

Mediation

09

An in-depth analysis

Mediation gives the parties control over the conflict and its resolution. You can physically see them change during the day. That's something, when we did the training, we didn't believe would happen. Even when we started out as mediators we didn't believe it would happen – it's something you can only see to believe. I can't see how anybody can lose using mediation, it's not going to make things any worse. It has the opportunity to make things a million and one times better. (Marie Coombes, in-house mediator with Royal Mail)

KEY LEARNING POINTS IN THIS CHAPTER

- Mediation is a voluntary, confidential and non-adversarial process of dispute resolution that generates win/win outcomes for the parties.
- The mediator's role is to help the parties engage in adult-to-adult dialogue and to explore and discuss their underlying feelings, needs, goals and aspirations.
- The mediator is an objective and impartial third party. His or her job is to facilitate the dialogue, not to impose or recommend a solution.
- Mediators can be from within the workplace or they can be accessed externally.
- According to the latest academic research, over 90 per cent of cases that go to mediation are resolved to the satisfaction of both parties (ACAS, 2015).
- The FAIR Mediation Model™ is an effective model of resolution and is the standard method used by numerous organizations in the United Kingdom and overseas. It stands for Facilitate, Appreciate, Innovate and Resolve.
- Mediation delivers significant human and business benefits. These include reduced time and stress, and increased engagement and productivity.

Introducing mediation

I first began mediating in the early 1990s. It is fair to say that, at that time, mediation was not widely known about. People often mistook it for meditation and, in some cases, people thought that I was talking about a new form of medication. They still do. Nonetheless, I managed to secure funding to set up a small neighbourhood mediation scheme in the northwest of Leicester. I was given an office and a phone in the local housing office and quite frankly, the local housing officers couldn't believe that someone was getting excited about dealing with the very issue that caused them the biggest headache – neighbour disputes.

I was surprised at how well mediation worked in some very challenging community disputes. That was when I first realized that mediation is full of surprises. I also learnt that mediation is an exhilarating, enjoyable and deeply rewarding activity. I was hooked. The local housing team were over the moon that they didn't have to deal with warring neighbours day in day out. It didn't take long for the local police to catch on, along with the local GP surgery, the local church and virtually every other local agency. Suffice to say that, in the next 12 months, I received 112 referrals for mediation in virtually every neighbour dispute across the north of Leicester. Our strapline was, 'Mediation works!' and it most definitely does.

Resolution reflection

Have you ever found yourself trying to mediate between two people – maybe two friends, family members or work colleagues?

- What worked well?
- What challenges did you face?
- What did you enjoy about it?
- What did you find frustrating?
- What do you wish you'd known?
- What did you learn from that experience?

Mediation has established itself as a driver of positive workplace relations

Over the past 20 years, the use of mediation to resolve workplace and employment issues has also been growing rapidly. Mediation is becoming a recognized profession with a professional body, quality standards, an accreditation scheme and annual awards. Mediation is now a key activity within a growing number of organizations and it is being used to resolve increasingly complex and sophisticated business disputes. Mediation is also being used across a wide range of people policy environments such as grievance, discipline, bullying, performance, absence, capability, whistleblowing and absence.

The 2015 CIPD report, *Conflict Management: A shift in direction?*, states: 'Our research shows that some big employers are wishing to make more, and more effective, use of mediation and mediation skills at an early stage.' The report goes on to say 'there is evident potential for such reforms to bring about a sea-change in the way employers manage workplace conflict'.

Furthermore, the principles, practices and processes of mediation are being embedded in the competency frameworks and the review processes for a growing number of managerial, HR and leadership roles. Greenwich University, based in the grounds of the Old Royal Naval College in London, has been pioneering the use of mediation and is one of a number of universities that have developed internal mediation programmes. Yvonne Walsh, Chartered FCIPD, HR Business Partner at Greenwich University, explains:

For our organization, the use of mediation is proving to be a constructive and successful method of resolving workplace conflicts. Individuals who have taken part in a mediation session have reported that they feel empowered by the process as relations are repaired and the likely escalation of further conflict reduces significantly. We have the support of our senior leadership team who have seen the benefits of mediation. With their endorsement, we continue to raise awareness to ensure that mediation features high as a more productive and cost-effective alternative to initiating formal processes.

What is mediation?

Mediation is a structured process in which a neutral third party (the mediator) intervenes in a conflict or dispute to assist the parties in reaching a satisfactory outcome. Mediation is primarily used to resolve individual disputes,

ie disputes between two parties – between colleagues or an employee and a manager. However, mediation is being used to great effect to resolve team or group conflicts along with resolving collective (union/management) disputes, discrimination allegations, consumer disputes, intellectual property disputes, conflicts arising from mergers and acquisitions, boardroom disputes and disputes with external stakeholders and communities.

As well as being used as a tool for resolving workplace and business disputes, mediation is widely used in family disputes, for resolving community disputes, in schools, for returning homeless people back to their families, in family businesses, in will and probate disputes, in the civil courts and to resolve multi-million pound commercial disputes. In fact, mediation is being used to resolve virtually every form of conflict that one can imagine. It is fair to say that you cannot fall out with someone in the United Kingdom without mediation being offered at some stage.

What do mediators do?

The mediator is the person who holds the process together. The mediator plays many roles during a mediation process: listener, critical friend, facilitator, referee, coach, timekeeper, chairperson and moderator. What mediators don't do is tell the parties what to do, allocate blame, propose solutions, force or coerce the parties to settle the dispute. This is what makes mediation so fascinating. As Barbara Browning, Senior HR Partner at Hastings Council, explains:

As trained mediators we are able to offer an in-house response to a wide variety of workplace problems as well as to the community for other service-related problems (tax collection, planning issues) in a timely and cost-effective way. We are able to resolve workplace problems at a low level, satisfactorily, rather than risking elevation and legal action.

The qualities of a workplace mediator

Most people can be mediators. I would love to say that everyone could be a mediator but my experience has led me to believe that it's not right for everyone. Nonetheless, we are often called upon to moderate a dispute, perhaps between friends or family members. I do believe that organizations already possess copious amounts of mediation and diplomatic ability within their HR teams, management teams and amongst their employees. If we could get better at harnessing the inner diplomat that exists within so many of our people, perhaps our organizations would be a bit more harmonious, our employees a bit more engaged and our businesses a bit more productive.

The core qualities of workplace mediators are:

- Understanding of different situations and openness to other people.
- Able to learn from experiences and from others.
- Able to plan and organize a mediation intervention.
- Able to remain impartial, objective and dispassionate, especially when it is in a party's interests for the mediator to take sides.
- Awareness of own prejudices and assumptions and how their own triggers can affect their ability to maintain impartiality.
- Being flexible and able to balance various demands.
- Having a clear commitment to equality and equal opportunities.
- Analytical ability.
- Creativity and ability to facilitate a problem-solving approach.
- As part of a commitment to self-development, they demonstrate professionalism, seek areas for their own self-development and respond to professional practice standards.

James Wilson, internal OD consultant at the Victoria and Albert Museum, says:

I first considered mediation as a skill to supplement my role. My particular interest has been in 'un-sticking' conflicts – finding ways to resolve seemingly intractable relational problems. Since then it is one of the ways I define my practice – I am a consultant, a coach and a mediator. This model is straightforward, understandable, clear and demonstrably effective. At the V&A, mediation has been used primarily when an interpersonal conflict starts to have an impact on colleagues, a project team or potentially, though rarely, external partners. Whilst mediation resolves conflict between individuals, for the organization the bottom line is business efficiency. As well as happier faces, there is usually a cost and time benefit to resolving conflicts.

The mediator's role is to:

- promote an early commitment to the mediation process from all parties;
- provide confidential impartial and non-judgmental support to all parties in dispute;
- foster a safe and constructive environment where the parties can engage in open and honest dialogue as a means of resolving their differences;

- encourage participants to transform their adopted positions by taking account of their personal interests and their underlying needs;
- test their unconscious biases and perceptions – particularly relating to perceived intent;
- provide full and equal opportunities for participants to consider and describe the causes and impacts of conflict upon themselves and each other;
- engage all parties equitably in the mediation process and ensure that all stages of mediation are managed in a safe and controlled manner;
- help the parties explore all the issues in full and support participants as they generate and evaluate a variety of opportunities for future working;
- handle impasses during mediation with sensitivity and compassion;
- develop opportunities for participants to create mutually acceptable outcomes to their conflict, complaint or dispute;
- support the parties to craft their own agreements to their conflict.

Resolution reflection

People often tell me that the skills and the qualities of the mediator are useful as part of their everyday roles as well as in the role of managing conflict. That mediation skills are in fact, useful 'life skills'.

Consider how mediation skills could support you in other aspects of your personal life and/or work life.

Introducing the FAIR Mediation Model™

I developed the FAIR Mediation Model™ over 10 years ago. The model is focused on helping the parties to transform their conflicts from dysfunctional to functional. FAIR stands for: Facilitate, Appreciate, Innovate and Resolve; see Table 9.1.

Tesco is another organization that has adopted mediation. The following case study explores how this major retailer has embedded mediation and is using it to drive better employee relations across the business.

Table 9.1 FAIR defined

Facilitate	Facilitate means to make something easier. The mediator's role is to make it easier for the parties to talk and to listen to each other. They do this by: • Creating a safe space during mediation. • Preparing the parties fully to meet each other. • Helping the parties to focus on their underlying needs and goals rather than the relative merits of their adopted positions. • Developing a set of ground rules that the parties sign up to for the face-to-face meetings: • Agreeing to strict confidentiality. • Being respectful. • Being open and honest. • Listening to each other. • Inviting the parties to talk without interrupting each other. • Helping the parties to focus on all stages of the narrative – past, present and future. • Reframing negative interactions and helping the parties to examine the positives and the challenges of their relationship.
Appreciate	Appreciation is a fundamental pillar of mediation. The mediator encourages the parties to look at the world through the other person's eyes and to appreciate what they have experienced, what they may be feeling and what they may need. This is about building empathy and having adult-to-adult interactions. The FAIR Model also draws heavily on emotional intelligence and positive psychology. During conflict, we often focus on the negatives and in some cases we actively seek out (and find) the worst in the other person. We may also catastrophize the situation and, for many disputing parties, the world is a pretty bleak place. Focusing on the positives provides a glimmer of light and some hope that all is not lost. It's somewhere from which we can begin building.
Innovate	Creativity is a key part of mediation. This is a different form of creativity – it's not about inventing the next Facebook; it's about crafting a new relationship and a new range of behaviours. If someone hasn't said good morning to you for two years, crafting an agreement where the other party will acknowledge you in the morning is an incredibly liberating and creative experience. This creativity seeds further creativity and it is not uncommon in mediation for the parties to explore issues outside of the relationship, such as business systems and processes. Mediation can seed future innovation that will carry on once mediation ends. Mediation releases immense human potential and who knows where that can lead...

(continued)

Table 9.1 *(Continued)*

Resolve	Resolve has two different but aligned meanings. The first meaning of resolve is that the conflict is resolved. It has shifted from dysfunctional to functional and the parties have agreed steps to prevent it reverting back into dysfunctional. This leads nicely to the second meaning of resolve. That the parties will have greater commitment to the agreement as it is forged by their own hands. The agreement in mediation is not imposed by the mediator or by anyone else. It is theirs and theirs alone.
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CASE STUDY Tesco embraces mediation

Tesco has been exploring the role of mediation as a means of resolving workplace issues for its colleagues. Leading this initiative is Pete Hodgson, its Head of Employee Relations.

Pete has a proven track record of providing ER and employment law support to senior directors across large multinational matrix organizations. He has extensive experience of consultation and negotiation with representative bodies in both unionized and non-unionized environments. Pete is also an experienced people manager and leader; he was responsible for bringing mediation into his previous employer.

‘Mediation is a fascinating and an increasingly important area of work for us’ explains Pete. ‘Mainly because of the way that people behave when they are in work. The workplace creates an environment where people are forced to work together with people that they wouldn’t normally choose to work with, and that creates friction.’

Pete believes that most workplace disputes start out as a minor misunderstanding that quickly escalate into a full-blown conflict. He suggests that these conflicts are often due to a misperception rather than malicious intent by one party or the other: ‘The intention behind the situation is very rarely malicious but the way that it is perceived causes it to spiral out of control. People assume the worst. Because they are not communicating effectively, they are unable to challenge the intention behind the behaviour or to test their assumptions.’

Pete believes that mediation could help to address these kinds of interpersonal conflicts. He recognizes the harm that formal grievance procedures can do and he cites an example of a case he was involved in before

he moved to Tesco of a dispute that lasted for a full year because a manager didn't make an employee a cup of tea. The situation escalated with counter-grievances being raised and a lengthy period of sickness absence, investigations and time spent by HR and managers. This situation was, in his words, 'an extraordinary waste of money and time'.

Pete also recognizes the importance of adult-to-adult conversations to help resolve workplace conflicts. However, he acknowledges that some people don't feel comfortable having a difficult conversation and that organizations can do a lot more to make the difficult conversation a less daunting prospect. 'Anything that an organization can do to reduce the fear of the conversation and make the parties feel comfortable to talk, the better' he explains. He goes on to add, 'In a conflict, the relationship between intent and impact can become very confused. The traditional grievance procedure does not address that.'

As a senior and experienced employee relations manager, Pete recognizes that ER needs to balance the need for managing the policy framework with a more proactive approach. 'ER has, in the past, been very much on the side of clearing up the mess after a grievance has been lodged,' says Pete. 'However, modern HR and employee relations should be moving towards thinking about the root causes of issues; identifying what steps can be taken to prevent conflicts; and helping our managers to deal with issues at a much earlier stage.'

Pete is aware of the challenges that this change presents for organizations. As he points out, 'Grievance procedures are deeply embedded into the psyche of organizations. Plus, in a big company people are often worried about getting things wrong and how it may be perceived by others. It's not going to be easy to move from classic ER to a greater focus on alternative dispute resolution (ADR). There needs to be a shift in focus from a reactive to a more proactive approach.'

Pete sees the use of a more values-based and person-centred approach as a great opportunity for the HR and ER community. 'We have loads of people policies and they all do their own thing – they may overlap a bit – but there is no unifying thread. This presents a massive opportunity for businesses to unify their people policies to the values of the organization and their overall HR strategy.'

Pete is a champion of mediation and he is committed to making it work within Tesco. 'Mediation is still an area that is being overlooked within HR and ER processes. I think that it is a fantastic way of resolving disputes.' Pete goes on to add: 'The ACAS Code, internal grievance processes and the employment tribunals – look for right and wrong or black and white.'

At least one party leaves those processes feeling harmed and let down. There must be a better way and mediation is the best way that I have seen to help employees, human beings, connect with each other. Mediation allows them to explore what their underlying needs are, how they are feeling and what value has been trodden on. It is an infinitely better way of doing things than the old right/wrong way.'

Pete is passionate that the time for the change is right now: 'Everyone in HR should be aware of mediation. Mediation adds value to the HR function and it will help HR and ER deliver real value which, after all, is what the HR and ER functions should be doing.'

Pete has provided a series of hints and tips for organizations that are considering using mediation:

- Take the time to get the data and the evidence to build your business case for mediation. An evidence-based approach can help to win people over. This data also acts as a baseline to measure the impact of mediation.
- Secure buy-in from senior managers and leaders. It is vital to have their full support and for mediation to be resourced properly.
- Don't expect too much too quickly – take the time and have a plan with sensible and realistic objectives.
- Ensure that your front-line HR team are skilled in triaging cases and understand how to identify the right cases for mediation.
- Changing your grievance procedure and embedding alternative dispute resolution into your organization will take time – don't expect it to happen overnight.

Pete concludes that mediation is closely aligned to one of Tesco's core values: treat people how they want to be treated. 'This is an important value for us,' explains Pete. 'When people are comfortable to speak up and they know that they will be listened to it creates a more engaged, more productive and more harmonious workplace.'

The mediation process

Mediation comprises a series of private meetings followed by face-to-face talks. The process is structured in a way that allows the parties to have a constructive and non-confrontational dialogue. The mediator creates a safe

environment where the parties are able to communicate and work towards the restoration of a positive working relationship. Mediation enables the parties to identify, consider and discuss their own and each other's feelings, needs and goals. The mediator encourages and facilitates open and honest communication which, in turn, leads to increased awareness, understanding and empathy between parties.

The mediator will contact both parties by phone prior to mediation to introduce him or herself and to answer any questions that the parties may have. The mediator will double-check that the parties are willing to engage in mediation and will address any blocks or barriers that may present themselves. Assuming that the mediation will progress, the mediator will send the parties a short questionnaire to complete and bring with them on the day of mediation, which will help them to prepare fully for the day.

Using the FAIR Mediation Model™, a typical mediation day would look something like this:

09.00	Mediator meets party A to explore the issues
10.00	Mediator meets party B to explore the issues
11.00	Mediator meets party A to prepare for the joint meeting
11.30	Mediator meets party B to prepare for the joint meeting
12.00	Lunch
12.30	Joint (face-to-face) meeting commences
15.30	Break
17.00	Mediation concludes

What happens in the mediation room?

The joint meeting is where the real magic of mediation happens. If you have ever seen mediation in action, you will know how powerful it can be. Below is a summary of what happens in the mediation room.

Opening the meeting

The mediator welcomes the parties and thanks them for attending. The mediator clarifies his or her role and sets out the objectives of the meeting as well as the process of the mediation session. He or she proposes a series of simple ground rules that will help to keep the meeting on track; these are approved by the parties. Finally, the mediator invites the parties to ask any questions about the process or the mediator's role.

Presenting the opening statements

This is a period of uninterrupted speaking time where the parties can speak to each other without the other person interrupting. It does not matter who goes first. Typically, I ask the person I met second at the private meetings to start. The parties are encouraged to talk directly to each other rather than through the mediator.

After each party has spoken, the mediator will ask a series of questions to elicit more information. Once all parties have spoken, the mediator will summarize what he or she has heard.

The exchange

After the mediator has summarized, the parties are invited to have a dialogue with each other. They are encouraged to ask questions, check, clarify, explain and discuss what they have heard. This is a more normal discussion and the mediator helps the parties to stay on track. The exchange phase of mediation is the longest, and is where issues are raised and greater understanding and insights can be formed.

Problem solving

This is the stage of mediation where the conflict moves into a transformational stage from ZONC (the zone of negative conflict) to ZOPA (the zone of possible agreement). The mediator will help the parties to articulate their underlying needs and goals. The mediator will map these and identify areas of convergence and divergence, which are used to create an agenda for problem solving. The mediator's role is to create a series of problem statements that relate specifically to the party's needs. For example:

- Both parties agree that they want to improve communication and to build a respectful working relationship.
- The manager needs the employee to improve the quality of his or her work.
- The employee needs to feel valued by the manager.

So, the agenda for problem solving will look something like this:

- How to improve communication.
- How to rebuild a respectful working relationship.
- How to address concerns about quality of work.
- How to ensure that the employee feels valued.

The mediator helps the parties formulate an action plan.

Concluding mediation

As the mediation process draws to an end, the mediator adapts his or her role to become an arbiter of reality. He or she checks that the agreement is achievable and tests the agreement against certain contingencies. In essence, he or she stress-tests the action plan to ensure that what the parties have agreed will work in practice.

In most cases, the action plan is written down. Verbal agreements are ok but they feel a bit 'light' considering how much work the parties have done to get to the outcome. If they are serious about the resolution, I believe that a written action plan is far better than a verbal one. The mediator will also develop a 'resilience clause' with the parties. The resilience clause in the action plan can be turned to by parties if the agreement begins to unravel or the parties begin to experience tension.

The mediator will destroy all notes from the mediation process and will ask the parties to do the same. The mediator will also check with the parties who, if anyone, needs to be aware of the outcome of mediation. While mediation is confidential, it is generally advisable for the parties' manager or HR to have sight of the action plan or to be aware of the broad outcome of mediation so that they can provide ongoing support. It must be stressed that, if the outcome is shared with management or HR, it should not be placed on either party's employment file. However, if the parties choose to do so, no feedback will be given to any external third parties and the process remains entirely confidential.

The mediator will also agree the level of follow-up required. Typically, the mediator will stay in touch for a full year once mediation concludes to check how things are going and to provide any support that the parties may require. This is generally very light touch.

CASE STUDY Gail's story*

I had worked for my company for over 15 years and with this manager for five years. It was a very stressful working relationship which culminated in having to initiate the grievance process. It was a gruelling procedure that started in the July 2015 and ended in December 2015 with my claim for the most part not upheld because of lack of witnesses.

Not wanting to leave the company, it was suggested by HR that we try mediation. I figured I would give it a go although I was not very convinced. It had been a problem five years in the making so how was mediation going to solve it?

How does mediation change people's behaviour and perceptions? I was really sceptical but I had nothing to lose.

Prior to the mediation, I was sent some paperwork to outline what I wanted from mediation and what my goals were. It helped me to focus on what the problem was. I felt safe during the face-to-face meetings and also talking to the mediator privately. The process was explained and I was able to ask questions. I felt that he took time to listen. It wasn't hurried. The whole process was extremely good. It surpassed my expectations. The day runs according to the progress you make, not according to the clock.

It was beneficial to listen and hear my manager's opinion on some of the choices I have made. I could appreciate how those choices may have looked to her. I know that her actions seen through my perspective has given her insight too. It gave us space to see each other's pain.

It has taken effort since the mediation to work on what we have agreed. I can truly say we have begun to understand each other and our improved working relationship has made our stressful job roles easier.

I have recommended mediation to a number of friends and colleagues because it has been a very positive experience.

I do believe though, that unless you come to mediation with an open mind and a desire to see the situation rectified you will not succeed.

*This is a verbatim record of a statement supplied by the individual. The name has been changed.

Mediation is not the easy option

One thing is certain: mediation is not the easy option. It is a brave and courageous decision by the parties to enter into a dialogue with the other person – their 'arch nemesis'. Somewhere along the line, mediation has been confused with 'soft skills' and a 'touchy feely' approach to people management. Hertfordshire police have been using mediators for many years. Vojislav Mihailovic from the Police Federation explains:

It is often the case that when mediation is spoken of, questions arise such as, 'What's that?' and, 'Why should I do that?' I reassure the parties that bringing about a resolution through mediation and making sure all parties move on – whilst understanding each other's perspective about what they have been through – helps to build our organization into one that bases itself upon mutual respect, continuous learning and personal growth.

Just because mediators use terms such as empathy, compassion, emotional intelligence, forgiveness and dialogue – it does not mean that mediation is the soft option. Far from it. Mediation is really, really tough. It must never be entered into lightly and anyone who thinks that mediation can be used to tick a box or to be seen to be doing the right thing will experience the shock of a lifetime when they are confronted with the impact of their behaviour and the need to engage fully as the other party spells out the harm that he or she has experienced.

The mediator supports the development of constructive dialogue and helps the parties to reframe the conflict from dysfunctional to functional. In many cases, the mediation process will generate a significant transformation where the parties deepen their understanding of one another, foster a new working pattern, develop insights into their own and each other's responses to conflict, and modify how they deal with conflict and tension in other aspects of their lives.

Mediation is different from every other approach for managing conflict

For my entire life as a mediator, a leader, a husband, a parent and a friend, I have believed passionately in three things:

- 1 That dysfunctional conflict is harmful. It diminishes us and it is better to not have it in our lives.
- 2 That every human being has the capacity to resolve his or her own conflicts – if he or she is given the means and the opportunity to do so.
- 3 That all conflicts can be resolved constructively – if the parties choose to do so.

For me, mediation is simply the most effective way to resolve a conflict, a complaint or a dispute. There is no more powerful way to drive behavioural change than to understand the impact of what you have done, to have the opportunity to reflect and to be given the chance to make new choices about how to behave in the future. Mediation is as close to a panacea for resolving workplace disputes as it is possible to get. Mediation is the relationship equivalent of the antibiotic.

Many organizations that use mediation report a successful resolution in over 90 per cent of cases. This demonstrates that, when the parties are given the opportunity to engage in adult-to-adult dialogue, a solution can be

found. Compare this with the damaging impact of our current approaches to handling conflict and the effectiveness of mediation becomes almost overwhelming.

The features, advantages and benefits of mediation

Mediation works in all areas of the workplace and the business environment, from international banks and retailers to a small business. Angie Juttner-Hart is a co-director of a boutique recruitment firm. She used mediation to resolve a dispute with her business partner and, as can be seen from this case study, mediation offers many advantages and delivers numerous benefits to the parties and the organization.

CASE STUDY Angie Juttner-Hart

We came into mediation because my business partner and I felt that we were unable to resolve a tough business issue between us. We didn't have the tools that we needed to resolve the conflict on our own. We were joint managing directors and equal partners. The work between us was not being handled equitably and this was showing up in the financial outcomes. It was creating resentment and frustration.

We sought mediation to help us to resolve the impasse. We were new to mediation but we absolutely loved it – it was such a great day. We knew that we needed to get this issue resolved and we were both on board with the idea to begin with. We loved our business and wanted to make it work. We were ready for the day and for whatever might be thrown against us. Mediation delivered all of the things that we were hoping for but it also delivered some unexpected outcomes. It has given us the tools that we need to run our business going forward.

The benefits of mediation have been dramatic – it's had an enormous impact. Since mediation, the path has not always been smooth but it has equipped us to deal with things as and when they come up. It's given us the tools that we need and it's given us some much-needed clarity.

What was surprising from the mediation was the importance of being true to yourself and to each other. We are very much more accepting of each other now

and we are aware of our own strengths and limitations. I would advise anyone to try it – it is important to get perspective when you are in a conflict. If things are going well, you can analyse problems from a rational, analytical and logical point of view. That is not possible in conflict – that is lost. The mediation input can help you to assess and analyse what is going wrong and this is the bit that is often missing.

Mediation has given us the confidence to have tough conversations. It has played a strategically important part in the way that we run our business.

The business benefits of mediation are shown in Table 9.2; the human benefits of mediation are that it:

- promotes adult-to-adult dialogue at times of dysfunctional conflict;
- creates a safe space for parties to craft their own solutions;
- allows strong feelings to be aired and discussed;
- develops empathy, insight and self-awareness;
- enables the underlying root causes of a dispute to be examined and resolved;
- develops agreements based on the parties' mutual interests and needs; and
- develops resilience within the working relationship.

The core principles of mediation

Mediation is voluntary

Mediation is a voluntary process during which the disputing parties discuss and hopefully resolve their conflict. Voluntarism refers to the rights of the parties to enter the mediation process voluntarily, exit the process at any time and/or settle the dispute on their own terms.

This principle of voluntarism gives the parties control over the resolution process. However, it is important to stress that while it is voluntary, organizations are fully entitled to make it clear that their preferred route to resolution is via dialogue, which includes facilitation and mediation. When people choose to work for your organization, this should be made clear at the outset to avoid any future confusion.

Table 9.2 The business benefits of mediation

Less of this	More of this
Management and HR time	Productivity and performance
Time spent preparing and handling grievances	Goodwill and team working
Investigations (internal and external)	Managerial confidence and leadership
Legal costs, compromise agreements and ET costs	Wellbeing and engagement
Absence due to stress and stress-related sickness	Individual and team resilience
Absence due to suspension	Cohesion and collaboration
Recruitment and office cover	Customer experience

Mediation is confidential

Any notes from mediation are destroyed at the conclusion of the process. This allows the parties to have an open conversation with each other in a way that might not happen if they felt that the information they shared during mediation could be used against them in any subsequent proceedings. Any discussions held during face-to-face mediation and any exchanges of information that occur during private talks are done so on a without prejudice privilege basis. In simpler terms, mediation is held under the Chatham House Rule. (When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed (<https://www.chathamhouse.org/about/chatham-house-rule>).)

Mediation is based on the principle of self-determination

Any agreement reached in mediation comes directly from the parties involved. They are actively encouraged to develop a ‘sense of agency’, ie the parties have full control over the *content* of the mediation and they control the nature of any final agreements or action plans.

However, the mediator is not a passive bystander – he or she has agency too. Mediators control the mediation *process* and they encourage the parties to think deeply about the conflict, its impact and its resolution. Mediators will also challenge the status quo and will invite the parties to consider a range of alternative options to the dispute. However, the ultimate resolution and the structure of any final agreement lies with the parties themselves, not with the mediator or any other third party.

Most mediations last one full day

The day contains a series of private and face-to-face meetings. The most common model of mediation used in the United Kingdom is the FAIR Mediation Model™ – see Chapter 9 for more on the model and the key stages.

Mediators are impartial and objective

Mediation can be undertaken by an internal or an external mediator. In either case, the mediator should have completed an accredited mediation skills qualification, should engage in regular supervision and continuing professional development (CPD) and should subscribe to a set of professional practice standards such as those developed by the Professional Mediators' Association.

Shirley Anderson, HR Director at Red Funnel, Isle of Wight Ferries, has embedded mediation in her organization. Shirley explains the benefits:

Mediation has improved understanding in this business. It has encouraged greater self-awareness in individuals and respect and tolerance for differences generally within the culture. Whilst conflict is inevitable, it is now generally less threatening and can be managed positively to bring about necessary change and continuous improvement.

Resolution recommendations

Not everyone will want to engage in mediation and of course it is a voluntary process. However, an initial reluctance to sit down with the other party should not be used as a reason to forego mediation. If your organization has adopted mediation as one of its preferred routes to resolution, one must ask if it is acceptable for mediation to be ruled out of hand before it is even attempted.

To help you secure buy-in from reluctant or reticent parties, here are some hints and tips to help engage them in the mediation process:

- Listen carefully and let people know that you are hearing them by asking open questions and summarizing back. If people aren't being heard they may close down and it is hard to sell them anything, let alone the prospect of sitting in a room, face-to-face with someone they don't trust.

- Provide high quality information that demonstrates that mediation is not a whim or a fly-by-night solution. People don't want to be experimented on with some new-fangled management ideology. They feel vulnerable and cautious – as anyone would. Having clear information that confidently explains why your organization is using mediation, along with the benefits it can offer, will put many a doubtful mind to rest.
- Ask the parties to describe their needs and goals to you. By reframing their language and their mindset and focusing on needs rather than their adopted positions, they may realize that the need to be heard, valued, respected, trusted, etc is more likely to be met through dialogue than through a drawn-out process.
- Avoid asking straight away if they want to mediate. If they say no, it is hard to convert that to a yes. Ask them instead if they would be willing to speak to a mediator. No reasonable person would refuse to at least speak to a mediator, even if they tell you it will do no good.
- Explore the options (consequences) of not mediating. These are often referred to as:
 - BATNA: if you don't mediate, what's your best alternative to a negotiated agreement?
 - WATNA: if you don't mediate, what's your worst alternative to a negotiated agreement?
 - MLATNA: if you don't mediate, what's your most likely alternative to a negotiated agreement?
- Explain that your organization has adopted mediation and that it is a reasonable expectation of all employees to at least give the process a chance of working.

Conclusion

I ought to declare a vested interest – I am a mediator and I am passionate about mediation. I believe that mediation can work in almost every quarrel, feud, disagreement and dispute imaginable. There are no areas of the modern workplace where mediation can't deliver at least some benefit. With mediation, everyone wins and no one loses.

What I hope this chapter has demonstrated, and the case studies and quotes from mediators, HR professionals and those who have used mediation have shown, is that mediation is not just two people sitting down in a room having a cup of tea. It is a powerful and highly effective route to resolution for so many people.

Resolution reflection

- What role does mediation currently play within your organization?
- What can you do to make mediation more widely available?
- Do you measure the benefits and the advantages of mediation?
- In what kind of cases could mediation be used?
- What might some of the blocks and barriers to mediation be?
- How will you overcome these blocks and barriers?

References

- ACAS (2015) *Towards a System of Conflict Management? An evaluation of the impact of workplace mediation at Northumbria Healthcare NHS Foundation Trust*, ACAS, London
- CIPD (2015) *Conflict Management: A shift in direction?*, CIPD, London