

**BULLYING AND HARASSMENT COMPLAINTS – IS
MEDIATION THE ANSWER?** Printed from web page of PMR Ltd
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Workplace Mediation is becoming an increasingly popular dispute resolution method to resolve interpersonal employee conflicts including harassment and bullying complaints. Nora Doherty explains what mediation is, how it can be most appropriately used by organisations and what kind of training staff may require.

There are many factors to explain why workplace mediation is now becoming the most favoured dispute resolution method for the resolution of employee conflicts including harassment and bullying – the huge increase in the number of employee complaints (employment tribunal cases are reaching record levels), the higher cost of compensation, the continuing introduction of new employment legislation and, for many, the realisation that formal procedures and investigations can in some circumstances be so adversarial and stressful to all concerned that any possibility of people working together again is minimal.

Workplace Mediation is based on the principles of encouraging constructive communication in a safe and confidential environment, identifying mutual solutions and agreements and restoring respectful, professional working relationships.

In many cases of harassment or bullying, people want certain behaviours or language to change and do not wish to go down the route of formal investigation, particularly if they want the working relationship to continue. Often there are issues on both sides which could be helped by better communication and understanding – facilitated by an experienced mediator.

If the mediation is not successful or if the complaint is more serious, then people can always invoke formal or legal procedures.

It is clear that the UK government, through the latest guidelines in the Gibbons report, wish to encourage more constructive communication and dispute resolution in the workplace through ‘internal’ mediation and conciliation complaint processes. This not only makes sense for organisations but it is also more likely to support individual employees in resolving their working difficulties and to actively encourage respectful working practices.

I would estimate that more than one third of all employee complaints could be best dealt with by mediation.

The Benefits of Workplace Mediation:

- quick to set up
- less costly in all ways (i.e. financially in that the costs of ‘one mediation day’ is a fraction of the cost of a formal investigation or an employment tribunal, management time, employee stress, and the knock on effects of an unproductive working environment)

- more positive: more likely to give those involved the outcomes they want
- more constructive: helps restore working relations rather than destroy them

Definition: 'Workplace Mediation is a structured process whereby an impartial mediator facilitates communication between disputants in order for them to clarify their issues and to come up with agreements on how to improve the working relationship in the future.'

Case Studies of Mediation for Harassment Complaints

There are two examples I have been involved with personally that will outline more clearly how mediation can be used. One is about a conflict situation between two people – where one person put in a complaint of bullying against their manager, and the second is about a complaint of harassment within a team.

Harassment Complaint: Mediation between two people

About a year ago, I was contacted by the Personnel Manager of a large charity who explained to me over the phone that one of their employees had put in a complaint of harassment against her manager. The complainant was saying that her manager was abrupt and aggressive in the way she spoke to her, had raised her voice and criticised her in front of other colleagues in the office and was generally acting towards her in an unsupportive way – so much so that she was now suffering from stress, could not sleep at night and dreaded coming into work. The Personnel manager had also spoken to the manager concerned who said that she had several issues with this particular person, the main one being that the manager felt that her directions concerning work and projects were not being accepted and, in her point of view, she felt that this person was deliberately undermining her authority as manager. The personnel manager offered mediation to both parties as mediation is written into their harassment policy as an informal first stage for resolution. Even though they had some misgivings, both parties agreed to have a mediation – as they both wanted the situation between them to be resolved as quickly as possible and neither wanted to go down the more formal route of investigation. They did see the merit in talking through their issues with the help and direction of an experienced mediator who did not take sides. As the external mediator chosen for this work, I arranged to meet with both of them the following week and set aside one day for the mediation. I spent almost two hours with each of them in individual meetings in the morning and brought them together in a face-to-face mediation for the whole of the afternoon. By the end of the mediation meeting, they both had had the chance to say what they needed to say to each other, they had identified the main issues and, with some help and encouragement, had come up with a number of practical agreements on changes for the future that would improve their working relationship (in this case mainly around how they communicated with each other). These voluntary agreements were written up by myself as mediator at the end and each were given a copy. A follow-up meeting has been

arranged for three months time when I will go back and see how these mediation agreements are working out between them.

Complaint of Bullying: Team Mediation

The second example was when a member of a team made an anonymous complaint of harassment against two senior managers of a department in a large insurance company. The complaint brought to light several areas of conflict and differences within a team of twelve people. While the complaint was investigated and no fault found, it was clear that something further had to be done. The Human Resources Director decided that the best way forward would be to offer the whole team a 'team mediation' and she contacted me and discussed it all over the phone. A team mediation is very similar to a mediation between two people in that the principles and structure are the same but it does demand more skills and experience from the mediator because of the number of people involved and the group dynamics and emotions that may arise. This particular team mediation was more complex than usual and took place over three days. The first day I spent seeing each person in the team in individual meetings (which means you can really get to know what is happening in total confidence) and from that I decided on the best way of setting up the team mediation which took place a few days later in a large conference centre nearby. There were several major issues that needed to be addressed – one person felt that he could not work with a colleague because of a personality clash between them, and the other was that two members of the team felt that there was a possible element of racial harassment going on in the team that was not being tackled by their managers. There is not the space to describe it all here but after a lot of hard work by everyone and a lot of useful communication, the mediation in the end proved beneficial for everyone. By the close of the mediation, the team had come up with eight agreements and clear strategies for addressing each of the main issues they had identified which would improve working relations within the team and would move things forwards in a very constructive way. I had a follow up meeting with the whole team two months later and there was a definite improvement all round – people felt that their concerns had been addressed, that changes had taken place that improved working relations, and members of the team treated each other with more professionalism and respect.

Who does the Mediation?

Mediation with individuals or team does require a high degree of expertise and communication skills, particularly when dealing with sensitive and emotionally volatile issues. Carrying out a workplace mediation without the necessary skills and experience could actually make the situation worse rather than better. Organisations who do not fully understand what mediation is are asking their personnel, welfare or counselling staff to 'add' on mediation to their services without the training they need. It is certainly true to say that the skills of mediation are not the same as counselling skills – they are very specific mediation and conflict resolution skills which are necessary to direct the mediation structure. Counselling and active listening skills are helpful but a mediator needs to learn a whole range of additional skills if they are to successfully and professionally manage the whole process, particularly within the

context of personnel policies and the more sensitive issues of bullying or harassment.

Organisations can use external mediators or set up their own ‘internal’ mediation service, or have both i.e. call in external mediators in more complex situations where mediation experience and independence from the organisation is required.

If an organisation decides to have their own mediation service for employee complaints then it does take a lot of thinking about how best to set it up, which staff are going to carry out the mediations and what accredited training and support they require.

It is early days as yet for the field of workplace mediation but professional workplace mediation training courses – both public and in-house are now becoming available throughout the UK. There may soon be a professional body for workplace mediation in the UK and choosing a training course accredited by a recognised accrediting body will prove the most useful as it will show evidence of competency-based learning.

It will not be too long before most public and private organisations will have written in mediation into their personnel procedures and established more effective ‘internal’ dispute resolution procedures.

In a world of rapid change and increasing demands within the work context, there has to be a diverse range of dispute resolution processes set up in order to clearly and fairly deal with the range of employee complaints and differences that will inevitably arise. Within this, workplace mediation is certainly going to have an important part to play.

Nora Doherty is Director of Professional Mediation Resolutions (PMR) Ltd which provides a six-day workplace mediation training accredited by the Open College Network, as well as independent mediators for organisations.

***All details and course bookings via their web site www.workplacemediation.co.uk
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