

Mediation: the gift from psychology

Linda Hoskinson highlights the important contribution to be made to workplace mediation by counsellors and psychotherapists



Unmanaged conflict is the largest reducible cost in organisations today, and the least recognised.' So says Dan Dana, a well-known international mediation specialist'. He goes on to remind us that workplace

conflict incurs a high, but hidden, cost – an expense that does not feature in most employers' budgets.

It is now possible to measure and, critically, to reduce this cost, in a way that is demonstrable to finance directors.

At last legislation in the UK is supporting what we already knew about the best way to protect harmony at work, and it ties in closely with the mediation revolution. The Employment Act of 2008² has instigated a radical shake-up of employment and workplace dispute resolution.

Mediation is far from being a new intervention, but until now has not played a formal role within HR practice. As of 6 April 2009, employers can include early resolution of potential conflict safely in their grievance policies and procedures. They can be confident that this proven and constructive approach is consistent with government thinking and that resources are available to help with new initiatives they wish to undertake.

Everyone in the workplace now needs to play a part in preventing conflict or resolving it promptly and *reasonably*. Courts will have power to increase or decrease awards by up to 25 per cent – to employers, employees or both. Undoubtedly there will be discussion and debate about what will be considered by the courts as 'reasonable'. Employees must certainly have an opportunity to explain their concerns, while employers for their part must take potential grievances seriously; compliance with the new ACAS Codes of Practice³ will be essential. Mediation is encouraged, but not compulsory, in line with good practice.

Some employers will take the opportunity to review their overall culture in relation to dignity and diversity and create fresh initiatives. Others will adjust their existing strategy and redraft policies and procedures to include more signposting for managers and employees on how to prevent and resolve conflict promptly. Employers will inform staff about mediation: what it is, how it helps, and how it may be accessed within the company. This might include access to experienced mediators, whether internal, external or both, depending on the circumstances or the complexity of each case.

Ken Cloke⁴, director of the Centre for Dispute Resolution, reminds us that sometimes conflict is the sound from the cracks in the system. Certainly at People Resolutions we have noticed an increase in key people within organisations welcoming help in structuring the 'system' to encourage and support the constructive resolution approach. As a result, we have made more consultancy and guidance available, as well as training for internal specialists.

We prefer to leave the old terminology behind that insisted there might be an 'informal' and 'formal' stage to a grievance. The organisation is accountable for what happens at both early and later stages and would be better protected if it recognised both stages equally and ensured standards for each. Hence, some organisations are reframing their procedures to outline a Stage 1 and Stage 2; this way the 'light touch' options are in Stage 1 and the more thorough investigation process is in Stage 2. Mediation can be in either, of course, preventing escalation in Stage 1, or helping people to adjust after an investigation and an outcome in Stage 2.

There are some situations in which mediation is not appropriate and an impartial investigation at Stage 2 is important. It should be conducted fairly and to standards – that is, internal investigators should be trained, or external specialists brought in. All facilities to handle the grievance process are usually tailored to the organisation – some might prefer an internal mediation team, others might

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wish to rely on external professionals, or some combination of both.

The key point is that investigators usually have a different skill set from mediators. Counsellors in the workplace setting will increasingly need to be clear about the grievance process in the organisations where their clients work so they know when and how to refer to them for resolution.

A recent CIPD (Chartered Institute of Personnel and Development) survey⁵ says that, on average, HR professionals spend 3.4 hours a week managing conflict at work. While more than 60 per cent of those responding had received training in conflict management as part of their professional development, nearly one third reported that line managers had not received any. Among those organisations proactively approaching conflict management, the most widely adopted practice is the training of line managers.

In addition, two-thirds mentioned that conflicts that escalate result in the absence from work of one or both parties, or in increasing levels of harassment and bullying. 'Warring egos and personality clashes' was the language used to describe the more common causes of conflict, closely followed by poor leadership and inadequate management, including weak performance management. Heavy workload also contributes, as we would expect.

Of those responding to the survey, almost a third reported that training in conflict management has led to a reduction in the number of disciplinary and grievance cases, an improvement in employee morale and an increase in team performance and productivity.

For counsellors and mediators the contribution they can make has mushroomed. The time for mediation has arrived.

Counsellors, psychotherapists and mediators have much to learn from one another. Sometimes those with wide-ranging interpersonal skills will conduct each role for different clients. They will know that it is not advisable to conduct both roles with the same client, of course. While it is necessary to recognise the differences between the professions of psychology and conflict resolution, it seems equally appropriate to recognise the common ground.

Mediation is considered, by those responding to the CIPD survey, to be the most likely method for resolving disputes, and half see mediation as helping to avoid the costs of defending employment tribunal claims. They seem agreed that the most suitable topics for mediation are relationship breakdown, bullying, harassment and discrimination.

Ken Cloke⁴ points out that 'all conflict has an emotional component'. He sometimes makes the following link for his students:



- It is possible for people to disagree without experiencing conflict.
- What distinguishes conflict from disagreement is the presence of emotions, such as anger or fear, which may be viewed as negative.
- Thus every conflict, by definition, contains an unavoidable emotional element.
- Conflicts can only be reached and resolved in their emotional location by people who have acquired emotional processing skills, or a degree of emotional intelligence.
- The discipline most familiar with these emotional skills is psychology.
- Hence, mediation can learn from psychology how to be more effective in resolving conflicts.

Ken points out that when we stop the fighting, we get 30 per cent of our energy back. When we arrive at a settlement, we get a further 30 per cent, and when we arrive at a resolution about how we will handle the future we are rewarded with another 30 per cent. The final 10 per cent is only returned when we forgive and let go.

Counsellors know well how to navigate this heart-to-heart territory and how to help us to safely step outside traditional boundaries so that we can understand the other person's world view. Ken has also been known to comment that 'all conflict is cross-cultural' – a perspective that is useful in the workplace when working with the broader concepts of diversity and dignity.

Short mediation courses are a first step on the journey. However, much as in counselling, they do not create mediators immediately competent to handle the full range of potential conflict. Longer courses often provide a better appreciation of the profession and usually offer a greater theoretical underpinning, more time for reflection in relation to the workplace and more accessible 'practice under supervision'. Mediators typically take part in

observations and co-mediation before carrying out mediation on their own.

There are conversion courses for those with some existing knowledge and skill in relation to personal interaction, psychology, interviewing, facilitating, coaching and training. In fact, experienced mediators often reflect later that they wish their training had included more:

- ways of using brief therapy techniques
- techniques for responding constructively to each emotion – including shame, jealousy, grief etc
- coaching skills when working with individuals
- ways of discovering what people think or want subconsciously, and bringing them into conscious awareness
- better ways of analysing conflict stories and transforming them
- better techniques for generating options and 'expanding the pie' (or creating more to share between the parties)
- ways of becoming aware of and responding to the 'energies' and 'vibrations' of conflict
- ways of gaining permission to work with people on a spiritual or heartfelt level
- ways of addressing the underlying systemic issues and chronic sources of conflict
- ways of addressing our own unresolved conflicts and making sure our emotions and judgments don't get in our way.

As a result of much discussion during 2008, the Civil Mediation Council (CMC)⁶ is now a substantial umbrella professional body for those working in the employment and workplace fields. Its website includes a definition of 'employment and workplace' mediation, along with the standards it expects of mediator members. Government has been reassured that should the ACAS helpline (expanded in the light of the legislation) receive cases which are less about statutory conciliation and more about mediation at work, they will refer callers to the CMC website where they will find contact details for mediation suppliers meeting a certain standard.

'Don't be a believer, be experienced.'

(Machteld Pel J, CMC Conference 2009)

If you would like to comment on the development of mediation in the workplace, please visit our blog at www.peoplereolutions.com ■

References

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Pandem

Mandy Rutter explores how the workplace can



Between 24 April and 6 May 2009, 31 people died of swine flu – 29 in Mexico and two in the USA. During that same period there were 253,442 news reports about swine flu, equating to 8,176 articles for every person who died¹.

With the plethora of news articles about each tragedy, it is not surprising that the media has provided us with a range of contradictory headlines in a desperate attempt to find a new angle on the swine flu situation. The combination of a new virus with an unknown trajectory and a range of media contradictions has caused some people to feel panic and anxiety. However, as one journalist has commented, 'What should scare the public is not flu but the shambles of scaremongering that regularly envelopes it'².

Whatever the cause of anxieties around swine flu, it is our role as workplace counsellors to listen, contain and support employees with such concerns. However, as counsellors we are in a unique position to offer workplace managers advice and guidance about the psychosocial issues accompanying the swine flu pandemic.

The majority of workplaces will by now have business continuity plans in place to deal with the second wave of swine flu. It is likely that these plans will focus on ensuring business-critical tasks and procedures are in place, whether it be telephone answering, IT servicing, or supply chain monitoring. But many plans may not have in place ways to deal with human aspects of the pandemic such as:

- managing anxiety about health and wellbeing
- communicating the organisation's expectations of employees during a pandemic
- understanding morale and motivation of staff who have to move to home working
- communicating with employees who have suffered a bereavement through swine flu
- assisting staff who are unable to identify a flu buddy
- supporting employees back into the workplace after long periods of absence (due to illness, bereavement or working from home).