Chapter 8
Towards an Integrated Workplace Mediation System: Reflections on the South African Experience

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Workplace mediation is more than merely a potentially useful process for conflict resolution and disputes in the workplace. Reuben (2005) argues that the new world of work – characterized by a breakdown of hierarchies, de-siloing of functions, flexible job descriptions, and greater employee mobility requires adherence to principles of democratic governance. In this regard, effective and constructive internal dispute resolution systems are a vital consideration for any organization. Workplace mediation, which allows for a large measure of party autonomy and self-determination (Reuben 2005), plays a critical role here by channeling inevitable tensions in the work environment into a constructive direction, supportive of broader organizational change.

In this contribution we focus on workplace disputes in a broad sense as involving any conflict or dispute arising in the work environment that involves employees' rights, interests or concerns, whether those arise from a grievance (against another employee or management), interpersonal conflict, complaints of unfair treatment, workplace bullying or alleged non-compliance by the employer with an employee's contract of employment or legitimate expectations. Our focus is therefore not on disputes arising out of or pertaining to collective bargaining, or that relate to the relationship between employer and trade union.

For this contribution, we draw not only on research but also on the combined experience of the authors as conflict and dispute resolution practitioners in South Africa. Both of us acted as neutrals in private practice as well as accredited members of mediation panels of private and public dispute resolution agencies. In addition, we have been involved in the development of workplace mediation systems in three tertiary institutions and two large corporates. This gave us some insight into the importance of establishing a supportive framework in organizations to optimize

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the potential benefits of workplace mediation and its long term effectiveness. Especially the experience of one of the authors as external consultant to the Office of Mediation of the World Bank Group provided valuable insights into how the effectiveness of a workplace mediation system can be improved by tying it into a more comprehensive, integrated organizational conflict resolution system.

We address the following questions: (1) Is there a role for workplace mediation where a statutory system already caters for the resolution of workplace disputes? Our experience of, and involvement in the South African system suggests that co-existence is not only possible but probably also to be encouraged to broaden access to justice in the work context. (2) What are the limits of workplace mediation and how could these be remedied? While we strongly believe in the value and benefits of mediation in workplace conflicts, we are also very aware of its limits as a dispute or conflict resolution process. We highlight some of these limitations and suggest possible practical remedial measures to overcome, or at least minimize them. We also make the point that workplace mediation could be far more effective if it is not merely applied on an ad hoc basis but incorporated into a coherent workplace mediation system. (3) This raises the third question, i.e., what are some of the principles that should underpin the introduction of a workplace mediation system if it were to be consistent with the 'democratic character of the new workplace' (Reuben 2005:67). (4) Finally, we suggest that a workplace mediation system would be more sustainable in the long run if it were incorporated into a more comprehensive organizational conflict management system. We look at some of the key factors that need to be taken into account when implementing such a system.

Workplace Mediation and Its Assumed Benefits

Definitions of mediation abound (Boulle and Nesic 2001; Menkel-Meadow 1995; Moore 2003). For our purposes, workplace mediation can be defined as a flexible process conducted confidentially, in which a third person who is not directly involved in the matter (the mediator) assists parties in working towards a negotiated agreement of a labor dispute, with the parties in ultimate control of the decision to settle and the terms of resolution (Brand et al. 2012). The third party may be an external neutral appointed by the parties directly or by a dispute resolution agency, but could also be someone from inside the organization (e.g., a line or human resources manager).

Workplace mediation can be applied to a broad range of disputes and conflicts that arise in the workplace, e.g., to help parties communicate more effectively or to rebuild their relationship, but also to address grievances regarding employer practices or its non-compliance with an employee's terms of employment (Bollen and Euwema 2013a).

Various considerations support more widespread use of workplace mediation, ranging from benefits for the individual and the organization at large, to promoting

access to justice and democratic values in the workplace (ACAS 2013; Reuben 2005). It can also restore relationships at work and assist with the development of workplace 'social capital'; prevent conflict escalating into disputes; save actual and associated costs such as management time; improve morale and productivity; help to retain valuable employees; reduce the number of formal grievances raised; assist in developing an organizational culture that focuses on managing and developing people; reduce absence due to sickness; and provide a model for effective conflict management skills and capabilities (Avgar 2010; CIPD 2011; Latreille 2012). The confidentiality of the process can also offer a breathing space that allows more open and honest discussions (ACAS 2013). The introduction of a mediation scheme was also found to have a transformative effect on the culture of conflict management in an organization (Saundry and Wibberley 2012; Saundry et al. 2013). Ridley-Duff and Bennett (2011) add that mediation can produce better substantive outcomes for the disputing parties with higher levels of satisfaction and consequently, a higher percentage of working relationships remaining intact in the aftermath of conflict.

One major potential benefit of workplace mediation which is sometimes overlooked, is its relationship with employee perceptions of fairness, justice and trust in the workplace (ACAS 2014; Reuben 2005). These are key in promoting employee engagement and workplace collaboration (Bollen et al. 2012; Saks 2006). As Colquitt (2001) has suggested, justice does not simply relate to the outcome of a decision (distributive justice) but critically to the way in which that decision was arrived at (procedural justice) and how this was dealt with by managers and/or colleagues (interactional justice). Accordingly, where decisions and actions are seen to be 'just', employees are more likely to co-operate and reciprocate with increased discretionary effort (Bollen and Euwema 2013a). Fuchs and Edwards (2012) make a very explicit link between employees' justice perception, their sense of unity or identification with the organization and their willingness to go the extra mile.

Workplace Mediation in Addition to a Statutory System

The South African experience shows that two systems to solve workplace-related disputes, one formalized in legislation and another driven by the private sector can co-exist comfortably and also augment one another.

The Statutory System

The South African statutory system provides for the creation and protection of certain fundamental employer and employee rights, and also for the resolution of individual and collective disputes arising between employer, employees or trade unions (Bendix 2010). While certain disputes must be heard by the Labour Court

(e.g., involving alleged unfair discrimination) the key organ responsible for dispute resolution is the Commission for Conciliation Mediation and Arbitration (CCMA). The enabling statute essentially provides for three different dispute resolution processes, i.e. mediation, conciliation and arbitration. 'Conciliation' is an evaluative process, where the commissioner provides a non-binding opinion about the perceived merits of each party's case in the light of legal norms to procure a quick settlement. It differs from mediation in the sense that the mediator generally does not express a view on the merits of the parties' cases but rather tries to facilitate an agreed resolution to the dispute. It is up to the commissioner to decide which of the two processes to use in a particular dispute. In practice, conciliation tends to be the main process used for individual rights disputes whereas mediation is normally used for disputes arising from collective bargaining or large scale redundancies. Arbitration is a final and binding process where the presiding commissioner, after hearing evidence, makes a decision that ends the dispute.

Three things about the statutory system stand out. First, an attempt must first be made to resolve the matter through conciliation or mediation. In the case of disputes of right (e.g. over alleged unfair dismissal or unfair treatment), the dispute will be referred either by the aggrieved employee or a trade union acting on her behalf. Only if an attempt at conciliation or mediation fails, the dispute may be referred for arbitration or, in certain cases, adjudication by the Labour Court. Second, the CCMA's services are in most cases offered free of charge. The purpose behind its establishment in November 1996 was to provide 'social justice' in the employment arena. This is achieved through the accessible and expeditious conciliation and mediation of all employment disputes – both individual and collective – and the final adjudication of unresolved disputes of right through arbitration and in some instances by the Labour Court. Despite its budgetary limitations, it has played a very positive role in 'limiting social tensions and in creating and preserving a deliberative labour policy' (Benjamin 2013:46). Third, the statute does not express any preference for any particular mediation 'style' and provides broad powers to commissioners to determine not only what process to follow, but also to engage with the merits of a dispute in a highly evaluative non-binding way. It is, in short, a robust process aimed at resolving as many disputes as possible, as quickly as possible at the conciliation stage, with commissioners sometimes conciliating five or more disputes in a single day (Tokiso 2014:31).

Finally, the CCMA's jurisdiction is limited. While it may conciliate most disputes of right (e.g. involving unfair dismissal, unfair discrimination, breach of collective agreements, or unfair labour practices) as well as disputes arising from failed collective bargaining (disputes of interest), its arbitral jursidiction – which is activated when conciliation fails – is limited to specific rights disputes only, primarily disputes concerning unfair dismissal and unfair labour practices. Rights disputes are adjudicated by the Labour Court if conciliation by the CCMA has failed (Grogan 2014b). The CCMA has no jurisdiction to deal with interpersonal conflicts or general workplace grievances not involving the infringement of rights.

Private Dispute Resolution

In South Africa, employment rights may arise from contract, common law, collective agreement or statute (Grogan 2014a). Unless a party wants access to the arbitration services of the CCMA, or seeks access to the Labour Court to enforce certain statutory employment rights, there is no obligation to use formal dispute resolution processes of the CCMA to solve employment-related issues. They may instead opt by agreement to use private mediation or private arbitration by an external neutral. This third person might either be an independent provider of dispute resolution services, or someone assigned by a private sector dispute resolution agency at the request of the disputing parties (Grogan 2014b).

In South Africa, privatized dispute resolution in the employment field developed in the early 1980s, when Black workers were only beginning to be included in the protective framework of employment legislation. The statutory dispute resolution institution available at the time – the industrial court – lacked credibility among the emergent Black trade union movement (Bendix 2010). The establishment of the privately sponsored and managed Independent Mediation Services of South Africa (IMSSA) served to fill that void by providing mediation and arbitration services at relatively modest fees. IMSSA subsequently transformed into a new organization named Tokiso Dispute Settlement.

Today, private dispute resolution continues to fill a void, but this time for different reasons than before:

1. The first, relates to time available for CCMA commissioners to resolve disputes, especially disputes of right. The CCMA bears a heavy caseload. According to its 2013–2014 Annual Report, the CCMA receives more than 680 referrals per day. The huge caseload means that the time allocated for conciliation has been reduced over time. Currently, it takes 1 h per conciliation before the matter is marked as unresolved and ready to be processed to arbitration or referred to the Labour Court (Tokiso 2014).
2. A second reason relates to the relative inexperience of commissioners handling conciliations: while the most junior commissioners are allocated conciliations, the more experienced ones are allocated arbitrations (Tokiso 2014). As such, it is less likely that a junior commissioner will be able to understand properly the nature and characteristics of the dispute as well as parties' positions and interests in the limited time available in order to come to a solution. For more complex disputes, it is likely that parties will seek out private dispute resolution agencies (Tokiso 2014).
3. The third reason, is most relevant in the context of the current topic: many workplace conflicts are not 'justiciable' and therefore not capable of application of rights-based norms such as those applied in conciliation or arbitration. Examples of this type of conflict include communication breakdown, organizational change, personality clashes, intra-managerial rivalry including power struggles, disputes between and within teams as well as issues concerning management style. All of these could have an impact on employee well-being and performance

as well as workplace collaboration and trust (De Dreu et al. 2004). Workplace mediation provides a form of access to justice in such matters and in this way complements the narrower focus of the statutory dispute resolution system. It allows employees and the employer to get beneath the problem and to make changes to working practices that can benefit employees and the organization in the long term.

The main disadvantage of the private system is cost: unless the employer is prepared to foot the bill, private mediation is out of reach of most employees. This, together with the fact that the services of the CCMA are generally free, limits the number of instances where private mediation (through external neutrals) is being used.

Limits of Workplace Mediation

Workplace mediation is subject to a number of limitations.

Internal Versus External Mediators

Compared to internal mediators, the use of external mediators tends to be more costly, subject to time delays and associated with the formalization of the dispute (Latrielle 2010). The South African experience bears testimony to this. Latrielle (2010) in his review of UK workplace mediation, shows that resolution rates are lower when external mediators are used. One reason could be that external mediators only tend to become involved when conflicts have become more intractable (Latrielle 2010).

Where parties are either unable (because of jurisdictional constraints) or unwilling (e.g., because of cost considerations) to use external agencies for conflict or dispute resolution, using an internal mediator would be a sensible alternative. The use of an internal mediator might also provide some comfort to the parties involved, that the mediator is familiar with the organization's culture, context and history. Yet, when internal mediators are used, finding someone who is completely impartial may be difficult. This could affect users' perceptions of the fairness of the process in a negative way and affect parties' satisfaction with the mediation and their well-being (Latreille 2012). It may also be difficult for senior staff to have confidence and trust in someone who does not have sufficient organizational status (Latreille 2012).

Power Imbalance Between Disputants

Power relations between participants may shape the conduct and outcome of the process, irrespective of whether internal or external neutrals are used (Bollen et al. 2012; Bollen and Euwema 2013b; Sherman 2003). While mediators can maintain a degree of equality within the process, they cannot change the fundamental power relationships that exist between parties, nor can they protect the weaker party outside the mediation session itself (Sherman 2003). Consequently, the 'weaker' party may be too intimidated to contribute fully to the process (Wiseman and Poitras 2002). The power imbalance may not simply reside in the hierarchical relationship between the parties, but also in the degree to which they are able to articulate their views, their level of formal education, or extravertedness (Bollen and Euwema 2013b). This could provide a potential advantage to more senior, experienced and confident staff (Saundry et al. 2013).

Responsibility for the Conflict

There is a risk that mediation could be used to shift the responsibility for the conflict from the organization to the individual, with mediation as a pragmatic way for management to dispose of difficult issues (Bush and Folger 2005). Saundry et al. (2013) use the example of a case involving bullying, harassment or discrimination: an apparent settlement through mediation can mask the continuation of behaviors that are unacceptable and require more formal action in the organization. A recent UK study also suggests that line managers may be resistant to mediation, seeing it both as a threat to their authority and as a symbol of failure (Saundry and Wibberley 2012).

Timing of the Mediation Process

While common knowledge suggests that mediation would be more effective if it is used as early as possible in a dispute, Saundry et al. (2013) also found that parties experience the process as stressful and daunting and not something to be entered into unless absolutely necessary. This delays recourse to mediation, allowing the conflict to escalate.

Voluntarism in Mediation

Workplace mediation assumes that parties to mediation accept mutual responsibility for, and are willing and committed to seeking a resolution (Seargeant 2005). In the work environment, individuals may feel obliged to take part in mediation, fearing reputational damage or other ramifications if they refuse (Latreille 2012). This could be true for managers who might feel compelled to be seen to support organizational policies and values, but also for employees who might fear repercussions if they refuse to participate (Saundry et al. 2013). Some organizations may also prefer issues to be resolved quickly in order to avoid cost or image damage and may pressure employees into agreeing not only to mediation but also to settle (Coben 2000).

Confidentiality

Confidentiality may be difficult to maintain within a working environment and this may restrict the extent to which organizations can learn from disputes to review and improve workplace practices (Fox 2005; Saundry et al. 2013). It may also obscure serious and/or persistent misconduct by a manager, e.g. harassment of a staff member (Bush and Folger 2005; Saundry et al. 2013) or be used tactically by someone to try and obtain information that is not generally available.

Good Principles to Underpin the Introduction of Workplace Mediation

Ad hoc use of workplace mediation is unlikely to transform the culture of conflict management in organizations (ACAS 2014). This hinges instead on the development of, amongst others, (a) conflict skills for line managers, (b) structures of employee voice and representation and (c) the integration of mediation into a more comprehensive conflict management system (Lynch 2001; Reuben 2005).

In the section following, we make some suggestions about how this could be done. Here we first address the principles that we believe should guide the development and implementation of such a system before turning to the incorporation of mediation into a more comprehensive dispute resolution system.

It has been predicted that the ‘new world of work’ is likely to be far more democratic than the workplace of old. The latter reflects primarily the interests of the employer, whereas the new workplace calls for greater recognition of the needs, interests, and concerns of employees ‘beyond mere economics’ (Reuben 2005:20) and thus greater investment by employers in the development of social capital. Social capital is linked to, among others, retention of talent, staff motivation, trust

and collaboration (Avgar 2010; Reuben 2005;) as well as the cultivation of 'pro-change behaviour' (Fuchs and Edwards 2012).

Reuben's analysis (2005) of the relationship between the nature of the new workplace, democratic values and dispute systems design, provides a useful framework for those who see workplace mediation as a means of promoting access to justice. The values that underpin this framework also provide antidotes to some of the limitations of workplace mediation that we touched on earlier. The core values are: transparency, self-determination and participation, equality, accountability of the mediator and rationality. These should be reflected in the design of workplace conflict resolution systems and processes (Avgar 2010; Reuben 2005; Wojkowska 2006).

Transparency: Balancing Access to Information with Confidentiality

The confidential nature of mediation poses a challenge to the need for transparency (Reuben 2005; Rubins 2009). This could generate suspicion and mistrust between the parties – if and when caucuses are used – and in the organization at large (ACAS 2013).

Caucuses, the use of one-to-one conversations with the parties separately, tend to shield information and therefore inhibit transparency. They also limit opportunities for the disputants to learn more about one another and from the mediation process itself. At the same time, a caucus can allow parties to openly and transparently air their views, feelings and concerns without the pressure of the other party. Caucuses could be used tactically, e.g., if a party is unwilling to share information face-to-face with the other party, the situation threatens to get out of hand, or the mediator believes that it might be the best option given the circumstances. The mediator can agree with parties to what extent information they will exchange privately, will be subject to disclosure to the other party.

As far as transparency towards others in the workplace is concerned, mediation is a fundamentally different process from arbitration or litigation. In the case of mediation, confidentiality is agreed upon. Therefore, the need for transparency diminishes (Rubins 2009: 48). However, where the outcome potentially impacts others or the workplace at large, the mediator could be given permission after consultation with the parties, to open the session to other parties or to assist the parties in developing joint communiqués to keep relevant stakeholders informed. This might be the situation, if the matter has received widespread attention in the organization.

Participation and Self-Determination: Promoting Voluntarism and Informed Decision-Making

Participation is about the extent to which employees can participate in the structural choices for the design of the process in which they will be participating (Reuben 2005). The most obvious application of this would be a choice in the selection of the mediator. Mediators can apply a variety of styles (Riskin 2003) that could impact on the course of the process and its outcome (Reuben 2005). We would therefore argue that parties to workplace mediation need to be given sufficient information not only to understand the purpose and nature of the process, but also the process options potentially available to the neutral in pursuit of a resolution of the conflict (Reuben 2005). In this manner, they would be enabled to help shape both the process and the mediator's role in it. Lurie's 'guided choice' approach could be useful in this regard (Lurie and Lack 2014).

Participation is also related to the question whether workplace mediation should be voluntary or compulsory, and to the issue of party autonomy or self-determination. Party self-determination is central to all models of mediation (Wolski 2015). The essential elements of self-determination are active and direct participation by the parties in the process; informed consent as to the identity of the mediator, the nature of the process and the outcome; information about the available alternatives to settlement; and the absence of coercion on the parties to accept a particular outcome (Reuben 2005; Wolski 2015).

We would agree with Sander's view that a via media is possible between a compulsory and voluntary system of mediation: there is a difference between 'coercion *into* mediation [and] coercion *in* mediation' (Sander 2000:8). The World Bank Group's Conflict Resolution System (discussed in more detail below) provides a good example: managers who are at the receiving end of a mediation request are compelled to attend the intake and first formal mediation session but may choose not to participate beyond that (Javits 2013).

Equality: Finding an Antidote for Power Imbalances

Equality means that the same rules should be applied 'in the same manner to all persons who are similarly situated' (Reuben 2005:32) irrespective of race, gender, age, or similar grounds. Equality also relates to power imbalances and how those are managed by the mediator (Reuben 2005). If a mediator is not able to manage power imbalances effectively, this could result in the autonomy of the less powerful party being undermined or, in worst cases, 'the direct or indirect coercion of that party's choices' (Reuben 2005:47). Possible remedies include allowing for a review of outcomes, or access to representation (e.g., by a fellow employee or trade union representative) (Dolder 2004). McDermott et al. (2000) found that employee participants

with representation were more satisfied with the fairness of the process than those without. Agreement rates were also higher when parties are represented.

Accountability of the Mediator: Addressing Questions of Mediator Status and Impartiality

It could be argued that because mediators do not make decisions about the settlement of a dispute – leaving that to the parties – the issue of accountability does not arise. However, this does not cater for situations where mediators without the consent of the parties adopt a very evaluative or directive style (Riskin 2003) or where other pressures – e.g., the need for a quick resolution – result in the issues not being properly aired or a party is left feeling coerced into a solution (Reuben 2005). Even where mediators are subject to public or professional oversight, this does not extend to the mediator's role within the process, or the level of 'cajoling' or pressure to settle that a mediator might apply on a party.

Furthermore, unlike most agreements, the results of mediated settlements cannot generally be legally reviewed for substantive fairness. In most cases this might not be necessary, yet in the workplace context there is a real risk that factors such as mediator coercion, party incompetence, inequality or other circumstances suggesting a lack of meaningful autonomy, could come into play. The position becomes especially acute when internal mediators are used: not only is there a lack of oversight, but the mediator might be accountable internally, directly or indirectly, to a key decision-maker and potentially interested party in the organization.

Possible remedies include implementing a system of mediator certification, also for in-house mediators; commitment by mediators to a code of conduct; allowing parties a choice of mediators after having been provided with information about, e.g., the mediator's style and experience; and the option to incorporate a review process by an internal or external expert to assess the merits of the mediated settlement agreement (Reuben 2005).

Rationality

Reuben (2005) points out that while one of the strengths of mediation is the ability of parties to make decisions about the outcomes of their disputes according to values and standards that are uniquely important to them, this also makes the process more idiosyncratic. This concern is probably most acute where mediation is used to deal with disputes involving rights issues. A possible antidote could be to exclude rights-based disputes from the scope of workplace mediation, or to include a review process as suggested above. Another option might be a cooling-off period, allowing the parties to seek counsel over the proposed terms of any settlement (Welsh 2001),

or for the mediator to play the 'devil's advocate', through reality testing or by painting 'what-if' scenarios.

Workplace Mediation as a Part of an Integrated Conflict Management System

As we suggested earlier, for mediation to have a potentially transformative effect on an organization's conflict management culture, managers have to be equipped with appropriate conflict management skills, employees need to be given voice and representation and mediation needs to be integrated into a comprehensive conflict management system (Lynch 2001; Reuben 2005). It is the latter aspect that we address here.

In most organizations, mediation is a novel and unknown concept. Skepticism from the side of managers about its impact on them (fear of the unknown) and concerns about its usefulness on the part of employees, make it important to be cautious when developing and implementing workplace mediation. A limited and evaluated pilot programme could serve to counteract this (Latreille 2012).

What is essential, is an integrated approach which locates conflict management as a central element of HR strategy (ACAS 2014; Latreille 2012; Lynch 2001). The overall purpose would be to address not only the symptoms of workplace conflict but also its underlying causes, which is essential to the success of the system (Ridley-Duff and Bennett 2001). Attention should also be paid to conflict prevention and development of a certain level of 'conflict consciousness' and competence in the organization and among employees (Lynch 2001).

Enabling Environment

The successful implementation of an integrated conflict management system is heavily dependent on an enabling environment within the organization (Lynch 2001). This includes, among others, leaders from all stakeholder groups acting as champions of the system; stakeholder buy-in and managerial support; institutionalized incentives that reward good conflict management practices and discourage poor ones; allocation of resources; structures that support implementation, institutionalization and trust in the conflict management system; capacity building; and system monitoring and evaluation (Latreille 2012; Lynch 2001). The existence of a generally positive employment relations climate greatly facilitates the introduction and acceptance of a workplace mediation system (Latreille 2012). An organization's responsiveness to mediation may be particularly affected if conflict is negatively viewed by management as an 'emotional' issue or a sign of failure, instead of

them acknowledging the link between the existence of conflict, employee behaviour in conflict situations and work performance (Kenny 2014).

Organization Size

While the use of ad hoc workplace mediation is not dependent on company size (Latrielle 2010), size does matter when it comes to the implementation of comprehensive conflict management systems. While knowledge and experience of mediation can overcome preconceptions about the cost and efficiency of mediation in SMEs (Antcliff 2014), larger organizations are more likely to adopt formal systems than smaller ones for reasons of cost and capacity (Johnson 2008; Latrielle 2010; Seargeant 2005). We have found, when advising SME clients on employment workplace related matters, that they were often open to the idea of mediation and sometimes implemented it systematically to a limited degree as part of their disciplinary, performance management, harassment or grievance procedures.

Emphasis on Early Resolution

While formal procedures have an important role to play in the workplace, many disputes could potentially be settled without the need to pursue formal procedures (ACAS 2014). In our experience, once formal procedures have been triggered, the tendency is for differences to become more adversarial. Conflicts tend to escalate, positions to harden, coalitions form and it sometimes becomes very difficult to alter people's perceptions and to have an open discussion. Ultimately, the likelihood of a mutually acceptable outcome also decreases. Early intervention is therefore desirable (Zapf and Gross 2001). As stated earlier parties are often reluctant to initiate a mediation process and turn to mediation at a very late stage. Saundry et al. (2013) propose a two-speed mediation process to cater for this: a relatively 'light touch' informal discussion, facilitated by an individual with mediation skills and knowledge who could be deployed quickly to nip emerging disputes in the bud, while the more extended and formal mediation process could be reserved for more difficult and complex disputes.

In the next paragraph, we try to show how multiple entry points into mediation allow for a party to a conflict to receive advice and guidance about the availability of mediation and other appropriate resolution mechanisms.

Showcase: CRS of the World Bank Group

The Conflict Resolution System (CRS) of the World Bank Group provides a good example of a system that provides multiple entry points into mediation (Javits 2013). The CRS has an open door policy that gives staff direct access to its various services, offering them multiple points of entry into both informal and formal means of addressing staff complaints (Javits 2013). Formal systems are those that require a particular process to be followed to activate the relevant service, whereas no prescribed procedures exist for accessing informal processes.

Four organs are provided for, which may be accessed by any staff member in no particular sequence. They are (a) Ombuds Services, (b) so-called Respectful Workplace Advisors, (c) the Office of Mediation and (d) Peer Review Services (referred to below as 'CRS' organs).

(a) The *Ombuds Services* operate independently of the organization's formal structure and offer impartial and confidential assistance to staff with employment-related concerns. The office does not issue decisions, but may provide recommendations (e.g., that a matter should be referred for mediation). With a grievant's consent, the office may communicate with other staff at any level to assist dispute resolution and may also engage with management regarding systemic issues facing the organization. It may also, if requested by a grievant, become involved in trying to resolve issues in an informal way.

(b) *Respectful Workplace Advisors* are volunteer peers who offer confidential assistance to staff experiencing employment-related conflicts and concerns (Javits 2013). They do not formally participate in dispute resolution, but provide advice to fellow employees on how to resolve problems or engage the Group's other conflict resolution services, including mediation. Ombuds Services supervise the Respectful Workplace Advisors programme (Javits 2013).

(c) The *Office of Mediation* reports directly to the office of the Group's president and offers impartial conflict resolution services to staff. This includes mediation, group facilitation and training services. Once a formal request for mediation is received, the office contacts all participants to conduct an intake. The purpose of the intake is to ensure the participants' understanding of the process and to help the office determine whether the case is appropriate for mediation. The participants are required to sign an agreement to mediate and may rank their preference for the mediator from a list of internal and external mediators. After the first session, any participant is free to decide whether they want to continue with the process or withdraw from it. Agreements reached during mediation are captured in a memorandum of understanding that binds the parties (Javits 2013).

(d) *Peer Review Services* ('PRS') consist of panels of volunteer staff, drawn from managers and non-managers who may, upon request by an employee, review an employment-related matter to determine whether a manager's decision accords

> with relevant organizational rules and conditions of employment. A panel will typically review the submissions of the employee and management concerned, and submit its findings to the vice president of the manager responding in the case. The vice president, in consultation with the vice president for human resources, will determine any relief to be provided. If a matter has been referred to the PRS for a finding, it may recommend that the matter is referred for mediation to the Office of Mediation instead (Javits 2013).

Each CRS organ is able to direct a staff member to the most appropriate process if it is not able to assist in the resolution of the issue. The focus of all CRS organs is on amicable (i.e. non-adjudicative) resolution of disputes. The Conflict Resolution System is, integrated into a comprehensive Internal Justice System (IJS) that includes an adjudicatory organ (the Administrative Tribunal) which hears cases involving alleged non-compliance by managers with the terms of a staff member's contract or group policy.

In a private sector context, we generally recommend to employers to include mediation as an option in internal grievance procedures, both as a precursor to the filing of a formal grievance and as an option in the course of a formal grievance process.

Participant Evaluation and Continuous Improvement

Evaluating a mediation scheme from the disputants' perspective can be more sensitive than the evaluation of other company policies because of the confidential nature of the process (Lynch 2001). Yet, the success and continuous improvement of the system depends on accurate feedback about the experiences of participants in terms of, their level of satisfaction with the process and outcome; the quality of the scheme; and the impartiality and professionalism of the mediators (ACAS 2013). Latreille's study found that the absence of more formal and robust evaluation of mediation schemes was considered a weakness and also a potential threat to the efficacy of the system, as was the absence of attempts to measure the durability of resolutions effected through mediation (Latrielle 2012). Understanding participants' mediation experience is central to assess perceptions of mediation effectiveness but also to understand the role it plays within wider employer-employee relations, including a change in the conflict culture of the organization (Latrielle 2012).

Debriefing of Mediators

Mediating can be a lonely affair, even more so when as an internal mediator, since one is under constant scrutiny from peers. Therefore, where internal mediators are involved, it is advisable for them to have debriefing opportunities to ask for feedback, a second opinion or to deal with stress, frustration and concerns by sharing experiences with a mediation coordinator or co-mediator. We have found informal peer mediation groups in which mediators can share experiences to be very useful.

Conclusion

Workplace mediation holds many potential benefits for organizations, e.g., restoration of damaged relationships at work; an increase in 'social capital; preventing conflict escalation; reducing the costs of workplace conflict; improving morale and productivity; helping to retain valuable employees; and assisting in developing a more open organizational culture where conflicts are addressed sooner rather than later, or not at all.

Yet workplace mediation also presents particular challenges, including issues of confidentiality, power imbalances and mediator impartiality.

We tried to demonstrate that a system of informal workplace mediation can co-exist with formal, state-sponsored systems for resolution of employment-related disputes: either to cater for conflicts and disputes that are not 'justiciable' under the formal system, or to alleviate pressure on formal systems caused. We provided some suggestions about the principles that need to inform the introduction or implementation of a workplace mediation system.

If the process is integrated into an effective and constructive internal dispute resolution system, it can also play a vital role in the democratization of the modern workplace and the promotion of access to justice at the organizational level.

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