even 'a sense of justice for being wronged' is required, then again an alternative method of dispute resolution would be required to achieve that result.

Contextual or sector specific elements of HE mediation

A key finding of the research was the almost universal contention that conflict and its methods of resolution were governed by the ethos of the sector and the nature of its workforce. This view in relation to mediation is captured well by one co-ordinator:

‘I think a mediation approach can complement the type of culture that many universities seek to promote. As it is less adversarial and promotes dialogue, mutual understanding and respect. Such values are cherished at universities, which are therefore more likely to be receptive to softer tools such as mediation when resolving disputes, rather than resorting to entrenched positions that processes such as grievance can encourage’.

All interviewees reported that mediation was clearly located with the organisation’s conflict management system and that the majority of disputes that went to mediation were employee grievances. They also stressed that the context of mediation must be understood specifically in terms of a university’s contribution to the individual development of students, the well-being of local communities and the success of the economy as a whole. These key objectives of HE clearly informed the nature of the academic labour process but could on occasion be the reason for conflict between academics. One HR manager’s reflection that, ‘managing academics is like herding cats’ captured for her, and others in the research, one of the more unique elements of people management and the sources of conflict in the sector. Crucially, for the majority of respondents, conflict could occur amongst academics for a number of reasons: The ‘unique’ nature of the academic role was cited by most respondents in the sense of ‘the need to be critical and challenge’, ‘the desire for autonomy’, ‘the competitive nature of academia’ and, it was felt, the apparent and largely unchallenged sanctity of ‘academic freedom’. The perception and experience of two mediators from different universities captured the general sentiment well:

‘It’s the somewhat unique issue of working with academics. They are highly creative and highly valued but do not always have the people skills and therefore can cause conflict with colleagues’.

‘It is a fine line when you mediate academics. I have done two of these [cases]. It may be that one [party] is thinking that they are critiquing somebody’s work and the other party thinks that they are being bullied or criticised. So there is more of an opportunity for that level of conflict to arise’

Other interviewees talked about ‘the reluctant academic manager’, for instance, where promotion was perceived by respondents as a means of rewarding academic excellence but often with little thought for the person’s ability to manage people. This led, subsequently, to disputes over management style, strategy and poor communication. Furthermore, the reluctance of many academics to deal with conflict within their team or between individuals was also cited as a cause of disputes developing. As one co-ordinator explained:

‘But some of it is, I suppose, a feature of higher education, as academic leaders are expected to be more than academic leaders, they’re expected to be leaders and managers that maybe they’re not equipped for those things. Then that leads to

communication issues with the teams and misunderstandings and unrealistic expectations’.

Another key finding of the research was that, unlike many other organisations utilising mediation, in HE the client group can include not only staff but also the end users of their ‘business’, in this case the students. Co-ordinators offering this service reported that student disputes were typically not as complex as those between members of staff and so a far higher number of additional mediations could be achieved. This enhanced the ‘student experience’ and also provided valuable practice for the mediators.

The offer of student mediation was also reflected in the common use of the metaphor of ‘community’ by the majority of the interviewees and did symbolise for them the unique nature of a university as an organisation but also as a collegiate body of staff and students. This communality of ethos and practice of universities from across the sector was for many also the logic that underpinned the practice of networking. As one co-ordinator involved explained:

Having completed the training and set up our own team of mediators, it seemed logical to then network and share good practice and our experiences with other universities in the local area.

All four provider representatives had work extensively in HE and noted the growing tendency to network. Similarly, most co-ordinators were or indicated an interest in working with other universities who offered a mediation service. The potential value of such collaboration was cited as sharing best practice, running joint training events and sharing resources, in the sense of having the option to bring in a totally impartial mediator for certain sensitive cases. For some new or challenging cases, co-ordinators stressed the value of being able to pose the question to their counterparts ‘have you had a case like this?’ in search of a sector specific strategy for the mediation.

Discussion and conclusion

Reflecting on the findings from the research it is clear that a number of key themes have emerged that will be considered in more depth in this final section. In line with the first objective of the study, respondents identified a number of key drivers for why mediation was introduced as a part of their organisation’s conflict management system that had resonance with the current literature (Lipsky and Seeber, 2001; ACAS, 2011a, CIPD, 2011b; Latreille, 2010, 2011).). Secondly, discussion on the management of the mediation process revealed that the key elements of delivery included: referral, mediator development and evaluation of the outcomes, and was also consistent with previous cross sectorial studies (Latreille, 2010; 2011). Significantly, all participants reported how specific elements of the HE sector could both precipitate the reasons for conflict but also influence the manner of its resolution, as practised through the process of mediation. That mediation can itself be ‘mediated’ by the nature of an organisation’s culture and economic and societal rationale is, it is argued, a key finding of this research.

Turning first to why mediation was introduced as an ADR across the universities sampled in this study, mediators consistently reported that pre-empting disputes becoming more formalised was particularly important This concurs with other findings (Goldberg, 2005;

ACAS, 2011b; CIPD, 2008) and also resonates with the reported rationale for the change in the dispute resolution law in 2009 in the UK (Davey and Dix, 2011). The main reported causes of disputes were breakdowns in relationships, supporting previous research (Latreille, 2010; CIPD, 2011b), poor management and communication problems.

In terms of managing the system, clear and multiple channels of referrals managed by a single co-ordinator, evidence suggests, is the most effective approach and concurs with Latreille's findings (2011). This also facilitates a decision as to whether mediation is appropriate for the dispute and, if so, the subsequent delivery of the service by one or more members of the mediation team, or externally if that is the policy of the organisation. As in any organisational process, evaluation was seen as crucial. This allows appropriate feedback to senior management to demonstrate its effectiveness and for action to be taken to address any limitations in the service (See also Lipsky et al., 2007). The research also concurred with Saundry et al's (2011) assertions that the public sector tends to have a more developed model of grievance and discipline procedures, which lends itself well to mediation as an ADR.

In terms of mediators' on-going development, for many universities dual mediation was a pragmatic choice to offer their mediators opportunities to practice. This supported Latreille's findings on the efficacy of 'a faster acquisition of experience and the maintenance of skills' (2011:36) in enhancing the service as a whole. Conversely, how line managers' training needs were often identified through mediation process, supports Jones and Saundry's (2011) findings that many line managers are ill equipped to deal with conflict in the workplace and proved a bonus for this type of ADR.

A key finding from the research was how mediators countered criticisms of the appropriateness and fairness of mediation. The criticisms (Dickens, 2008; Keashly and Nowell, 2011) discussed earlier in relation to mediation were tested against the views of the respondents and highlighted a number of 'counter arguments'. All respondents argued that mediation was not intended to be a 'panacea' and if a decision was required to find its place in the public domain then other dispute resolution mechanisms were open to the disputants. This supports Ridley-Duff and Bennett rationale for their conceptualisation of conflict management in arguing that mediation could otherwise be seen as 'silencing social criticism by hiding the process of conflict resolution from public scrutiny' (2011: 114).

In reply to other criticisms highlighted earlier in the paper (Sanders, 2009), the mediators all argued passionately that the strength of the process was its ability to address 'power imbalance' between disputants. The results support the assertions of writers who recommend a more 'interest based' (Goldberg, 2005) approach to conflict resolution and, as Costantino and Stickles Merchant (1996) rightly argue, the need for disputants to have more ownership of the overall process. Conversely, it is significant that with respect to harassment and bullying, grievance and discipline procedures were generally seen as more appropriate than mediation. This finding suggests that the concerns of some critics of mediation in the workplace (Branch et al., 2009; Keashly and Nowell, 2011) were being acted on in practice.

Another key finding of the research was the almost universal contention that conflict and its methods of resolution were governed by the ethos of the sector and the nature of its

workforce. The findings highlight some of the more contextual and sector specific elements of HE mediation, such as its client group, its ethos, networking and the challenges of managing the academic labour process.

That one typical respondent commented that managing academic staff was like ‘herding cats’ echoes Watson’s observation (2006) that the underlying independence of most workers ultimately limits the ways and the degree to which ‘human resources’ can be managed. Similarly, the highly autonomous nature of academic labour has resonance with certain facets of Ouchi’s model of control (1979) with respect to the extent to which academics are manageable. That is particularly when having an aversion, as reported by many interviewees, to the notion of bureaucratic control. The challenges to successfully resolving workplace disputes to which academics are a party, in this case through mediation, it can be further argued have valuable lessons for organisations employing similar types of highly autonomous workers in other sectors of the economy.

Interest continues to grow in terms of the practice of workplace mediation in the UK and we are well served by policy (ACAS, 2011a; Johnston, 2008) and practitioner oriented accounts (CIPD, 2008, 2011b) of its development. This article has focussed rather on contributing to the far more limited amount of academic writing available to underpin that practice. To that end the HE sector, as arguably the most developed sector for utilising workplace mediation in the UK, was assessed through comparison with other contemporary sectorial studies (Latreille, 2010, 2011; Saundry et al., 2011).

Furthermore, the discussion proved valuable in addressing some other key questions, specifically in relation to the current government’s initiatives referred to earlier. With regard to the success of mediation there is evidence, through both a review of the literature and with respect to the setting of this research within higher education, that mediation is making some successful inroads in the workplace in terms of developing alternative conflict management systems (Costantino, 1996). However, the findings also clearly highlight its limitations with respect to what it can deliver. Similarly, the case for effective networking between organisations is well made on the basis of a critical analysis of HE, in terms of the common culture, ethos and conflict management practice identified in the study. Nevertheless, this writer would counsel caution in assuming that such efficacy is easily transferrable to a cross sectorial group of organisations based solely on their size (BIS, 2012), rather than the specific industrial context of their sector. On the evidence of this study, the government’s cited support for trials in the retail sector (BIS, 2011), or possibly the health service (Saundry et al., 2011), may prove more fruitful.

Whilst it is argued that reporting on the views and experiences of a cross-section of mediators is a strength of the study, and also enabled the capture of views from a sample of HRM and HRD practitioners, reflecting on the methodology adopted for the research, its limitations are the absence of other key stakeholders in the process. For instance, what are the views of trade union representatives, line managers and the disputants on mediation and the implications of their support for or resistance to the process? It is recognised such absences predicate the need for further research that encompasses the views of all stakeholders.

In closing, as yet the fields of mediation practice and research both remain at their formative stage in the UK. The discussion has sought, in the context of the HE sector, to capture the key features of mediation as an alternative mechanism for conflict resolution in the workplace.

The challenge now is to further develop those ideas in both refining our understanding of mediation and the potential applicability of the findings beyond a single sector.

References

ACAS (2011a), *ACAS mediation 2010/11: Responses from participants and commissioners*, ACAS Ref 12/11. www.acas.org.uk/research accessed 20th October 2011.

ACAS (2011b), *Mediation Explained*, London, ACAS Publications.

Bingham, L. and Pitts, D. (2002), "Highlight of Mediation at Work: Studies of the National REDRESS Evaluation Project", *Negotiation Journal*, April 2002, pp. 135-146.

BIS (2011), *Resolving workplace disputes: Government response to the consultation*, London: Department for Business Innovation and Skills.

BIS (2012), "Regional-Mediation-Pilot-Schemes-up-and-running", Department for Business Innovation and Skills <http://news.bis.gov.uk/Press-Releases/Regional-Mediation-Pilot-Schemes-up-and-running-67b90.aspx> Accessed 7th August 2012.

Branch, S., Ramsay, S. and Barker, M. (2009), "Workplace bullying", in Redman, T. and Wilkinson, A. (Ed), 3rd Ed. *Contemporary Human Resource Management*, FT Prentice Hall, Harlow, England.

CIPD (2007), *Managing Conflict at Work*, London, CIPD Publications.

CIPD (2008), *Workplace Mediation: How Employers Do It*, London, CIPD Publications.

CIPD (2011a), *Conflict management*, CIPD Publications, London.

CIPD (2011b), *Workplace mediation: How employer do it*, CIPD Publications, London.

Costantino, C. (1996), "Using interest-based techniques to design conflict management systems", *Negotiation Journal*, July 1996, pp. 207-215.

Costantino, C. (2005), "Second generational organizational conflict management systems design: A practitioner's perspective on emerging issues", *Harvard Negotiation Law Review*, Issue 1, Winter 2005, pp. 81-100.

Costantino, C. and Strickles Merchant, C. (1996), "How to design conflict management systems", *CPR Institute for Dispute Resolution*, Vol. 14 No. 4, April 1996, pp48-49.

Davey, B. and Dix, G. (2011), *The dispute resolution regulations two years on: The Acas experience*, ACAS Paper 7/11.

Dickens, L. (2008), "Legal Regulation, Institutions and Industrial Relations", *Warwick Industrial Relations*, No 89, University of Warwick: Industrial Relations Research Unit.

ECU (2007), *Dignity at work: A good practice guide for higher education institutions on dealing with bullying and harassment in the workplace*, Equality Challenge Unit Publications.

Gaynier, L (2005), "Transformative Mediation: In Search of a Theory of Practice", *Conflict Resolution Quarterly*, Vol. 22 No. 3, pp. 397-408.

Gibbons, M. (2007), *Better Dispute Resolution: A Review of Employment Dispute Resolution in Great Britain*, London, Department of Trade and Industry.

Goldberg, S. (2005), "How interest based grievance mediation performs in the long term", *Dispute Resolution Journal*, Vol. 60 No. 4, pp. 8-15.

Johnston, T. (2008), *Knowledge and Use of Mediation in SMEs*, (ACAS Publications, London).

Jones, C. and Saundry, R. (2011), "The practice of discipline: Evaluating the roles and relationship between managers and HR professionals", *Human Resource Management Journal*, doi: 10.1111/j.1748-8583.2011.00175.x Accessed 28th December 2011.

Karambayya, R. and Brett, J. (1989), "Managers handling disputes: Third-party roles and perceptions of fairness", *Academy of Management Journal*, Vol. 32 No. 4, pp. 687-704.

Karambayya, R., Brett, J. and Lytle, J. (1992), "Effects of formal authority and experience on third-party roles, outcomes, and perceptions of fairness", *Academy of Management Journal*, Vol. 35 No. 2, pp. 426-438.

Keashly, L. and Nowell, B. (2011), "Conflict, conflict resolution and bullying", in. Einarsen, S., Hoel, H., Zapf, D. and Cooper, C. (Eds), 2nd Ed. *Bullying and harassment in the workplace: Development in theory, research and practice*, CRC Press, Taylor and Francis Group, Bora Raton, Florida.

Kelly, J. (2004), "Family Mediation Research: Is There Empirical Support for the Field?", *Conflict Resolution Quarterly*, Vol. 22 No. 1-2, pp. 3-35.

King, N. (2004), "Template analysis", in Cassell, G. and Symon, G. Eds, *Essential guide to qualitative methods in organizational research*, Sage, London.

Latreille, .P. (2011), *Mediation: A thematic review of ACAS/CIPD evidence*, ACAS Paper 13/11

Latreille, P., Buscha, F. and Conte, A. (2012), “Are you experienced? SME use of and attitude towards workplace mediation”, *The International Journal of Human Resource Management*, Vol. 23 No. 3, pp. 590-606.

Liebmann, L. (2000), “History and Overview of Mediation in the UK”, in *Mediation in Context*, (London: Jessica Kingsley Publishers).

Lipsky, D. (2007), “Conflict resolution and the transformation of the social contract”, *Labor and Employment Relations Association Series Proceedings of the 59th Annual Meeting* January 5–7, 2007, Chicago, Illinois.

Lipsky, D. and Seeber, R. (2001), “Resolving workplace disputes in the United States: The growth of alternative dispute resolution in employment relations”, *Journal of Alternative Dispute Resolution*, 2:3, Fall, 2000, pp. 37-49.

Lipsky, D., Seeber, R., Avgar, A. and Scanza, R. (2007), “Managing the politics of evaluation Lessons from the evaluation of ADR programs”, *Labor and Employment Relations Association Series Proceedings of the 59th Annual Meeting* January 5–7, 2007, Chicago, Illinois.

Mareschal, P. (2003), “Solving problems and transforming relationships: The Bifocal Approach to Mediation”, *The American Review of Public Administration*, Vol. 33, pp. 423-448.

Ouchi, W.G. (1979.), “A conceptual framework for the design of organizational control mechanisms”, *Management Science*, Vol. 25 No. 9, pp. 833-848.

PMA (2012) “National Forum for Mediation in Higher Education gathers tomorrow”, Professional Mediation Association
<http://www.sourcewire.com/news/71026/national-forum-for-mediation-in-higher-education-gathers-tomorrow> Accessed 8th August 2012.

Ridley-Duff, R. and Bennett, A. (2011), “Towards mediation: Developing a theoretical framework to understand alternative dispute resolution”, *Industrial Relations Journal*, Vol. 42 No. 2, pp. 106-123.

Rowe, M. (2005), “An organizational ombuds office in a system for dealing with conflict and learning from conflict, or ‘conflict management system’”, *Harvard Negotiation Law Review*, Issue 1, Winter 2005, pp. 279-288.

Sanders, A. (2009), “Part one of the Employment Act 2008: ‘Better’ dispute resolution?”, *Industrial Law Journal*, Vol. 38 No. 1, pp. 30-49.

Saundry, R., McCardle, L. and Thomas, P. (2011), *Transforming conflict management in the public sector: Mediation, trade unions and partnership in a PCT*, ACAS Paper 1/11.

Shapiro, D. and Brett, J. (1993), "Comparing three processes underlying judgments of procedural justice: A field study of mediation and arbitration", *Journal of Personality and Social Psychology*, Vol. 65 No. 6, pp. 1167-1177.

UCEA (2012) *Membership of the Universities and Colleges Employers' Association* <http://www.ucea.ac.uk/en/membership/ucea-member-heis/a--b.cfm> accessed 15th August 2012.

The Complete University Guide (2012) Universities in the north of England rate highly in UK university league – 2013 Complete University Guide
<http://www.thecompleteuniversityguide.co.uk/news/universities-in-the-north-of-england-rate-highly-in-uk-university-league/> Accessed 15th August 2012.

Watson, T. (2006), *Organising and managing work*, 2nd Ed. FT, Prentice Hall, London.