Research Paper

Transforming Conflict Management in the Public Sector?
Mediation, Trade Unions and Partnerships in a Primary
Care Trust

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Transforming Conflict Management in the Public Sector? Mediation, Trade Unions and Partnerships in a Primary Care Trust

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FOREWORD

Acas is interested in seeking to identify best practice in respect of all aspects of conflict handling in the workplace. The goal has been an objective since the inception of the organisation over thirty years ago, and fits with our mission *'to improve organisations and working life through better employment relations'.*

Our research programme reflects this broad interest and we regularly evaluate the services delivered by Acas in respect of both individualised and collective conflict. This includes evaluating Acas' delivery of *mediation* services, and also exploring more broadly how workplaces have utilised mediation as a method for responding to individual grievances and disciplinary matters.

This report by Richard Saundry and colleagues for the Institute for Research into Organisations, Work and Employment (iROWE) at the University of Central Lancashire takes a further look at mediation. In this case the parameters of the research were wider than evaluating the mediation scheme adopted. Here, the study focused on the factors that informed an organisation's decision to seek an alternative means of handling conflict to traditional discipline and grievance procedures; and also looked at the barriers and facilitators to integrating mediation into workplace practice and culture. It finds that in the NHS organisation studied, a series of issues were especially relevant to the integration of mediation: the commitment of individuals involved; the quality of training received; the role and buy-in from the union; and the overall climate of employment relations. Dr Saundry's work reflects on both practice and cultural issues making it an extremely valuable contribution to ongoing debates on how conflict can be handling effectively, and in a timely and cost effective fashion.

Acas is grateful to Dr Saundry and colleagues for their work, and to the East Lancashire Primary Care Trust for allowing access for this study.

Ed Sweeney

Chair of Acas

1.   INTRODUCTION

The need for a new approach to workplace dispute resolution has become a central focus of public employment policy (Gibbons, 2007). In particular, it has been argued that more emphasis needs to be placed on early responses to individual employment disputes and the increased use of alternative dispute resolution (ADR) processes (Acas, 2005). Recent attention has centred on the promotion and use of workplace mediation. While there has been limited academic research into workplace mediation in the UK, there is a growing evidence base that points to its potential benefits (Sergeant, 2005; CIPD, 2008; Johnston, 2008; Harris et al., 2008; Latreille, 2010a, b; Latreille et al., 2010). This is also underpinned by a significant body of international evidence, much of it from the USA (McDermott et al., 2000; Lipsky and Seeber, 2001; Bingham et al., 2002).

However, while mediation may be a useful technique for resolving specific disputes a more fundamental question arises over the ability of organisations to make wholesale changes to the way that conflict is managed. Recent research suggests that an important element of effective dispute resolution is the nature of relations between key organisational actors and particularly managers and employee representatives (Antcliff and Saundry, 2009; Saundry et al., 2008). More broadly, it has been argued that developing an organisational culture in which dissent is welcomed is a crucial component of effective 'integrated systems of conflict management' (Lipsky et al., 2003).

This report examines a specific organisation, East Lancashire Primary Care Trust (ELPCT) within which there was an apparent step-change in the way in which individual employment disputes are managed. At the time the research was conducted ELPCT provided, and commissioned, community based health services employing 2,773 people across five local authority areas. ELPCT, like many other public sector organisations, traditionally had a formal approach to dispute resolution with a series of relatively detailed and complex written policies and procedures dealing with a range of issues including discipline, employee grievances, fair treatment and performance management. Furthermore, employment relations within the Trust were highly adversarial and confrontational.

In 2008, an internal mediation scheme was established in order 'to create a shift in how the Trust dealt with conflict and difficult relationships within the workplace' (Bailey and Efthymiades, 2009:3). In the first 18 months of the scheme, 23 mediations took place with 96% resulting in a written agreement. The Trust also reported a significant reduction in formal dispute cases. But perhaps more significantly, ELPCT argued that the involvement of key trade union representatives in both the introduction and operation of the mediation scheme had a transformative impact on the ability of the organisation to resolve individual employment disputes and also underpinned broader improvements in management-employee relations.

Consequently, ELPCT provided a useful setting in which to identify, examine and explore the key factors underpinning a shift from a formal and adversarial approach to individual employment disputes to one that focuses on early resolution. Therefore, this report:

- Provides a brief review of relevant literature;
- Examines the implementation of in-house mediation at ELPCT;

- Explores the nature and extent of changes to the way in which the organisation dealt with individual employment disputes following the introduction of workplace mediation;
- Assesses the benefits, outcomes and impact of the mediation scheme;
- Examines the effect on the relationships between key employee relations' actors of the introduction and operation of workplace mediation;
- Identifies the implications for policy and practice.

2.   MEDIATION – PROCESS, OUTCOMES AND IMPACTS

Much of the existing literature (for detailed reviews see Latreille, 2010a; 2010b; 2011; Banks and Saundry, 2010) has conceptualised workplace mediation as a linear, technical process through which organisations are better able to resolve disputes. Unsurprisingly therefore, attention has focused on the business case for mediation. Certainly, from a policy perspective, it has been argued that an expansion of workplace mediation can facilitate dispute resolution and reduce the burdens placed on employers, employees and the state (Gibbons, 2007).

Principally, it is argued that mediation has clear benefits compared to 'standard' grievance and disciplinary procedures (Anderson and Bingham, 1997). It is argued that conventional approaches tend to focus on apportioning blame. In contrast, mediation emphasises the importance of seeking a jointly agreed resolution (Reynolds, 2000; Pope, 1996). Thus, mediation provides a less confrontational way, and a safer environment, in which individuals can raise their concerns (Fox, 2005; Sergeant, 2005). Indeed, case study research has highlighted the effectiveness of mediation with a range of studies pointing to its success in delivering sustainable agreements and high levels of satisfaction amongst the parties (for example McDermott et al., 2000; Bingham et al., 2000, 2002).

Furthermore, mediation offers significant financial savings (Kressel, 2006; Goldberg, 2005) compared to conventional disputes procedures. Swift and sustainable resolutions to disputes promise to reduce the possibility of long term-absence, make resignations less likely and minimise the number of cases that reach litigation. In addition, mediation can be organised and conducted relatively quickly and tends to involve significantly less management time than traditional approaches (Bingham and Pitts, 2002; Corby, 1999, CIPD, 2007).

The introduction of internal mediation schemes may also have an indirect impact beyond the specific disputes that are mediated. Firstly, those parties directly involved within mediation may change the way that they deal with disputes. For example, the literature suggests that managers trained as mediators improve their 'conflict handling skills' (Bingham 2004), their reputation (Reynolds 2000) and even gain 'knowledge or resources that can greatly expand the opportunities for creative problem solving' (Kressell, 2006:747).

Secondly, it has been suggested that there may be a range of broader effects. Sergeant's (2005) evaluation of mediation in small firms in the UK found evidence of a sustained improvement in employer-employee relationships, while Fox's (2005) evaluation of an Acas mediation pilot exercise in small firms pointed to improved team morale. Similarly the Chartered Institute for Personnel and Development (CIPD, 2007) claim that, in addition to resolving disputes, mediation can lead to a range of positive impacts, including the development of organisational culture and improvements in employee relationships (CIPD, 2008). It is also argued these wider benefits are more likely to be realised when organisations introduce complementary dispute resolution practices (Bendersky, 2003) as part of an overall strategic approach. A combination of interest based (i.e. mediation, coaching) and rights based (i.e. grievance procedures, arbitration) processes or what Lipsky et al. (2003) refer to as 'integrated conflict management systems' (ICMS) not only facilitate effective dispute resolution but also the generation of an organisational 'culture' in which dissent is welcomed (Lipsky, 2003) and employee voice is increased (Bendersky, 2003).

However there are two major difficulties with the existing research in this area. Firstly, assessing the benefits that accrue from the introduction of mediation can be problematic. Secondly, the processes through which mediation leads to the broader impacts outlined above have received relatively little attention.

Measuring the success of mediation in terms of dispute settlement is too simplistic. The attitudes of participants towards mediation may influence the nature of the eventual outcome (Fox, 2005) while cases that are unlikely to succeed will often be deemed as unsuitable for referral. Consequently, mediation only takes place when there is a relatively good prospect of success (Greig 2005). In addition, directly comparing mediation with formal disputes procedures does not reflect the fact that mediation may not be appropriate for all individual disputes. For example, managers may be sceptical about offering mediation in disciplinary cases (CIPD, 2008, see also Latreille, 2010). It is a widely held view that it is unsuitable in cases involving overt bullying, harassment and other situations where formal sanctions should be used (Bellman 1998, La Rue, 2000). In contrast, others suggest that mediation at an early stage can resolve emergent problems that may lead into full-blown discrimination and harassment cases (Stallworth et al., 2001). Indeed, Latreille's (2010) analysis of a CIPD survey of managers (CIPD, 2008) found that over three-quarters of respondents saw mediation as a suitable way of dealing with bullying and harassment.

Assessing the indirect impact of mediation is also challenging. In particular, it is difficult to isolate the effect of mediation from that of other initiatives and contextual factors (Lipsky et al., 2003). This is especially the case with broader measures of conflict such as staff absence and turnover. Furthermore, the link between improved systems of conflict management and the incidence of individual employment disputes is not straightforward. For example, it could be argued that a successful mediation scheme could increase employee confidence in dispute resolution and therefore make them more likely to report problems and make complaints. In short, high levels of 'complaints' may not necessarily indicate high levels of conflict but could be an indicator of employee faith in the system (Olson-Buchanan and Boswell, 20008).

This is made more difficult by the fact that much of the research to date fails to clearly distinguish between 'conflict' and 'disputes'. Moreover, it also underplays the extent to which mediation overlaps and interacts with conventional approaches (both formal and informal) to discipline and grievance. Consequently, the different outcomes and impacts of mediation tend to be poorly conceptualised. Dix et al. (2009) differentiate between *conflict*, which they define as 'discontent arising from a perceived clash of interests' and *disputes*, which are 'manifest expressions' of that discontent. It follows from this that mediation may not have a uniform impact across these related but distinct phenomena. For example, mediation might be argued to not only improve the outcomes of disputes but also to reduce the incidence of disputes by enhancing the way that conflict is managed. Furthermore, it has the potential to prevent the development of conflict by facilitating improved employment relations.

Mediation may have a positive impact on the outcomes of individual employment disputes in two ways. Firstly, those cases that are referred to mediation may be more likely to be resolved than if conventional grievance and disciplinary procedures were used (Anderson and Bingham, 1997). Secondly, the introduction of a mediation scheme may help to resolve those employee grievances and disciplinary cases that are not deemed suitable for mediation by improving managers' ability to handle disputes (Kressell, 2006).

The research outlined above also suggests that mediation may enhance the skills of managers needed to manage and resolve conflict (Bingham, 2004) before it escalates, thus reducing the overall incidence of grievances and disciplinary cases. Furthermore, studies have pointed to mediation improving employment relations or morale (Fox, 2005; Sergeant, 2005; CIPD, 2008). Hence it might be suggested that mediation could combat the development of conflict within an organisation. This in turn could be reflected in indicators such as reduced staff turnover, lower absence rates or increased employee engagement.

Therefore any assessment of the effects of introducing in-house mediation needs to provide a systematic account of consequent outcomes in terms of dispute resolution and impacts in regard to conflict management. However, even if we are able to identify the broader benefits that flow from the introduction of mediation, we know relatively little about the processes through which these accrue.

In part, whether mediation will have a significant impact on an organisation will depend on the attitudes and behaviours of key employment relations' actors. Inevitably this will affect whether and how ADR is implemented and shape consequent outcomes. For example, resistance to ADR techniques often comes from first line managers who may reject what they perceive to be 'emotional' reactions to conflict (Schreier, 2002) and feel that techniques such as mediation may compromise their authority (see also Seargeant, 2004). Similarly, Lipsky et al. (2003) suggest that HR professionals may resist mediation because they may feel that it 'changes the power structure, diminishes their role in conflict resolution, and decreases the emphasis on rights-based determination of employee disputes' (165). In addition, trade unions are generally argued to be sceptical about ADR, which they see as threatening their traditional representative role, although some public sector unions in the USA have embraced ADR as a way of extending their influence (Robinson et al., 2005).

Overcoming this resistance and securing the buy-in of stakeholders is widely seen as critical to the introduction of mediation and ADR (Carter, 1999, Bingham, 2004) yet how this is achieved has received relatively scant attention in the literature. Lipsky et al. (2003) place significant emphasis on the role of the champion, an individual or small group of individuals who is 'dedicated to the 'cultural transformation' of the organisation' (136). The reliance on a small number of such individuals 'underscores the potential fragility' of ICMS (2003:136), nonetheless the champion(s) play a crucial role in winning senior management commitment and overcoming resistance from line managers, HR and employees. Interestingly, they also argue that 'acceptance of the system is also more likely to occur if a champion of the idea is found in the union leadership' (2003:161). However, while such individuals may be important in securing broad support within an organisation for mediation and ADR, we know little about how this is done.

This report seeks to begin to untangle these complexities and examine both the direct outcomes of mediation and the indirect impact of the implementation and operation of an in-house mediation scheme. Therefore it will ask a number of key questions: to what extent can mediation increase the dispute resolution capability of an organisation? Can mediation enable an organisation to manage conflict more effectively and hence reduce the incidence of disputes? Can the introduction of in-house mediation attenuate organisational conflict by improving employment relations? How are such benefits realised and what are the lessons for policy and practice?

3.   METHODOLOGY

This research is based on in-depth exploratory case-study of East Lancashire Primary Care Trust. The broad aim of the research is to examine the extent to which the introduction of an in-house mediation scheme has triggered sustainable changes in the way in which ELPCT manages individual conflict. As such the methods used focus primarily on the experiences and views of key members of management and trade union representatives.

The research has three main elements:

1. Examination of documentation regarding existing policies for dealing with individual employment disputes and relevant collective agreements.
2. In-depth interviews with key informants including mediators, managers, HR practitioners and trade union representatives.
3. Analysis of statistical data regarding disputes, indicators of conflict and staff-survey responses.

Firstly, existing documentation regarding individual dispute resolution was examined. This included policies and procedures relating to grievance, discipline, fair treatment and performance management. It also became clear during the research that partnership was a key issue, hence available agreements relating to this were also studied. These policies and procedures were benchmarked against the Acas Code of Practice on Discipline and Grievance and various statutory requirements set out in the Employment Act 2008 and Employment Relations Act 1999 (as amended).

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

a) Individuals who were pivotal to the introduction of mediation at ELPCT. These included senior HR managers; trade union representatives; and the mediation training provider. These interviews provided an overview of the rationale for the scheme, the conduct and impact of the initial mediation training and the initial barriers and obstacles to the scheme.

b) Trained mediators operating within the scheme. These included, operational managers, HR advisors and managers and trade union representatives. A key focus of these interviews was the experience of the respondents of their initial training and the issues they faced when mediating. Furthermore, respondents were questioned about the way in which this had shaped their own practice in handling individual employment disputes in general.

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

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

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

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

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

The statistical data in this report needs to be treated with caution for a number of reasons, some of which reflect the inherent difficulties of evaluating the impact of mediation and other ADR techniques, which we discuss in the previous section. Firstly, data has been examined that spans 2007 (before the introduction of mediation) to 2009/10. As the mediation scheme was only introduced in 2008, its impact may not be fully felt for some time. Secondly, during the period, the organisation has been undergoing significant change, making it difficult to isolate the specific impact of mediation.

4.   CASE STUDY

The questions posed in section 2 of the report are now explored through a detailed organisational case study of East Lancashire Primary Care Trust (ELPCT) which introduced an in-house mediation scheme in 2008. The aim of the case study was to examine the extent to which the introduction of the scheme changed the way in which ELPCT manages conflict.

The case study is structured as follows. Firstly, the organisational and employment relations' context is examined and the main characteristics of policies and procedures designed to manage individual employment disputes are set out. Secondly, the state of employment relations within the Trust prior to the introduction of mediation is discussed. This provides a clear benchmark against which the impact of the scheme can be assessed. Thirdly, the nature of the ELPCT mediation scheme is explored. The implementation of the scheme and the consequent problems encountered are then examined. Fourthly, the outcomes and impact of the introduction of mediation at ELPCT are assessed across three dimensions: the ability of the organisation to resolve disputes; the incidence of individual employment disputes; and level and extent of organisational conflict.

4.1   Background

East Lancashire Primary Care Trust (ELPCT) provides, plans and funds appropriate health services for a population of 386,000 spread across five boroughs: Burnley; Hyndburn; Pendle; Ribble Valley; and Rossendale. The current organisation was formed following the re-organisation and rationalisation of Strategic Health Authorities and Primary Care Trusts announced by the government in 2005. As part of this process ELPCT was created from two predecessor organisations: Hyndburn and Ribble Valley PCT and Burnley, Pendle and Rossendale PCT.

ELPCT has two main divisions. Strategic Commissioning is responsible for commissioning of services and also public health including functions such as public health promotion and infection control. It also includes staff that provide corporate services, such as finance and HR. Provider Services is the in-house provision arm of the Trust. This is the largest directorate in terms of employment and delivers a wide range of community health services including district nursing, health visiting, physiotherapy and community hospitals.

The Trust employs a total of 2773 people (April 2010), including those on fixed-term contracts. A breakdown of this is included in table 1 (see below).

The majority of the workforce is between 36 and 55 years of age and more than four-fifths is female. The proportion of the workforce from black and minority ethnic communities is relatively low (around 8%) compared to the make-up of the local population, but this has improved in recent years.

Overall underlying employment within the Trust has remained relatively stable in recent years. However, there has been a significant transfer of staff to other providers as a result of in-house services not being re-commissioned. In particular, during 2007/08, the former Hyndburn and Ribble Valley PCT Learning Disabilities Supported Living Service was transferred to third sector providers.

Table 1: Breakdown of employment

	Permanent	Temporary
Strategic Commissioning		
Corporate services	28	19
Finance, information and estates	308	5
Health standards	65	5
HR workforce and OD	28	5
Public health and commissioning networks	76	15
Strategic commissioning	80	26
Total	*585*	*75*
Provider Services		
Business support services	213	8
Complex long-term conditions	517	20
Public health and family services	681	84
Unscheduled care services	563	27
Total	*1974*	*139*
Overall Total	**2559**	**214**

Employment relations within ELPCT have been conducted in the context of far reaching internal and external changes. These have included the formation of ELPCT itself, the shift to practice-based commissioning and also the re-commissioning of services. In addition, employment relations have been underpinned by the introduction of NHS Agenda for Change in 2006. This was accompanied by the promotion of workplace partnership throughout the NHS. In East Lancashire, this was achieved through the creation of two 'partnership leads' – one was drawn from amongst trade union representatives and another from management and were both provided with full-time secondments to provide support to staff and managers through the Agenda for Change process.

In 2006/7 a Partnership Framework agreement was made within the newly formed ELPCT with the stated aim of 'fostering long-term good relations between unions, staff and managers, based on common interests which improve the PCT's performance, the quality of working life for staff and enhanced patient care.' In September 2009, a revised 'Workforce Partnership Agreement Framework' was introduced that set out the roles played by trade union representatives within ELPCT. Firstly a designated 'partnership lead' oversees and co-ordinates staff-side representatives. Crucially, the 'partnership lead' has a specific role to 'analyse and monitor grievances, disciplinary cases and fair treatment complaints'. Two 'partnership lead stewards' then represent workforce interests at 'service provider level'. These are then supported by local staff representatives drawn from all recognised trade unions.

The formal structures of employment relations within ELPCT reflect those within the NHS as a whole. A number of different trade unions and employee organisations are recognised: UNISON; Royal College of Nursing (RCN); UNITE; British Medical Association (BMA); Society of Chiropodists and Podiatrists (SCP); British Dental Association (BDA); and the GMB. Trust-level collective bargaining and consultation takes place through the Joint Consultative and Negotiating and Committee, on which all recognised trade unions are represented. The 'staff-side' is made up of representatives from the recognised unions outlined above, including the partnership lead and partnership lead stewards. The largest group comes from UNISON, which also supplies the Chair of the staff-side.

4.2 Employment Relations and Conflict Handling at ELPCT – Before Mediation

Employment relations within ELPCT prior to the introduction of the mediation scheme were considered to be relatively adversarial by both unions and managers alike.

> *'There wasn't a partnership…It was a 'them and us,' batter the barricades the old fashioned way. If there was a problem just hit it head on'* (Trade union representative)

> *'I think there was a really typical confrontational conflict management style, if you like, where there was an 'us and them,' management versus staff-side situation.'* (Operational manager)

There were a number of inter-related reasons for this. Firstly, the organisation, and its staff, had experienced a significant degree of change and with it consequent uncertainty and insecurity. Secondly, most respondents identified that there was a lack of Trust between union representatives and management (both operational and HR). Unions were seen as confrontational – something not disputed by union respondents:

> *'we went in always with a big hammer, trying to get a bigger hammer than they had. It was all of that - banging on the table; a lot of, this is what policies are. "You'll do this or we'll do that and if you don't do that, we're going to grievance."'* (Trade union representative)

However, this was a response to what unions perceived was a lack of respect from some managers – levels of communication and consultation were poor which aggravated feelings of distrust. In general, management respondents accepted that they held a degree of responsibility for the poor relations that existed. A senior manager argued that the unions' attitude could partly be explained as follows:

> *'The line management that they were experiencing…was what I would probably say was very firm. Not always fair – there were definitely some issues there with inconsistency in approach. And I think that was driving mistrust of management to some extent. And that was largely what the reps. were seeing, so they thought all managers behave like that.'*

It is important to note that what some respondents described as 'cultures' of conflict and confrontation, were not universal throughout ELPCT. However there were key and identifiable parts of the Trust in which mistrust was deep-rooted. This inevitably shaped broader relations between union representatives, operational managers and HR practitioners.
The way in which individual employment disputes were handled reflected the lack of trust between management and unions. The approach to individual employment disputes within ELPCT has, like many other NHS and public sector organisations, been conditioned by a number of detailed and lengthy procedures relating to disciplinary matters, employee grievances and fair treatment at work (which deals with bullying, harassment and victimisation cases). While the notion of partnership working is clearly written into such policies and the importance of informal resolution is stressed, both the disciplinary and grievance procedures are formal and lengthy. They also provide for quasi-judicial hearings involving the adversarial presentation of cases and the provision of witness testimony and cross-examination. While this is not unusual within the public sector, it reflects a tradition of dealing with disputes in a formal and highly procedural manner.

> *'the process itself seemed to be very laboured with a lot of layers and...
> Not as slick as the process I was used to...which even then I thought was
> quite bureaucratic.'* (Senior manager)

However, this was exacerbated by the approaches and attitudes of both unions
and management. For the former, mistrust of managers meant that unions had
little faith in informal processes of resolution. Furthermore the grievance
procedure was used as a way of raising a wide range of both collective and
individual issues. Management respondents claimed that trade unions would
immediately formalise employee grievances and encourage the submission of
formal complaints on a wide range of issues. At the same time, management also
tended to apply and enforce procedures very rigidly.

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

In some respects, the procedures became a battleground in which trade unions
and management sought to win. Even trade union respondents admitted that the
wishes of the employee were sometimes over-ridden or lost sight of in the
attempt to 'beat' management.

> *'the aim was drag it out as long as you can because they'll get peed off
> and they'll start throwing money at it....I put round about, I think, at one
> stage, twenty odd grievances in a year and only lost one. I was at a point
> where management had wound me up that many times, I didn't care
> whose grievance it was. Sometimes I'd say I'd say I've got to go back and
> have a go at these people'.* (Union representative)

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

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

This was perhaps not helped by the semi-judicial nature of the procedures.
However, the length and cost of disputes was also exacerbated by the 'tit-for-tat'
use of procedures by trade union representatives which, they argued was the
only way in which their members could be defended in the face of what they saw
as management intransigence:

> *'grievances and fair treatment cases could go on for months with no
> resolution. The other thing was, as well, that you had a tit for tat going on
> as well. For instance, one of our members is suspended for an alleged
> offence. We then put in a bullying and harassment claim against the line
> manager and claimed that the suspension was part of the bullying and
> harassment so you could have two or three processes running in tandem.'*
> (Union representative)

Overall therefore, what some respondents referred to as a 'grievance culture'
clearly existed at ELPCT prior to the introduction of the mediation scheme. An
over-riding dynamic of mistrust and suspicion locked managers and unions into

confrontation played out through formal procedures. The focus of both sides was not on resolution but on whether they could 'win' or at the very least, save face.

4.3   Mediation and Partnership

Attempts to remedy the climate of mistrust at ELPCT began with the development of partnership working as part of Agenda for Change. However, management respondents suggested that while this had improved working relationships between union representatives and managers involved in the job evaluation and job matching process, this did not extend to those outside the negotiating framework and in particular to those stewards who were dealing with individual disputes. Furthermore, key personnel from both the management and trade unions who had developed good relations through the Agenda for Change process had tended to move to different roles.

For trade union respondents, a key development was the appointment of an Acting Director of Human Resources (Manager A) who placed significant emphasis on building personal and direct relationships of trust with trade union representatives. The development of a partnership approach had two main facets. Firstly, representatives were given substantial facility time and access to resources. This not only allowed them to play a much more active role but was a clear sign that they were respected and valued by management. Secondly, trade unions were consulted to a greater extent and invited to meetings where key decisions were being discussed.

> *'They gave us the access to meetings; they gave us access to information. They were more open. And they were honest as well. You know, they acknowledged the fact that we do have issues and it was that open dialogue, and I think there was a development of trust.'* (Union representative)

Nonetheless, other senior managers believed that while these early attempts to develop partnership were positive they were fairly fragile:

> *'I think they trusted her personally, but were less supportive of the overall approach. They didn't believe the organisation believed it...if things didn't go according to their plan with partnership working...they were very, very quickly inclined to revert to type.'* (Senior manager)

The impetus for the introduction of an in-house mediation scheme came from Manager A, who had previously been responsible for introducing a similar scheme in another NHS organisation. This was seen as a way of reducing the costs of grievance and dispute handling but also as making 'a real culture difference' (Manager A). The idea was strongly supported by senior management who were generally receptive to the idea of workplace mediation. ELPCT saw the introduction of the scheme as reflective of a shift towards:

> *"a collaborative approach to managing employment relationship issues. This type of cultural development, aimed at minimizing the use of formal resolution processes is very effective in reducing costs and time for the organisation and also has a more positive outcome for the individual."* (ELPCT Annual Report and Accounts, 2008/9).

Initially trade unions were hostile to the proposal. In addition managers and staff within the HR department were unconvinced. Respondents suggested that mediation presented a challenge to HR practitioners who were used to providing

HR solutions and trained to protect the integrity of the organisation through process and procedure. Mediation threatened to take the central task of dispute resolution out of their hands.

In order to begin to develop support for mediation, Manager A encouraged one of the HR managers to be trained as a mediator by Acas. Importantly, the manager in question was well-respected by colleagues, thus cementing the credibility of mediation amongst the HR department as a whole. An awareness event was then held involving about fifty HR managers, operational managers and trade union representatives. From this, those interested in becoming mediators were identified. However key union representatives were still extremely negative. In particular they saw mediation as a deliberate strategy to blunt their ability to fully represent members:

> '*I went along to the workshop with three other union reps and... the lead UNISON convenor at the time and he actually wrote - I wish I had it with me - on my copy of the workshop notes, "What a load of bollocks".... At the time it was regarded with great suspicion because some union representatives felt it was a way for management to pull the union's teeth.*' (Union representative)

According to Manager A, the selection of potential mediators was a crucial and purposive element of the overall strategy to use the scheme to change the 'grievance culture' that existed at ELPCT. In particular, a decision was taken to represent the three main organisational stakeholders. Four mediators were drawn from the HR department, four from operational management, and three from the three largest trade unions (UNISON, RCN and UNITE).

Specific individuals were also targeted. Initially, the 'partnership lead' union representative (at that time from the RCN) was signed up. Manager A also sought to involve the lead UNISON representative who had been vocally opposed to mediation. This was important for three reasons. Firstly, as the lead representative he would deal with the largest number of individual cases. Secondly, he came from a part of the organisation from which a high number of disputes emerged. Thirdly, he was well respected by union representatives and by staff. Therefore his validation of mediation would help to reduce opposition, suspicion and resistance. However, even though he agreed to undertake the training he remained extremely sceptical:

> '*I thought they were looking to convince me. I went in with the attitude... I thought if anything I'll come in and I'll kibosh it. I will get my voice heard that there is no other better way than a grievance procedure.*'

The way in which the mediation training was designed and conducted did not seek to sidestep or underplay the pervasive adversarial employee relations in ELPCT. Instead it sought to use existing employer-union conflicts as a focus. The training was conducted by Consensio, a private provider. A conscious decision was made: to allow time to discuss existing issues of mistrust and conflict; to design role-play exercises that dealt with situations facing the organisation; and to force individuals to take roles that would challenge existing assumptions whereby union representatives would take on management roles and vice-versa.

However, the decision to confront difficult issues from the outset was high-risk. Initially, existing divisions between unions and management were very clear – according to one manager, '*you had staff side people sat over here and you had managers sat over here*'. Participants were encouraged to air grievances and explain how they felt about the roles played by managers, employees and unions.

A critical area of discussion revolved around the right to manage. One senior manager explained this as follows:

> *'There was a couple of moments where I really did not want to come back…I was really, really about a millimetre away from walking out a couple of times because of the attitude of staff side reps, really sort of going to town on management instead of thinking about us all in it together as mediators… I struggled to understand how you could possibly come in as a mediator if you held such strong views about managers.'*

However, all those respondents that had attended the training believed that this approach was necessary in order to shift entrenched attitudes and establish trust between the mediators. Furthermore there was a clear sense that the training had a transformative impact on those that attended and in particular on those participants who had previously adopted a confrontational approach to disputes:

> *'During the training, it was like these eureka moments. You could see people having these, like, oh you know, really enlightening, you know, light bulbs switching on and things like this that they could see the value of, you know, using mediation.' (Operational manager)*

The UNISON lead representative, who had been very sceptical of the entire concept and process explained that the mediation training had helped him to understand (for the first time) the perspective of managers.

> *'I never wanted to go into a room and believe that the manager at any point in any kind of dispute was right. Or even believe that they were a human being.…Mediation gets people to sit in the other person's shoes…until you can understand what pressure somebody's under, or how they think, you know, don't judge them.'*

4.4   Mediation – Implementation, Operation and Resistance

Following the completion of training, the mediation scheme was established in 2008. The scheme aims to resolve issues related to 'difficult' situations at work that are affecting: employees' working relationships; how employees feel about the people they work with; how they do their work; and the health and home-life of employees. In contrast, mediation is not seen as appropriate: when one of the parties does not agree to take part; where there is undue pressure on one of the parties to take part in mediation; and where there is a potential for disciplinary action to take place. The operation of the scheme is clearly set out in a written 'Operating Protocol', which sets out the 'key principles of mediation'. These are that it is: impartial; confidential; voluntary; and that the parties in conflict determine their own outcome.

The initial referral may come from an employee or manager. However, for the most part, either HR staff or union representatives will identify whether a matter may be appropriate and then suggest mediation to both the staff involved in conflict and the relevant line manager(s). The scheme has two co-ordinators one drawn from management and one from the trade unions. A key role for the mediation co-ordinator(s) is to discuss the possibility of mediation with the relevant parties. Not only must both parties agree, in writing, to take part but, the appropriate line manager must agree to mediation being used.

The manager is asked to sign a written 'contract' that sets out: the principles of the mediation; the names of the disputants; the provisions for releasing staff to

take part in the mediation; and the principle of confidentiality. The agreement makes it clear that the manager will be told whether the parties have reached an agreement, however, the parties are not bound to discuss the details of this with the manager unless they wish to do so. In addition, the agreement states that if mediation does not result in an agreement that normal management processes may be implemented. This is designed to keep managers informed and avoid undermining their authority and discretion. At the same time it sets out clearly that the process and any consequent agreement is primarily owned by the parties.

The mediation co-ordinator has the task of ensuring that both the parties' agreements and the manager's contract are signed and discussing any issues or concerns that may arise. Once this has been done, the co-ordinator will allocate two co-mediators. The selection of the mediators is based on: the nature of the conflict; the need to avoid conflict of interest and maintain impartiality; and to try to ensure that all mediators participate on a regular basis.

The appointed mediators then contact the parties to ensure that they understand the process and their agreement to participate. The parties also complete a pre-mediation questionnaire. The mediators will then meet each party separately (for one hour) and then hold a joint half-day meeting in order to try to reach a resolution. The mediator will then inform the relevant manager whether or not agreement was reached and send out an evaluation questionnaire to the parties one week after the joint meeting. Mediators will also complete their own evaluation form and provide feedback to the co-ordinator. This is used to monitor the scheme in tandem with the Scheme's Network Group – through which mediators meet regularly to review the Scheme and share their experiences of practice.

A number of potential barriers emerged when the mediation scheme was first launched. Firstly, there was confusion as to what mediation entailed. Managers, in particular, did not see the distinction between mediation and simply discussing an issue with an employee. Secondly, there was concern amongst managers that mediation may undermine their authority and ability to manage. According to one mediator:

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

This was arguably made more difficult by the appointment of the lead UNISON representative as one of the scheme's co-ordinators. As discussed above, this individual had a reputation for being militant and confrontational. This made managers even more suspicious and wary of loosening their control over individual disputes.

> 'in terms of introducing the scheme to managers we had by this stage appointed [name] as the mediation coordinator and trying to establish what his role would be and part of that was promoting the scheme. So you can imagine that gave lots of scepticisms, because he was this person who, self confessed Grievance King, was now coming and saying mediation, mediation, mediation. So that I think was quite a big barrier for a lot of managers across at lot of levels.' (Manager A)

Thirdly the issue of confidentiality led to problems with information flow. In the early days of the scheme, some managers felt that they were not being kept informed over mediations that involved their employees. It could be argued that this was a problem because many managers who had not been involved in the training and in the initial phases of the Scheme did not feel any ownership over, and therefore commitment towards, the process. Instead there was a sense that this was being foisted upon them by a combination of HR and what had hitherto been hostile trade unions.

Scepticism was not confined to ELPCT management – union representatives who had not been involved in the training were concerned that this was an attempt by management to reduce union influence. Union respondents also claimed that members were sometimes reluctant to enter into mediation as opposed to relying on the union to fight their case through formal procedure. There was a perception that opting for mediation was in some way conceding defeat. In addition, staff were unclear as to what mediation entailed and particularly about issues of confidentiality. Importantly, the fact that the lead UNISON representative was one of the co-ordinators allayed some of these fears. He explained that:

> 'Some were a bit sceptical thinking, "Hang on a minute, have we been sucked in here?" but the vast majority would say, "if you like it, [knowing what my previous was, which is grievance king and everything else] you've either been brainwashed within six, seven days or you genuinely think it's a better way"… And I said, "but if we don't stop all these grievances we're going to end up in a mine full of problems…So let's give it a go, give it a while, give it a year or so and see what happens." And the more people got involved and members were going back to their staff rep saying, "Hi, we've got it resolved. A lot better than I thought. You know, a bit frightened when I went but I think it's a good outcome."'

The Trust sought to overcome the concerns outlined above by communicating the existence and nature of the Mediation Scheme through a range of promotional material, which gave basic information regarding the scheme, the key contacts and details of how staff could access mediation. It also provided reassurance that the scheme did not preclude the use of formal processes. In addition, the Scheme's co-ordinators made numerous presentations to meetings of managers and staff and took part in a series of 'roadshows'.

However, perhaps the most effective way in which initial suspicions were quelled was through word of mouth. In short, managers and staff who had been through the process and seen difficult issues resolved, passed on this information to their colleagues. Consequently, awareness of the Scheme has inevitably been incremental and has been taken up with more enthusiasm in some areas than others. Understandably, many managers and staff will only be interested if and when a problem arises:

> 'So it's only at the point when things are breaking down or there's a problem, or there's a grievance or something like that coming in that then they're finding out that there's a mediation scheme.'　　(Operational manager)

There was a general consensus that awareness of the scheme had increased over the past two years and that managers were now more comfortable with the concept. Nonetheless, there was also a general belief that more work was still needed to promote mediation within the Trust. In particular respondents suggested that it tended to be more widely used in those areas from which grievances were more likely to emerge. Managers' awareness of mediation and its

potential benefits were therefore dependent on their prior experiences of mediation.

Amongst trade union representatives, initial doubts appeared to have been overcome, with mediation now routinely considered before formal complaints are made. This was not confined to representatives who were closely involved in the scheme. Newer representatives also appeared to be enthusiastic about mediation and its benefits.

> *'Anything that can bring two people together, without having to go down formal processes, you know, following guidelines that can lead to one person being penalised or, you know, also managers being penalised, if you can break it down before then, it's got to be a good thing.'* (Trade union representative)

Trade union representatives were also fairly confident that their members were aware of the existence of the Scheme even if they were not always clear about what mediation was or what it entailed. This is where the co-ordinators played a key role in explaining the process to employees in dispute. The fact that one of the co-ordinators was a well known trade union representative was seen as being helpful in overcoming the reluctance of some employees in agreeing to mediation. He explained this as follows:

> *'I explain, well, if they're going down the formal route you'll end up here anyway and isn't it better to get this over with in four hours, even if you just want to sit down and chat, or just come to the process and see how it goes…So far, I've managed to get everybody there…The feedback that's coming back is that the first contact with mediation has been all right.'*

However, it was accepted by respondents that despite efforts to reassure disputants that participation is voluntary, a minority of individuals feel that they had no choice but to agree to mediation. Interestingly, some respondents believed that sometimes individuals had to be persuaded to take part in their own interests. One union representative explained that he did believe that some members felt pressure to mediate, however:

> *'part of being a Rep. is understanding and managing – I hate to say it - but managing, you know, members' expectations and I know only too well that when you put in complaints of harassing, bullying and victimisation, they're notoriously difficult to hang on anybody… I have to weigh that up with the person I'm speaking to… I'll go through the concept of mediation, if I think it's right and, you know, in fairness and most of the time, I do think it is always best to sit down first and have a discussion. If it doesn't work then we've tried that. At least we've tried that and then we can move on…I'll always try and promote it.'*

There were two areas in which the scheme had encountered problems. The first of these was in relation to ethnicity. While disputes involving potential race discrimination had been mediated successfully, post-mediation evaluation conducted by the scheme co-ordinator had highlighted the need for mediators from the BME community. Consequently two mediators from the BME community had been recently trained by Acas in order to address this issue.

Secondly, a number of respondents who were trained mediators cited the difficulty of finding time to conduct mediations. A number of those interviewed had only conducted one or two mediations since the inception of the Scheme. This was particularly the case for more senior managers.

> *'But in terms of being able to do mediations I think that's one of the big pressures on me, is that, because of the level that I work at within the organisation, I can't free my time up.'* (Senior manager and mediator)

This was even more difficult at times of organisational change when arguably mediation would be most needed. This problem had led to an imbalance in the number of mediations that different members of the team were conducting. However a number of the mediators interviewed had taken the step of including mediation within their performance appraisal objectives and secured support from line managers. Nonetheless, the degree to which the organisation was prepared to provide staff with flexibility to mediate was seen as a crucial issue if the scheme was to be sustainable.

4.5   Mediation at ELPCT – Outcomes and Impact

As discussed in part one, the impact of mediation is difficult to assess and insufficiently conceptualised. We discuss this in further length in part three of the report. However, in order to evaluate the effects of the introduction of mediation at ELPCT, we have examined below the extent to which the mediation has: enhanced the ability of the organisation to resolve individual employment disputes; reduced the incidence of individual employment disputes; impact on the extent and level of conflict within the organisation.

4.5.1 Mediation – Resolving Disputes?

There was clear evidence that the scheme was extremely effective in resolving those disputes that referred to mediation. To date, 30 cases have been referred to mediation and 28 have been mediated (See table 2). These have dealt with issues from minor relationship problems to cases of racial harassment and bullying.

Of those cases that have proceeded to mediation, all but one has reached a written agreement (a success rate of over 96%). In addition, as far as ELPCT is aware all these agreements have been sustained. The Trust's own early evaluation of the scheme (Bailey and Efthymiades, 2009:6) claims that most participants have 'found the experience empowering, even if they were sceptical prior to the mediation process'.

Table 2: Mediations – January 2008 – June 2010

Date	Referred	Agreement reached	Agreement not reached	Withdrawn	Not yet mediated
Jan 2008 – Jan 2009	13	12	1	0	0
Feb 2009 – Dec 2009	12	12	0	0	0
Jan 2010 – June 2010	5	3	0	1	1

Furthermore, the Trust (in conjunction with Consensio) (Bailey and Efthymiades, 2009) conducted a cost-benefit analysis of the operation of the scheme in its first 18 months, which claimed direct cost savings of £213,753 (see table 3).

Table 3: Estimate of cost savings of NHS East Lancashire Mediation Scheme (reproduced from Bailey and Efthymiades, 2009).

Cost	Basis of Calculation	£
Cost of Formal Processes		
Management Time	Public-sector managers on average spend 14.5 days on each discipline and grievance case. Salary costs calculated at mid-point of band 8a.[1]	65,021
Witness Time	4 days per case at salary band 6	12,420
Union Time	5 days per case at salary band 6	15,525
Cost of Employment Tribunals	Based on three cases proceeding to ET hearing.[2]	
Management Time	Preparation time of 23[3] days per case at band 8d	23,460
Witness time	4 days and 6 days per case for staff and management respectively at bands 6 and 8a	5,130
Union Time	10 days per case	4,050
Settlement/Compensation and Legal Advice	Average cost in public sector per case is £22,535[4]	67,605
Costs of Sickness Absence		
Cost of Short-term Absence Due to Stress	Average cost to public sector health organisation estimated at £1,153 per employee[5]	36,527
TOTAL		229,738
Cost of Mediation	Mediator time has been estimated as three days per case. Salaries have been calculated at the mid-point of band 8a. Mediation co-ordinator's time has been based on 23 mediations cases. Salary calculated at the mid-point of band 5.	15,985
TOTAL COST SAVING		**213,753**

This assumed that three main types of costs would be incurred. Firstly, if mediation is not successful, the case would normally proceed into formal grievance or fair treatment processes which would require a significant input of time from HR staff, investigating managers, panel members, trade union representatives and witnesses. The overall cost of each case was estimated to be £4,042.

Secondly, it is possible that some cases, if not resolved through mediation, would progress into an employment tribunal claim. ELPCT's calculations are based on an assumption that three of the mediated cases would otherwise have resulted in an employment tribunal application. It is also assumed that each of these cases would progress to a full hearing. ELPCT calculated the costs of this based on preparation time for witnesses, management and trade union representatives and also the cost of legal advice and settlement and/or compensation. They estimated that avoiding employment tribunal claims through mediation would save £33,415 per case.

[1] CIPD (2004, 2007)
[2] CIPD (2004) found that 14% of bullying and harassment cases escalate to ET – this equates to three of the 22 cases mediated.
[3] CIPD (2004)
[4] CIPD (2007)
[5] CIPD (2008)

Thirdly, ELPCT estimated the possible cost of stress-related absence as a result of progressing through formal procedures. Respondents indicated that this was common amongst individuals subject to grievance, fair treatment and disciplinary procedures. Finally, ELPCT estimated the costs of conducting each mediation, in terms of the time of the mediators and mediation co-ordinator, at £695. If this analysis is extended to the operation of the scheme to date, a total of £272,205 would have been saved.

One might question some of the assumptions underpinning the calculations outlined above. Firstly, there is no guarantee that cases would have proceeded to formal procedure in the absence of a mediation scheme. As we shall discuss later, the presence of a scheme may encourage individuals to come forward who would otherwise be unlikely to do so. Secondly, the likelihood of employment tribunal applications and consequent cost is very difficult to estimate. Thirdly, the estimates above do not take into account the initial set up costs of the scheme. In particular, the cost of mediation training was not included in the calculations due to issues of commercial confidentiality.

Despite this, there can be little doubt that the successful resolution of 27 cases has resulted in significant costs savings. Moreover, the Trust's conclusion that mediation is cost-effective when compared with traditional procedures is convincing. At a basic level, the average cost of management, union and witness time in handling an issue through formal procedures is £4042, more than five times the direct cost of mediation (£695). Even if an estimate of the expense involved in initial mediation training[6] is allocated across each case, the cost of mediation (£2223) is around 55% of the projected costs incurred through conventional processes.

As discussed in part one, measuring the success of mediation is always problematic. One recurrent issue is that a high settlement rate can be explained by the fact that only those cases suitable for mediation are selected. Therefore it is possible that cases that are more difficult to resolve are screened out by co-ordinators. In particular, the Trust's own guidance currently states that mediation is not appropriate in disciplinary situations. Management respondents were especially cautious as to whether referring disciplinary cases to mediation could undermine managerial authority and act as disincentive against managers addressing poor performance.

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

Nonetheless, managers have been surprised at the success rate of the scheme:

> *'my view would have been, well, probably about 50 percent of the potential mediation cases might work through mediation. What surprised me was the sheer number of successes being much greater than that.'* (Senior manager)

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[6] The current cost of Acas' five-day certificate in internal workplace mediation is £1995 per mediator. Therefore we can estimate that the costs of training twelve mediators (as in the case of ELPCT) would amount to £23,940. The cost of staff time for nine managers to attend a five-day course would be £15,300 and for three union representatives the cost would be £2,025. Overall therefore – the overall cost of training would be £41,265.

While there was strong evidence that mediation was successful in resolving those disputes that were referred to the scheme, there was also evidence that the introduction of the scheme had contributed to a shift away from formal, process driven approaches to individual employment disputes in general. Instead managers, HR practitioners and union representatives placed an emphasis on trying to resolve disputes at the earliest stage.

Involvement with mediation had changed the attitudes and consequent behaviours of key employment relations' actors. For example, a senior manager cited the case of union representative who was now one of the mediation scheme co-ordinators:

> *'you cannot believe how [name] has changed from going back to the days before we did the mediation and the scheme…it's just transformed…he can see the managers' viewpoint, he can see when staff are being unreasonable, he can see what'll work and what won't work; there's lots of experience he can bring to help.'*

Similarly managers who had been involved within the scheme as mediators were less prone to adopt defensive positions in regard to disputes and to work with trade unions to resolve difficult issues. An HR manager gave the following example of how her own practice had changed:

> *'the other week a grievance did come through and that was a fairly new rep and I was just able to pick up the phone to her and just say, you know, sort of like, why's this grievance in when we're part way through? …can we not mediate this?'*

One measure of the success of mediation, in improving ELPCT's dispute resolution capacity, is the number of cases that escalate into employment tribunal claims. ELPCT data suggests that there has been a reduction in the number of employment tribunal claims (see table 4) between 2007/8 and 2009/10, however this is complicated by a relatively high number of equal pay claims. When these are stripped out, there were four new cases in 2007/8, three in 2008/9 and just one in 2009/10.

Table 4: Employment Tribunal Claims – 2008-2010

	2007/8	2008/9	2009/10
	July-March	April-March	April-March
New cases	12*	3	1
Ongoing from previous year	n.a.	11**	6***
Ongoing at year end	n.a.	6	1

*included 8 equal pay cases ** included 10 equal pay cases *** included 5 equal pay cases

Importantly, there was also evidence that this change in attitudes extended beyond those involved in the mediation scheme. For example, throughout the union representatives interviewed, there appeared to be a genuine commitment, not just to mediation, but to dispute resolution. As opposed to viewing the grievance and disciplinary procedure as weapons with which to resist managerial authority their primary objective is now resolution. While some respondents suggested that the unions were now more 'realistic' and 'aware of the issues facing management', from the Unions' perspective the focus remained on getting the best possible outcome for their members. Respondents also argued that management attitudes had changed:

'I think they [operational managers] have an alternative view now of employee relations. They look at staff-side colleagues and it's in a far less confrontational way.' (Senior manager)

This message was reinforced by trade union respondents, who argued that good experiences of early dispute resolution were disseminated by word of mouth. In addition, mediation had provided a forum through which managers and unions had developed more trusting attitudes:

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

4.5.2 Reducing the Incidence of Individual Employment Disputes?

While the introduction of mediation may have improved ELPCTs ability to resolve disputes, a key question is whether it has reduced the likelihood of those disputes occurring in the first place. One could argue that it may encourage the resolution of issues that might otherwise develop into grievances and disciplinary cases. The available statistics would suggest that there has been a steady but relatively modest reduction in the number of formal grievance and fair treatment cases, from 12 in 2007 to 9 in 2009 and a further projected reduction in 2010 (table 5). The main change here, however, has been a fairly steep reduction in fair treatment cases which may suggest that these issues are those that can be most successfully dealt with through mediation.

Table 5: Grievance and Fair Treatment Cases

Year	Total	Grievances	Fair Treatment
2007	12	5	7
2008	11	9	2
2009	9	7	2
2010 – to date	4	4	0

It should also be noted that the presence of a mediation scheme may help to develop an environment in which employees feel safe to voice dissent. Therefore the relationship between mediation and the level of employee grievances is complex. In fact if one considers that 13 cases were referred to mediation in 2008, this suggests a significant increase in the overall number of employees raising issues compared to the previous year.

Amongst respondents, there was a clear perception that the scheme had reduced the prevalence of formal grievances. According to a senior union representative:

'I know it sounds stupid but you get to the point that, I now have to look at the grievance policy to remember how to fill it in, because I can't remember the last one I did. And that's being honest. I just cannot remember the last grievance I did.'

A senior HR manager confirmed this picture:

'If you measure success by us not having any grievances, when I left East Lancs, we'd no grievances, no case work involving grievances, so to my

mind that does say something…. I think mediation is now the first port of call: let's see if we can sort it without going into any sort of policy and procedure.'

The centrality of trade union representatives within the scheme was widely seen as being a key reason for this apparent success. It was argued that individuals with complaints would normally go to their union representative. Prior to the introduction of the scheme, the representative would ensure that the complaint was raised as a formal grievance. Now, if possible, the trade union representative would recommend mediation. One respondent made a comparison with a neighbouring health organisation, which, they claimed, had been operating a mediation scheme for 12 months but had only conducted four mediations in this time:

> *'Well the reason they're not being referred is because they haven't had the reps there. [In ELPCT] The majority of issues come through…one or two come through management, some through HR, but the majority are through stewards. But if I wouldn't have been trained, I wouldn't have offered anyone this option. I would have said it wasn't really an option.'*

However, there is less evidence that the introduction of mediation has reduced the incidence of disciplinary cases.

Table 6: Disciplinary Cases – August 2007- June 2010

Year	No. of cases	Formal hearings	No formal action*	Employee resigned	Under investigation
Aug - Dec 2007	7	4	2	1	0
2008	18	8	9	1	0
2009	18	15	2	1	0
Jan – June 2010	10	5	3	0	2

Table 6 shows that there has been little change in the number of formal disciplinary cases in the period since the introduction of the mediation scheme. Nonetheless, respondents suggested that the increased accent on resolution (noted above) and the change in the relationship between managers and union representatives could help to nip potential disciplinary issues 'in the bud'. For example, trade union representatives had seen a marked change in their relationship with HR staff and a less process driven approach in dealing with disputes:

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

Improved relationships had also led to innovative approaches to attempt to avoid cases escalating. If a serious emergent issue is identified, a 'case conference' will be held involving the relevant operational manager, trade union representative and an HR manager. This meeting will discuss the case and the possibilities for resolution and where possible an action plan will be agreed, setting out how the matter is going to be handled. A senior union representative gave the following example:

> *'Basically a case came in last week…this can be done as quickly as, like, in twelve hours, we got HR, we got a manager there, we got the line manager I should say, the senior manager; we got the partnership lead in.*

> *We sat down and said, these are what the issues are; this is what we need to deal with: how do we go about it? Manager's saying, you know, how do we go about doing this, what's the action plan? Where do we see this going? What support mechanisms do we have in place? …when the member of staff came back in on the Monday everything was arranged so that basically we were dealing with all the issues, we knew where everything was going.'*

This was illustrative of a shift towards more informal and early management of conflict. While disciplinary cases were still generally handled using formal procedures, improved relationships within the Trust enabled early warning signs to be spotted and preventative action to be taken.

> *'it's having that open culture where people open up and have those discussions and say things like, 'I'm a bit worried about somebody's behaviour…' and it's opening that discussion up but it's having support mechanisms in place. It's not beating people over the head with a stick and saying, oh you've done wrong – we're taking you to disciplinary. You know, is there a reason behind why you've got this behaviour?'* (Union representative)

It was suggested to union respondents that by accepting mediation and by working closely with management, it could be argued that they were not fully representing their members' interests. While this tension was acknowledged, all those interviewed were strongly of the view that a more constructive approach resulted in better outcomes for members.

> *'You've got the member back to work; you've got the situation where there's a better working environment for the member. And actually you keep the member of staff at work as well, and not letting them go off, either leaving the organisation, and also the effect it has on their home life. Because, you know, I've been involved with some really serious cases where you've seen people that it's gone on for twelve months, it's gone to formal processes and…court proceedings. People don't understand until it gets to that stage what it involves.'* (Senior union representative)

Interestingly, less experienced union representatives who had not been involved in the scheme had a similar approach. They did not see employee grievances and disciplinary issues in terms of winning and losing but focussed on the need to find a fair resolution for the member they were representing

> *'I'm not fussed about how we get to a resolution of things…If I can phone HR, or a manager, and say 'Can we talk about this before we go into a formal meeting?' or, you know, 'This is what we're looking at,' then I'll do that.'* (Union representative)

4.5.3 Combating Conflict – Mediation and Employment Relations

We have examined above whether the introduction of mediation has impacted upon the ability of ELPCT to both resolve disputes and limit the escalation of conflict. However, a key question for this research is the extent to which mediation has played a role in reducing overall levels of conflict within the organisation.

One indicator of this is the state of employment relations. There was general agreement from those respondents able to make a comparison, that there had been a significant improvement in the period since the introduction of mediation.

Relations between management and unions were less adversarial and this underpinned both the handling of individual disputes and also collective issues. Respondents were clearly of the view that the last two or three years had seen the development of genuine partnership working between management and trade unions. This was explained by a senior HR manager:

> 'It's a lot less confrontational, and a lot more forgiving. I think there's more trust now, so that if the staff side finds something out that they think they should have been communicated on earlier, there tends to be more acceptance that it's cock-up rather than conspiracy now. A mutual trust to a higher degree, so generally employee relations now here feel positive. Not perfect; they're never perfect. You've always got to keep working on these things…We're currently doing a major reconfiguration and downsizing. We have the partnership lead on the HR project team actually sits on the project team in the project meetings. That kind, that level of input from staff side I think is very strong.' (Senior HR Manager)

We noted above, that the successful introduction of the mediation scheme was conditional on the development of nascent partnership working. To the same extent, the relative success of partnership working was seen as being critically dependent on the role of the mediation scheme in changing the attitudes of key actors and building trust between unions and management. The interdependency of mediation and partnership was summed up by a trade union representative:

> 'I don't think it's enough just to have mediation on its own or just have partnership on its own. It's kind of the foundation for everything that the trust is going to do with its employees and that's moving away from the Trust doing things to its employee… the mediation service sets up better outcomes for the Trust from the point of view of process. It [formal process] felt really horrible; it felt really unfair. It left people very disillusioned and demoralised and eventually they'd either be really unproductive or just wander off the books altogether and there was no way out of it. There was no way at which you could stop it and say, "Okay. We stop the process there. We can make this better". The only thing that's done that is mediation, but mediation wouldn't have happened if it weren't for the workforce partnership which bred the trust in the first place.'

The broader value of mediation appeared to be in demonstrating to both unions and management that a focus on resolution could bring better results for both the organisation and the individual member of staff than an adversarial contest within formal procedures.

Crucially, improved relationships were underpinned by the strength of the union and its ability to represent its members. Union respondents were adamant that constructive approaches were not a sign of union weakness or collusion but based on the argument that confrontation most often failed to deliver positive outcomes for union members. Indeed, UNISON claimed that over the last two years, membership had doubled:

> 'Some people have this perception, oh well you're collusive. You know, you're working with managers; you're in their pockets. But at the end of the day, from my perspective, it's improving the quality of life of the staff; it's a benefit for the organisation, because you've not got obviously staff going off sick and formal process… I just don't see the point in having a situation where you're exacerbating a problem when it can be dealt with

early on. It's having those discussions, nipping it in the bud and dealing with it.' (Union representative)

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

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

It is important to acknowledge that within ELPCT, this centred on a relatively small number of key individuals. While, these changed attitudes have had a ripple effect through the organisation, it was widely accepted that mediation remains a tool that managers use rather than a way of managing in itself. This also raises questions about sustainability in the light of organisational restructuring and the possible tightening of funding in the coming years. This could impact in two ways. Firstly, trade unions may find it more difficult to sustain a constructive approach in the face of significant cuts. Secondly, financial pressures could lead to a reduction in facility time for trade union representatives, particularly the lead mediation co-ordinator as well as restricting the availability of mediators. Furthermore, if mediators leave the organisation through restructuring and redundancy, the viability of the Scheme may be threatened.

However, union respondents were quite bullish about the importance of partnership in dealing with the potential of cuts and downsizing. Furthermore, there was a strong belief from those involved in the Scheme that mediation would be even more valuable in an environment in which cost-saving was a priority and in which managers and staff would be placed under increasing pressure:

> *'I don't think the NHS will get through the changes it needs to get through in the most productive way possible unless it remembers partnership and mediation. It's easy for them to slide off the agenda when you've filled the agenda full of figures and I think one of the problems that we've got is with these cuts in budgets is that the employees stand in danger of being payroll numbers again, rather than people, and partnership and mediation (can) try to put (pn) the agenda that we're people.'* (Union representative)

Therefore this may suggest that mediation may not only help to combat conflict that may lead to individual employment disputes but also enable unions and management to resolve issues that may otherwise could escalate into collective industrial action.

While qualitative evidence suggested a dramatic change in employment relations, to what extent has this been transferred to staff working within ELPCT. Two key indicators of individual conflict are sickness absence and staff turnover. Data covering the periods prior and post mediation scheme are reproduced in tables 7 and 8. Table 7 reproduces data from publically available NHS benchmark statistics. Unfortunately this provides comparable data only up to April 2009.

Table 7: Sickness Absence and Staff Turnover - NHS

Time Period	Sickness Absence	Staff Turnover
	%	%
Q4 – 2006/7	8.66	n.a.
Q4 – 2007/8	5.08	9.68
Q4 – 2008/9	4.49	8.23

Source: www.productivity.nhs.uk

Table 8: Sickness Absence and Staff Turnover - ELPCT

Time Period	Sickness Absence		Staff Turnover	
April-March	%		%	
2007/8	5.18		11.51	
	Commissioning	Provider	Commissioning	Provider
2008/9	3.11	4.93	9.3	12.73
2009/10	3.34	5.17	13.2	23.74*

Source: ELPCT
*This figure is distorted by the fact that in July 2009, 217 employees left ELPCT as part of a transfer of undertakings

Table 8 is drawn from ELPCT's own data as reported to their Board and provides data up to March 2010. In the last two years, this data is split between the commissioning and provider sides of the organisation. The data suggests an improvement in absence rates in the period since the introduction of the mediation scheme, however, this may reflect a number of factors including strenuous attempts made by ELPCT to manage absence more effectively. The problem of drawing inferences from such data is also illustrated by staff turnover. There is some evidence of a modest reduction in turnover between 2007/8 and 2008/9 but a very sharp increase in 2009/10, however this latter figure can, in part, be explained by 217 jobs being transferred to an external provider.

A further source of evidence is the Trust's annual staff survey (part of a national survey of NHS staff). The latest of these was conducted in October 2009. A total of 2528 staff from ELPCT were surveyed with 1339 completed, a response rate of 55.17%. The survey does not ask specific questions about mediation, discipline, grievance or dispute resolution. It does ask staff whether they have suffered discrimination and been a victim of bullying and harassment. The results here are mixed. In 2009, 8% of staff claimed to been harassed, bullied or abused by their line manager in the previous 12 months, unchanged from 2008 and marginally higher than 2007. A lower proportion (8%) claimed that they had been harassed, bullied or abused by other colleagues, than did so in 2008 (10%) and 2007 (9%). In terms of discrimination, in 2009 4% of staff said that they had experienced discrimination at ELPCT in the last 12 months, compared to 6% in the previous two years.

A slightly clearer picture is apparent in regards to indicators of employee engagement. These are set out in Table 9 (below) and show year on year improvement in terms of consultation, communication and involvement in decision-making. The proportion of staff agreeing that their colleagues treat them with respect also increased between 2008 and 2009.

Table 9: ELPCT Staff Survey Responses – Employee engagement and well-being

	2007		2008		2009	
	Agree	Disagree	*Agree*	Disagree	*Agree*	Disagree
	%	%	**%**	%	**%**	%
I am consulted about changes that affect my work area	**54**	28	**55**	26	**57**	24
I get clear feedback about how well I am doing in my job	**36**	28	**43**	29	**45**	25
Senior managers here try to involve staff in important decisions	**29**	41	**31**	41	**33**	36
Communication between senior management and staff is effective	**30**	40	**32**	38	**33**	36
The people I work with treat me with respect	**n.a.**	n.a.	**81**	6	**83**	5
Relationships at work are strained	**24**	52	**23**	52	**22**	56

In addition, 71% of staff said that they were satisfied with the support provided by their immediate manager, an increase from 64% in 2007 and 68% in 2008. Finally, 43% of staff were satisfied with the extent to which ELPCT valued their work, compared with 36% in 2007 and 39% in 2008. The data therefore would seem to provide tentative support for the views of respondents that significant improvements had occurred despite substantial organisational change. Senior management claimed that:

> *'We're getting measurable improvement, culturally and on staff engagement, year on year. Now I don't think mediation's the sole driver behind that but I certainly think it contributes significantly to it.'*

4.6   Summary

Prior to the establishment of the mediation scheme, employment relations within ELPCT were adversarial and confrontational, characterised by a profound lack of trust. Individual employment disputes were largely dealt with through the organisation's highly formalised procedures, which were actively used by trade unions to challenge managerial authority. In turn, managers used formal process in a reactive and defensive manner. In short, both sides were locked into a zero-sum game that not only exacerbated conflict but also made the resolution of disputes more difficult.

However in the two years since the introduction of mediation, there have been significant changes to the way in which individual employment disputes are managed and to broader employment relations within the organisation. The introduction of mediation has clearly provided a channel through which employee grievances can be resolved without recourse to formal procedure. The trade unions' centrality within the scheme and commitment to early resolution was found to be crucial here. As opposed to directing members towards formal

procedures as would have been the case in the past, members are now routinely encouraged to take part in mediation or supported in trying resolve the matter informally. It is important to note that this change has been most marked in regard to certain types of conflict – grievances, fair treatment cases and colleague relationship issues.

Perhaps more importantly, the mediation scheme has provided a medium through which attitudes, behaviours and relationships of key employment relations' actors have been transformed. For union representatives, adversarial attitudes were a direct reaction to what they perceived as previous poor treatment at the hands of management. However, mediation training and the scheme itself not only provided a forum through which trust could be built but convinced unions that early resolution and a more consensual approach was the most effective way of protecting their members' interests. In short, their disavowal of formal procedures was based on a recognition that, for the most part, they did not work. Mediation was a way of extending influence over the way in which conflict was handled and decisions made. Indeed, UNISON, the main union, claimed that over the period in question, membership had increased substantially and organisation had strengthened.

The evidence also points towards a progressive acceptance of mediation by HR managers and advisors, who can see the potential for avoiding lengthy and difficult grievance cases. More broadly, improved relationships with union representatives have provided greater scope for more flexibility and informality in seeking resolutions to individual disputes. Amongst operational managers, those who were active as mediators or had some involvement with the scheme were argued to have become more likely to manage conflict with a view to seeking resolution rather than using formal procedure.

However, there was resistance with some managers concerned that the extension of mediation may compromise their ability and authority to manage. The degree to which operational managers were now open to mediation was also concentrated in certain parts of the organisation and it was generally acknowledged that the process of changing attitudes and behaviours within this group was 'incremental' and largely achieved through experience and word of mouth.

The experience of ELPCT would suggest that mediation can act as a catalyst to change the attitudes and behaviours of individuals. Moreover, by providing the basis for reframing interpersonal relationships and in particular a foundation for the development of high trust relations, it can have a transformative effect. Certainly, the impact on those individuals involved in the scheme and who have experienced its effectiveness appears to be significant and profound. Many respondents could not envisage returning to the confrontational and adversarial way in which conflict was previously managed. However, the changes that have occurred are still critically linked to specific individuals who play central roles within dispute resolution processes. In this way, the change that has taken place at ELPCT, while significant remains contingent and fragile.

5. DISCUSSION AND CONCLUSION – IMPLICATIONS FOR POLICY AND PRACTICE

In the wake of the Gibbons Review (Gibbons, 2008) into dispute resolution and the Employment Act 2008, there has been much debate over the potential benefits of mediation. It is argued that mediation is more likely to successfully resolve individual disputes compared with conventional formal procedures and offers significant savings in terms of time and cost. This report examines this issue but also seeks to broaden the debate by asking whether the development of in-house mediation can transform the way in which an organisation manages conflict?

One must be cautious in drawing lessons from a single case. It could be argued that ELPCT - a highly unionised, public sector organisation - is of little significance to the majority of workplaces which are smaller, in the private sector and have little, if any, union presence (Kersley et al., 2006; Pollert and Charlwood, 2008). However, the insights provided by ELPCT are important for a number of reasons. Firstly, they are directly relevant to the NHS, public sector organisations and also private sector workplaces in which trade unions are recognised. Secondly, the findings have significant implications for trade unions in how they engage with mediation and alternative dispute resolution. Thirdly, large, public sector, unionised workplaces experience a relatively high incidence of employee grievances and employment tribunal applications, making the pursuit of improved dispute resolution in such settings of direct relevance to public policy. Finally, as outlined above, mediation can affect the way in which individual managers approach conflict. This is as relevant to a small private sector employer as it is to a large organisation in the NHS.

In the following, we examine three broad issues: firstly we assess the benefits, outcomes and impact of introducing mediation in ELPCT; secondly, we examine the key factors that underpinned the broader changes in conflict management outlined in the case study; and finally, we summarise the key implications of the research for policy and practice.

5.1 Benefits, Outcomes and Impact of Mediation

The Gibbons Review (2007) argued that mediation was *'a pragmatic, flexible and informal way of providing both parties with positive outcomes'*. Importantly, the case of ELPCT suggests that the 'outcomes' associated with the introduction of in-house mediation extend beyond the immediate resolution of a mediated dispute. As discussed earlier, however, measuring the outcomes and impact of mediation is not straightforward. Here, therefore we attempt to distinguish between the impact of mediation on: an organisation's capability to resolve disputes, both in terms of resolving those issues referred to mediation but also in creating an environment conducive to resolution; the effective management of conflict, by facilitating the early resolution of issues before they escalate into formal disputes; and the minimization of organisational conflict, by improving employment relations or extending employee voice.

5.1.1 Dispute Resolution Capability

The case-study suggests that the introduction of mediation can improve the dispute resolution capability of an organisation in two ways. Firstly, it can have a *direct* effect in improving the outcomes of those disputes that are referred to mediation. Within ELPCT, this was clearly the case – all but one case referred over the life of the scheme were successfully mediated and resulted in written and (to date) sustainable agreements. Furthermore, there was persuasive

evidence that mediated settlements were significantly less resource (and therefore cost) intensive than dealing with disputes through formal conventional procedures.

Secondly, it can have an *indirect* impact in improving the ability of organisations to resolve disputes outside the remit of mediation. Within ELPCT, there were a number of disputes that were not referred to mediation, either because they were not deemed suitable (i.e. disciplinary cases) or because the parties did not agree. However, the introduction of the scheme led to a fundamental change in the way that these disputes were handled.

Previously, cases were dealt with in a highly adversarial and confrontational manner. Both sides were locked into a zero-sum game with little emphasis on resolution. Crucially, the scheme provided a channel through which the attitudes of key managers, union representatives and HR practitioners have been transformed. This was most marked in respect of those trained as mediators. Amongst this group, trusting relationships were developed based on an acceptance of the legitimacy of their respective positions. Rather than seeking to 'win' disputes, or adopting defensive stances the first consideration was the possibility of resolution.

Importantly, these changes were transmitted to others within the organisation. Those mediators enthusiastically promoted both mediation and dispute resolution and carried this emphasis on resolution into their dealings with colleagues who were not involved in the scheme. This acted to break the spiral of distrust and adversarialism that had traditionally reinforced the reliance on formal procedure and blunted the ability of the organisation to resolve disputes.

5.1.2 Conflict Management

There was also significant qualitative evidence within the case study that the introduction of the scheme enhanced the ability of the organisation to identify and resolve conflict before it escalated into formal disputes. An important factor was the central involvement of the union and the appointment of the lead trade union representative as mediation co-ordinator. Prior to the introduction of the scheme, the union was central in translating latent discontent into formal disputes – indeed, one might argue that this is a legitimate function of unions in ensuring that their members interests are properly represented. However, the adversarial relationship between management and unions meant that unions saw formal procedure as a means of expressing both individual and collective conflict. Moreover, they had no faith that management would respond constructively to any attempts to adopt a more consensual stance.

As discussed above, the introduction of the mediation scheme underpinned the development of trusting relationships and a realisation that early resolution achieved better outcomes for employees. Thus, it fundamentally changed the response of trade union representatives to conflict. When issues were referred to them by members, they would not reach for formal procedure. Instead, they would be more likely to explore the possibility of informal resolution. Moreover the shift of emphasis from formal procedure to early resolution, and the consequent development of initiatives such as case conferences made it more likely that simmering conflict that may have led to disputes was identified and 'nipped in the bud'.

However, the quantitative evidence from ELPCT in this respect was mixed. Paradoxically, the introduction of mediation seemed to have created an environment in which individuals would feel more confident in raising problematic

issues. Consequently, this may have provided upward pressure on the occurrence of observable disputes. Despite this, the incidence of grievances and fair treatment disputes appeared to have fallen since the introduction of the scheme, but there was less evidence of any reduction in the number of disciplinary cases being dealt with through formal procedure. This might reflect the fact that certain types of inter-personal conflict may be more prone to resolution, particularly when compared with serious disciplinary issues for which formal action may be the only possible response.

5.1.3 Organisational Conflict

We argue above that mediation can impact on the ability of an organisation to resolve disputes and also to manage conflict in such a way as to minimise the incidence of disputes. However, can the introduction of a mediation scheme affect the level or extent of conflict? To a large extent it is questionable whether mediation can have a direct effect on those factors that lead to discontent. For example, within ELPCT, it could be suggested that a turbulent external policy context triggered changes within the organisation that in turn resulted in conflict. However, the introduction of a mediation scheme may shape the way in which the organisation and its employees respond to such external shocks. For example, if, as we argue above, it underpins improved relations between managers and unions, the organisation may be better placed to develop consensual solutions to problems as opposed to adversarial and confrontational reactions. At the level of the individual employee, the advent of a mediation scheme could also extend employee voice and consequently lead to improved morale and performance.

Although data in relation to certain indicators such as sickness absence, labour turnover and employee engagement suggested an improving trend, it would be difficult to attribute this solely to the introduction of mediation. However, there is little doubt that the improved relationships between managers and unions, while predominantly focused on individual employment dispute resolution has also underpinned the development of partnership working and broader improvements in employment relations. The experience of ELPCT would suggest that mediation can act as a catalyst to change the attitudes and behaviours of individuals, by providing the basis for reframing interpersonal relationships. Certainly, the impact on those individuals involved in the scheme and who have experienced its effectiveness appears to be significant and profound. Many respondents could not envisage returning to the confrontational and adversarial way in which conflict was previously managed. This was seen to be particularly relevant in light of the challenging policy environment that the Trust was entering at the time of the study.

Overall, therefore, the evidence from ELPCT suggests that the introduction of a mediation scheme can have benefits that extend beyond the resolution of those cases that are referred to mediation. Crucially, the development of a scheme can act as a conduit for not only changing the attitudes of key employment relations' actors but for developing high trust relations. This, in turn, enhances the ability of the organisation to resolve individual employment disputes and manage conflict more effectively. Furthermore, by improving broader employment relations, mediation may also boost the ability of the organisation to resolve issues that might otherwise develop into collective disputes.

However, there is a concern that mediation at ELPCT has been based on creating relationships of trust between key actors. Accordingly, the changes that have occurred are still critically linked to specific individuals who play central roles within dispute resolution processes. There was less evidence that this new approach to conflict management was embedded at higher levels of the

organisation or throughout operational management. In this way, the change that has taken place at ELPCT is both contingent and fragile. For example, if certain individuals, or a critical mass of mediators, were to leave the organisation, the future of the scheme would be uncertain and its wider benefits put at risk.

5.2   Mediation, Trust and Partnership

The case of ELPCT suggests that the introduction of in-house mediation can lead to a fundamental change in the way in which disputes are handled and conflict is managed. However, it also provides a number of important insights that offer to inform our understanding of how such a change can occur. The findings outlined above highlight a number of key elements.

Firstly, the development and success of workplace mediation at ELPCT was dependent on, and shaped by, a number of key individuals. The genesis of the scheme lay in the values of one senior HR manager (manager A) who saw mediation as a way of improving employment relations and breaking down barriers between management and unions. However, while one manager initiated these changes, there were a number of 'champions' within different constituencies. Influential individuals were 'recruited' to the cause from both the trade unions and the HR department. Therefore, responsibility for change was ceded to key actors and was not, ultimately, the responsibility of senior management. Accordingly, while 'leadership' is important, the case suggests that 'championing' mediation from the top down may not be enough.

Secondly, the most distinctive element of the ELPCT case was the way in which the manager driving the introduction of mediation scheme sought to involve trade union representatives. It may have been tempting to co-opt more moderate and compliant union representatives. Instead, one senior, influential and powerful representative who was at the heart of (what was previously seen by management as) the 'grievance culture' was persuaded to train as a mediator and subsequently agreed to take on a central role co-ordinating the scheme. Two other union representatives also became mediators. This ensured that unions had a significant degree of ownership of the scheme and of the notion of mediation itself. Furthermore, they were also the first point of contact in relation to individual employment disputes. Consequently, if union members had a grievance, whether mediation was appropriate would be a primary consideration. Crucially by ceding a degree of control over the scheme to trade unions, mediation was given a degree of legitimacy that would otherwise have been impossible.

Thirdly, a tentative move towards partnership was crucial in encouraging union representatives to take part in mediation training. Without this, it was unlikely that they would have overcome their initial suspicion and scepticism that mediation was simply a tool to undermine their ability to fully represent their members. This suggests that simply introducing mediation as a remedy for poor industrial relations will be unlikely to succeed – there must be a degree of trust in order for mediation to become established. That said, at the time the scheme was first mooted, partnership was nascent and trust was fragile. Indeed, the introduction of mediation was then central to the continued development of partnership working; and respondents were unanimous that without mediation, partnership would not have become embedded within ELPCT.

Finally, the way in which the mediation training process was designed and conducted was crucial in developing trusting relations between management and unions. The structure of the training deliberately built in time to allow difficult

issues between the trainees to be aired and discussed. As can be seen from the case-study, this was a high risk strategy, but it was possibly the only forum in which managers and unions were stripped of their traditional hierarchical roles and therefore able to address issues in an honest and straightforward way. In addition, role-play mediations were conducted which reflected the specific context of the organisation. Union participants were encouraged to take the role of managers, while managers played the roles of aggrieved employees. Respondents were unanimous that this led trainee mediators to question their assumptions about their organisational counterparts.

An alternative critique of the role played by unions in the mediation scheme would be that the developments at ELPCT represent an attempt by management to 'hijack' the notion of mediation in order to co-opt a trade union, 'tame' militant shop stewards and reduce resistance to managerial authority and prerogative. As was highlighted within the literature review, mediation is often seen as a union substitution mechanism and consequently trade unions are often extremely sceptical about their involvement.

Certainly, there is less superficial evidence within ELPCT of industrial conflict and management have hailed the new 'constructive' and realistic' approach of the trade union. However, such an explanation paints organised labour as a passive recipient of change. We found no evidence of this and no sense that trade unions had become more compliant. Union representatives were uniformly of the view that their enthusiasm for, and active involvement in, mediation and partnership delivered improved outcomes for their members. In short, their disavowal of formal procedures was based on a recognition that, for the most part, they did not work.

They saw mediation as a way of extending influence over the way in which conflict was handled and decisions made. Indeed unions saw the extension of mediation over a wider range of issues as a way of confronting the unreasonable exercise of managerial prerogative. There was little sense in which the unions were compliant. They reserved the right to represent their members in the strongest possible terms through formal procedures if that was necessary. This was clear from management responses. Finally, UNISON, the main union, claimed that over the period in question, membership had increased substantially and organisation had strengthened.

In fact, the case of ELPCT would suggest *active involvement* in mediation potentially offers trade unions and their members very real benefits and in particular an ability to shape the resolutions of individual employment disputes as opposed to relying almost exclusively on the enforcement of individual employment rights to challenge managerial prerogative. Importantly, the potential of improved relationships with management combined with a focus on resolution as opposed to procedure also offers unions the chance to re-establish important informal processes of resolution in relation to a wide range of issues, including disciplinary cases which have been progressively eroded by the formalisation and proceduralisation of workplace discipline and grievance.

5.3   Implications for Policy and Practice

This report has a number of clear implications for policy and practice. It provides additional evidence that mediation provides an effective way of reaching sustainable resolutions in a range of employee grievances and inter-personal disputes. Not only was mediation relatively successful but there is also persuasive evidence that it generated significant cost savings for ELPCT. However, the

findings raise a question mark over the direct applicability of mediation to other types of disputes, particularly those involving disciplinary sanctions, which were seen by respondents within ELPCT to raise questions of managerial authority and discretion.

However, a pre-occupation with mediation as a process to resolve specific disputes arguably obscures its broader potential. The report suggests that the greatest value of mediation could lie in its ability to provide a basis for the renegotiation of working relationships. At a micro-level this may mean restarting communications between colleagues in conflict with each other, but at the level of the organisation it could recast the traditional adversarial roles adopted by stakeholders within traditional dispute resolution processes. Therefore while mediation may only impact upon a limited sub-set of individual conflict within an organisation, it may act as a catalyst in changing the way in which key actors manage both individual and collective employment disputes.

The case of ELPCT clearly suggests that mediation can act as a catalyst through which high-trust employment relations can be formed or at least low-trust relations can be challenged. This is linked to the fact that mediation in itself amounts to a rejection of confrontation and an acceptance that conflicting interests are legitimate. At the same time, the findings question whether mediation can simply provide a sticking plaster for adversarial relationships between employers and organisational stakeholders. Mediation at ELPCT undoubtedly created an environment in which partnership flourished and became embedded within the organisation. However, before, mediation could be fully accepted by key actors, a degree of trust had to first be established.

The findings outlined above also highlight the positive role that can be played by trade unions in the successful introduction of mediation. However, they suggest that simply consulting over the introduction over mediation will not be enough. If after the consultations are complete, unions are excluded from the operation of the scheme, mediation will be less likely to have any impact on their broader attitudes to conflict and employment relations within the organisation. It is unlikely that they will fully commit to early resolution and consequently their members will have little faith in any scheme. For trade unions, mediation represents an opportunity to both resolve issues more effectively for their members and to increase influence within processes of conflict management.

At a broader level, the experience of ELPCT casts doubt on the prescriptions that are regularly made in relation to dispute resolution. It is sometimes argued that organisations can design and implement systems that provide improved conflict management. While these approaches highlight important issues such as senior management commitment, leadership, the role of a 'champion' and the importance of consultation and engagement, they neglect the complex web of relationships that shape dispute resolution processes and the contested and political nature of organisations. Systems in themselves are not enough. Instead, greater focus must be placed upon the nature of workplace relationships. It is here that mediation can play a crucial role in shaping attitudes, developing trust between key actors and creating an environment, which is conducive to successful dispute resolution.

Finally, while this case provides key insights for policy and practice, further research is needed in two main respects. Firstly, more detailed longitudinal study of workplace mediation is required to fully quantify its outcomes and impact and to examine the way in which mediation relates to different dispute resolution processes. Secondly, further studies of this type are necessary in order to see

whether the experiences of ELPCT (a large, highly unionised, public sector organisation) are replicated in different contexts.

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