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Research Paper

Mediation and Early Resolution

A Case Study in Conflict Management

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Richard Saundry and Gemma Wibberley
Institute for Research into Organisation, Work and Employment, iROWE
Lancashire Business School

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CONTENTS

PREFACE

This paper is the fourth in a series of case studies exploring innovative approaches to conflict management in the workplace. It follows earlier papers on conflict resolution strategies, two in the public sector and the other in a private sector organisation (see Acas Research Papers 01/11, 05/12 and 08/12). The focus here is a large private business in the service sector working across the UK and in particular, the organisation's use of mediation in handling individualised conflict.

Acas is grateful to Richard Saundry and Gemma Wibberley from the Lancashire Business School for their work.

1. INTRODUCTION

The government's recent response to its consultation over 'Resolving Workplace Disputes' sets out their vision '*for an employment dispute resolution system that promotes the use of early dispute resolution as a means of dealing with workplace problems*' (BIS, 2011:3). While the public debate has centred on proposed changes to employment law and the employment tribunal system, a central pillar of the government's approach to reform is the promotion of workplace mediation.

Crucially, the government does not simply see mediation as another tool in the dispute resolution box but points to wider benefits of improved '*employer-employee relationships, the development of organisational culture and the development of "high-trust" relationships*'. In this way they believe that mediation initiatives '*can help change the whole culture*' (BIS, 2011:3). In fact, despite the increased attention devoted to it, there is still relatively limited empirical data regarding the nature, extent and impact of workplace mediation in the UK (for a review see Latreille, 2011). However, there is growing evidence that suggests that mediation delivers sustainable outcomes and high rates of resolution and satisfaction among the parties. Cases that might otherwise result in long-term absence and litigation are resolved relatively quickly. Therefore, mediation is more likely to restore the employment relationship and offers significant financial savings compared with (often lengthy) traditional procedures.

While mediation may be useful for resolving specific disputes a more fundamental question arises over whether it can provide a basis for fundamentally changing the way in which organisations manage conflict in order to prevent employee grievances and disciplinary action. Lipskey et al., (2003) have argued that mediation may be one component of 'integrated systems of conflict management' that can transform the way in which organisations handle individual employment disputes. Thus it could be argued that workplace mediation needs to be considered in the broader context of workplace relations and the way in which organisations manage conflict.

Recent case study research, funded by Acas (Saundry et al., 2011) suggests that the introduction of in-house mediation[1] can be instrumental in changing adversarial attitudes towards individual disputes and embedding a focus on resolution. However, that study was based on a unionised public sector organisation, perhaps typical of those where mediation has tended to predominate (Acas, 2011b). This report offers a different perspective as it explores the impact of the introduction and operation of workplace mediation within a non-unionised, large private business within the services sector (QualCo[2]). In doing so it will:

- Examine the nature and pattern of employment related conflict and individual employment disputes within the case-study organisation
- Explore the way in which the organisation manages conflict and attempts to resolve individual employment disputes
- Identify any barriers to effective conflict management and early dispute resolution

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[1] An internal mediation scheme, in which some of an organisation's staff are trained as mediators and typically undertake mediations in addition to their normal duties.
[2] QualCo – is an assumed name in order to maintain the anonymity of the case-study organisation.

- Examine the introduction and implementation of workplace mediation within the organisation
- Explore the impact of the introduction of workplace mediation on the organisation's capacity to resolve disputes and the 'culture' of conflict management
- Assess the implication for public policy and organisational practice

The report is structured as follows. We provide a brief review of the relevant literature and policy debate relating to mediation and in particular its role in facilitating broader changes to the nature of conflict management and workplace relations. The methods used in this research are then outlined. The findings are presented in three main parts. Firstly we discuss the main sources of conflict within the case-study organisation, the way in which conflict is managed and the handling of individual employment disputes. Secondly we identify and discuss the key barriers to informal early resolution. Thirdly we explore the introduction, implementation and impact of the organisation's in-house mediation scheme with a specific emphasis on the degree to which this has shaped the 'culture' of conflict management. Finally we discuss the implications of the research for policy and practice.

2.   MEDIATION – CHANGING THE 'CULTURE' OF DISPUTE RESOLUTION?

The resolution and prevention of individual employment disputes has become an increasingly important issue for policy-makers and practitioners (Gibbons, 2007; BIS, 2011; CIPD, 2011). Over the last five years the number of employment tribunal applications has more than doubled (Ministry of Justice, 2011) while the costs of managing workplace conflict and the consequent impact on organisational performance have been highlighted by a number of employers' organisations (British Chambers of Commerce, 2010; CBI, 2011).

Within the UK, until recently, the dominant approach to individual employment resolution has been centred on increased regulation and the widespread adoption of formal disciplinary and grievance procedures (Kersley et al., 2006).   For employers, this was a response (in part at least) to the growing complexity of employment legislation and the consequent threat of litigation (Edwards, 2000). Conventional disciplinary and grievance procedures were also argued to provide a degree of employee voice; a source of organisational justice; and a way of improving and correcting employee behaviour.

However, the Gibbons Review into the UK's system of dispute resolution concluded in 2007 that a more flexible approach was needed that encouraged employers to address difficult issues at an early stage and allowed them to seek solutions through discussion as opposed to formal written procedures. Part of Gibbons' prescription was the extension of alternative dispute resolution (ADR) processes, and workplace mediation, in particular. For Gibbons, mediation provided *'a pragmatic, flexible and informal way of providing both parties with positive outcomes'* and therefore urged the government to *'Challenge all employer and employee organisations to commit to implementing and promoting early dispute resolution.'*

While the government has not (to date) introduced any specific measures to expand the use of workplace mediation, the introduction of a revised Acas Code of Practice on Discipline and Grievance in April 2009 has triggered greater interest amongst organisations in the potential offered by mediation (Latreille, 2011). Further evidence of this was provided by Rahim et al.'s (2011) evaluation which found specific cases whereby, *'the introduction of mediation into an organisational approach was prompted by a review of policies in light of the Code'* (40).

The government's enthusiasm for mediation remains evident. In their response to the consultation over 'Resolving Workplace Disputes' they conclude that:

> *'...we are even more convinced about the role that mediation can play, as one of the forms of early dispute resolution. There is much work to be done over the coming months and years to change attitudes to mediation and embed it as an accepted part of the dispute resolution process. Government will work with the industry and key stakeholders to make this a reality.'* (BIS, 2011:8)

Notably, the government also sees mediation as a way of transforming organisational culture. How the government intends to achieve this aim is not clear, but, they have launched two specific initiatives. Firstly they will work with leading retail organisations to see how their mediation expertise can be shared with organisations within their supply chains. Secondly, BIS are funding a pilot scheme establishing regional mediation networks to serve SMEs (BIS, 2011).

There is some evidence that the use of workplace mediation in the UK is increasing. Over the last five years, the annual number of individual mediations conducted by Acas has risen steadily from 35 in 2004/5 to 241 in 2009/10 (Acas, 2006; 2011a) while the Chartered Institute of Personnel and Development's (CIPD) 2011 survey of their members found that 57% reported using mediation compared to less than half in 2008 (CIPD, 2011). Mediation has been defined as *"a process of negotiation, but structured and influenced by the intervention of a neutral third party who seeks to assist the parties to reach an agreement that is acceptable to them"* (Mackie et al., 1995: 9). However, as Latreille's (2011:7) review of Acas and CIPD research argued, a wide spectrum of mediation is used within organisations. This can be divided into three broad categories. Firstly, managers and HR professionals can facilitate discussion between staff in dispute on an ad hoc basis. This takes place without reference to any specific written procedure and the facilitator will generally not have any formal mediation training or qualification. Secondly, organisations can engage external professional mediators to attempt to resolve specific disputes. Thirdly, mediation can be conducted through internal or in-house mediation schemes, within which an organisation can draw from a pool of staff who are trained and accredited as workplace mediators.

The use of in-house mediation schemes appears to be mainly limited to larger organisations and those in the public sector. In some cases, this pre-dated the Gibbons Review. For example, Bradford Metropolitan District Council introduced an Employee Advisory and Mediation Service in 2002 (Saundry, 2012). Furthermore, in 2006 five NHS trusts (Bedford and Luton Mental Health and Social Care Partnership Trust; South Central Ambulance Service NHS Trust; Derby Hospitals Trust; Guy's and St Thomas' NHS Foundation Trust and Bradford Care Trust and Bradford PCTs) took part in a pilot project whereby Acas, the Department of Health's HR capacity team and the NHS Social Partnership Forum worked to establish in-house mediation schemes in each of the participating organisations (Social Partnership Forum, 2009). In contrast, while there is evidence of enthusiasm for mediation amongst SMEs, the personal nature of small firm employment relations and the cost of mediation are undoubted barriers to its use (Harris et al., 2008; Johnston, 2008; Rahim et al., 2011). Research undertaken by Acas found that just five per cent of private sector businesses had used mediation, falling to just four per cent in small and medium sized enterprises (SMEs) (Williams, 2011).

It is argued that mediation enjoys a number of advantages over conventional written disciplinary and grievance procedures and litigation. In simple terms, the impacts of mediation can be traced across two dimensions. Firstly it is argued to provide a relatively quick, cost-effective and successful way of resolving individual employment disputes that might otherwise become enmeshed in long, complex processes and/or escalate into litigation. In this way, mediation is seen as having clear advantages over conventional discipline and grievance procedures (Sergeant, 2005; CIPD, 2008; Johnston, 2008; Harris et al., 2008; Latreille, 2010, 2011; Saundry et al., 2011).

Secondly, it has been suggested that the introduction of internal mediation schemes may have an impact beyond the specific disputes that are mediated. 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), team morale (Fox 2005), and even gain 'knowledge or resources that can greatly expand the opportunities for creative problem solving' (Kressell, 2006:747). Sergeant's (2005) evaluation of mediation in small firms in

the UK found evidence of a sustained improvement in employer-employee relationships. Similarly the CIPD (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 that these wider benefits are more likely to be realised when organisations introduce complementary ADR practices (Bendersky, 2003) as part of an overall strategic approach. The suggestion that organisations should develop integrated conflict management systems (ICMS) has gained widespread support in the USA (Lipskey, 2003; Lynch, 2001, 2003). For example Lipskey et al., (2003) have argued that this approach has the potential to transform organisations rather than simply manage disputes. In broad terms ICMS comprises of a combination of interest based (i.e. mediation) and rights based (i.e. grievance procedures) processes. A key motive for the introduction of ICMS is to change the 'culture' of conflict management. Similarly Lynch (2001, 2003) sees 'culture' as one of the key drivers for the introduction of ICMS. However, Lipskey et al., (2003) also argue that 'organizational culture, which reflects the values, experiences, and belief structures of the organization's decision makers plays a critical role' (125) in providing an environment in which ICMS can be introduced. Therefore, whether ICMS can be introduced in an organisation unless there has already been at least a degree of 'cultural' change is questionable.

Indeed, key organizational decision makers may be resistant to the introduction and use of mediation. For example, first line managers are often seen as being sceptical about mediation which they feel may compromise their authority (see also Sergeant, 2005). This threatens to limit the use of mediation as managers may be reluctant to refer cases to be mediated. Therefore the support and buy-in of line managers is seen as essential if mediation is to take root within organisations (Latreille, 2011). This is particularly important given the devolution of people management issues (Hales, 2005; Hall and Torrington, 1998) and the increased role played by line and operational managers in dealing with employee grievances and disciplinary issues with (Cooke, 2006; Hunter and Renwick, 2009; Jones and Saundry, 2011).

Similarly, 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' (Lipskey et al., 2003:165). 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). Interestingly there is little evidence regarding the involvement in or attitudes to mediation of non-union employee representatives.

This suggests that any exploration of mediation needs to be framed within the wider context of the way that workplace relations are configured and conflict is managed, something which the current policy debate fails to do. However, there is evidence that the introduction of in-house mediation can have a transformative effect on workplace relationships and critically lay the platform for channels of communication which facilitate the early and informal resolution of workplace conflict. Saundry et al.,'s (2011) case-study of the introduction of mediation at an NHS organisation focussed on the way in which mediation provided a conduit through which high-trust relationships between managers and trade union representatives were rebuilt. In doing so an adversarial approach to disciplinary and grievance issues was replaced by one in which the parties sought to resolve issues at the earliest possible stage through informal discussion and negotiation.

While this points to the broader potential of mediation, it might be argued that such findings may not be replicated within different organisational and employment relations' contexts. Therefore, this report examines the introduction of similar scheme in a very different setting – a large, private company in the services sector in which trade unions are not recognised but where representation within individual employment disputes is provided by elected employee representatives. Specifically it seeks to ask whether mediation is just another organisational tool for resolving employment disputes or a means through which the culture of conflict management can be transformed. In doing so the report first explores the way in which the case-study organisation manages conflict and handles disputes. It then examines the impact of the mediation scheme both in terms of its capacity for resolving disputes and also its influence on the way that conflict is managed.

3. METHODOLOGY

We examined 'QualCo' via an in-depth exploratory case-study. The objective of the case study was to explore the way in which 'QualCo' manages conflict and handles individual employment disputes. Therefore, the methods employed revolved around the attitudes, experiences and perspectives of key members of HR, operational managers and employee representatives.

The case study consisted of:

- Analysis of 'QualCo' policies for dealing with individual employment disputes.
- Semi-structured interviews with key stakeholders including staff association representatives, operational managers and HR practitioners.
- Data analysis of available 'QualCo' statistics on employee demographics, and numbers of employment tribunals.

The initial phase of the research involved examining current documentation regarding individual dispute resolution. This included policies and procedures relating to grievances, disciplinary action, appeals, mediation, performance management, equality and absence.

The study then moved onto the interview phase, and 29 in-depth interviews were conducted. An initial interview was held with a senior manager responsible for Employee Relations within 'QualCo', who is also a trained mediator. The discussion provided an extensive overview of conflict and disputes within the company. The organisation then provided contact details for 31 members of staff, who were approached independently by the research team, and interviews were secured with 28 of these employees. Interviews were neither sought nor conducted with individuals who had brought formal grievances or were subject to disciplinary action.

The sample of respondents included:

- 17 operational managers. This incorporated staff from various levels of seniority and who worked in business units which varied in size and function. We were given the contact details for 18 managers, and were able to interview 17.
- 11 HR contacts were given, and 9 of those were interviewed. This included HR Business Partners3 and staff of several levels from the 'ER advice service'. Moreover, 7 of these respondents were trained mediators.
- Contacts for 2 senior employee representatives were given and interviews were held with both.

Interviews were not conducted with non-management employees. This reflected both ethical issues and access considerations, given the sensitive and confidential nature of conflict and disputes. However, it is important to note that some of the managerial respondents occupied a relatively junior position and could offer a dual view of being managed and as a manager.

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3 Senior HR practitioners who covered a number of business units and had a strategic rather than operational function role in human resources.

The interviews were conducted either by telephone or in person depending on the availability of interviewees and their geographical location. All discussions were recorded on a Dictaphone. The interviews were personally undertaken by the writers of the report, but transcription was undertaken by a specialist third party service to enable prompt analysis. Respondents were sent their transcripts to ensure they were satisfied with its contents, and all respondents were assured anonymity. Interviews lasted between 30 minutes and 90 minutes. In total just over 20 hours of interview data was recorded.

In addition QualCo provided statistical data on: the demographics of their workforce, overall and by region; the number of employment tribunal claims they had received in the last two years; and the numbers and outcomes of disputes referred to mediation. This data was used to inform the analysis in the report but, with the exception of some of the demographic data; it has not been explicitly used within the text to ensure confidentiality.

4.   BACKGROUND

'QualCo' is a well-established private sector business which sells an array of products and services. It is a large company employing over 50,000 staff and the majority of its activities take place within business units located across the UK. Traditionally, the company has enjoyed a relatively robust market position. In recent years, in response to increasing domestic and global competition, there has been increased emphasis on performance, efficiency and service quality.

4.1   Employment at QualCo

While the majority of 'QualCo' employees (51%) have been employed for less than five years, there is a substantial proportion of staff (28%) who have worked for the organisation for more than 11 years. Over three-quarters of staff are women (75%) and a similar proportion is employed on part-time contracts. QualCo has a relatively mature workforce with almost two thirds of their employees aged over 40 years old. In terms of ethnicity, 82% of employees are white, although this is substantially different in urban areas where the recruitment pool is more diverse.

According to respondents, the company has enjoyed positive employee relations based on stable employment and good terms and conditions. However, increased competition has led to changes in working arrangements and pay and benefits and also seen the organisation adopt a more pro-active stance to the management of employee performance, conduct and absence.

4.2   Changing nature of the HR function

The drive for improved efficiency has been reflected in the structure of HR management. Until about ten years ago, the organisation operated a generalist approach with dedicated personnel managers in each business unit who had a range of specific responsibilities including handling and hearing disciplinary and grievance issues. A regional structure was then introduced whereby 'roving' HR managers typically covered a number of locations. More recently, the organisation adopted a three-cornered HR model with the creation of a shared service centre for HR administration, a centralised strategic policy and advice function (including an ER advice service), and a number of regional HR Business Partners (HRBPs) who provide strategic HR support to a number of business units.

The new 'ER advice service' provides specialist guidance by telephone for managers or employee representatives in relation to disciplinary and grievance cases, absence issues, ill health and employment tribunals. The service is located within various sites across the UK but callers dial a national number and typically speak to the first available advisor, regardless of the location of the caller. However, in the case of long standing or complex cases a specific advisor may be assigned to a case and if necessary face-to-face meetings can take place.

Importantly, the day-to-day management of conflict, investigations and disciplinary and grievance decisions are now the responsibility of operational management. HR practitioners may become involved in more serious cases where it may be difficult to appoint an impartial manager to investigate or hear a case, but this is the exception rather than the rule.

4.3   Dispute resolution at QualCo

The pattern of individual employment disputes experienced by QualCo is typical for the sector in which the company operates. Respondents reported that the numbers of formal grievances were considerably lower than disciplinary cases. Furthermore, available data suggested that levels of employment tribunal applications were approximately 20 per percentage points lower than the industry norm as indicated by the Workplace Employment Relations Survey (WERS) 2004 (Kersley et al., 2006: 225).

Traditionally these disputes have been managed through an array of formal processes which reflect the company's desire to ensure that staff are treated consistently and fairly. The grievance policy sets out a clear procedure for dealing with employee complaints, while misconduct is dealt with through the disciplinary policy, the aim of which is 'to encourage improvement in behaviour, not to punish'. Performance issues are dealt with through the Managing Poor Performance Policy which sets out a defined process through which warnings are given, assistance provided to improve and ultimately sanctions taken. It also includes a system of performance improvement notices (PINs) which outline performance concerns, actions and targets but do not constitute formal warnings. In addition, the Managing Sickness Absence Policy sets out expected levels of attendance and trigger points which if reached may result in disciplinary action. Finally the organisation has a specific policy which explains how employees can appeal against disciplinary or grievance decision.

The introduction of the revised Acas Code of Practice on Discipline and Grievance in 2009 prompted a number of changes to policy and procedure designed to encourage the early resolution of disputes and reduce reliance on formal procedure. The grievance and the appeals policy were simplified and streamlined while the former was also revised to increase the emphasis on informal approaches and highlight the availability of mediation.
Perhaps most importantly, an in-house mediation scheme was introduced in 2010 and initially comprised of nine trained mediators with a further tranche of mediators trained in 2011. Mediation under the scheme is primarily intended to provide an early intervention to prevent the escalation of interpersonal conflict and potential employee grievances. However, it can also be used to 'rebuild relationships after a formal dispute has been resolved'.

4.4   Employee voice and representation in individual employment disputes

The main source of employee voice within the organisation is a network of representatives who are directly elected from the workforce at business unit, regional and national level every five years. Trade unions are not recognised. Formal consultative mechanisms at business unit, regional and national level are supplemented by regular informal meetings between employee representatives and managers.

Crucially, for the purposes of this report, representatives have a wide role including: accompanying employees at disciplinary or grievance hearings; representing employees views either by raising issues on the behalf of other staff, or by asking for colleagues' feedback as requested by management; and acting as a channel for communicating changes to employees. In addition, staff are encouraged to discuss their concerns with a representative before raising a grievance or appeal, and if they are facing disciplinary action. Importantly, all

elected representatives receive training in accompanying staff within disciplinary or grievance hearings. Employees may also elect to be accompanied by a trade union representative if they request, however respondents reported that this was rare.

4.5 Summary

In summary, QualCo and its employees have experienced substantial change over the past 10 years, much of which is linked to industry wide developments that have transformed the pace, place and shape of work. The need to remain competitive has led to changes in working conditions and benefits and an increased focus on performance, cost and customer service. The way in which employment relations are managed has evolved through the introduction of a telephone-based and centralised 'ER advice service' and regional HR Business Partners. These now provide advisory and strategic support to operational managers who have day-to-day responsibility for people management issues. Procedural changes are also evident, with increased emphasis on more informal approaches to early dispute resolution, driven by the introduction of an in-house mediation scheme.

5.   MANAGING CONFLICT AND DISPUTE RESOLUTION AT QUALCO

In broad terms the interview data suggested that there were two main sources of conflict over employment issues. The first was rooted in the response of staff to an increasing emphasis on performance and efficiency. The second reflected employee attitudes to work and the extent to which this clashed with organisational norms, rules and standards. Both appeared to be shaped by external factors: increased competitive pressure and also local labour market conditions. In past years, QualCo's response to conflict has revolved around a comprehensive set of formal policies and procedures. However, more recently, there has been an increased focus on trying to manage conflict and resolve employment related issues at an early stage in order to prevent disputes being handled through grievance and disciplinary procedures.

5.1 Patterns of conflict – change, performance and expectations

Staff employed by 'QualCo' have generally enjoyed relatively generous terms and conditions and high levels of employment security. However, intense competition has led the company to adopt new systems of work and in particular, a more pro-active approach to the management of performance. For more experienced staff this has sometimes been problematic and their resistance to change was seen by a number of respondents as a source of conflict:

> '…we're constantly changing to keep in line with the rest of the business….there are individuals that have been here for a long period of time…they don't like change ….' (Operational Manager)

The pursuit of improved performance had also led to increased turnover of management staff. This could also be a source of conflict as new managers sometimes lacked experience and could bring management styles which clashed with the existing culture of particular locations. In addition where new business units had opened or expansion had meant an influx of new staff, there were often teething problems:

> '…you tend to get that first few years of settling in where…people are just adjusting to a new way of working…new procedures, new managers, and people are developing' (Operational Manager)

Importantly, our findings suggested that the relationship between length of service and conflict was not straightforward. While more established staff often found coping with change difficult, respondents pointed out that this was balanced by commitment and loyalty to the organisation. In contrast a number of respondents believed that newer (and often younger) staff were generally 'less engaged' than their more experienced colleagues and this could lead to conflict. One respondent highlighted a difference between employees who have '…worked with us for years and years' and who are 'mortified' if they 'do something wrong' and newer staff who are 'very, very mobile in their jobs' and who 'don't really have any buy in to the brand'.

According to interviewees, this was more acute within certain locations. For example London was seen to have higher levels of employment related problems than other areas. A number of reasons were given for this. Firstly, the size of the London labour market meant that staff believed that there were other employment opportunities open to them, reducing the 'cost' of becoming involved in conflict. Secondly, while wages at QualCo were high in comparison with

sectoral competitors, they were low relative to living costs and those available in other occupations. This could make it difficult to recruit and retain high calibre staff and to generate loyalty and commitment.

However, the impact of local economic conditions worked two ways – in large cities within the North of England and Scotland, there were relatively few problems related to employment issues. A number of explanations were suggested for this. Firstly, the age and service profile of the workforce was seen to be very different to other locations with a greater proportion of established staff. Secondly, lower living costs in certain areas meant that levels of pay and conditions compared well with other occupations while higher levels of unemployment restricted alternative job opportunities.

5.2 Managing conflict at QualCo – communication and performance management

For most respondents the key to managing conflict and avoiding employment disputes was to address issues as early as possible and through discussion as opposed to disciplinary and grievance procedures. We found that there were three routes through which this was achieved: action on the part of the line manager; application of performance management systems; and intervention of employee representatives.

Among those managers that we interviewed, there was an emphasis on identifying and attempting to resolve conflict by maintaining lines of communication with staff. This, it was argued, was the main way in which they prevented discontent escalating into full-blown disputes:

> *'...we try and resolve things, before they get to that, that point, where somebody feels that they need to take it formally...So, by actually sitting down with the individual, and seeing if we can come to some sort of compromise.' (Operational manager)*

The ER Advice Service played an important role in this regard. Advisors would encourage managers to explore the possibility of discussing the issue with the employee(s) concerned and/or their employee representative. While 'remote' guidance of this type is sometimes associated with an emphasis on procedural adherence and legal compliance, the service was used as a way of encouraging managers to seek to resolve issues before formal procedures were triggered:

> *'...working with line managers at those earliest phases, the minute they're getting a sniff of something not feeling right...really working with them nip [issues] in the bud' (HR Practitioner)*

Performance management systems offered a further opportunity for identifying and addressing issues at an early stage. Staff performance was reviewed through a structured appraisal process but was also informally discussed and monitored on an ongoing basis. One manager explained that this might just take the form of a 'quick chat' for a few minutes each day. Nonetheless, it was important to keep employees informed as to how they were performing, otherwise they may think, '*I'm fine, I'm doing what I need to do'...when they may not be...'.*

The way in which the performance of managers themselves was reviewed also provided a lever through which effective conflict management could be encouraged. For example, HR Business Partners would review key performance indicators (KPIs) and data from the ER Advice Service for specific business units

under their remit. If higher than expected levels of disputes or absence were found then they would look to put measures in place in order to ensure that people management issues were addressed. An HR practitioner explained that they were:

> '…very close to the KPIs and as soon as the risk emerges then the HR Business Partner is absolutely all over it with the head of region…they want to make sure the support is there to drive the KPIs…'

Therefore, co-ordinated action from HR Business Partners, the ER Advice Service and Senior Managers was seen as key in enabling a pro-active approach.

Employee voice also appeared to be important in facilitating effective conflict management. A number of respondents stressed the need to develop an 'open' culture whereby staff felt that they were able to voice their views and opinions. This was explained by one operational manager as follows:

> 'I've got a very open relationship with my team. If they're unhappy about anything then they'll always bring that to me and it's, we'll always deal with it before it gets to that stage'. (Operational manager]

However, this was not always the case. Conflict often developed between employees and line managers, typically as a result of attempts to manage performance as discussed above. In this context, employee representatives were seen to play a central role in acting as intermediaries between the manager and the employee. Without this, employees, who may not wish to talk directly to their manager, would often resort to the grievance procedure to express their concerns:

> 'A lot of… the problems, or issues that our staff have, can be sorted at ground level….they can go to, the rep, and the…rep can discuss with their manager, and they can bring it up at the meeting… A lot of people would rather speak to the reps… If they have a grievance or there's something wrong.' (Operational manager)

Frequent meetings between employee representatives and HRBPs also helped to identify any issues that were *'bubbling under the surface'.* According to one HR practitioner, employee representatives *'know exactly what's going on'* in contrast with some managers who want to *'paint a rosy picture'.* In addition, respondents reported that representatives would typically attend management team meetings as well as meeting with line managers on an informal basis to share any concerns:

> '…they're the eyes and ears on the floor…they're the ones that talk to the [staff], so if there is some kind of rumbling … we're expecting them to be picking that up and then going to the relevant manager' (Operational manager)

5.3 Handling individual employment disputes at QualCo – process and procedure

Whether conflict developed into disciplinary and grievance cases depended not only on the effectiveness of management attempts to resolve conflict but also on the nature of the issues. In respect of employee grievances, there appeared to be the potential for resolution even after procedures had been enacted. This was partly due to the fact that grievances were generally related to personality issues

or caused by a breakdown in working relationships between line manager and their staff. The grievance procedure explicitly encouraged parties to resolve issues 'informally' and also made disputants aware of the option of mediation. Therefore, even when an employee had made a complaint under the procedure, there was scope for managers to seek to resolve the issue prior to any formal grievance hearing. This could be through having a conversation with the aggrieved party, bringing the disputants together to discuss their concerns and/or by utilising the organisation's mediation scheme. In this sense, the procedure could act as a prompt to the parties to *'hopefully try and nip things in the bud before they become an issue'* (*Operational manager*).

In contrast, there was a widely held view that once a disciplinary issue had emerged, the initiation of the disciplinary procedure was unavoidable. Importantly, respondents stressed that disciplinary action was sometimes needed in order to convince the employee concerned of the potential implications of their actions and improve their behaviour or performance. According to one manager some employees:

> *'...don't get it until they're in a formal setting with letters, meetings and sanctions and an accompanying person and the potential of dismissal if it doesn't improve... that sometimes just makes the person sit up and say 'Right I'm going to sort myself out now'...'* (*Operational manager*)

However, this could also lead to grievances as a result of managers trying to raise questions over performance which may not have been previously raised with the employee. In the context of increased competition and the demand from senior management for results, line managers were expected to take a more assertive stance on poor performance than previously. This change had led to tensions:

> *'...managers have a job to do, and quite often, people don't like the feedback.... They will come in and say that my manager's bullying me, or harassing me, when, actually, there's no evidence to suggest they are...they're feeding back about how they've done something, and they don't like what's being said to them.'* (*Operational Manager*)

This suggests that we should be cautious in interpreting levels of disciplinary and/or grievance cases. An absence of employee grievances or disciplinary sanctions may be evidence of an organisation that manages conflict pro-actively and effectively. However, it could also reflect one in which difficult issues are ignored. Conversely, the pro-active management of performance and conduct could lead to an increase in disciplinary action and employee grievances in the short run but may have long-term benefits in reducing conflict in the future. Respondents were agreed that procedure could play a positive role by enabling managers to set clear standards and expectations for staff in terms of their behaviour and performance. However, it was crucial that they were implemented in a fair and consistent manner. If this was not the case, procedures would have little legitimacy and their application could be counter-productive.

Respondents were also generally positive about the role played by employee representatives in accompanying staff in disciplinary and grievance hearings. They were seen as important in promoting fair treatment and compliance with policy and procedure. Moreover, they provided support for the employee, ensured they were properly prepared and helped employees to put their case across in a clear and effective way. It was also suggested that they helped to remove emotion from the proceedings and manage expectations so that employees were aware of the key issues and potential consequences:

> *'…[they] can also help the disciplinary manager because they will already have explained to the individual that this is what the policy is… in a way break the ice slightly for the person because they will have had a prior meeting and they will have probably discussed what the potential outcomes could be…'* (Operational manager)

> *'In fact, often, it would be me, or my colleagues, that will say to an individual, you do understand that this could mean … it's sometimes about getting the person they're comfortable representing, to actually say, well, you know, we've done this…You need to be straight with people.'* (Employee representative)

It was also claimed that representatives could have a more frank and open discussion with employees than managers or HR staff would be able to conduct. This could unearth mitigating factors and allow a more informed consideration of the case.

5.4 Summary

The external context within which QualCo operates and its employees work and live played a key role in shaping the pattern of conflict within the organisation. Increasing product market competition triggered changes in the management of work and performance, while employees' response to this was conditioned in part at least by the local labour market conditions.

In the last two to three years, an increasing emphasis has been placed on trying to manage conflict before it escalates into employee grievances or disciplinary action – here, the role of the line manager, performance management systems and employee voice were all found to be influential. The ability of line managers to maintain open lines of communication with their staff was vital if issues were to be 'nipped in the bud'. However, where this breaks down, the ability of employees to talk to their representatives and for representatives to act as an honest broker could provide the basis for resolving disputes before parties become enmeshed in formal grievance and disciplinary procedures.

Nonetheless, formal procedure remained important in setting clear expectations and providing the basis for fair and consistent treatment. Importantly, the findings above suggest that the relationship between conflict management and the development of individual employment disputes is not straightforward – while attempts to address and manage difficult issues at an early stage may prevent some disputes, it may also bring disciplinary issues to the surface and even trigger employee grievances. Therefore, low levels of disputes might simply reflect a lack of attention to performance issues. In contrast, an increase in the incidence of disciplinary action and employee grievances does not necessarily imply management dysfunction but could reflect a more proactive approach to conflict.

6. BARRIERS TO EFFECTIVE CONFLICT MANAGEMENT AND THE EARLY RESOLUTION OF DISPUTES

As described in the previous section, managers within Qualco were actively encouraged to manage conflict and resolve disputes through informal discussion and so minimise the need for formal procedure. However, we found that this was hampered by three main barriers. Firstly, some line and operational managers lacked the confidence and capability to handle 'difficult issues'. Secondly, despite the reform of a number of policies, the nature of organisational procedures and the need to retain consistency and ensure legislative compliance constrained managers in attempting to resolve issues at an early stage. Thirdly, commercial and operational demands could limit the time that managers were able to spend on managing conflict and lead to a 'safety-first' approach to workplace conflict.

6.1 Line managers – confidence and capability

The confidence and capability of line and operational managers in handling difficult issues was seen as the main barrier to early dispute resolution. This was of particular importance given the devolution of responsibility for conflict management that had taken place within Qualco. Therefore while line managers were expected to address poor performance, absence, misconduct and inter-personal conflict, a significant proportion found this part of their work extremely challenging:

> *'I think that we've got pockets of managers who are developing some really good skills...And I think we've got others who are still quite nervous, and would need some support throughout....'* (HR practitioner)

A number of operational managers that we interviewed also revealed that they personally felt apprehensive undertaking people management tasks. The following quote provides a graphic illustration of this:

> *'I don't know if we'll ever feel confident in it... I mean, we get to know what the policy is, and we get to know...what to do when...But, it's always, always a minefield... I never feel particularly confident doing it.'* (Operational manager)

This lack of confidence manifested itself in two main ways. Firstly, some managers would be reluctant to acknowledge emerging problems, preferring instead to sweep issues 'under the carpet'. Issues would be left to escalate until there was no alternative to a disciplinary sanction, or a formal employee grievance was lodged. Secondly, when issues were addressed managers tended to invoke procedure as a first step rather than exploring alternative ways of resolving difficult issues. Subsequently procedure was applied in a rigid and inflexible manner, taking little account of context and/or mitigating factors. This, in itself, could generate further conflict among employees who felt that they may not have been treated fairly:

> *'I think one of the biggest issues...is about line manager capability around making a decision...in terms of looking at mitigation, and taking that into consideration...people feel really aggrieved when they think, 'that situation's exactly the same as mine. I got given a [disciplinary] sanction, and they didn't – it's not fair...'* (Employee representative)

An important source of managerial uncertainty was a fear of failure. Managers did not want to be seen to get things wrong and risk internal scrutiny and possible

criticism from others in the organisation. This not only affected how they managed a difficult situation but also whether they were prepared to ask for support. Respondents from the ER Advice Service explained that while they tried to encourage line managers to address issues at an early stage, by the time they were contacted it was often 'too late' too avoid formal procedure.

The sense of unease felt by managers was also linked by respondents to the threat of employment tribunal action if they departed from procedure:

> 'we've raised… management … to fear legislation … and they're petrified about talking to people about things that might not be comfortable. So if they've got an issue with a policy or a process, rather than say, look, let me explain it to you, they'll say, put it in writing, let's let HR deal with it. And actually, we've moved away from just knowing people, knowing our teams, knowing … how to manage them as people. And we're trying to get back to that a bit more….[But] there's a big fear factor …that actually, they may have to go to court, they may have to be up in the dock' (HR Practitioner)

For some respondents this 'fear factor' was particularly acute amongst newer managers who had less experience. In contrast, managers who were more established within their role had the conviction to take a more nuanced and flexible approach:

> '…when you're experienced, you,… take risks….you're more likely to have that conversation…whereas for example… if you're younger and, and coming into a new system… you tend to stick very rigidly [to the procedure], because you're almost afraid…' (Operational manager)

Line manager confidence was also shaped by the attitude of senior management. In some cases, senior managers not only backed the judgement of their managers but actively helped to coach more junior staff through difficult cases:

> '…at times I went to my manager. I was like "this is completely out of my comfort zone, I really don't feel comfortable"… they said they would always be there if I didn't feel comfortable going to meet the individual on my own… they met with the ('ER Advice Service') support link … they were in contact with the HR regional manager … they were really supportive.' (Junior operational manager)

However, where managers were unsure as to whether their superiors would support their judgement they were less likely to take calculated risks in order to resolve disputes. Furthermore, the pressure on senior management to meet KPIs could also have contradictory impacts and encourage a more rigid and punitive approach to conflict. For example, one respondent explained that as their senior manager had KPIs in relation to absence, there was pressure to issue sanctions rather than taking time to explore if there were underlying issues.

Interestingly, the training offered by QualCo was not widely cited as a source of the problems outlined above. Training was generally provided on a wide range of people management issues and unlike in many organisations, it extended beyond mere policy and procedure and included discussion of conflict management and handling difficult conversations. While training for new managers was seen to be effective, respondents suggested that the skills development when in post could be a little inconsistent. Furthermore, the commercial pressures of the role made it difficult for managers to take up training opportunities.

Importantly, it was argued that training alone is not enough to develop competencies in people management, and respondents felt that new managers need experience, and the opportunity to learn from skilled and proficient colleague. Many interviewees believed that levels of capability were often related to the personal traits of the individual manager – in short some managers were simply 'good at dealing with people', while for others their strengths lay elsewhere. Furthermore for new managers it could take time to adjust to the added responsibility of people management and the culture of the workplace.

> *'…you need to understand the culture before you can go in head-on to deal with the issues, it is absolutely right that they're dealing with them but it's the way that you deal with them which means you don't have disputes at the end of it….' (HR Practitioner)*

Within some workplaces, difficult issues were relatively rare – as a result it was suggested that a regional mentoring or shadowing system would be useful in developing skills among operational managers. One respondent described a successful initiative whereby inexperienced managers would observe experienced colleagues during discipline and grievance cases - taking minutes and discussing their perspectives of the dispute. The managers would then exchange roles, enabling the less confident colleague to take a leading role in a case, but remaining supported:

> *'I think… why it was so successful, was because it was colleague to colleague….Nobody was reporting back on anybody else – it was just one of these real win, win situations.' (Employee Representative)*

Importantly, despite their 'distance' from operational management, the ER Advice Service was argued to play an important role in coaching and developing operational managers. ER advisors would often talk managers through different courses of action and their implications, providing advice and guidance. Furthermore they would liaise with the relevant HRBP if they felt that there was a need to provide additional support and development to certain line managers.

6.2 Performance and conflict management – pressure and priorities

Even when managers had the confidence to hold 'difficult conversations' with their staff, balancing this with competing operational imperatives was not easy. Importantly, conflict management was not specifically reflected in the KPIs under which the performance of managers was assessed. In the context of increasing workloads and intense pressure to improve customer service and increase efficiency, there was simply 'not enough time to do everything' and people management issues were not prioritised.

There was a perception that addressing issues related to conduct or performance at an early stage was extremely time consuming, particularly where this involved discussing sensitive issues with members of staff. Furthermore it ran the risk of having a negative impact on staff morale and possibly leading to accusations of bullying and harassment. Thus managers would either avoid addressing an issue or simply trigger formal processes hoping that this would then be 'someone else's problem':

> *'…sometimes it's just lack of time, people… take the easy way out, they make a decision without any thought to it…Because it's written down and that is the policy…or they overlook some facts because it's convenient to them…' (Operational manager)*

A number of respondents explained that it had not been uncommon for managers facing complaints from staff to encourage them to submit a grievance as this would mean that it would be investigated and ultimately handled by another manager.

We noted in the previous section that the performance management process could provide an opportunity for identifying and addressing early signs of conflict. However, there was a view from a range of respondents that for many managers (and staff) the appraisal system was often reduced to a 'tick-box' exercise as opposed to a developmental or conflict management tool. Once again this appeared to relate to a lack of time and a reluctance on the part of some managers to confront difficult issues. One ER advisor explained this as follows:

> '...by the time I get a phone call about poor performance ... they're at their wit's end. If you managed it by the process, you'd be at a point now where you're at dismissal stage, rather than at the start of a process...they don't use the processes that are in place well enough...They have the conversation, but they don't always back it up...People fear policy and process, because it means bad things. Disciplinary means bad things, or performance management means bad things. And it's a hard conversation to have.'

However, there had been attempts to make the management of performance more nuanced. This involved changes to the appraisal documentation and also the introduction of Performance Improvement Notices which provided managers with a process through which concerns over performance could be raised without issuing a formal warning. This was seen as a positive development by respondents.

6.3 The 'problem' of procedure

While there had been significant attempts to make procedures more flexible and streamlined, reducing the reliance on rigid procedural adherence was not easy. There was a view that employees themselves were sometimes suspicious of informal attempts to address difficult issues. For example, a number of respondents suggested that there was a perception amongst staff that a formally raised grievance would be addressed more seriously, and therefore employees would push for this rather than an informal resolution.

HR managers and employee representatives also argued that 'QualCo' still retained a 'culture' of procedural formality and convincing managers that they could adopt a more informal approach could be difficult:

> 'it's about trying to make managers understand that if they can identify these issues and nip them in the bud quickly...trying to get...their mindsets into that...but it is quite a challenge.' (HR Practitioner)

In addition, it was also felt that it had been too easy (in the past) to appeal against disciplinary and grievance decisions even if there were insufficient grounds.

In response to these problems and also prompted by the revision of the Acas Code of Practice on Discipline and Grievance, the organisation had revised the Grievance and the Appeals policies in order to encourage informal resolution:

> *'…when the ACAS code came out we had to really go through it and change the language and soften it up and put a real emphasis on informal resolution…'* (HR Practitioner)

As a result a new passage was included within the grievance policy that stressed the importance of informal resolution and highlighted the possibility of using the company's mediation scheme before formal proceedings. The idea according to one respondent was to 'nudge' employees and managers into thinking about trying to resolve a dispute through informal discussion or using mediation as opposed to submitting a formal grievance. However, at the same time the appeals policy was tightened to ensure staff have genuine grounds for appeal:

> *'…we can really streamline these things down, to the point where if you raise an appeal and there's no grounds for it, we'll now turn it away. We never did that. We used to hear every single appeal that came through, even if someone said, I just don't like what the outcome was…So we're getting better at…growing some teeth…we're getting better at streamlining the paperwork.'* (HR Practitioner)

Among those HR practitioners interviewed there was a belief that this had made an impact in reducing the amount of appeals, however, operational managers still felt that the organisation was too cautious. This reflected an interesting tension in the attitudes of line managers towards formal procedure. There was a general view that policies were too burdensome and time consuming. Furthermore, a number of operational managers argued that there was a need for greater flexibility and scope to handle issues in an appropriate way:

> *"the policy that's there in front of you is great but they're very black and white….And it's you know obviously every case is different…and it's being able to relate that case to the particular policies"* (Operational Manager)

At the same time, others stressed the need for greater uniformity. This apparent contradiction reflected the desire of managers for greater freedom to manage difficult issues but also a fear that attempts to handle an issue informally could lead to appeals from staff, criticism from superiors and even litigation. Thus, once procedure was enacted, it developed its own momentum and it was very difficult to intervene to explore alternatives:

> *'…once it starts it's like a ball that rolls and there's things you have to do and letters you have to send and, there isn't anything to take it offline with a chat in a room….it would be looked on as you're not following the procedure'* (Operational manager)

6.4 Summary

Overall, our findings suggest that despite a desire to move towards more informal resolution there are a number of barriers to this. Perhaps most importantly, line and operational managers, who have the prime responsibility for addressing and resolving disputes often lacked the confidence and/or the capability to do so. Despite the best efforts of the ER advice service to provide coaching and support and also relatively extensive training provided by the organisation, this still appeared to be a problem. This could be explained in part by the intensification of managers' workloads and commercial priorities which could reduce the time and the incentive for managers to invest the time needed to address and resolve problems at an early stage. The threat of litigation and potential criticism if managers departed from procedure also constrained more informal and flexible approaches.

7. MEDIATION AT QUALCO – EARLY RESOLUTION OR LAST RESORT?

An in-house mediation scheme was introduced by QualCo in 2010 in response to changes in the policy landscape and also to drive a more informal approach to conflict management and dispute resolution within the organisation. While it is early to make a substantive judgement on the impact of the initiative, there are some indications to suggest that it has had clear benefits in terms of: resolving potentially costly and damaging disputes; enhancing the skills of those managers who have been trained as mediators or who have been involved in mediation; and embedding the primacy of informal resolution within the HR community. However, the impact in the rest of the organisation has been less pronounced. Those managers with no experience of mediation under the scheme would appear to be reluctant to use it and generally view it as a formal process of 'last resort'.

7.1 Introducing mediation – rationale and design

Two issues triggered QualCo's consideration of an in-house mediation scheme. Firstly, there was a sense in the organisation that grievances (in particular) were not being resolved at an early stage. Even where the volume of grievances was relatively low, when they did occur they tended to be long, costly and extremely disruptive. Secondly, the revision of the Acas Code of Practice on Disciplinary and Grievance procedures led to a general review of dispute resolution within the organisation:

> '…when we did the work on the ACAS code and we were looking at mediation, we were looking at informal resolution, we were looking at different things we could do and different ways of working and mediation is obviously something that was recommended…' (HR Practitioner)

From the very start, the rationale underpinning the scheme was not simply to resolve formal grievances but to encourage managers to adopt a less formal approach to conflict management. Certainly, among managers in our sample there was general support for the idea of mediation:

> 'I think that's an absolutely excellent idea and that will stop things…dragging on for a long, long time and with both parties agreeing to it and it being resolved in a professional and informal nature.' (Operational manager)

It was also welcomed by HR practitioners and by the staff association. For employee representatives, mediation was another way in which they could help their colleagues to resolve disputes.

> '..if it's used in the right way, it can…save time for everybody…it gets to that point of adult conversation sooner rather than later…where it is used and where people go in with that genuine, 'I want to try and resolve this', I think it's pretty effective..' (Employee representative)

Initially, nine employees, drawn from senior staff within the HR function and in particular from the ER Advice Service, were trained as mediators. The organisation decided to select existing HR professionals as mediators for a number of reasons. Firstly, it was argued that they would be more likely to provide a degree of impartiality that would in turn underpin trust in the scheme. Secondly, it was thought that they would have the basic knowledge and skills to

give the initiative the best chance of success. Moreover, mediation training would broaden and enhance that skills base.

Thirdly, HR professionals had more time to devote to training as opposed to operational staff who were working under significant commercial pressure. It was also felt that if operational staff were trained there was no guarantee that they would be able to free themselves up to carry out mediation work. Despite this there was general agreement that in an ideal world, mediation skills would be extremely valuable for operational managers faced with handling conflict on a regular basis.

The fact that senior HR staff were trained also caused a subsequent problem with availability, so that the bulk of the mediations had been carried out by the less senior mediators within the group. More recently the decision was taken to train a further twelve mediators again drawn mainly from the ER Advice Service. However, in this case mediators were selected from different parts of the country and from more junior positions.

Most of the mediators interviewed found their training to be a largely positive experience, which widened their existing skills portfolio. Nonetheless, a number of respondents, felt that the training was too long and that as a result there was a problem with scalability – limiting the number of mediators that could be trained. Interestingly, the second tranche of mediators were trained using a shorter, three day format rather than the five day course used initially.

7.2 Scope of mediation – 'flexing' mediation to resolve disputes

Most of the cases that were referred to the mediation scheme involved interpersonal disputes where the work relationship had broken down. In principle, the aim was to try to utilise mediation before a formal grievance hearing but after there had been attempts to resolve the issue informally at a local level. The job of the mediator was, in the words of one respondent, to 'recover and repair':

> 'what we're trying to do with mediation is…utilise it as an informal part of our grievance process, or our grievance policy, in that sense that we want to try and capture these festering issues … before they escalate to a formal grievance. (HR Practitioner)

There was a view that mediation was not an appropriate way of dealing with straightforward disciplinary issues but could be used to try and rebuild relationships following disciplinary action. In addition, respondents pointed out that grievance and disciplinary issues were often intertwined. For example, grievances were sometimes submitted in response to attempts to impose discipline or manage performance. Mediation could therefore be used to try to avoid 'tit-for-tat' complaints. Similarly, mediation could resolve interpersonal disputes which could otherwise escalate into disciplinary action. An HR practitioner gave the following example:

> '…because you could have two [employees] …who are continually arguing with each other…so there's a grievance between each other …but then, the reason why mediation could be considered is because the Line says "I've had enough of these two… I'm going to discipline them both … because they just weren't listening"…'

Importantly, in addition to the cases referred to mediation, QualCo had benefitted from the skills of their mediators in a number of different ways. Firstly, mediators, in their role as HR professionals had used their mediation skills to try

to resolve disputes that were outside the scope of the scheme. For example, respondents reported that they had taken part in facilitated discussions between staff and used mediation techniques to good effect.

Secondly, mediators had been used to conciliate at an early stage in cases in which existing employees had brought employment tribunal claims against the organisation and the matter had been referred to Acas. The mediator involved explained this as follows:

> '...this was one where ACAS did approach us, and what we said was we are really keen to resolve the matter...but actually what we'd like to do is actually use our own mediation service. So in effect, in that case I mediated between the individual and the relevant line manager...and... we actually ended up with both of them being on very good terms and the claim being withdrawn.' (HR Practitioner)

It was accepted that this was perhaps closer to conciliation than 'pure mediation', but there was a willingness to 'flex the scheme' in order to achieve a resolution.

Thirdly, one of the mediators had played a role together with QualCo's legal representatives in reaching settlement in claims that had proceeded to the employment tribunal. This had particularly involved the mediator using their skills to negotiate a settlement and also return to work for the employee concerned. A key function of mediation in this context was to:

> '...rebuild their relationship with the company... and the trust in terms of "how do I come back"...part of that would normally have been a basic reinstatement meeting, so there were the usual details of pay to sort out, but we used it in a much broader sense in terms of actually rebuilding the trust in the organisation as well.' (HR practitioner)

One of the key benefits of this more flexible application of mediation skills was not only success in resolving potentially very costly disputes but that it provided visible evidence of the commercial benefits of mediation to senior management.

7.3 Mediation – implementation, impact and outcomes

In terms of outcomes there was broad consensus that the scheme had been successful in reaching agreed resolutions. As with most schemes, unsuitable cases were screened out at an early stage. Nonetheless, in the 18 months that the scheme has been operating, there had been 39 referrals to the scheme and a resolution had been reached in every case. In 21 cases a full agreement was reached following the full mediation process while the other 18 cases were settled prior to the completion of the mediation process. Moreover, the organisation reported a high level of client satisfaction. Certainly, those managers that we interviewed who had been involved in cases referred to mediation were very positive about the process. The following was typical:

> I would absolutely say it was a positive experience for all involved, and the individual definitely got a lot out of [mediation]...' (Operational Manager)

There was also evidence that the conflict management skills of such managers had been enhanced by the experience. One operational manager explained how mediation had influenced his practice and the way in which conflict was approached within his workplace:

> *'I've started using the word [mediation] more, with my [junior] managers in terms of some of the issues that they will come up with…rather than saying to somebody 'oh she has a problem, right tell her to take a grievance', we're going to have to work very hard…to steer people towards using more, softer language in terms of…we can get a meeting, and get somebody to mediate it, let's have a discussion…I think once we get to that stage I think we will be making progress.' (Operational Manager)*

More specifically, it was reported that managers, faced with intense operational pressures may find it difficult to understand the implications of their actions. Taking part in mediation, it was suggested, inevitably made these managers a little more aware of the potential impact of their decisions on staff:

> *'I think awareness of an issue will always make you change a little bit because I genuinely don't think the manager had any idea of the impact that he had on this individual.' (HR practitioner)*

Furthermore, it was suggested that the mediation process could help all employees involved to develop strategies for dealing with conflict. One respondent gave the example of an employee who had put in a number of different complaints. In their case:

> *'[mediation] taught that person to, to listen, and try and see both sides of it. As well as some of the line managers that absolutely changed their behaviour in the way they, that we were able to do business with them.' (HR Practitioner)*

For mediators, the impact was a little more mixed. While some mediators felt that mediation simply reinforced what they already knew and their existing competencies, others argued that they had gained new skills and perspectives. In particular, it was argued that mediation addressed a tendency for HR practitioners to provide solutions by emphasising the importance of those in dispute to develop their own settlements:

> *'I find now that I have less conflict…I feel more able now to handle disagreements that I have with other people…I think it's easier for me to now sometimes just show up and listen and understand people's views and try and start addressing that and processing that, rather than just bowling straight in and trying to push my view across.' (HR Practitioner)*

Those mediators who worked in the ER Advice Service also suggested that they were able to use their mediation skills to enhance their advice to managers – for example by emphasising the importance of setting ground rules in discussions, putting people at ease and possibly meeting staff in dispute individually before bringing them together. In this way, one could argue that mediation skills were being disseminated through the operational manager community.

There was less evidence that the introduction of the scheme had had an impact on the 'culture' of conflict management within 'QualCo'. Respondents pointed out that the scheme was still in its infancy and argued that the relatively small scale of the initial launch of the scheme made a proper assessment difficult. Nonetheless they claimed that mediation had played a part in signifying the importance of informal resolution within the advice provided to managers by the ER Advice Service. Therefore mediation was part of an attempt to shift the organisation away from a formalised approach to conflict management and towards one that emphasises informal resolution wherever possible. Within the HR community, the introduction of the scheme was crucial in underwriting the centrality of informal resolution and providing a 'toolkit' to assist operational

managers. For managers, those exposed to mediation appeared to be convinced of its worth. However, whether this was true of operational managers as a whole was much more doubtful.

7.4 Utilisation and awareness of mediation

Despite the benefits discussed above, the impact of the scheme within our sample was constrained by a lack of awareness and relatively low number of referrals. Of the operational managers that we interviewed, knowledge of the scheme was limited. In fact, most managers when asked about mediation believed this to refer to informal discussions whereby the manager would bring disputants together to try and sort out any differences. Therefore, there was a belief that mediation was something that they already practised, albeit in a much less structured way. The following quotation was typical:

> *'I suppose we do mediate anyway because we tend to sit down with…managers and individuals before we even get down the formal route…that's a form of mediation I suppose.' (Operational Manager)*

Overall, only three operational managers within the sample could recall an instance of mediation under the scheme at their workplace. One HR Business Partner referred to the mediation scheme as a *'hidden gem'*. Employee representatives also questioned the level of awareness, both among other representatives and line managers. The explanations for the relatively low level of awareness hinged on the 'soft launch' of the scheme and the inherent problems in publicising an initiative across a very large organisation. There was concern that the initial group of just nine mediators would struggle to cope if there were a high number of cases:

> *'I think in hindsight we've taken a cautious approach to launching mediation and I'm not saying that's wrong but I think initially we had…7 or 8 of us that were trained, we weren't sure how many referrals we would get and I think we thought we would be overwhelmed.' (HR Practitioner)*

Furthermore, given the commercial pressures and priorities of operational staff, it was difficult to convince managers of the value of mediation until they were faced with a particularly intractable issue.

To this end, the scheme had been re-launched to coincide with the training of the second tranche of mediators. This has involved the distribution of leaflets and posters and briefings with employee representatives, HR practitioners and regional management teams. Employee representatives in particular, were seen as an important way of promoting the mediation scheme. At a broader level, the fact that mediation was primarily located within the ER Advice Service meant that advisors who were regularly in contact with line managers over employment disputes were increasingly aware of the potential benefits of mediation. In this way it was hoped that knowledge of the scheme and its benefits would be transmitted through the organisation.

However, there was a general view that the best form of promotion was through stories of success being passed on by managers and employees who had experience of mediation:

> *'we've seen real pockets of referrals where perhaps there's been a mediation completed and … [if] the HR business partner or [senior management] is aware… then if they identify something similar…we've seen repeat referrals from the same area.' (HR Practitioner)*

Managers who had successfully used mediation were seen to be much more likely to use the service again. One respondent gave an example where a successful mediation had triggered a further four referrals in the same region. Inevitably, however, this was a slow and incremental process:

> '…word of mouth is everything and to demonstrate that through a day's worth of mediation we got a manager who'd been off for six months back, a [senior] manager who'd been off for three months back, civilly working together consistently, I mean that's quite powerful.' (HR Practitioner)

7.5 Limits to mediation – an indication of failure?

The problem of extending the reach of the mediation scheme in Qualco was not simply one of awareness. We also found significant resistance from operational managers who had not experienced mediation. For these respondents, referring a case to, or taking part in, mediation was evidence that they had not managed the issue effectively. This had two effects. Firstly, managers were sometimes reluctant themselves to take part in mediation as this was seen as questioning their managerial approach and ability:

> '…the biggest challenge for me is if you've got … It's a difficult one to explain, but if you've got a manager that's in there, that thinks they need to be there, to try and resolve it, they're not always wanting to be there. That can make it quite difficult to resolve it.' (HR Practitioner)

Secondly where there was a dispute between two members of staff, managers were also averse to suggesting mediation as this was an admittance of failure.

> '…if both individuals are making very good points and they can't see eye to eye, I would find it quite difficult to call someone in because if I can't deal with it, then I think that's a bit of a problem…' (Operational manager)

> 'I should be able to manage the advisors…without having to bring mediation in.' (Operational manager)

A number of respondents preferred to attempt to 'mediate' issues themselves through informal discussion as opposed to using trained mediators from within the mediation scheme. This partly reflected a number of the concerns outlined above but also a view that external mediators may not be able to appreciate the context of the dispute:

> 'I think you're better to do it yourself [mediation] because you know your own people…you know what way they work and what makes them tick and how they react to different things.' (Operational Manager)

Asking for an issue to be taken through the mediation scheme was therefore seen as a very serious step – something that was accentuated by the fact that mediators were often senior staff, who would typically have to travel to the location, thus involving significant expense. Moreover, it was argued that management in individual units and regions of the organisation could be concerned that referring cases could invite scrutiny and possible criticism from 'head–office':

> '…there's a bit of a barrier around I think just admitting that there is an issue and we try and resolve things in-house because sometimes we don't want other [parts of the business] to know there is a problem.' (Operational manager)

For managers, therefore, referring a case to the mediation scheme was seen as a formal process of last resort which was only considered when all other avenues had been exhausted. Indeed there was some evidence that mediation was sometimes recommended as part of a grievance or appeal decision. For some respondents there was a danger that this enabled managers to avoid making clear cut decisions. Mediators with experience of mediating such cases also found that they were often problematic due to the fact that disputants found it difficult to move beyond their *'unhappiness with what the grievance and what the appeal hearing had found'.*

7.6 Overcoming resistance – a nudge towards mediation?

Given these problems, a number of respondents argued for the introduction of compulsion or at least a very firm nudge towards mediation. Mediation was now referred to explicitly within the grievance policy. However, some mediators wondered whether this could be strengthened, whereby mediation at least had to be considered before a formal procedure could be enacted:

> *'…it might well be that needs to be a specific question…before you consider raising a formal grievance we would suggest you think about mediation, talk to your line manager about mediation.' (HR Practitioner)*

At the same time, respondents were also concerned that any movement in this direction could compromise the voluntary nature of the process.

There was also a clear push to increase mediation referrals through the ER Advice Service as they were the first point of contact for managers and also employee representatives. Therefore:

> *'…We've targeted our teams to increase the number of mediation referrals… the guys know when they're dealing with a situation on the phone they will be saying, well actually you could consider mediation' (HR Practitioner)*

It was hoped that the additional training of ER advisors in the second wave of mediators would further enhance and embed this. A number of respondents also suggested that extending mediation training beyond the HR community could be beneficial in promoting the scheme. Employee representatives, in particular, were positive about the scheme and argued that they could play a more substantive role.

7.7 Summary

Overall, there was strong evidence that the introduction of the mediation scheme had brought significant benefits. It had provided a mechanism through which resolutions were achieved in a number of difficult cases that might otherwise have resulted in costly, damaging and lengthy disputes. In particular, mediators had applied their skills creatively to secure settlements in respect of employment tribunal proceedings, resulting in significant financial savings and more importantly bringing individuals back into the workplace. There were also signs of mediation having a broader impact: some of those who had trained as mediators reported enhanced skills; there was evidence that experience of mediation had significant impacts on the attitudes of those involved; and the training of mediators within the ER Advice Service had provided a vehicle for the wider promotion of the benefits of informal resolution. However, awareness of the scheme was limited. Furthermore, those managers who had not used it were

reluctant to refer cases, as this was seen as an admittance of failure. Moreover, many managers (without mediation training) already practised what they perceived as informal mediation and felt that this was a satisfactory approach. Perhaps most tellingly, mediation was generally perceived as a last resort as opposed to a means of early intervention and resolution.

8. DISCUSSION AND CONCLUSION – IMPLICATIONS FOR POLICY AND PRACTICE

The impact of mediation both in facilitating settlements of specific disputes and in changing the way in which organisations manage individual conflict is central to current debates over public policy and organisational practice. There is tentative evidence that the promotion of a more informal workplace agenda post Gibbons, through the Employment Act 2008 and the revised Acas Code of Practice on Discipline and Grievance has led organisations to review the way in which they handle difficult workplace issues (Rahim et al., 2011). In this case, QualCo was initially prompted by the introduction of the revised Code of Practice to develop an in-house mediation scheme and amend existing procedures to encourage and extend informal resolution.

The government clearly sees the extension of 'mediation' as having the potential to have significant broader benefits in terms of employment relations and what could be called the culture of conflict management (BIS, 2011). However, to what extent does the existing evidence support this ambition? We know from at least one previous study that the introduction of in-house mediation can have a transformative effect on workplace relations and underpin a new (and more informal) approach in the way that conflict is managed (Saundry et al., 2011). Importantly, that research centred on a public sector organisation with relatively high levels of unionisation, which is fairly typical of the types of organisations in which mediation schemes have (to date) been more likely to be found in the UK (Williams, 2011). This report therefore examines the experience of the introduction of an in-house mediation scheme in a very different setting.

8.1 Benefits of mediation – outcomes and impact

In certain respects, the findings reinforce existing empirical evidence that mediation provides an effective means through which certain types of employee disputes can be successfully resolved relatively quickly and efficiently (Latreille, 2011). Within QualCo, the success rate of cases referred to the mediation scheme was very high and the satisfaction of managers and employee representatives who had been involved with specific cases was evident. Interestingly, while previous research has tended to suggest that the applicability of mediation may be limited to employee grievances arising out of interpersonal disputes, in this case, trained mediators and the mediation scheme had been used flexibly to resolve a wide range of issues. Perhaps most notably, in-house mediators had been used to reach settlements in potentially costly and damaging employment tribunal claims. This had not simply involved reaching financial settlements but had also focussed on the re-employment and/or reintegration of claimants into the organisation. While this had only been attempted in a limited number of cases, this was seen to have retained staff and resuscitated employment relationships that had seemed irretrievably broken.

The broader impact of the scheme and in particular the extent to which it had helped to change the way in which QualCo managed conflict was less clear. Nonetheless, there had undoubtedly been some positive effects. Firstly, the case provided evidence that the training process developed new skills amongst mediators that influenced their everyday practice and gave them new ways of managing conflict in a wide range of settings (Bingham, 2004; Kressell, 2006). Secondly, when line and operational managers were subject to, or involved with, mediation, they reported very positive experiences. They then promoted its use to their staff and colleagues, gradually transmitting awareness of the scheme.

Furthermore, respondents claimed that involvement in mediation prompted managers to reflect on and potentially improve the way they dealt with conflict.

Thirdly, the scheme had acted as a focus around which the organisation was able to redefine its approach to conflict and disputes. The primary conduit for this was the ER Advice Service and there was general consensus that informal resolution was given a high priority in their dealing with managers. The fact that a significant number of HR practitioners within the service have now been trained as mediators is likely to embed this further. The introduction of mediation had also been embraced by the staff association with senior employee representatives clearly committed to early resolution of conflict and disputes.

8.2 Changing attitudes on the ground — line manager resistance and the problem of scale

While the HR community and senior employee representatives were clearly committed to a new informal approach with a clear focus on resolution, there was less evidence that this had been fully transmitted to the workplace. To this extent, it would be difficult to argue that the introduction of the mediation scheme within QualCo had changed the 'culture' of conflict management (BIS, 2011; Lipskey et al., 2003) and had the transformative effects noted in Saundry et al's (2011) study.

In particular, at workplace level, awareness of the mediation scheme was limited and among those managers that had not been involved in a mediated case there were clear concerns about referring a dispute that they had been unable to resolve. For these respondents, 'mediation' was something that they already used to resolve individual employment disputes, by bringing employees in dispute together to discuss and hopefully iron out difficult issues. Such managers clearly felt that to bring in help from outside their workplace, in the form of a trained mediator from 'head office,' would be an admittance of failure. In their eyes, a referral to the mediation scheme had become a formal 'last resort' to be considered only when all other procedures had been exhausted.

Of course, it is important to acknowledge that the mediation scheme within QualCo is still at a relatively early stage and was initially launched with a deliberately low profile. Therefore it could be argued that as the number of mediators and mediations increase the success of the scheme will permeate different parts of the organisation. However, the evidence suggested that this could be a long, slow and gradual process. This is made more difficult by the size of QualCo and we would argue that scale is a crucial factor in determining the potential impact of an in-house mediation scheme. In the case of East Lancashire Primary Care Trust (ELPCT) (Saundry et al., 2011), 11 mediators were trained in an organisation with fewer than 3,000 staff (one mediator to every 270 employees) working within a limited geographical area, compared to approximately one mediator for every 3,000 employees in QualCo, a nationwide operation. Furthermore the size of ELPCT made it possible to train most, if not all, of the individuals who generally dealt with individual employment disputes. Within QualCo this was impracticable given both the size of the company and the extensive devolution of conflict management and dispute handling to the line.

8.3 Transforming the culture of conflict management – line managers and the opacity of informal resolution

It is also important to avoid separating mediation from the complex web of relationships that shape the process of conflict management and dispute resolution (Saundry et al., 2011). Within QualCo, for example, the attempt to inculcate more informal approaches was hampered by a number of important barriers upon which the introduction of mediation was unlikely to have any impact. Perhaps the most noticeable of these was the lack of confidence and experience of some line managers on whom the responsibility for 'nipping issues in the bud' now rests (see also Jones and Saundry, 2011).

A key factor in explaining this was the broader organisational context within which line managers operated. The devolution of conflict management from HR to the line had given operational managers new areas of responsibility at the same time as the organisation was expecting improved commercial results and increased efficiency. It is important to note that these managers had been provided with substantial support, coaching and encouragement to resolve issues informally by the ER Advice Service. However, for line managers, managing conflict and informal resolution was more time consuming (in the short-run) than the simple application of grievance or disciplinary policies. Of course, this may be a false economy and enacting formal procedure will absorb significant resources in the longer-term. But, this is difficult to reconcile with the short-term operational imperatives which the organisation and therefore its managers face. Furthermore, while one can measure levels of disciplinary action, employee grievances and employment tribunal applications, informal resolution is inevitably opaque making it more difficult to justify. This is arguably accentuated where the management of conflict is not directly reflected in the key performance indicators on which both line and senior managers are judged.

8.4 Implications for policy and practice

While we must be cautious in generalising the implications of this research, when viewed in light of previous studies, it does provide a number of valuable insights for policy and practice. It adds further weight to the argument that in-house mediation provides a useful additional tool for resolving difficult disputes. Importantly, it also suggests that mediation can, if used flexibly and creatively, be used to address a relatively wide range of issues, including those that are already subject to litigation.

However, this case-study raises question marks over the potential of mediation to transform the way in which organisations approach conflict and employment disputes. Given the devolution of conflict management apparent in many organisations, the culture of conflict management revolves around line and operational managers. Therefore they must be convinced of the value of informal approaches of resolution. In the case of Qualco this was shaped by the tension between the immediate imperatives of operational management and the fact that the benefits of informal resolution may only be felt in the long run.

The findings also suggest that in assessing the potential of in-house mediation, there is an issue of scale. We already know that developing mediation within smaller organisations is problematic however very large organisations also face clear challenges. Where conflict is handled by a relatively small group of managers, HR practitioners and employee representatives, targeting these individuals as mediators provides a way of radically changing attitudes (see Saundry et al., 2011).

In larger organisations or those in which conflict management has been successfully devolved to substantial and geographically dispersed community of line managers, this may be more difficult. The introduction of an in-house mediation scheme is likely to be seen as an additional formal mechanism for resolving disputes as opposed to contributing to a step-change in attitudes and conflict management practices. In such contexts, there may be a need to locate mediation skills closer to the locus of conflict and disputes. This in turn may mean placing a greater emphasis on the provision of mediation skills to key actors as opposed to training accredited mediators.

Therefore, public policy and HR strategy designed to change the culture of conflict management cannot simply view the introduction of in-house mediation as a panacea. Instead, more attention needs to be given to the roles of the key organisational actors responsible for dealing with conflict and employment disputes and the context within which they operate. This perhaps suggests that organisational support for mediation is not enough in itself – instead there needs to be a recognition of the longer-term and indirect benefits of conflict management and its centrality to meeting commercial and strategic organisational objectives.

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