

Workplace & Employment Mediation



The story so far

Since the passing of the 2008 Employment Act, the landscape of Employment Relations in the UK has radically changed. For those employers quick out of the blocks, Workplace & Employment mediation has produced savings in cost and time in dealing with employment disputes and seen a real benefit in the skills of leaders and the engagement of staff. Here, we review the progress of employment mediation in the UK and illustrate through a case study an emerging view of best practice.

Case Study – Billy and Sarah

Sarah has been in Billy's sales team for a while now and her recent performance has been poor as he has tried to introduce new ways of working into the department. Billy approached his HR Manager a while back for some guidance and the resulting coaching and close management of Sarah have not brought any improvements. Worse, Billy is beginning to feel that Sarah is a negative influence on others and he needs some support on next steps...



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This is familiar territory to anyone involved in managing performance in UK business and until April 2009, the legal position was clear. Billy's only option was to embark upon the 'three step process' contained in the 2004 Dispute Resolution Rules and invite Sarah into a formal disciplinary meeting where they could discuss her performance before potentially issuing a formal written warning. Would this help Sarah? Probably not. Would it solve Billy's problem? Again, probably not.



The cost of conflict

Cases such as Billy and Sarah's are a drain on business and a strain on people. According to a CIPD/ACAS study (Managing Conflict at Work, 2007) as much as 13 days of management time are devoted to each case like Sarah's and the loss of focus for Billy and his team is the last thing they need. For Sarah, Billy and the people around them at work and at home, the stress of the situation is intense and only increases as the disciplinary process grinds on. With the cost of Employment Tribunals estimated at £20,000 per firm, the pressure on Billy and his HR Manager to 'get it right' forces them to formalise their dealings with Sarah and simply solidifies both parties on different sides of an argument.

As bad for Billy's organisation is the damage to their reputation that cases like Sarah's bring. At a time when engaging staff is the aim, Sarah's water-cooler conversations are no help to morale and too many cases like hers will make the most committed of her colleagues question the Company's approach and wonder if there isn't a better way.

Michael Gibbons and the 2008 Employment Act

In March 2007, Michael Gibbons published his review into employment dispute resolution and recommended radical change. Identifying the failings in the 2004 Dispute Resolution Rules and the value of early resolution to disputes, Gibbons recommended Workplace & Employment Mediation as the alternative of choice, as it has proved to be in some other corners of the world. These proposals form the basis of the 2008 Employment Act and give employers the flexibility to deal with disputes more constructively and at lower cost to all involved.

What is mediation?

- Mediation is informal, voluntary, confidential and without prejudice. It would involve Billy, Sarah and an impartial mediator in discussing their issues, separately and together on a single day.
- The goal of mediation is for Billy and Sarah to discuss their situation openly and honestly without an eye on future legal action. Mediation is a safe and constructive environment aimed at resolving things quickly, cleanly and in both of their interests.
- The mediator will not tell Billy and Sarah what to do. Any agreement that is arrived at – whether Sarah stays with the business or moves on – is determined by them but it is recorded by the mediator and it is binding on them both.

The benefits of mediation

Whilst it is new in Employment Relations, mediation is commonplace in some commercial environments in the UK and has become a powerful tool in resolving community disputes. The USA and New Zealand have led the way in adopting mediated solutions to some classes of dispute and for the CIPD, mediation has 'a key role to play in settling workplace disputes' (Mediation, an Employer's Guide, 2009).

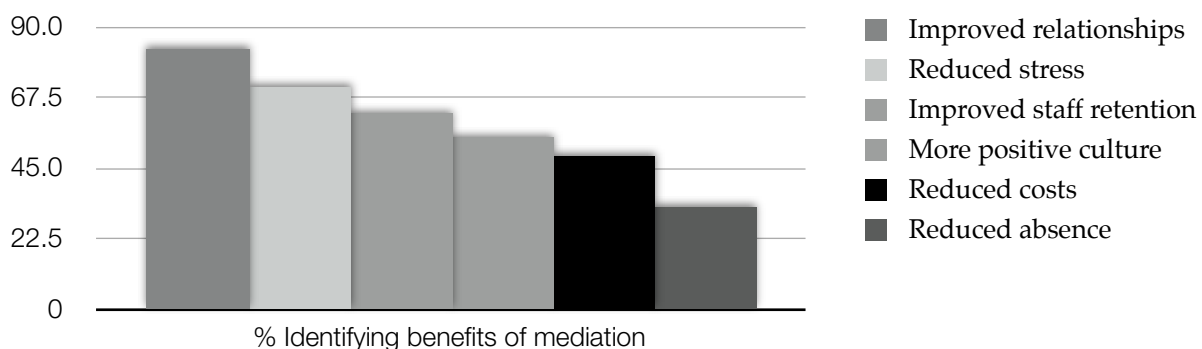
Case Study – Billy and Sarah

After discussion with his HR Manager, Billy feels that formal discipline is his only option with Sarah. In the meeting, she angrily brings up a long list of challenges that she is having with the new processes that Billy is introducing, insisting that he doesn't listen when she brings them up in team meetings. Adamant that others are able to perform despite the problems, Billy decides to issue a written warning. Within a week, Sarah has stormed out of a team meeting and is signed off work with stress. A fortnight later the HR Manager receives a grievance letter from her, accusing Billy of bullying and harassment and claiming that he favours male members of the team over her...

HR practitioners have identified the flexibility of mediation as being a key strength and, whilst a mediator can be engaged at any stage, best results are achieved early on in a dispute before the parties have become too entrenched and the costs have already started to escalate.

What mediation can do for you - faster, cheaper and better

In a 2008 survey (Small Firms and Workplace Dispute Resolution, 2008), ACAS questioned organisations using mediation as to where they felt benefits from the approach and reported the following findings:



This report was echoed by a CIPD survey (Mediation, an Employer's Guide, 2009) on the effectiveness of mediated solutions which showed mediation as second only to 'informal dialogue' in its effectiveness in solving problems. With 76% of respondents identifying mediation as effective compared to 23% for Compromise Agreements and 6% for ACAS, those organisations who have implemented mediation are clearly on to something.

Surveys apart, here are some views from people at the sharp end:

'...increased productivity and better morale, getting employees in the first place because they realise you are an employer of choice. Less legal action, hopefully cheaper in the long run. And the fact that you are able to carry out your service provision'.

Call Centre Manager

'Managers and staff involved in the process have come out much more self-aware and thoughtful than they were before. I'd be hard put to prove it, but I'm not the only one who has noticed a change in the way things get done around here'.

HR Business Partner, Financial Services



Introducing mediation to your business

Case Study – Billy and Sarah

Without mediation, Sarah's dispute looks set to be one of the cases clogging up a Tribunal system that has seen a 61% increase in claims as at 31 March 2009 (Tribunals Service, 2009). Since April, 'though, Billy's HR Manager can bring in a mediator – either an external expert or an internally trained one – and there is a real prospect that the issue can be resolved in a matter of days and weeks rather than months and years. Whether Billy and Sarah decide they can resolve their differences and work together again or not, mediation can bring things to a close and minimise the cost, time and stress for all involved.

For those organisations at the front of the curve in introducing mediation, real benefits are beginning to flow from a strategic approach to mediation which includes:

- Defining those cases that you will refer to a mediator, amending your relevant policies and procedures and involving people at all levels in dialogue about what you are doing and why.
- Selecting and training internal mediators. Working with your internal and external mediators to capture their experience and make the process stronger.
- Factoring your learning into management training and development to make mediation an ingrained part of your culture for the future.

About us

West is a Human Resource Consulting business specialising in Workplace & Employment mediation. All of our mediators are highly skilled, fully trained and accredited by the Law Society, the Bar Standards Council and the National Open College Network. We work with organisations on a retained basis or on specific issues as follows:

	What we do
We mediate disputes before or after litigation has begun.	We review your paperwork and discuss it with you to fully understand the situation. We talk to the parties individually to fully brief them on the process and gain their consent to mediation. We manage the mediation, recording the outcome and reporting back to you within the bounds of confidentiality.
We train, coach and mentor internal mediators.	We train your internal mediators in-house on a course designed to your particular needs. After training, we support them to refine and develop their skills as they gain experience.
We design and implement a strategic approach to mediation.	We work with you to understand your culture and the particular benefits you can gain from mediation. We help to decide on selection criteria for suitable cases and modify your policies as required. We design and support communications and launch processes. We help you to decide how to select and train your internal mediators and we support you through the implementation to make sure that your return on the investment is secured in every way.

Mediation is the 'hot ticket' in UK Employment Relations. To see how you can take advantage of mediation, get in touch and make a date for our free in-house seminar.



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