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Reframing workplace relations? Conflict resolution and mediation in a Primary Care Trust

Abstract

In recent years, workplace conflict has become increasingly manifest in individual employment disputes as collective labour regulation has been eroded. Accordingly attention has been focused on finding ways to facilitate the early resolution of such disputes. Policy-makers have placed a particular emphasis on workplace mediation. However, the broader impact of mediation on conventional grievance and disciplinary processes and on the workplace relations that underpin them has been largely ignored. This paper reports on research into the introduction of an in-house mediation scheme within a primary care trust (PCT). It explores the implications of the scheme for: workplace relations within the organisation; the dynamics of conflict management; and trade union influence. It argues that the introduction of mediation provided a conduit through which positive workplace relations were rebuilt which in turn facilitated informal processes of dispute resolution. Furthermore, it allowed trade unions within the organisation to extend their influence into areas traditionally dominated by managerial prerogative.

Keywords – mediation, dispute resolution, conflict, discipline, grievance, trade unions.

Introduction

The relative decline in collective industrial action and the emergence of persistently high levels of individual employment disputes (Dix et al., 2008) has prompted a search for new approaches to conflict resolution. One aspect of this has been increased interest in workplace mediation (BIS, 2011) lauded by the recent Gibbons review of the UK's system of dispute resolution as '*a pragmatic, flexible and informal way of providing both parties with positive outcomes*' (Gibbons, 2007).

The promotion of mediation is supported by a growing evidence base that points to its potential benefits (Sergeant, 2005; CIPD, 2008; Johnston, 2008; Harris et al., 2008; Latreille, 2010, 2011; Latreille et al., 2010). However, much of the literature has conceptualised workplace mediation as a linear, technical process through which organisations are better able to resolve specific disputes. This managerial perspective has tended to focus on a narrow consideration of the benefits of mediation. Accordingly, inadequate consideration has been given to its potential to shape the social and power relations between key organisational actors and consequently impact on broader processes of employment relations and conflict resolution.

This paper seeks to begin to fill this gap through a detailed examination of the introduction and implementation of an in-house mediation scheme within an NHS primary care trust (PCT). A notable feature of this was the active participation of the main trade unions which not only provided mediators but also played a role in co-

ordinating the scheme. This arguably represents a critical shift away from the traditional representative role played by unions within disciplinary and grievance procedures. It therefore provides an ideal setting in which to examine the broader implications of workplace mediation in respect of three main issues: *relations between organisational actors; the dynamics of conflict management; and trade union influence.*

The paper is structured as follows. Firstly a brief review of the literature is provided which examines mediation in the context of existing debates over discipline and grievance. Secondly the methods used in this study are explained and discussed. Thirdly, the findings are set out in two parts which examine the nature of conflict management and employment relations before and after the introduction of mediation. Finally, the implications of these findings are discussed in terms of the three issues outlined above.

Mediation, Discipline and Grievance – Bridging the Divide?

The last three decades have seen a radical, albeit uneven, shift in the nexus of industrial conflict from the collective to the individual arena (Dix et al., 2008). Consequently there has been increased policy emphasis on the resolution of individual employment disputes. Until recently, the dominant approach was reflected in increased regulation and the widespread adoption of formal disciplinary and grievance procedures (Kersley et al., 2006).

For employers, this was a response (in part at least) to the growing complexity of employment legislation and the consequent threat of litigation (Edwards, 2000). Conventional disciplinary and grievance procedures were also argued to provide a degree of employee voice; a source of organisational justice; and a way of improving and correcting employee behaviour (Jones, 1961). At the same time, the increasing dominance of formal processes could be seen as an assertion of managerial prerogative over individual issues that had previously been subject to broader structures of collective bargaining (Edwards, 2000; Mellish and Collis-Squires, 1976; Purcell and Earl, 1977; Thomson and Murray, 1976). Certainly as trade union influence was curtailed and collective regulation eroded, unions had little choice but to place increased emphasis on defending their members' interests through individual representation within disciplinary and grievance procedures and the enforcement of employment rights (Dickens et al., 2005).

In 2007, the Gibbons Review (2007) into the UK's system of dispute resolution concluded that formal procedural approaches had hindered early and informal attempts to address and resolve individual employment disputes in the workplace. Conventional formal grievance and disciplinary processes were seen as adversarial and focused on the apportioning of blame rather than resolution (Reynolds, 2000; Pope, 1996). In contrast, mediation was argued to provide a less confrontational environment in which individuals could raise their concerns (Fox, 2005; Sergeant, 2005).

Importantly it is suggested that mediation removes disputes from the scope of either managerial authority or trade union representation and places it squarely in the hands of the individuals in dispute. Generally, neither managers nor union representatives play any role within the mediation. Mediators are argued to be impartial, participation is voluntary and both the content and mediation and details of settlement are normally confidential (Acas/TUC, 2010). While there are different mediation 'styles' (Latreille, 2011), the most widely used in UK workplaces is facilitative mediation – through which the mediator encourages a recognition of the needs and interests of the participants in an attempt to identify areas for agreement (Alberts et al., 2005). In this way, participants take ownership over both the dispute and its solution.

It's supporters suggest that as a consequence mediation delivers sustainable outcomes with a range of studies citing high rates of resolution and satisfaction amongst the parties (for example McDermott et al., 2000; Bingham et al., 2000, 2002). Cases that might otherwise result in long-term absence and litigation are resolved relatively quickly (Anderson and Bingham, 1997; Corby, 1999; Kressel, 2006). Therefore, mediation is more likely to restore the employment relationship and offers significant financial savings compared with (often lengthy) traditional procedures (Kressel, 2006; Goldberg, 2005).

However, both the policy debate and much of the academic literature tends to conceptualise mediation as a solution to the 'problem' of conflict and its attendant costs. This is problematic in a number of respects. Firstly, it relies on a simplistic characterisation of conventional grievance and disciplinary processes as formal and adversarial. Of course this may be the case, but it ignores the way in which formal procedure and informal processes often co-exist. Managers often handle individual disputes in diverse and multi-faceted ways (Edwards and Whitston, 1989) while the role played by trade union representatives goes beyond that of simply challenging managerial authority and may include elements of self-discipline as they seek informal resolutions on behalf of their members (Edwards, 1994; McCarthy, 1966; Batstone et al., 1977).

Secondly, both formal and informal processes of dispute resolution are shaped by the nature of the relationships between key organisational actors (Author A et al., 2009) which in turn are conditioned by workplace power relations. For example in the absence of strong trade unions or individuals able to exercise significant bargaining power, employers have a wide discretion as to how they 'resolve' individual employment disputes. In such situations procedures may be reduced to exercises in legal compliance, affording workers little chance to resolve problems or challenge perceived unfairness (Pollert and Charlwood, 2009). In contrast, effective structures of employee representation may not only ensure that formal procedures are adhered to but also underpin informal resolution processes (Author A et al., 2011) Therefore, outcomes of individual disputes are subject to processes of negotiation and re-negotiation (Edwards and Whitston, 1989). In short, their operation (in both formal and informal spheres) is inexorably conditioned by what Edwards (2000) calls the politics of the management of labour.

This underlines the importance of examining mediation through a lens that accepts that the management of individual conflict is itself contested and reflects the balance of workplace power. Inevitably, the competing interests of organisational actors are affected by and played out within mediation. For example, resistance to mediation could come from first line managers who may see it as a threat to the authority that is implicit within grievance and disciplinary procedures (Sergeant, 2004). Similarly, it has been suggested that HR professionals may worry that mediation may undermine their central role in the application of procedure and the management of individual disputes (Lipskey et al., 2003).

Mediation has particular consequences for trade unions. In recent years, individual disputes have been progressively removed from the ambit of collective regulation. Consequently, trade unions have placed increased emphasis on defending their members' interests through individual representation within disciplinary and grievance procedures and the enforcement of employment rights (Dickens et al., 2005).

Crucially, representation within mediation is generally seen as inappropriate because 'the focus of mediation is the resolution of the dispute by participants themselves and to maintain as much informality for the process as possible.' (Acas/TUC, 2010:3). At best, the role of unions has tended to be limited to a consultative role as employers seek to win support for mediation amongst the workforce (Lipskey et al., 2003). Unions are thus a means to an end rather than an integral part of the process.

Thus, the expansion of mediation could be seen as undermining the ability of unions to fully defend the interests of their members and influence outcomes. At a broader level, it may help management to bypass unions, stifle legitimate resistance and strengthen control over organisational systems of dispute resolution. Although in the USA there is evidence of public sector unions seeking to extend influence by embracing alternative forms of dispute resolution (ADR) such as mediation (Robinson et al., 2005), the rise of ADR has mirrored the erosion of collective labour regulation with some employers using practices such as mediation as a substitute for trade union voice (Lipskey et al., 2003; Olson-Buchanan and Boswell, 2008).

The relative lack of any detailed consideration of the roles played by organisational stakeholders in relation to mediation processes perhaps explains the inadequate examination of their wider impacts. There is some evidence that the introduction of internal mediation schemes may have an indirect impact beyond the specific disputes that are mediated. Being trained as a mediator may improve an individual's 'conflict handling skills' (Bingham 2004; Kressell, 2006) and their reputation amongst colleagues (Reynolds, 2000). More broadly, Sergeant's (2005) evaluation of mediation in small firms in the UK found evidence of a sustained improvement in employer-employee relationships. Similarly the Chartered Institute for Personnel and Development (CIPD, 2007) claim that, in addition to resolving disputes, mediation can lead to a range of positive impacts, including the development of organisational culture and improvements in employee relationships (CIPD, 2008). However the

precise nature of these benefits and the processes through which they are realised has not been explored in the literature in any depth. In short, mediation is portrayed as being somehow insulated from workplace employment relations and the interests of management and labour.

Therefore a proper consideration of the implications of mediation for patterns of conflict resolution must examine how it interrelates with other employment relations processes and the relationships that underpin them. Accordingly in this paper we examine a specific case in which a mediation scheme was introduced within a highly adversarial (and unionised) industrial relations climate. In doing so we explore the broad impact of workplace mediation and pose three crucial questions: how does the introduction of mediation shape the nature of relations between organisational actors? What are the implications for the management of conflict? Does the introduction of mediation threaten to undermine the role and influence of trade unions?

Methodology

The research had three main elements: firstly, existing documentation regarding individual dispute resolution was examined, including policies and procedures relating to grievance, discipline, fair treatment and performance management. These policies and procedures were benchmarked against the Acas Code of Practice on Discipline and Grievance and statutory requirements.

Secondly, nineteen semi-structured interviews were conducted with key organisational actors. Crucially the focus of the study was not on the conduct of mediation per se but on its broad impact on conflict management. Consequently, interviews were neither sought nor conducted with individuals subject to mediation. In addition details of individual cases were not requested. Instead, the sample of respondents was made up of the following:

- i) Individuals who were pivotal to the introduction of mediation at ELPCT. These included senior HR managers; trade union representatives; and the mediation training provider. These interviews provided an overview of the rationale for the scheme, the conduct and impact of the initial mediation training and the initial barriers and obstacles to the scheme.
- ii) Trained mediators operating within the scheme. These included, operational managers, HR advisors and managers and trade union representatives. A key focus of these interviews was the experience of the respondents of their initial training and the issues they faced when mediating. Furthermore, respondents were questioned about the way in which this had shaped their own practice in handling individual employment disputes in general.

- iii) Operational managers, HR staff and trade union representatives who had no direct involvement with the mediation scheme. The reason for this was to examine their attitudes towards mediation and to try to identify and explore any changes that had occurred in the way in which conflict is managed. In particular, interviews were sought in specific areas of the organisation that had emerged during the research as having experienced change in regard to conflict management.

Overall, six operational managers were interviewed, drawn from different areas of the organisation. Three of the operational managers were trained mediators. Five members of HR staff (broadly defined) were interviewed. These were drawn from advisor, manager and director level. Three of the HR staff interviewed were mediators. One of the HR staff, who was primarily responsible for the introduction of the scheme, was interviewed twice. Finally, the external consultant who had provided the initial mediation training was also interviewed.

Six trade union representatives were interviewed. Five of these were from UNISON the largest recognised trade union, although one of these respondents was the Royal College of Nursing (RCN) representative until recently (at the time of the research there was RCN representative employed within PCT). The remaining respondent was a representative for UNITE. Three of the union respondents were trained mediators, while three had no direct involvement with the mediation scheme.

The interviews were semi structured but based around a broad topic guide that highlighted key issues for discussion. Interviews lasted between 35 minutes and 90 minutes – in total just under 20 hours of interview data was recorded. The majority of the interviews were conducted face-to-face, but three were conducted by telephone for logistical reasons. All respondents were assured anonymity, interviews were transcribed and returned to respondents for approval and amendment.

Finally, extant statistical data regarding the total numbers (and outcomes) of employee grievances, disciplinary cases, mediations and employment tribunal applications was examined. The researchers were given access to data from the PCT staff survey for 2007, 2008 and 2009. This was in the form of frequency tables and analysis. The survey was part of a national NHS wide survey conducted by Capita. Finally, publically available data regarding staff absence and turnover was analysed.

Findings

The findings are presented in three parts. In the first we provide a very brief introduction to the case and explain the background to the introduction of mediation. In the following two parts, we examine the nature of workplace relations and the way in which individual employment disputes are handled both prior and after the introduction of in-house mediation.

Background

The case study organisation ('PCT') was a Primary Care NHS Trust based in the North of England, employing 3,028 staff. In the years immediately preceding the research, employment relations were conducted within a rapidly shifting organisational context. This included the formation of PCT itself, the integration of new services and changes in the way that services were commissioned.

A number of trade unions and employee organisations were recognised: UNISON; Royal College of Nursing (RCN); UNITE; British Medical Association (BMA); Society of Chiropractors and Podiatrists (SCP); British Dental Association (BDA); and the GMB. Individual employment disputes were handled through conventional disciplinary and grievance procedures, which were relatively lengthy and complex. Specific policies existed to deal with warnings and dismissals in relation to sickness absence (Sickness Absence Policy) and performance (Managing Performance Improvement Policy). PCT also operated a 'Fair Treatment Policy' to deal with complaints of bullying, harassment and victimisation.

However, the way in which these procedures were implemented was shaped by the broader employment relations within PCT. Although a framework partnership agreement had been agreed between management and unions in 2006, relations between unions and managers were adversarial and confrontational.

The mediation scheme was introduced in 2008 and was specifically aimed to combat what management saw as the 'grievance culture' that operated within the organisation. Following an initial workshop to introduce and explain the idea of the scheme, ten mediators were trained. These included three union representatives, drawn from UNISON, RCN and UNITE. In addition three HR managers and four operational managers were trained as mediators. Critically, two co-ordinators were appointed to act as co-ordinators with responsibility for screening potential referrals, briefing disputants and allocating mediators. One was a senior member of the HR team, the other, was the lead UNISON representative.

In its operation between 2008 and the conduct of this research (July 2010), the scheme dealt with 30 referrals in total, dealing with issues from minor relationship problems to cases of racial harassment and bullying. Twenty eight of these cases proceeded to mediation and 27 resulted in a written agreement (a success rate of over 96%). In addition, according to PCT, all these agreements had been sustained.

Before mediation - Conflict, confrontation and resistance

Prior to the introduction of the mediation scheme, there was general agreement from respondents that employment relations were adversarial and highly confrontational. According to one union respondent:

'... It was a 'them and us,' batter the barricades the old fashioned way. If there was a problem just hit it head on; there's no phone calls...I didn't get on with ninety nine percent of management or HR'. (Trade union representative)

One HR manager described the unions' approach as:

'They were just resistant to change and the slightest thing, in my opinion, became an issue or a grievance...they would take an opposite viewpoint just for the sake of take an opposite viewpoint in my opinion.'

Management respondents accepted that unions' attitude was shaped by the fact that they *'didn't have a great deal of voice'* and *'weren't used to being treated with an enormous amount of respect'*. Unions were often not consulted over important decisions and issues within the organisation. Consequently trade unions, who felt that traditional collective channels of influence were closed to them, resorted to exploiting individual dispute procedures, immediately formalising employee grievances and encouraging the submission of complaints on a range of issues:

'I put round about, I think, at one stage, twenty odd grievances in a year and only lost one. It's not that I was really good at it. It's just the people above were saying, "Just agree and shut him up"'. (Trade union representative)

Partly, this was a way of raising a range of collective and individual issues. However, members' interests became entangled with the low-trust personal relations between representatives and managers:

'Well, the aim was drag it out as long as you can because they'll get peed off and they'll start throwing money at it.... management had wound me up that many times, I didn't care whose grievance it was. Sometimes I'd say I'd say I've got to go back and have a go at these people'. (Union representative)

Managements' reaction to this was reactive and defensive. HR managers, in particular, retreated behind the relative safety of the procedure. Consequently, both sides became entrapped in a zero-sum game in which all informal channels of dispute resolution were closed.

'There wasn't room for leaving anything not tied down, in a way, because they felt that the other side would take advantage of that. So they had to dot all the I's and cross all the T's'. (Operational manager)

'You couldn't sit down with management. Management never wanted to sit down with you... I'd say the vast majority of the time you could not sit down with a manager and say, "Look why have we got to this stage? Can we not just bring it back?" No, there was none of that.' (Trade union representative)

Not only was the early informal resolution of disputes undermined by a lack of trust between key actors, but formal grievance and disciplinary hearings were conducted in an adversarial and confrontational manner.

'it was definitely management and union side at loggerheads and really, you know, managers looking for a win or trade unions looking for a win and there was no middle ground.' (Operational manager)

Thus, conflict resolution was inextricably linked to the state of workplace relations. A lack of trust and profound suspicion permeated formal disputes procedures and undermined informal processes. Thus, individual employment disputes became battlegrounds in which trade unions and management struggled for control rather than seeking resolution.

In this context, the notion of mediation could be seen as a clear attempt to reassert managerial control over dispute resolution. Certainly, trade union representatives were concerned that this was a ploy to reduce union influence. One respondent described the initial reaction of the lead UNISON convenor to a presentation on the proposals:

'...he actually wrote - I wish I had it with me - on my copy of the workshop notes, "What a load of bollocks".... At the time it was regarded with great suspicion because some union representatives felt it was a way for management to pull the union's teeth.' (Union representative)

However, other organisational actors were also resistant to mediation as it threatened to undermine their own perceptions of control and influence. Operational managers were concerned that mediation provided a way that employees could challenge their authority. According to one mediator:

'they couldn't see why it was being taken out of their hands. It was a control issue for managers, you know? They regarded themselves as not managing if they were not actually doing the thing that fixed the problem.'

Similarly mediation was seen as potentially questioning the central role played by HR professionals within conventional disputes procedures. According to a senior HR manager:

'I think mediation is out of the HR comfort zone...because it allows the people...to come up with whatever solution is right for them, whereas within HR...they were very used to saying, "this is what you will do".'

Therefore to conceptualise mediation as either a neutral tool for dispute resolution or a mechanism of management control is over simplistic. In fact, the attitudes of key actors to the prospect of mediation reflected the extent to which the conventional structures of dispute resolution allowed them to defend their own sectional interests. The introduction of mediation at PCT was not simply introduced to provide an additional mechanism for resolving disputes but was explicitly aimed

at changing the way in which individual disputes were managed. Whether this was through the development of improved union management relations or the attenuation of union influence is a key question for this paper.

After mediation – resolving disputes and improving workplace relations?

There was clear evidence that the mediation scheme was effective in resolving those disputes that were referred to the scheme. There had been a reduction in the number of cases subject to formal grievance and fair treatment procedures and also been a modest fall in the number of new employment tribunal claims against the PCT. Part of the explanation for this, according to respondents was that some issues that would have otherwise escalated into a formal complaint were resolved through mediation. According to a senior HR manager, who had recently left the PCT:

'If you measure success by us not having any grievances, when I left...we'd no grievances, no case work involving grievances, so to my mind that does say something.... I think mediation is now the first port of call: let's see if we can sort it without going into any sort of policy and procedure.'

The role of the union was important here. As outlined above, the lead UNISON representative who was the first point of contact for aggrieved members was now one of the mediation co-ordinators. Whereas previously he would have actively encouraged them to file a formal complaint, he now promoted the idea of mediation. Furthermore, the active involvement of the union within the scheme assuaged the fears of members over taking part in mediation:

'The reason why it's been so successful is staff have seen it, not every staff, but the majority of staff are thinking, well, if staff side are going along with it, or the union reps, at least I trust them.' (Trade union representative)

Importantly, the disputes referred to mediation represented a relatively small (though not insignificant) subset of inter-personal disputes. There was little change in the number of formal disciplinary cases and consensus amongst respondents that serious cases involving clear misconduct were not appropriate for mediation. Indeed this was clearly written into the scheme's protocols. Respondents were also cautious as to whether dealing with disciplinary issues through mediation could undermine managerial authority and act as a disincentive against managers addressing poor performance.

'is it just the manager managing them? You know, it could be straight: this individual's got away with things for donkey's years. The previous manager never tackled them or whatever. The new manager's come in, they're doing whatever wrong and the manager's trying to address it sort it out; they don't like it and immediately cry, I'm being bullied and harassed by my manager, and then mediation'. (HR Manager)

This underlines the complexity of workplace disputes and potentially illustrates that the application of mediation may be more problematic where it is seen to challenge existing structures of control and workplace relations.

However, there was also evidence that the introduction of mediation had triggered a general shift away from formal, process driven approaches to all types of individual employment disputes. While there had been no changes to formal procedures, it was much more likely that even those cases that were not suitable for mediation would be resolved informally.

There were three related reasons that appeared to underpin this change. Firstly, the experience of mediation training and involvement within the mediation scheme had a significant impact on the attitudes and consequent behaviours of certain key individuals. For example, the UNISON lead representative, who had been sceptical of the entire concept and explained that the training had helped him to understand (for the first time) the perspective of managers.

'I never wanted to go into a room and believe that the manager at any point in any kind of dispute was right. Or even believe that they were a human being. I honestly saw them as the devil...I wasn't bothered how much pressure they had...'

Furthermore, the process of mediation forced both managers and union representatives to adopt a resolution focused approach and also to accept that participants, and not themselves, were responsible for reaching an agreement. Mediators not only felt that this had a profound impact on their own attitudes but taking control away from managers and unions removed a key source of conflict from the management-union relationship.

'With this informal resolution there's no need to do something. It's good for the steward because you're handing the control back to the member again, which you didn't get to do with the process. The process takes all control out of the member's hands, puts it in the hands of the organisations. So mediation stops that from the point of view of we had somewhere else to go that wasn't process bound, that wasn't about scoring points.' (Union representative)

Secondly, managers, HR professionals and trade union representatives involved in the mediation scheme developed more trusting relationships. One manager explained the experience of mediation training as follows:

'...when you do the training you are thrown together in those circumstances and you do so much role play and, you know, you do sort of then start to come together. And it's a bit like you do the storming and then you do the 'norming' don't you?'

Crucially this was then carried through into the way in which employee grievances and disciplinary disputes were then dealt with. Managers and HR professionals who had taken part in mediation training and the subsequent implementation of the scheme could now see that (in the words of one manager) that *'staff-side were human'*. Consequently, they were less prone to adopt defensive and risk averse positions in regard to disputes and instead work with unions to resolve difficult issues. An HR manager gave the following example:

'the other week a grievance did come through and that was a fairly new rep and I was just able to pick up the phone to her and just say...'why's this grievance in when we're part way through? ...can we not mediate this?'

Similarly, union representatives had also seen a marked change in their relationship with HR staff and a less process driven approach in dealing with disputes:

'They'll come and talk to us, and they'll ask me, rather than tell me, "Do you think it's, you know, can we go down this way? What if we considered it, suggest this to the manager?" I'd have never got that phone call before.'

Thirdly, while these changes largely revolved centred on a relatively small group of individuals that were trained and acted as mediators, this group contained influential figures (both within unions and management) who occupied central positions within structures of conflict management within PCT. Hence their attitudes were transmitted beyond the confines of the mediation scheme. As those managers and union representatives involved in the scheme began to display more constructive approaches to disputes, so others became less defensive and increasingly open to informal resolutions.

'...because we have dealt in a positive way with these managers they've taken the recommendation on the basis of the relationship that they have with us and because the mediation scheme is actually quite successful...it doesn't matter what I say about mediation, at the end of the day it's the managers that have engaged with the process and seen successes and results of it that have recommended it to other managers, passed it on as being a good idea.'
(Union representative)

There was also evidence that the improvement in management-union relations was not simply related to individual issues. Respondents were clearly of the view that mediation had been a key factor in the development of partnership working. According to a senior HR manager, mediation had underpinned:

'...mutual trust to a higher degree, so generally employee relations now here feel positive. Not perfect; they're never perfect. You've always got to keep working on these things...We're currently doing a major reconfiguration and downsizing. We have the partnership lead on the HR project team.' (Senior HR Manager)

The interdependency of mediation and partnership was summed up by a trade union representative:

'I don't think it's enough just to have mediation on its own or just have partnership on its own...It [formal process] felt really horrible; it felt really unfair. It left people very disillusioned and demoralised and eventually they'd either be really unproductive or just wander off the books altogether and there was no way out of it...the only thing that's done that is mediation, but mediation wouldn't have happened if weren't for the workforce partnership which bred the trust in the first place'.

It could be argued that this case is simply one of incorporation, where the influence of the union has been essentially nullified. Indeed, union respondents admitted that members were sometimes reluctant to enter into mediation as opposed to relying on the union to fight their case through formal procedure. There was a perception that opting for mediation was in some way conceding defeat. Nonetheless, union respondents were strongly of the view that a resolution-focused approach resulted in better outcomes for members.

'...there's definitely no winners. It's nice if you get one up on HR but equally, HR think it's nice they get one up on the Reps but I really, truly believe this, it's the people in the middle... If I can phone HR, or a manager, and say 'Can we talk about this before we go into a formal meeting?' or, you know, 'This is what we're looking at,' then I'll do that.' (Union representative)

Union respondents were adamant that constructive approaches were not a sign of union weakness or collusion but based on their view that more adversarial approaches generally failed to deliver positive outcomes for members. Indeed, UNISON claimed that over the last two years, membership had doubled:

'Some people have this perception, oh well you're collusive. You know, you're working with managers; you're in their pockets. But at the end of the day, from my perspective, it's improving the quality of life of the staff... I just don't see the point in having a situation where you're exacerbating a problem when it can be dealt with early on. It's having those discussions, nipping it in the bud and dealing with it.' (Union representative)

Moreover, management respondents made it clear that when necessary union representatives defended members within formal hearings in the strongest possible terms. The difference was that managers now accepted this as legitimate:

'If we go into formal process they're still very keen, quite rightly so, to do the best they can to defend the individual that they're supporting. So I guess we draw a line under it once we get to a formal disciplinary. But there is mutual respect between certainly HR and staff side – they're doing their job, we're doing our job.' (HR Manager)

Discussion and conclusion

While the use of workplace mediation to resolve individual employment disputes in the UK is a relatively recent phenomenon, it is increasingly promoted as a means of encouraging early resolution, thereby reducing costs and attenuating the risk of litigation (CIPD, 2011; Gibbons, 2007; BIS, 2011). This paper examines one particular case in which the introduction of in-house mediation has been claimed to have a significant impact on both the ability of an organisation to resolve disputes seen as suitable for mediation but also on broader processes of conflict resolution.

Of course, we must be extremely careful in placing undue weight on the findings from a single case-study based on a large, public sector and highly unionised organisation. For example, the introduction of in-house mediation is unlikely to be practicable within smaller organisations. In addition, the impacts discussed above may be less apparent where employee representatives are not involved in grievance and disciplinary issues. Nonetheless, we would argue that the insights gained remain important. Not only are they directly relevant to the NHS, public sector organisations and private sector workplaces in which trade unions are recognised, but they have significant implications for debates within trade unions as to how they respond to mediation and alternative dispute resolution.

In some respects, this paper adds to growing evidence (see Latreille, 2011) that mediation can be an effective way of finding sustainable solutions for certain employee grievances and inter-personal disputes. However, our research also suggests that only a relatively limited range of disputes is appropriate for mediation. Notably, disciplinary issues were explicitly excluded from the scope of PCT's mediation scheme. This is important – if mediation is only relevant to particular types of dispute, its potency as a tool for resolving individual workplace conflict is inevitably limited. However, the key purpose of this paper was to examine the broader impact of the introduction of in-house mediation in respect of workplace relations, the nature of conflict resolution and trade union influence.

Undoubtedly, the mediation initiative had a significant impact on workplace relations at PCT. Prior to the introduction of the scheme, relations between trade unions, HR and operational management were characterised by mutual distrust. Management saw trade unions as unreasonable, resistant to change and confrontational. While trade union representatives conceded that their approach was often adversarial, they argued that they had little choice as they felt shut out of normal channels of consultation and negotiation. Consequently, low-trust relations severed processes of informal resolution often found within unionised environments (Author A et al., 2011). In the absence of meaningful engagement at a collective level, formal procedures became both a source of employee voice and a means through which managerial prerogative could be challenged. In return, managers used formal process in a reactive and defensive manner. In short, grievance and disciplinary procedures ceased to be mechanisms of correction or dispute resolution but arenas within which management and unions struggled for control.

The introduction of mediation clearly had a positive impact on workplace relations. This operated at two levels. At a personal level, those involved in the scheme developed trusting relationships. As this group of key actors were also those who largely handled individual employment disputes, these relations were further strengthened through the ongoing contact as informal processes of resolution were played out. However, improved personal relations between key actors were also transmitted to other layers within the organisation as those not directly involved in mediation saw and experienced a more constructive and consensual approach to disputes. Furthermore, formal grievance and disciplinary processes were no longer seen as a channel for the expression of broader collective issues. Overall, therefore, it could be argued that the mediation scheme provided a conduit through which management-union relations were reframed.

The evidence also suggested that this in turn underpinned a marked change in the way that conflict within PCT was managed and resolved. At an individual level, the introduction of mediation facilitated the resolution of certain disputes that would have previously been subject to lengthy formal procedures. At a broader level, post-mediation there was a commitment and willingness from both management and unions to seek to resolve issues informally, with formal procedure the last resort. Moreover, it was clear that the introduction of mediation had triggered this new approach in several ways. Firstly, involvement in the introduction and conduct of the mediation scheme had a significant impact on the attitudes and consequent behaviours of union representatives and managers who played key roles within conflict management. In particular it fostered a focus on resolution as opposed to confrontation. Secondly, the development of high-trust relations underpinned informal processes of resolution in that managers and union representatives had the confidence to work outside the safety and re-assurance of formal procedure.

However, an alternative analysis may see the introduction of mediation at PCT as a straightforward attempt by management to reassert control over the organisation's system of dispute resolution. From the outset, union representatives perceived to have been at the heart of the 'grievance culture' were targeted as potential mediators. Furthermore, the lead union representative, and the individual perceived as most militant by management, was given a co-ordination role. This increased the credibility of the scheme (see Lipskey et al., 2003) amongst union members and activists. In addition, the lead union representative was the first point of contact in relation to individual disputes. Therefore, it was much more likely that potential grievances would be channelled through the mediation scheme as opposed to formal procedure. Accordingly, a radical perspective may see the introduction of mediation as a management attempt to 'hijack' mediation (Collins, 1998) in order to co-opt trade unions, 'tame' militant representatives and reduce resistance to managerial authority.

However, there are problems with such an account. Firstly, to posit mediation as a means of managerial control is too simplistic. In some respects mediation represents a rejection of the unilateral managerial authority implicit within conventional procedures and also involves a recognition of the validity of the conflicting views of

the disputants. Indeed, our findings revealed significant management disquiet over the potential for mediation to be used by employees to challenge attempts to manage performance and concern amongst HR professionals who feared it could erode their role within formal procedures.

Secondly, such an explanation underplays the extent to which organised labour can shape processes of change and avoid the negative imposition of management strategies. We found no evidence that trade unions had become more compliant as a result of its involvement in the mediation scheme. Unions still represented members in the strongest possible terms through formal procedures when necessary. However, union respondents believed that, for the most part, informal resolutions provided better outcomes for members. Moreover, they saw mediation as a way of broadening influence over the way in which conflict was handled and decisions made and thus challenging the exercise of managerial prerogative implicit within conventional disputes procedures (Robinson et al., 2005).

As discussed above, recent years have seen trade unions increasingly relying on enforcing individual employment rights (Dickens et al., 2005) within workplace procedures and through litigation in order to defend their members' interests. However, such a strategy is inevitably reactive and while it may limit managerial authority it ultimately fails to challenge the unilateral discretion ceded to managers within formal grievance and disciplinary procedures. In contrast, active involvement in mediation potentially offers trade unions and their members an ability to shape the outcomes of individual employment disputes and re-establish important informal processes of resolution in relation to a range of issues, including disciplinary cases (see Author A et al., 2009).

Overall, conceptualising mediation either as a managerial tool to resolve the problem of individual employment disputes, or as a means of nullifying union influence, arguably obscures its broader impact. The value of mediation does not lie in its utility as a system of dispute resolution process. Instead, it provides a focus on resolution as opposed to the competing interests of either management or labour. In so doing, it acts as a conduit through which trusting workplace relations can be reconfigured and informal channels of dispute resolution opened.

More broadly our findings also suggest a need to move away from a managerial pre-occupation (evident within the current policy debate) with finding or devising new systems to solve the problem of individual conflict (Lipskey et al., 2003). Inevitably, this neglects the complex web of relationships shaping dispute resolution processes and the contested nature of employment relations. Systems in themselves are not enough; greater focus must be placed upon the nature of workplace relationships. It is here that mediation can play a crucial role in shaping attitudes, developing trust between key actors and creating an environment, which is conducive to dispute resolution.

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