Workplace Mediation and Trade Unions: Friends or Foes?

A study of UK trade unions' attitudes and experiences.

by

Virginia Elizabeth Branney

Volume 1 of 2

A thesis submitted in partial fulfilment for the requirements for the degree of
Doctor of Philosophy at the University of Central Lancashire
January 2020

STUDENT DECLARATION FORM

Type of Award	**Doctor of Philosophy (PhD)**
School	**Lancashire School of Business and Enterprise**

1. Concurrent registration for two or more academic awards

I declare that while registered for the research degree, I was with the University's specific permission, an enrolled student for the following award:

Certificate in Teaching Toolkit

2. Material submitted for another award

I declare that no material contained in the thesis has been used in any other submission for an academic award and is solely my own work.

3. Use of a Proof-reader

No proof-reading service was used in the compilation of this thesis.

4. Signature of Candidate 

5. Print name: Virginia Branney

ABSTRACT

Workplace mediation is a facilitative process for dealing with conflict between individuals in the workplace whereby a third party (the mediator), assists them to reach a mutually agreed outcome. Existing literature on the contemporary management of individual conflict in UK organisations includes studies of unionised employers' use of workplace mediation. What distinguishes this study is its focus on trade union attitudes towards, and experiences of, workplace mediation, and its theoretically based approach. The findings derive mainly from exploratory multiple case studies of the involvement of UNISON and Communication Workers Union (CWU) representatives with mediation in the workplace. The UNISON cases feature 'workplace mediation' of individual employees' grievances in different public sector organisations. In contrast, the CWU cases feature 'industrial relations (IR) mediation', conducted at workplace level, under the auspices of a collective dispute resolution procedure agreed nationally by the Royal Mail and CWU. Notwithstanding the differences between workplace and IR mediation, including the nature of union involvement, both modes of mediation apply the facilitative practice model associated with the resolution of individual grievances.

The findings are analysed from different industrial relations perspectives on work (Heery, 2016) in relation to three themes: incorporation, union displacement and union revitalisation. From a critical pluralist perspective, the study concludes that the extent to which workplace mediation and trade unions could be considered "friends" or "foes" depended on a range of contextual factors. In summary, these factors were employers' objectives in adopting mediation in the workplace; the degree to which employers involved recognised unions in introducing and operating workplace mediation in their organisations; and the willingness and capacity of trade unions to independently engage with employers over its adoption and use. It is argued that unions could better equip their representatives to critically appraise the ideology and core tenets underpinning the practice of UK workplace mediation. This would assist in enabling unions to enhance employee voice and equity in the process and avoid the potential pitfalls of its use in resolving workplace conflict.

TABLE OF CONTENTS – Volume 1

TABLE OF CONTENTS - Volume 2

LIST OF TABLES

INTRODUCTION

Workplace mediation and trade unions - friends or foes?

This is a study of UK trade unions' attitudes towards, and experiences of, workplace mediation - a process that aims to resolve conflicts mainly between individuals within employers' organisations. The introduction defines what is meant by workplace mediation in the thesis. It gives a brief overview of the history of workplace mediation in the UK, the key influences on its take-up and the extent of its use. The relevance of the study to contemporary employment relations is explained. Areas in which the thesis seeks to make an original contribution to knowledge are outlined. The research aims and objectives are set out. Unitary, pluralist and critical perspectives on work (Heery, 2016) provide the overarching theoretical framework for the study. Within this framework, trade union involvement with workplace mediation is analysed thematically. The themes - incorporation, displacement and union revitalisation – are introduced. The research questions are then set out. This is followed by a synopsis of the methodology of the thesis, including an introductory statement on the position of the researcher. Lastly, on the structure of the thesis, the order of the chapters is explained and the contents of each chapter are briefly summarised.

Workplace mediation – a definition

In the UK, the term 'workplace mediation' has evolved to distinguish mediation which occurs within employers' organisations - usually involving currently employed individuals – from 'employment mediation'. In the thesis, employment mediation refers to all forms of ACAS individual conciliation and equivalent Labour Relations Agency processes in Northern Ireland; judicial mediation and privately arranged mediation – all of which are processes of assisted negotiation that aim to settle prospective or actual legal claims made by individual employees against their employers. Employment mediation can also refer to collective dispute resolution processes such as collective conciliation and, in Great Britain, dispute mediation. Expressed simply, workplace mediation is a way of dealing with conflict between individuals in the workplace using a third party (the mediator) to assist them to resolve their differences themselves. ACAS' description adds that mediation 'is a voluntary

process…. Any agreement comes from those in dispute, not the mediator' and that 'the mediator is in charge of the process of seeking to resolve the problem but not the outcome (ACAS, 2019, p. 9). This describes the facilitative model of mediation which is the most commonly practised by UK workplace mediators (Latreille, 2011; Bennett, 2013). The study concentrates on the provision of workplace mediation by UK employers that recognise trade unions. There is a particular focus on cases where the employer had an in-house mediation scheme or service.

Take-up and use of workplace mediation in the UK - an overview

Although the use of conciliation to resolve collective employment disputes dates from the 1860s in England (Lowry, 1990), and in individual employment disputes in Great Britain from 1972 (Dickens, 2000), the use of workplace mediation, as a structured process to resolve disputes or informal disagreements involving individual employees, is a relatively recent phenomenon. Workplace mediation has been practised in the UK for around 30 years. Surprisingly perhaps, workplace mediation was not an off-shoot of established industrial UK dispute resolution procedures. Influenced by the American community mediation movement, in the early 1980s, community mediation services began to develop in the UK (Liebmann, 2000). Workplace mediation made its first appearance around the late 1980s when community mediators began offering their services to local authority employers.

From the late 1980s to the early 1990s, its spread owed much to the pioneering efforts of fledgling conflict management organisations (CMOs) and individual champions who instigated its use by their employers, and networking among early users such as local authorities. In the mid 1990s, central government turned its attention to individual dispute resolution *within* workplaces, prompted by concerns about the rising cost of the employment tribunal system. Since then, successive governments have shown sporadic interest in workplace mediation, acting on recommendations of the Employment Tribunal Taskforce (Taskforce, 2002) chaired by Janet Gaymer, and the Gibbons Review (2007) to encourage its wider use. Post Gaymer, given the green light by government, ACAS ran mediation pilots in small and medium-sized enterprises. It began running an accredited training course for in-house workplace mediators and

launched its own workplace mediation service (ACAS, 2006), entering the growing market for mediation services among employers, particularly in the public sector.

Post Gibbons (2007), ACAS revised its *Code of practice on disciplinary and grievance procedures* (2009a). The foreword to the *Code* referred approvingly to mediation. Importantly, the accompanying ACAS guidance (2009b) set out advice for employers on its use. The association of mediation with the *Code* and "doing the right thing" in dealing with individual workplace disputes raised awareness among employers and may have encouraged some to use workplace mediation (Rahim, Brown and Graham, 2011). ACAS co-produced guides on mediation for employers and trade union representatives (CIPD/ACAS, 2008, 2013; ACAS/TUC, 2010). It also commissioned research on the efficacy of workplace mediation and the state of conflict management in British organisations. Many of the ACAS-commissioned research projects were undertaken in unionised organisations and they are the subject of discussion in the literature review. In the last decade, active government support for workplace mediation has waned although it remains a key public policy objective to 'contain employment disputes within the workplace…' wherever possible (Doyle, 2018, p. 14).

Governments tend to be interested mostly in individual workplace conflict which is likely to manifest itself in claims to the employment tribunals. However, surveys and case studies of UK user organisations (CIPD, 2008) show that 'mediation was widely seen as being most suitable for dealing with issues where there may be little or no basis for an ET claim…' (Latreille, 2011, p. 15). Rather, workplace mediation is seen as a dispute resolution procedure best suited to dealing with behavioural conflict between individuals exemplified by dysfunctional working relationships and communication breakdown (CIPD, 2008, 2011; Bennett, 2013, 2014). This would include the resolution of complaints of bullying and harassment which are not seen - by HR or union representatives - as *prima facie* violations of individuals' statutory or contractual rights. The use of workplace mediation for these categories of individual conflict features in the UNISON case studies in the thesis. In contrast, and possibly uniquely in the UK, under the auspices of a national collective agreement (with legally binding dispute resolution procedures), 'Voluntary Mediation' in Royal Mail is an option available to Communication Workers Union (CWU) representatives and their management counterparts for the resolution of *collective* disputes. In the thesis,

'Voluntary Mediation' - also called 'industrial relations (IR) mediation' - features in the CWU case studies. Typically, in IR mediations, the parties were an individual CWU workplace representative and line manager. As will be discussed, there were differences between IR mediation and (in the UNISON cases) 'workplace mediation'. A similarity was that both mediation processes applied the facilitative practice model associated with *individual* dispute resolution.

Among UK employers, the main motivations for adopting workplace mediation have been to reduce the cost of conflict (broadly defined), and, in some cases, to change the conflict culture of the organisation; to move away from a reliance on formalised means of dealing with individual disputes and to reduce levels of formal grievances (Latreille, 2011). Individual grievances are more likely to occur within large organisations (Forth and Dix, 2016) and unionised workplaces (Kersley *et al*. 2006; Saundry and Wibberley, 2014). The use of formalised grievance procedures is characteristic of public sector organisations and the literature indicates that, in the UK, workplace mediation 'is generally found in larger and public sector organisations' (Saundry *et al.* 2014, p. 9). The UNISON case studies feature the use of workplace mediation in public sector organisations. The CWU case studies are set in Royal Mail, post-privatisation.

Current data on the extent of the use of workplace mediation in the UK is limited. In regard to Great Britain, analysis of the Workplace Employment Relations Study (WERS) 2011 data by Wood, Saundry and Latreille (2014) showed that 'mediation by an impartial third party was used in 17 per cent of workplaces that experienced a formal grievance (in the 12 months preceding the survey)' (Latreille and Saundry, 2016, p. 317). More recent data from the Chartered Institute of Personnel and Development (CIPD) survey of a representative sample of British employers reported that 24 per cent of respondents had used 'internal mediation by a trained member of staff' in the last 12 months, and nine per cent had used 'external mediation' to deal with workplace issues (CIPD, 2015a, p. 11). It is not known what effect, if any, the introduction and abolition of employment tribunal fees (2013-2017) has had on the use of workplace mediation in Great Britain and whether the impact of austerity has led to more or less use of workplace mediation, particularly in public sector organisations. The limitations and costs of formalised dispute resolution, the existence

of a developed UK conflict management industry and State policy which is currently supportive of Alternative Dispute Resolution (ADR) in employment suggest that workplace mediation will continue to be used by UK employers. However, as is referred to briefly in the concluding chapter, the extent of its future use is very difficult to predict.

It is evident from the literature that data about the use of workplace mediation pertains mostly to employers in Great Britain and predominantly England. As will be discussed, the thesis includes data from union representatives in Wales and Scotland but not Northern Ireland (see the methodology chapter). Nor did this study find any published research specifically on the use of workplace mediation in Northern Ireland. Workplace mediation is provided in Northern Ireland by the Labour Relations Commission and on a charged-for basis by legal firms and other private providers. To the writer's knowledge, internal workplace mediation services exist in the civil service, at least one NHS trust, the Northern Ireland hub of a UK-wide bank and Royal Mail. (Throughout the manuscript, 'the writer' refers to the writer of the thesis.) There is some evidence of the use of workplace mediation by non-unionised and unionised employers in the Republic of Ireland (Teague, Roche and Hann, 2011; Teague *et al.* 2015; Doherty and Teague, 2016; Roche *et al.* 2019).

In relation to Wales, Hann, Nash and Heery (2016) researched the use of Alternative Dispute Resolution (ADR) in resolving workplace conflict in private sector firms. If the definition of ADR was restricted to 'mediation', then use of ADR in Wales appeared to be limited. However there was no specific category of 'workplace mediation' in the data and it is difficult to extrapolate what might be workplace mediation as it is defined in this thesis. Overall, in respect of the trade union role, it is relevant to note the finding that:

> Unionized firms are more ready to use early stage collaborative processes, such as mediation, the early use of ACAS… than are their non-unionized counterparts, especially although not exclusively, in the case of collective conflict. The resources and structures of unions may also support routes to addressing conflict (Hann, Nash and Heery, 2016, p. 22).

The writer's study includes examples of the use of workplace mediation in NHS sector organisations in Wales. Scottish union policies and attitudes to workplace mediation are discussed in part 4 of the literature review.

The relevance of the study to contemporary employment relations

As an addition to established processes of individual dispute resolution, it appears that workplace mediation is a 'minority activity' (Saundry *et al.* 2014, p. 9) most commonly found in unionised public sector organisations. Overall, collective bargaining coverage (OECD, 2019), union membership and density have been on a downward path in the UK since 1979 (Department for Business Energy & Industrial Strategy (BEIS), 2017). In 2017, trade union density in the private sector was 13.5 per cent. In the public sector, around 3.5 million employees belonged to a trade union and union density was 51.8 per cent (BEIS, 2018, p. 12). Notwithstanding these indicators, the relevance of the study to contemporary employment relations is underpinned by two key assertions; firstly, on the pervasiveness of individual workplace conflict; and secondly, on the continuing importance of trade unions.

On the incidence of conflict, a representative survey commissioned by the CIPD in 2014 found that 38 per cent of UK employees reported some form of interpersonal conflict at work in the last year, and one in four (26 per cent) considered conflict was a common occurrence in their organisation (CIPD, 2015b, p. 7). Fevre *et al.* (2011, p. 4) found that 'just under half the British workforce experience unreasonable treatment at work over a two year period' and that 'most unreasonable treatment originates with their managers and supervisors'. Furthermore, '40 per cent of employees experience incivility or disrespect…' Managers and supervisors were 'the most importance source of incivility and disrespect but more of this kind of ill-treatment [was] meted out by co-workers, and by customers and clients' (Fevre *et al*, 2011, p. 4). The Workplace Employment Relations Study (WERS) 2011 showed that 91 per cent of British workplace HR managers spent time on grievances or grievance procedures and disciplinary matters or procedures (van Wanrooy *et al.* 2011, p. 12).

Turning to the second assertion, despite their decline, trade unions retain a significant presence in UK organisations and 'legitimacy power' (French and Raven, 1968; cited by Simms and Charlwood, 2010, p. 128). In the UK literature, for example, among

employers that had set up workplace mediation schemes or services, unions were regarded as important stakeholders in the management of individual workplace conflict (Latreille, 2011; Latreille and Saundry, 2015). (In the thesis, employers using workplace mediation are referred to as 'user organisations'.) From a pluralist perspective, trade unions are important 'mechanisms of representation' for the 'enforcement of individual employment rights' and 'for providing employee voice' (Colvin, 2016, p. 14). Dealing with individual disciplinary and grievance issues remain key activities of union workplace representatives in Britain (Charlwood and Angrave, 2014). Workplace mediation may remain a minority activity; however, debate in academic, practitioner and policy making circles about reforming individual dispute resolution will continue. It will be argued in the concluding chapter that the findings of this study have important implications for trade unions in respect of their capacity to influence the future direction of individual and collective dispute resolution in UK organisations.

To my knowledge, this is the first study dedicated to the subject of UK trade union attitudes towards, and experiences of, workplace mediation. It aims to address a significant gap in the literature. As mentioned above, the predominant UK user organisations - in the public sector - are mostly unionised. Building on the UK literature, it seeks to further explore union perspectives in relation to employers' introduction of mediation schemes or services; the operation of mediation, including, to quote Saundry, Bennett and Wibberley (2016, p. 1) 'inside the mediation room' - an under-researched facet of UK workplace mediation; and, in relation to unions as institutions, the outcomes and impact of the use of workplace mediation. As such, it considers efficiency, voice and equity (Budd, 2004) from the participant unions' perspective. As 'mechanisms of employee representation' (Colvin, 2016), unions could be expected to take a keen interest in voice and equity in workplace mediation, especially in user organisations, yet comparatively little is known about union representatives' views on these issues. From a critical perspective, mediation is antithetic to the achievement of workplace justice through collective means because it is designed to personalise and neutralise conflict inherent in the employment relationship. It is therefore relevant to contemporary debates within unions and in

industrial relations (IR) writing about union renewal or revitalisation, as is discussed later in the introduction.

The union perspective in the UK literature, particularly the case studies reviewed later in the thesis, is largely that of workplace lay representatives in user organisations. Their experience tends not to be located in the wider institutional context of the union, at regional and national level. In the UK academic literature, there is little reference to national union policies or internal union debates or tensions over union positions on employers' use of workplace mediation - dimensions that the thesis seeks to add.

The UK literature on workplace mediation is largely empirical. In contrast, the thesis offers a theoretically based analysis, applying the 'rival normative positions' of the unitary, pluralist and critical perspectives on work (Heery, 2016, p. 1). In assessing the applicability of these positions to the study's findings, the writer adopts a *critical pluralist* perspective, that is, a pluralist perspective at an intersection with a critical perspective. It provides a critique of the ideology and practice of UK workplace mediation and trade unions' experiences and responses not found in the mainstream pluralist literature, influenced by, but not situated in, a radical IR perspective.

Research aim

The overarching question posed by the thesis is whether workplace mediation and UK trade unions are friends or foes. The aim of the research is to explore trade union engagement with workplace mediation in the UK and the implications for union organisation and employment relations. To meet this aim, the research objectives were:

- To gather data on UK trade union representatives' attitudes towards, and experiences of, workplace dispute resolution procedures for individual disputes, to provide a baseline for subsequent fieldwork;
- To examine the national policies and positions of unions on workplace mediation, particularly where their workplace representatives had involvement with it;

- To undertake comparative case studies of at least two unions whose representatives had been involved with the use of workplace mediation, in order to explore their responses to it as a form of dispute resolution used by employers; the implications of its use for union organisation in the workplace; and how union responses might impact on the way workplace mediation is used by employers.

The friends or foes question is considered in relation to three themes - incorporation, union displacement and union revitalisation - in reviewing the literature, in analysing and discussing the empirically based findings.

The themes: incorporation, displacement and union revitalisation

As propositions, incorporation and displacement are strongly associated with the radical IR frame of reference (Fox, 1974) and its modern incarnation, the Critical Labour Studies (CLS) category of critical writing (Heery, 2016, pp. 8-9). The union revitalisation theme is strongly represented in contemporary critical IR writing but pluralists have also staked a claim to this territory (Heery, 2016, p. 63).

In the existing academic IR literature on workplace mediation, the pluralist perspective dominates. Theoretically based criticisms of mediation do feature in the work of some British IR scholars, but these derive mainly from US sources. Researching workplace mediation in unionised organisations led some researchers to sketch out arguments against UK workplace mediation from an IR perspective (for example, Bennett, 2013, 2014; Latreille and Saundry, 2016b), but developed critiques of UK workplace mediation specifically from CLS perspectives are sparse. Consequently, to enable a theoretically based analysis, in the thesis putative arguments have been constructed to reflect the main strands of the CLS perspective on workplace mediation and trade union involvement. Arguably, workplace mediation bears the hallmarks of previous UK employer initiatives that have been analysed by CLS scholars, and this literature has been drawn on, as is explained below.

<u>Incorporation</u>

From a critical perspective, the so-called resolution of conflict through the use of employers' procedures can be interpreted not as regulating conflict (as soft unitarists

and pluralists might see it) but as dampening if not suppressing workers' resistance to employers' demands. Union cooperation with seemingly progressive employer initiatives is in danger of becoming incorporation when it erodes perceptions of conflicting interests and the willingness and capacity of union members to resist and challenge employers' demands (Kelly, 1996). For example, the incorporation theme recurs in the literature on union-management partnerships in the New Labour era (Kelly, 2004; Stuart and Martínez Lucio, 2005; Terry and Smith, 2003; Bacon and Samuel, 2009). Union cooperation specifically at local level could be portrayed as 'micro-corporatism' (Hyman, 2005, citing Regini, 1995; Marginson, 2015).

There were instances in the UK literature of leading workplace union representatives who anticipated or experienced charges of colluding with management from other representatives in their own or rival unions (Saundry, McArdle and Thomas, 2011; Saundry, 2012). Fears were expressed that mediation could be used by management (as a trade union interviewee put it) 'to dismiss justifiable and perfectly acceptable grievance cases' (Latreille and Saundry, 2015, p. 19). Mediation could be seen as the thin end of the wedge, undermining workplace justice, weakening established dispute resolution procedures, and thereby eroding union influence. In contrast, union representatives who had cooperated with the use of mediation pointed to the better outcomes achieved for members with grievances which would otherwise end unsatisfactorily – which a pluralist might argue, is indicative of independent engagement on the part of the union. If, having had union advice and support, individual union members found mediation to be a just process and one that resulted in satisfactory outcomes, then it could be claimed by the union that their support for, and independent engagement with, mediation brought these benefits for individual members. Indeed, from a critical perspective, Paul Edwards (2013, pp. 4-5) points out that the interests of management and workers can overlap. He gives the example of a 'capricious' disciplinary procedure which 'may suit individual managers' but 'not the interests of management in general for it will 'generate immediate costs in grievances… as well as longer term costs through reduced commitment from workers'. Unions can therefore 'help make managerial systems work'. This is not necessarily incorporation – it can be done from a position of 'independent engagement':

> There is… a terrain on which unions can demonstrate their value to managers. This does not mean giving up their independence. Independence means two things: being able to dispute the principle of some change; and negotiating the detailed process of its implementation if it is accepted in principle (Edwards, 2013, p. 5).

Where unions believed these two conditions were met, as in his study of team work systems in UK and Canadian aluminium smelters, Edwards (2013, p. 5) argues that unions were 'able to shape how the systems operated, sometimes indeed over the hostility of some line managers, while retaining a very clear divide between managerial and trade union functions'. In relation to their support for the use of mediation, this has echoes of UK unions' retort to charges of incorporation in East Lancashire Primary Care Trust (ELPCT) and Bradford Metropolitan District Council (MDC) – discussed in part 4 of the literature review – that they also used formal, adversarial procedures and approaches when necessary to defend workers' interests (Saundry, McArdle and Thomas, 2011; Saundry, 2012; McArdle and Thomas, 2016).

From a critical pluralist perspective, Edwards' conditions for independent engagement provide a yardstick against which to assess the nature of union involvement with workplace mediation, bearing in mind that some employers may choose not to engage recognised unions in adopting and operating their workplace mediation service (albeit such cases are largely absent from the UK literature). Also, depending on the context, 'being able to dispute the principle' may halt an employer's initiative, or it may not.

Displacement

Hypothetically, in relation to workplace mediation, displacement of union functions and activities could take various forms. The formal adoption of workplace mediation by employers and setting up of in-house schemes or services might signal to union representatives that mediators could displace their role in informally resolving individual workplace conflicts. Displacement could entail individual union members opting to bypass union representatives en route to mediation, relying solely on management advice on whether to participate. Importantly, employees represent themselves in mediation which dispenses with individual union representation - arguably the "bread and butter" of workplace union representatives' work. Moreover, the literature indicates that accompaniment in mediation was the exception to the rule (Latreille, 2011). This was a convention – and arguably a form of displacement - that

paradoxically, workplace union representatives and the TUC agreed with (ACAS/TUC, 2010). The implications of union representatives' absence from the mediation room are not discussed in any detail in the UK academic literature. This aspect of standard mediation practice intertwines with confidentiality. In facilitative workplace mediation, (in the writer's experience) typically, unless the participants agree, other interested parties, including members' union representatives would not (and should not) be informed of the outcome. The implications of confidentiality in the context of displacement and union effectiveness are discussed later in the thesis. Arguably, whatever its form, the occurrence of displacement would point to a diminished role for unions in individual dispute resolution in the workplace and perceptions of impaired representational effectiveness among union members and non-members.

Running counter to displacement, the UK literature included examples of union representatives taking on additional roles as co-mediators for in-house mediation services and joint steering group members (Latreille, 2011; Saundry, McArdle and Thomas, 2011; Saundry, 2012; Latreille and Saundry, 2015). Serving as co-mediators could prompt concerns within unions about conflicts of interest (Bennett, 2013), and allied to the incorporation theme, for example, whether co-mediators who were also union representatives would be seen by members as "doing management's job". Where there were good relationships with employers – which typically was the case in user organisations (Latreille, 2011) – union representatives' initial wariness about the introduction of workplace mediation usually abated. It was not apparent that UK workplace representatives perceived its introduction as heralding a diminished role for unions in handling individual conflict at work, or that its use would erode employees' perceptions of the value of union membership. The thesis seeks to draw on a wider range of union experiences to assess whether there were any displacement effects.

Union revitalisation

Drawing on Bryson's (2007) pluralist conception of union revitalisation, three elements are relevant to this study: stabilising and increasing union membership, greater workplace effectiveness, and enhanced union legitimacy (Bryson, 2007). Union revitalisation is the least explored of the three themes in the UK literature,

understandably, given its predominant focus on conflict management. The most comprehensive coverage of issues relating to revitalisation is found in the East Lancashire Primary Care Trust case study (Saundry, McArdle and Thomas, 2011; 2013; McArdle and Thomas, 2016). Although the terms 'revitalisation' or 'union renewal' are not used, the authors discuss the impact of the staff side unions' involvement with workplace mediation in regard to improving union-management relationships; extending the unions' collective influence; providing an enhanced service for individual members with bullying complaints; and (for one union) increasing the membership. The thesis inquires if, from unions' perspective, these outcomes were replicated in other organisations where unions supported the use of workplace mediation. If union association with mediation impacted positively on the recruitment or retention of members, this might suggest that it had enhanced their perceived legitimacy among employees or possibly certain groups of employees.

From a critical perspective, workplace mediation can be seen as representing the apogee of the individualisation of conflict. In mediation, the key to resolution lies in dispelling blame and focussing on finding the common interests of the parties, as individuals, thus divorcing the conflict from its organisational context. By seeking to prevent "blaming" of managers, as agents of the employer, for workplace injustices, mediation disrupts the escalation of conflict, undermining the foundations for worker mobilisation. Elements of mobilisation theory underpin the organising model (Kelly, 1998; Simms, Holgate and Heery, 2012). As the major unions recognised by UK user organisations subscribe to variants of the organising model, the question arises as to whether workplace representatives' support for the use of mediation defied national policy stances or caused internal tensions within unions; and if so, how were these issues dealt with. This is largely unexplored territory in the UK literature.

The research questions

Given the different theoretical perspectives underpinning the overarching "friends or foes" question in relation to workplace mediation and UK unions, the following sets of research questions were identified:

1. Do employers seek to engage unions in adopting and using workplace mediation; and if so, how do unions respond? What factors influence these responses? Does trade union engagement with workplace mediation influence the way in which it is used in organisations? Overall, were trade union responses indicative of incorporation or independent engagement?
2. In regard to the operation of workplace mediation in user organisations, what role/s do union representatives play in the selection of cases for mediation? What approaches are taken to advising individual union members on dispute resolution options, including mediation? What support is provided for members who participate in mediation and what role do union representatives play in the mediation process? Do union representatives consider that their involvement in the operation of workplace mediation enhances employee voice and equity in relation to the process and mediation outcomes?
3. Has the use of mediation in the workplace entailed any displacement effects in regard to union representatives' representational roles and activities in user organisations?
4. Has union involvement with workplace mediation impacted on the recruitment and retention of union members? Has support for the use of mediation caused tensions within unions over approaches to dispute resolution?
5. Has trade union involvement with workplace mediation brought institutional benefits, such as the acquisition by representatives of transferable mediation skills and time saved in dealing with members' formal grievances?
6. Has union involvement with employers' use of workplace mediation weakened or strengthened unions' legitimacy power with employers and collective influence in user organisations where they are recognised?

Synopsis of the methodology

The thesis employs a qualitative research strategy. The research design for the study entailed two phases of research. The first phase comprised three strands: an initial scoping exercise to identify unionised user organisations in the UK from secondary

sources; an online survey of UK trade union representatives, to obtain an overview of UK union representatives' experience of workplace mediation and attitudes to individual dispute resolution; and interviews with national union officials, to gather data on national union policies or positions on workplace mediation and their knowledge of its use in organisations where they had recognition. The results of these data gathering exercises were used in identifying potential case studies to be undertaken in the second phase. This comprised exploratory multiple case studies of two unions' involvement with mediation in the workplace - the Communication Workers Union (CWU) in relation to IR mediation - and UNISON, in the case of workplace mediation. (The distinction is that IR mediation is a collective dispute resolution process, unlike workplace mediation. However, IR mediation practice is based on the UK facilitative workplace mediation model.) In addition to interviews with national officials, interviews were conducted with lay and salaried CWU and UNISON representatives below national level who had been involved with employers' use of mediation. Most of the latter interviews were with lay workplace representatives whose employers had an in-house mediation scheme or service. Template analysis (King, 2004) was used to organise and analyse the research participants' data thematically in order to make analytic generalisations and answer the research questions.

Researcher positionality is discussed in the methodology chapter. By way of introduction, as a former trade union official, I have a strong belief in the societal value of trade unions which is rooted in what Michael Poole (1981, pp. 8-11) describes as 'moral and ethical theories of trade unionism' which he distinguishes from the 'revolutionary tradition' of trade unionism deriving from Marxism. In my view, while unions' ability to 'regulate employer power in… market relations' has diminished, it still holds that 'together with employment law, unions are the principal mechanisms for regulating the unfettered exercise of employer power in… authority relations' (Ackers, Smith and Smith, 1996, p. 1). In relation to mediation, based on my experience as an adjudicator, arbitrator and workplace mediator, I believe that when used in appropriate cases, workplace mediation can be a better option for individual employees and their unions than formal grievance and dignity at work procedures, other forms of ADR and litigation. Having said that, while it is acknowledged in the IR

pluralist literature that mediation is not a panacea (Bennett, 2013), the use of UK workplace mediation in the relation to equity and voice from the perspective of different employee groups or union members, for example, in relation to bullying and harassment complaints, has yet to be explored (see the concluding chapter on areas for further study).

My position on mediation is reflected in this quote from the American legal scholar and ADR practitioner, Carrie Menkel-Meadow (1995, p. 240) which suggests its friend or foe potential:

> …mediation is transformative because it is educational [for those involved] … but it has not solved racial and class inequalities in the world…Mediation cannot transform all people… At its best, it allows parties to talk directly to each other and arrive at solutions to problems that would not be possible in other fora. At its worst, it recapitulates the power inequalities in our society and achieves unfair results for parties who don't know what happened to them or whom to blame.

Structure of the thesis

The contents of the thesis are arranged as follows. The literature review (chapter one) comprises four parts. Part 1 discusses industrial relations theory and the IR perspectives that provide the theoretical framework for the thesis. It introduces the themes of incorporation, displacement and union revitalisation that form the basis of the research questions and theoretical analysis of the research findings.

To set the scene for the contemporary use of workplace mediation and trade union involvement, part 2 discusses the literature on the individualisation of conflict and the role of UK trade unions. It traces the individualisation and judicialisation (Davies and Freedland, 1993) in resolving workplace conflict since the 1960s. In particular, part 2 considers the changing role of the shop steward - today's generic workplace representative - in dealing with individual employees' grievances.

Part 3 discusses the origins of UK workplace mediation and traces its take-up by UK employers since the late 1980s. The defining characteristics of workplace mediation as practised in the UK are identified. It is argued that the core tenets of workplace

mediation practice that appeal to common sense also represent an underlying ideology that could be considered antithetic to trade union interests.

Part 4 reviews the existing literature on UK workplace mediation and unions. It begins with an overview of national UK unions' formal policy positions on workplace mediation. This is followed by an extensive analysis of the existent UK literature on trade union attitudes towards, and experiences of, workplace mediation in relation to the themes of incorporation, displacement and union revitalisation, from pluralist and critical IR perspectives. The analysis proceeds sequentially, from the introduction of workplace mediation in user organisations, to its operation, and finally, to the outcomes and impact of its use, as perceived by union representatives. Gaps in the literature are identified at each stage.

Chapter two discusses the methodology used for the study and the position of the researcher.

Chapters three, four and five present and analyse the findings of the primary research which derive mainly from the case studies of UNISON and CWU. Chapter three discusses unions' responses to the proposed (or imposed) adoption of workplace mediation by employers and the introduction stage - setting up in-house workplace mediation schemes or services. Chapter four examines union representatives' experiences of the operation stage – how the workplace mediation process operated within organisations. Lastly, chapter five considers union representatives' assessments of the outcome and impact of the use of workplace mediation in respect of their members and trade unions as organisations. In each of the these chapters, the themes of incorporation, displacement and union revitalisation (as expressed in the research questions) provide the theoretical framework for the analysis of the findings.

Chapter six elaborates on the study's original contribution to knowledge. The analyses of the findings at each stage are drawn together and discussed in relation to the research questions. The implications of the findings for trade unions and other interested parties are discussed. Areas for further study are identified. In brief, the thesis concludes that as it is largely practised in the UK in unionised organisations,

workplace mediation is not an enemy of trade unions but neither is it entirely benign. From a critical pluralist perspective, it is argued that unions should engage with employers over its use wherever possible. The extent to which, as an employers' practice, workplace mediation can be compatible with the interests of unions, and those they represent, is heavily influenced by unions' capacity to engage independently with employers over its use.

CHAPTER ONE: LITERATURE REVIEW

Introduction

The literature review is in four parts. Part 1 sets out the industrial relations perspectives that provide the analytical framework for the thesis and other theoretical constructs which drawn on. Part 2 discusses the individualisation of workplace conflict since the 1970s and its impact on the role of union representatives, particularly at workplace level. This provides the industrial relations context for the adoption of workplace mediation in UK organisations from the late 1980s. Part 3 introduces the concept of mediation. It defines workplace mediation and outlines key elements of its practice in the UK. It charts the origins of workplace mediation and its take-up by employers, particularly in the UK public sector. Part 4 reviews the existing literature on the use of workplace mediation by UK employers, focussing on studies which feature unionised organisations. It discusses the main findings about trade union representatives' attitudes towards, and experiences of, workplace mediation, and identifies gaps in what is known about the subject, to which this thesis seeks to make an original contribution.

Part 1: Industrial relations perspectives and theory

The overarching theoretical framework for this study is that of 'the time honoured concept of frames of reference' in industrial relations (Heery, 2016, vii), the unitary, pluralist and radical frames formulated by Alan Fox (1966; 1974), and explicated in their contemporary forms by Edmund Heery (2016) as 'unitary, pluralist and critical perspectives on work'. The first section of Part 1 discusses the frames as reformulated by Heery (2016), their applicability to the research question and the perspective taken by the writer. The following two sections discuss the UK literature on workplace mediation from soft unitarist/pluralist and critical perspectives respectively. The review then turns to the themes identified from the literature that are relevant to the friends or foes question: incorporation, displacement of union representatives and union revitalisation.

Unitary, pluralist and critical perspectives on workplace mediation

Heery (2016, p. 1) observes that unitary, pluralist and critical perspectives on work are 'rival normative positions [which] …underpin debate' in the industrial relations field. As such they are well suited to the analysis of both published material on workplace mediation and the findings of this study. Indeed, the overarching question posed by the thesis encapsulates these 'rival normative positions'. In this respect, Saundry, McArdle and Thomas (2013, p. 215) observe that workplace mediation 'can be located' within all three of Fox's frames. The key arguments which have been, or could be, deployed within each frame are considered later in the literature review. Heery's updated version of Fox's frames, its relevance to contemporary IR and ideological inclusivity justify its choice as the overarching theoretical framework for this study. It is also somewhat reassuring that Heery's (2016) work passed muster - although not without some criticism - with Roger Seifert (2017), whose work sits within the Marxist radical frame, and Peter Ackers (2017), the originator of neo-pluralism (Ackers, 2014).

The tenor of much of the predominantly pluralist UK literature on workplace mediation is that its use has benefited employers. Most of the employers featured in UK case studies and thematic reviews were unionised and, on balance, to the extent that union interests have been explored, the overall conclusion is that workplace mediation has also been beneficial for unions. International - especially North American - critiques of mediation have been acknowledged in the UK literature. However, the theory and practice of workplace mediation specifically have not been subject to any searching critical analysis, mainly because the primary focus of existent research has been on the role played by workplace mediation in improving conflict management in British organisations.

It is implicit in most of the literature that 'a plurality of legitimate interests can sometimes be aligned but sometimes conflict' and that 'conflict management needs to respect the legitimacy of multiple interests and find a balance' (Budd and Colvin, 2014, p. 23). Accordingly, Budd's (2004) triadic conception of the objectives of the employment relationship – to balance efficiency, equity and voice – applies equally to the goals of conflict management (Budd and Colvin, 2014, p. 23), and it has been deployed by British IR pluralists in their analyses of workplace mediation. The goal of

efficiency has received the most attention in the UK literature, including in respect of trade unions that were supportive of employers' use of workplace mediation. Efficiency gains for unions included speedier case handling and saving workplace representatives' time. Voice and equity in workplace mediation have been explored from the perspectives of individual participants rather than trade unions, perhaps understandably as generally, in the literature, union representatives played no role in the mediation process itself. The UK literature tends to juxtapose employee voice and equity in workplace mediation with alternative organisational dispute resolution processes, especially formal grievance procedures. Mediation is argued to be superior in that it enables greater direct employee voice; and because parties decide the outcome, they can escape managerial prerogative that they would otherwise be subjected to in formal hearings. It is noted in the margins that trade unions might not be comfortable with challenges posed by the use of mediation to their traditional role (Bennett 2013). On the other hand, it was found that where workplace union representatives supported its use, they considered that in appropriate cases – usually ones that did not involve clear breaches of the employer's rules or infringe individual employees' rights - workplace mediation was a better alternative. It was a quicker and less damaging process for the parties and it was more likely to result in a satisfying outcome than adversarial, win/lose formal procedures. Bullying and harassment complaints against individual managers or co-workers appeared to comprise the bulk of these cases. From an employer and union perspective, where mediation succeeded – which it reportedly did in a very high percentage of cases - justice (in the sense of equity) appeared to have been served. However, in their examination of efficiency, voice and equity in UK workplace mediation, Saundry, Bennett and Wibberley (2016, p. 17) found that:

> Participants… did not see mediation as a vehicle of justice. Subordinates… tended to have little faith that the process would substantially change the behaviour of their manager in the long term or hold them to account.

Saundry, Bennett and Wibberley (2016) drew attention to what happens *inside* the mediation room and *beyond* it, back in the workplace. While power – in a relational sense – may shift between parties during the mediation process, mediation left the structural imbalance of power undisturbed. Their conclusion has important

implications for trade unions in user organisations which have not been explored hitherto.

This study claims to adopt a pluralist perspective but at an intersection with the critical perspective. It is pluralist in its acceptance of the 'common features' (Heery, 2016, p. 37) of contemporary pluralism and critical in respect of what it will be argued is the ideology of UK workplace mediation and, in some respects, trade unions' responses to its use in unionised organisations. While Heery uses the term 'frames' and 'positions', in respect of contemporary writing, 'perspectives' is his preferred general description. Of course, perspectives allow for malleability whereas, in the literal sense, frames do not. Refreshingly, Heery thought it best to 'come clean and state from the outset' his 'own choices in regard to frames of references in IR.' He concludes that 'my own feet are probably in the muddy ground between pluralist and radical perspectives' (Heery, 2016, p. 11). This is later described as 'critical pluralism' – 'a position that stands at the intersection of the pluralist and critical frames' (Heery, 2016, pp. 258-259) and the writer of this thesis also adopts that position. (This is further commented on, in regard to researcher positionality, in the methodology chapter.)

Heery (2016, p. 70) notes that the 'Marxisant group' of critical writers, including Paul Edwards (1986) and Blyton and Turnbull (2004) 'have been labelled "radical pluralists" by Ackers (2014). While Heery treats them as belonging to the critical perspective, he does admit the possibility that they may also stand in the muddy ground between the pluralist and critical frame. Be that as it may, this writer's conception of critical pluralism is not synonymous with what Ackers (2014, p. 2609) identifies as 'radical pluralism', which 'claims to entertain conflict and cooperation at work [but] carries a default bias in favour of the former'. The writer professes not to have that bias or to share 'radical pluralist pessimism about all forms of workplace co-operation' (Ackers, 2014, p. 2622).

The UK literature on workplace mediation: Soft unitarist and pluralist perspectives

Promotional and related material on workplace mediation published by UK practitioners and promoters such as conflict management organisations (CMOs) is characterised by a unitarist tone or discourse (McArdle and Thomas, 2016). It tends not to take a hard unitarist stance partly in deference to the fact that unionised

organisations make up a substantial proportion of CMO's clients. ACAS' unique position as a quasi-State agency (governed by a tripartite council) leads it to tread more softly but for reasons explained below its guidance and research reports take a 'managerialist' (Godard, 2000) or 'soft unitarist' perspective (Heery, 2016, p. 3), as do CIPD publications.

Reviewing the body of UK academic literature on workplace mediation to date, Saundry, Bennett and Wibberley (2016, p. 1) noted that:

> Existing research… has tended to focus on managerial perceptions. Consequently, there has been a unitarist emphasis on the business case revolving around its alleged superior efficiency properties compared to conventional rights-based procedures.

The dominance of the conflict management perspective in UK academic research, as Saundry, Bennett and Wibberley (2016, p. 1) explain, partly flows from the 'dominant methodologies within mediation research which have rested on the perspectives and experiences of mediation coordinators, mediators, managers and trade union representatives' (at least in the UK). Methodology also followed the funding - most of the case study research reviewed below was supported by ACAS (published between 2005-07 and 2011-16), in response to outbreaks of enthusiasm for the use of ADR in employment by successive governments.

Notwithstanding user organisations' 'unitarist emphasis' on the business case, the UK case study and related research sits within the mainstream pluralist perspective. It might be debated whether a preoccupation with the business case is a hallmark of unitarism. However, as will be discussed later in the thesis, from a critical perspective, the practice of workplace mediation is underpinned by a unitarist view of conflict – that it is 'mostly interpersonal or a product of organizational dysfunction' (Budd and Colvin, 2014, p. 23). Nevertheless workplace mediation has been adopted the UK by public sector organisations traditionally considered to be pluralist owing to their recognition of unions and acceptance of collective bargaining. It might therefore be anticipated that the arrival of mediation - a unitarist cuckoo in the pluralist nest - could cause tensions between employers and unions, and possibly between unions and their members.

The writer is not aware of any academic studies of UK workplace mediation written from a unitarist perspective. It will be argued in part 3 of the literature review that workplace mediation ideology has roots outside HRM and the world of employment and it is these roots that have given rise to the core tenets of mediator impartiality, voluntary participation and party self-determination. In theory at least, the process treats the parties as individuals of equal standing. Hence a subordinate employee can legitimately challenge the authority of a manager. This is unlikely to be an appealing prospect to unitarist employers. In a similar vein, examining the diffusion of ADR practices in Ireland, Roche and Teague (2012, p. 455) pointed out:

> It would be erroneous to think that the HRM profession universally welcomes the emergence of ADR workplace conflict management practices. Some HRM managers are mostly focussed on developing organizational practices that build employee engagement and commitment and attach little importance to established ADR procedures that ensure workplace problems are addressed effectively and fairly.

Likewise, it would be erroneous to assume that UK public sector organisations are monolithically pluralist in their approach to conflict management. New public management – marketisation, outsourcing and performance management – budget cuts and a decade of austerity have undermined the 'good employer model'; and as will be discussed in part 2 of the literature review, while the public sector remains the bastion of UK trade union organisation, union density has diminished. The UK public sector user organisations featured in the literature sought union support and, to varying degrees, union involvement in operating their in-house workplace mediation schemes. As will be discussed, the writer's study found that some public sector employers operated workplace mediation services with little union input, with, for example, managers or external consultants serving as mediators. Value for money is clearly a factor in influencing organisations' choices but in the following example, there is arguably a hint of unitarism in the rationale given by the quoted HR director of a county council for deciding against setting up an in-house mediation service and opting to train line managers in mediation skills instead:

> The creation of mediation services could take something away from line managers and create a dependency on the mediation service rather than on their own skills (Baker, 2009).

UK literature on workplace mediation: Critical perspectives

Heery (2016, p. 70) categorises radical/critical writing within the IR field as follows: Marxist (Allen, 1971; Kelly, 1998), Trotskyist (early Hyman, 1975) including "rank-and-filist" interpretations of trade unions (Darlington, 1994; Fairbrother, 1996; Danford *et al.* 2005) and 'Marxisant' (such as Edwards, 1986; and Blyton and Turnbull, 2004). In the wider field of the employment relationship, Heery (2016, p. 71) identifies common strands among the diverse body of critical writing: the assumption that the interests of workers and employers are fundamentally or sharply opposed; the celebration of conflict and resistance at work; class struggle being viewed as the motor of change; and its 'very focus on critique' (Heery, 2016, p. 71), as in critical labour studies and critical realism.

Heery (2016) subdivides critical writing into two main currents, critical labour studies (CLS) and critical management studies (CMS). CLS is 'largely internal to the field of IR, retains a strong connection to Marxist theory, and is distinguished by an on-going preoccupation with the labour movement' Heery (2016, pp. 71-72). He cites the work of John Kelly and Richard Hyman in the UK, and Kate Bronfenbrenner and Ruth Milkman in the US, as exemplifying the 'CLS wing' of critical scholarship. The CMS current 'is much more diffuse, encompassing labour process theorists, critical realists, and post-structuralists' (Heery, 2016, p. 72).

There is no developed treatment of UK workplace mediation by writers in the CLS grouping and only a small body of UK literature from the CMS perspective. This may be partly a reflection of the neglect in this strand of IR writing of the unglamorous day-to-day role of the workplace union representative. However, arguments one might expect from CLS scholars have been acknowledged or voiced by soft unitarist/pluralist writers (for example, Latreille, 2011), often citing US sources. Saundry, McArdle and Thomas (2013, pp. 215-216) summarised the position likely to be taken from a traditional critical perspective:

> …a radical analysis would see mediation as a process affording 'bureaucratic control' (Edwards, R.) or what Hyman (1987, p. 40) refers to as a 'spurious' system of 'humanization and democratization' through which employees can be further co-opted by capital and the 'coercive' nature of work relations can be 'obscured'.

The wider field of ADR in UK employment (in relation to individual complaints) has produced a small body of critical studies in the IR and socio-legal fields. Trevor Colling (2004) and Cheryl Dolder (2004) argue that ADR is a device employed by the State to privatise workplace justice. Colling (2004) focused on the ACAS-run arbitration scheme for unfair dismissal complaints while Dolder (2004) cast doubt on untested claims made for the benefits of workplace mediation which the Government was urging employers to adopt. Also in a British context, Ria Deakin (2014) examined the appropriateness of using mediation to deal with workplace bullying and harassment, applying a theoretical framework based on Rawls' (2001) theory of justice as fairness. Focussing on cases involving race, sex and sexual orientation, her work 'explores tensions between the nature of mediation and of bullying and harassment to question the extent to which an emphasis on cost/efficiency and empowerment in mediation rhetoric may obscure questions of the privatisation and individualisation of systemic and structural problems' (Deakin, 2014, p. 7).

As will be mentioned, bullying and harassment complaints constitute a substantial proportion of mediated cases in unionised organisations, and while Deakin's research subjects included some trade union members, union representatives' perspectives on the use of workplace mediation of bullying and harassment complaints were not directly explored. Her findings raised questions which this writer sought to explore in user organisations with workplace representatives and their unions. For example, if '…the use of mediation may be both feasible and fair but that these are contingent on the operation of numerous contextual factors' (Deakin, 2014, p. 231), what role did, or might, union representatives play in ensuring employers used workplace mediation fairly.

In the IR field, Louise McArdle and Pete Thomas (2016) apply a Critical Discourse perspective (Laclau and Mouffe, 1985) to further analyse the trade union role in the development of mediation in East Lancashire Primary Care Trust (ELPCT), first studied by Saundry, McArdle and Thomas (2011). McArdle and Thomas (2016, p. 270) suggest that this approach 'would seem to counter the simplistic view of mediation as simply a means of managerial control…' They acknowledge that within certain CMS and CLS circles, 'this makes for uncomfortable theorizing as it limits generalizing', but defend it on the grounds that it avoids simplification and offers 'an alternative to the binary

distinction between managerialist approaches that see dispute resolution processes as means of correcting the problem of workplace conflict, and perspectives which locate such initiatives within managerial attempts to restrict the influence of labour within the relations of production'. They argue that this approach permits 'a more nuanced understanding of the changing nature of workplace employment relations' (McArdle and Thomas, 2016, pp. 284-285). Key aspects of their findings are examined from an IR critical pluralistic perspective later in the literature review. Briefly, while agreeing that the critical discourse perspective allows for more nuanced analysis, it will be argued that it understates the strategic approach taken by the employer.

From a post-structuralist perspective (drawing on 'post-Marxist political discourse theory'), Roger Seaman (2010, p. 9) argues that the practice of workplace mediation has been 'colonized' by HRM and his work focuses on developing an alternative model, 'explorative mediation'. He does not discuss the role of unions but it is relevant to note that for the purposes of his argument, Seaman constructed alternative radical critiques of workplace mediation. Firstly, from 'the Marxist side of the CMS arena':

> …a mediator would tend to be positioned as simply a management tool, used to suppress conflict episodes that detract from production of a surplus. As such, it would not matter if a mediator adopted a directive style or a critically reflective style…. from a hard Marxist interpretation of labour relations, a mediator would be cast on the side of the oppressor and not as emancipator, despite any humanist claims for mediations' ability to raise awareness (Seaman, 2010, p. 88).

Secondly, from 'the "orthodox Labour Process Theory" (LPT) position, Seaman (2010, p. 88) notes that 'the labour process is defined as a site of conflict'. He then envisages an orthodox LPT perspective on the role of the mediator:

> A mediator who is wittingly or unwittingly directive and captured by the dominant discourses of management, could be viewed as pouring oil onto the wheels of surplus extraction, as those in conflict are helped to cease argument and concentrate their energies on work (Seaman, p. 89).

Seaman assumes from these various perspectives (and his own) that mediators are managers or 'proxy' managers, including presumably union representatives who serve as in-house mediators. From this perspective, workplace mediation would obviously be seen as a foe of unions and cooperation with it by union representatives would be characterised as co-option.

An alternative LPT perspective is then advanced:

> Perhaps less likely, the process of mediation could be viewed as operating in a more emancipatory fashion. If mediation led to a critical questioning of antagonisms and structural causes of conflict, the mediation process may, occasionally, become a temporary site of resistance within the "structured antagonism" (Seaman, 2010, p. 89).

In the writer's experience, temporary acts of resistance by participants in mediation do occur, though they are not usually encouraged by mediators. Challenges to managers' authority by subordinates in mediation are also noted in the pluralist literature (Saundry, Bennett and Wibberley, 2016). An unexplored dimension is the impact of union representatives' presence in mediations, which conceivably could enhance the possibility of mediation being (as Seaman puts it) a 'temporary site of resistance'. Perhaps accompaniment in mediation might also alert a union representative to the root cause of the conflict and lead (outside mediation) to collective action on the part of the union to address those causes. Alternatively, a union companion might stifle their member's acts of resistance and collude with the mediators to secure an agreement. This study seeks to explore both the extent of accompaniment in workplace mediation and the role played by union companions.

The only theoretical IR treatment of workplace mediation itself - which included UK mediation - is that of Ridley-Duff and Bennett (2011). Their model of dispute resolution procedures uses Fox's frames of reference and locates UK facilitative workplace mediation within the radical frame, viewing it 'as a strategy for the advancement of direct democracy in the workplace' and as 'a radical management practice' (Ridley-Duff and Bennett, 2011, pp. 106-107). The theoretical framework which is developed 'relates dispute resolution practice to philosophical assumptions about authority and knowledge' (Ridley-Duff and Bennett, 2011, p. 106). The central arguments go beyond the bounds of this study and are not debated here. Some observations are made by the authors on the role played by trade unions in organisational dispute resolution. They are referred to elsewhere in the literature review. It is relevant to note that Tony Bennett has since described the model as 'an early effort to conceptualise the [mediation] process' (Bennett, 2014, p. 119) and recognised some of the contextual constraints on the radical potential claimed for workplace mediation. Furthermore, the key element of mediation identified as radical in its contribution to 'direct democracy' (Ridley-Duff and Bennett, 2011, p. 106) appears to have evolved into an aspect of

'voice' (Saundry, Bennett and Wibberley, 2016), situated within Budd and Colvin's (2008) pluralist dispute resolution framework of efficiency, equity and voice.

The remaining sections in this first part of the literature review introduce three potential implications of mediation for trade unions which will be recurring themes in the thesis: the twin foes of the incorporation and displacement of unions, and possibly on either side of the friends or foes equation, the impact that union involvement with workplace mediation may have on union revitalisation.

The incorporation theme

Heery (2016, p. 95) includes incorporation as 'among the most frequently deployed types of critique' in CLS and CMS writing. In CMS work:

> The focus tends to be on management techniques that concede discretion to workers… with a claim that such concessions reconcile those workers to a position of subordination. Provisions of this kind… ultimately reinforce management control and employer dominance within the workplace (Heery, 2016, p. 96).

Particularly relevant to this study is the line of critique in CLS work on trade unionism and the part it plays in 'the pacification of the workforce by employers through judicious concessions', through collective bargaining, for example, which has '…been viewed as a means of stabilizing conflict and integrating workers into an oppressive set of economic relations' (Heery, 2016, p. 96):

> Typically… there is always a militant alternative and… if the union movement rejected the course of collaboration then it would prove more effective in advancing workers' interests. For this reason, incorporation is often explained through "sell-out" arguments of varying degrees of crudity (Heery, 2016, pp. 96-97).

Union elites 'fixated on the institutional interests of the union' are seen as part of the problem where they 'fall for the incorporating ruse' of 'seemingly progressive reforms of management practice and industrial relations' (Heery, 2016, p. 97). Clearly, workplace mediation is a prime candidate for condemnation as it *overtly* seeks to stabilise conflict and "humanise" disputants. From a CLS perspective, the successful introduction of mediation into unionised organisations would suggest that union representatives who become converts to mediation had been duped by the employer, as in the East Lancashire Primary Care Trust (ELPCT) case study, and induced to cooperate through 'judicious concessions' being made, such as increased facility time

and seats on joint steering bodies. As will be discussed, joint union-management training in mediation skills was crucial to obtaining union support for the use of mediation in ELPCT. In a similar vein, on training in partnership skills, from a pluralist perspective, Terry and Smith (2003, x) concluded:

> One identified risk of training was its tendency to be directed at key groups and individuals and hence identify them as privileged 'elite groups'. Partnership training and other processes may have been creating an 'inner circle' among union representatives and management representatives with privileged access to partnership processes.

While Terry and Smith (2003) do not label this as incorporation, there was an implied risk that union representatives in the inner circle could become distanced from other representatives and union members. It might also be argued that mediation was introduced in organisations where an inner circle of leading union representatives had already been incorporated through partnership working. As will be discussed, in the ELPCT case study, leading union participants vigorously denied having been incorporated (Saundry, McArdle and Thomas, 2011). From a post-structuralist position, McArdle and Thomas (2016) also rejected a putative CLS analysis on the basis that it would be an over-simplification (discussed later in the literature review). A CLS critic might point out that the views of rank and file members were not sought as to the benefits of mediation for employees.

In some of the UK case studies, there were hints of inter-union tensions, with representatives from some unions remaining aloof from engagement with mediation (Saundry, 2012). Given their focus on the advancement of conflict management, the case studies do not examine in detail the views of representatives who were hostile to the use of mediation or chose to disengage from it.

As will be discussed in part 4 of the literature review, in relation to the incorporation theme, the UK literature reports that certainly initially, some union representatives were sceptical about involvement with workplace mediation and also that charges of incorporation were denied by the leading representatives who were most closely associated with its introduction. Formal dispute resolution procedures and adversarial approaches were still resorted to when necessary (Saundry, McArdle and Thomas, 2011; Saundry, 2012). This thesis seeks to examine a wider cross-section of union reactions, particularly within the case study unions – in different workplaces and at

different levels of the union - and to explore representatives' reactions and perceptions of conflicts of interest in more depth.

The displacement theme

On both sides of the Atlantic, soft unitarist guidance on implementing integrated conflict management systems gives examples of how to overcome the barrier posed by fear of displacement on the part of frontline managers and union representatives (Costantino and Sickles Merchant, 1996; Liddle, 2017). The recommended response is to engage 'stakeholders' and to 'increase buy-in through involvement' (Costantino and Sickles Merchant, 1996, p. 216). For example, to transform 'lukewarm commitment' into full-blown commitment on the part of stakeholders, it is recommended that they become 'members of the ADR design team' (Costantino and Sickles Merchant, 1996, p. 222) which was the prescription followed at ELPCT (Saundry, McArdle and Thomas, 2011) in introducing workplace mediation. In ELPCT, leading union representatives' initial wariness and scepticism abated, as will be discussed in the section on workplace unions and mediation.

It has been suggested that fear of displacement may be a greater concern to US trade unionists than their UK counterparts (Saundry *et al.* 2014, p. 11):

> It has been argued that innovation in conflict management in the US non-union sector has been driven by the desire to ward off trade unionisation (Lipsky and Seeber, 2000). The all or nothing nature of union recognition within the US system means that the implications of this for the UK are relatively limited.

As is discussed later in the thesis, some UK union representatives believed (correctly) workplace mediation to be an American idea and may have associated it with anti-unionism. However, innovative ADR processes have also been adopted by US employers in the unionised public sector. The most frequently cited example in the UK literature is the REDRESS mediation programme which operates in the US Postal Service (USPS), a quasi-public sector organisation. The development of the REDRESS programme casts some light on US unions' concerns about displacement in unionised organisations. In contrast to the introduction of mediation in Royal Mail (discussed later in the thesis), REDRESS was introduced by the employer without the national agreement of the recognised USPS unions (Amsler, 2014). At the outset of the programme, the American Postal Workers Union (APWU) 'advised the union

representatives not to participate' in it (Bingham *et al*. 2009, p. 41). However, through working with local union representatives, its use had garnered support from union locals, although five years after its introduction, Lisa Blomgren Bingham said that union responses to REDRESS were 'constantly in flux… it depends on whether we ask the question on the local level or at the national level. Second, it depends on what bargaining unit you are asking' (Cardozo Symposium, 1999, p. 23). Pam Zuczek, Coordinator of the REDRESS Program, added that initially '…there was not a lot of support from our unions' owing to a fear of REDRESS 'encroaching on their territory' and 'a lack of information'. It was necessary to reassure the unions that 'the CBA [collective bargaining agreement] is their arena' and that just as they were representatives in the [internal USPS] EEO complaint process (Cardozo Symposium. 1999, pp. 23-24), so they could be in REDRESS mediations.

REDRESS is used for the mediation of equal employment opportunity (EEO) complaints, and as such it sits outside the USPS collective bargaining frameworks; although some discrimination complaints are filed as both grievances under the relevant collective bargaining agreement and as EEO complaints. In REDRESS mediations, where 'craft' employees, that is, operational workers covered by a CBA, choose to be represented by a union official, Bingham, Kim, and Raines (2002, p. 358) explain the role of the union representative as follows:

> [Their presence]… serves to ensure that any settlement does not violate the relevant collective bargaining agreement. However, union representatives participate on behalf of the individual employee, and *not* [writer's emphasis] in an official capacity on behalf of the union.

Parties in UK workplace mediations have no statutory right to be accompanied. In contrast, parties in EEO mediations have a statutory right to representation of their own choosing. USPS union representatives have authority to settle individuals' grievances that are a cause of action under the CBA or which have been 'dual filed' as grievances and EEO complaints. They do not have authority to settle stand-alone EEO complaints made by individuals. The standard REDRESS arrangement enables a union representative to accompany a union member irrespective of the cause of action and to safeguard the collective interests of the union.

The inviolability of the CBA is emphasised in *The USPS-APWU Joint Contract Interpretation Manual* (2017, p. 24):

> EEO settlements to which the union is not a party will not take precedence over the language contained in the CBA. Nor can an EEO settlement modify the terms or requirements of the CBA. A settlement of an EEO claim does not automatically render moot a grievance filed on the same issue. Rather, for a grievance beyond step 1, the union must be a signatory to any EEO settlement which resolves the grievance…

REDRESS uses a non-evaluative model of mediation and union representatives do not act as advocates. As in UK workplace mediations, in the accompanying role, they offer support and advice. Longitudinal data on the REDRESS mediation outcomes show that union representatives' attendance has a positive effect on settlement rates (Bingham, Kim and Raines, 2002; Bingham *et al.* 2009).

In summary, in the USPS, concern about union displacement was primarily a concern about the impact of settlements made (by individuals) in a dispute resolution process outwith the collective bargaining structures, on collective bargaining agreements – potentially eroding or undermining terms and conditions and unions' prerogatives in determining the issues that are grieved and grievance settlements. In contrast to the US, in the UK, the individual employee has a statutory right to seek redress from the employer in regard to 'any grievance relating to his employment' (*Employment Rights Act 1996* s.3 (b) (ii)). The *ACAS Code* (2015a, paragraph 1) defines 'grievances' broadly as 'concerns, problems or complaints that employees raise with their employers'. The accompanying *Guide* (2019) gives examples of 'issues that may cause grievances' including 'work relations', 'bullying and harassment' and 'discrimination' (ACAS, 2019, p. 38). 'Grievance' is defined more narrowly in relation to the statutory right to be accompanied, but employees may have wider contractual rights to union representation and in any event unionised employers may not make fine distinctions in this respect.

Generally, neither UK unions nor employees are circumscribed by the terms of the collective agreement as to what can be raised as a grievance. As will be discussed in the next part of the literature review, representing individual employees is a key activity for UK workplace union representatives. Workplace mediation can be seen as an adjunct to established individual dispute resolution processes. In most user

organisations, if mediation fails, participants can revert to formal procedures which engage statutory rights to accompaniment (in the case of most grievances) and often contractual rights to representation. Arguably, in the UK context, the concept of workplace mediation would be more familiar than alien to unions – in some respects it can be seen as a more structured version of informal approaches to resolution, except that the outcome is ostensibly in the hands of the disputants. Importantly, the UK literature indicates that the majority of workplace mediations involve relational rather than transactional issues, suggesting that mediation settlements posed little threat to collective terms and conditions of employment. In summary, UK unions are unlikely to perceive the adoption of mediation in the workplace by UK employers as a threat to their collective interests in the same way as US unions. How then, in the UK context, might displacement arise?

Potentially, displacement could occur at various stages in the life cycle of individual employees' complaints. Firstly, members having a problem at work might bypass their workplace representative at an early stage in the conflict and directly approach the mediation service gatekeeper, especially where they had been referred to the service by a manager (Neathey, Regan and Newton, 2005, p. 33). This could usurp the role of the union representative as an *ad hoc* mediator. Secondly, having discovered from gatekeepers that participation in mediation did not require or involve representation, members might forego seeking independent advice from union representatives. Thirdly, a 'displacement effect' could be perceived by union representatives in regard to the mediation process itself. There was no place for advocacy and rarely accompaniment (ACAS/TUC; 2010; CIPD/ACAS, 2013). Party self-representation might have a multiplier effect, in that individual union members could be encouraged and 'empowered' through participation in mediation to manage their own conflicts at work (Bennett, 2013), rendering union representatives' traditional representational role redundant. Lastly, there could be a post-mediation displacement effect in that representatives might not be informed of the outcome of individual mediations in which members had participated, or have access to information from the employer about overall use of mediation in the organisation. The UK literature does not venture into these issues in any depth.

There is another aspect of displacement on which the UK literature is silent - the 'displaced activist' thesis, associated with CLS critics of union-management partnership (Kelly, 1999) and examined by Geary and Roche (2003). This can be explained by the fact that there are no examples in the UK literature of nationally negotiated workplace mediation schemes. Full-time union officials are also largely absent from the picture which poses questions about the role of unions at national and regional level in respect of the use of workplace mediation which this study seeks to explore. In Royal Mail, CWU activist displacement has been discussed in the context of various employer initiatives (Gall, 2003a). Post-privatisation, the use of nationally agreed IR mediation in Royal Mail could be seen as an example of activist displacement, in that mediators from a joint national team could be deployed to resolve workplace disputes.

Overall, the thesis seeks to further explore the phenomenon of union displacement in the UK context; if displacement effects were perceived and if so, how they were responded to; and how it affected union representatives' assessment of workplace mediation as a friend or foe.

The union revitalisation theme

From a pluralist perspective, a broad conception of revitalisation was outlined by Bryson (2007, p. 184):

> [It] would entail halting and… reversing the decline in membership, heightened political influence, greater union effectiveness within the workplace, and a growing recognition on the part of workers and employers that unions were an important stakeholder in the economy and were here to stay.

At the level of the individual employer and union branch, all but the macro-political elements of Bryson's conception are relevant to this study, and these elements – stabilising and increasing union membership, greater workplace effectiveness, and union legitimacy – have been considered in analysing the thesis' findings on the impact of union involvement with workplace mediation.

The decline in UK union membership density and organisation in unionised workplaces has raised concerns about a 'representation gap' (Towers, 1997; Wibberley and Saundry, 2016) and generated a sub-field of IR literature on union renewal (Gall, 2003b; Badigannavar and Kelly, 2004; Fernie and Metcalf, 2005; Gumbrell-McCormick

and Hyman, 2013; Simms, Holgate and Heery, 2013). Debates within this literature on the efficacy of different strategies to renew unions and future prospects of trade unionism have links with the research question. Do changes to dispute resolution procedures - in this case, the introduction of workplace mediation - undermine unions' standing with employees and weaken their collective influence in organisations where they are recognised? Does involvement with mediation - as an added option to organisations' dispute resolution procedures - create opportunities for union representatives to be seen by employees (union members and potential members) in actual or potential conflict situations as being more responsive to what is in their best interests? The thesis considers these issues from the perspective of union representatives. How unions deal with individuals' disputes could potentially affect member commitment to the union; and it has been argued that member commitment is the foundation for participation in union activity (Johnson and Jarley, 2004; Hickey, Kuruvilla and Lakhani, 2010). Clearly, the views of union members - missing from this study - are central to these questions. As the subject of individual grievance/complaint handling by UK union representatives and its relationship to union commitment and participation does not seem to have attracted much attention from IR scholars, it is suggested as an area for further study in the concluding chapter.

The other main strand to revitalisation, discussed in part 4, is the question whether union involvement with workplace mediation enhances or diminishes union's collective influence in organisations. To the extent that this has been researched in the UK, there is some evidence in support of the former contention (Saundry, McArdle and Thomas, 2013). Paul Latreille and Richard Saundry (2014, p. 202) also point to US evidence of this phenomenon:

> In the US there is tentative evidence of public sector unions seeking to extend their influence by embracing alternative forms of dispute resolution (Robinson *et al.* 2005); while Lipsky and Seeber (2000, p. 45) contend that for some unions this "can extend the authority and influence of a union into areas normally considered management prerogatives".

However, the US evidence is of limited applicability in a UK context owing to fundamental trans-Atlantic differences between contractual and legal rights of employees. In brief, in the US studies, the extension of union influence was to areas *not* covered by collective bargaining contracts such as the resolution of disputes over

communication problems and interpersonal disputes involving employees (Hodges, 2004, p. 392; Robinson, Pearlstein and Mayer, 2005, p. 349). As referred to earlier in this chapter, as a rule, in UK unionised organisations, unions would expect to represent individual members (if asked) if they have a grievance about these types of issues. Consequently, the adoption of mediation by UK employers is unlikely to offer the same potential that it does to some US unions to extend their authority and influence. However, the potential advantage to UK unions of employers expanding dispute resolution options is that traditional grievance procedures do not offer the best option for resolving certain types of individual disputes. Lipsky and Seeber (2000, p. 45) maintain that some US unions '…have embraced ADR with enthusiasm valuing its potential benefits for their members'. The UK research found consistently that for the types of conflicts that were mediated, union representatives regarded the process and outcome for their members as more beneficial than formal grievance processes (Saundry, McArdle and Thomas, 2011; Latreille and Saundry, 2016b; McArdle and Thomas, 2016). It was less clear what the implications were for unions as membership organisations; for example, whether union representatives' support for individuals opting for mediation enhanced their reputation with employees; and whether union involvement with workplace mediation enhanced or diminished their ability to act collectively to address systemic causes of conflict such as workplace bullying.

From a radical CLS perspective, it can be argued that mediation perpetuates the individualisation of conflict and, aided and abetted by union support, strips out the collectivising potential of workplace conflict. Mobilisation theory (Kelly, 1998) posits that casting blame on the employer for perceived wrongdoing is the necessary spark to ignite anger and the development of a collective sense of injustice. However, during the mediation process, workplace mediators consciously seek to quash blaming behaviour as a legitimate response to feeling aggrieved. 'Taking the blame out of [parties'] interactions' (Crawley and Graham, 2002, p. 33) is a mediator technique rooted in psychological theories as to how individuals perceive and act on mistreatment at work (Klaas, 1989; Folger and Cropanzano, 2001; Olson-Buchanan and Boswell, 2008). It can also be argued from a radical perspective that treating the manager in mediation as an individual distances the conflict from the organisation absolves the employer of responsibility. Therefore, while it may suit the interests of

some individual employees and the 'vested interests' of unions (such as divesting workplace representatives of time consuming, awkward cases), by taking up mediation, workplace representatives are laying down the 'sword of justice' (Flanders, 1970, p. 15).

Faced with the decline of traditional union solidarities and greater individualism among workers, referring back to Flanders (1970), Hyman (1999, p. 1) urged unions 'to revive and to redefine the role as sword of justice'; to 'move to a new model of organic solidarity' and 'to persuade both their own members and members of civil society more generally, that they have a mission as a "sword of justice" (Hyman, 1999, p. 11). This rallying cry is strongly associated with social movement unionism and strands of the organising model. Focussing on the workplace, Hyman (1999, p. 3), citing Pérez-Días (1987, pp. 114-115), recognised that 'workers adopt "a rational, instrumental or experimental attitude towards the unions"…' which made them vulnerable in the face of 'the new managerialism of the 1980s and 1990s (with its mendacious rhetoric of "empowerment" and "human resource development" (Hyman, 1999, p. 4). Instead of 'simple resistance' which 'often proved ineffectual since union members themselves were frequently attracted by the rhetoric of autonomy', Hyman (1999, pp. 4-5) argued that 'more viable in the longer run have been strategies of "critical engagement" in which unions have responded by mobilising support for their own demands in the process of negotiating change'.

Hyman (1999) does not refer to individual dispute resolution but, as McArdle and Thomas (2016, p. 267; citing Hyman, 1987) suggest, workplace mediation would most likely be considered a sham exercise in 'empowerment' and an example of the 'mendacious discourse [which] typically provides a "democratic" gloss to employer efforts to intensify production pressures, cut staffing numbers, and undermine traditional forms of collective regulation' (Hyman, 1999, p. 8). But would it be a candidate for critical engagement? Arguably not; while Hyman's enticing vision of new 'imagined solidarities' (Gumbrell-McCormick and Hyman, 2013) acknowledges differentiation of members' interests, it does not grapple with the daily experience of workplace representatives approached for assistance by individual members. More

broadly, CLS literature pays scant attention to workplace conflict as it is experienced by individual workers and unions' role in dealing with individual dispute resolution.

As will be discussed later in the thesis, union representatives are well aware that individuals join unions as an insurance policy in case they have a problem at work (Waddington and Whitson, 1997) and that in many work settings, problems brought to the union by individual members may not be amenable to being collectivised, nor may they want it to be - bullying by a co-worker being an example. Moreover, if help is not forthcoming, they may opt to resign their membership (Waddington, 2006; 2015). These realities are inextricably linked to the individualisation of conflict which is the subject of part 2 of the literature review.

Part 2: Individualised conflict and the role of trade unions

This part of the review gives an historical overview of the individualisation of workplace conflict since the 1960s. It goes on to compare the role of the union workplace representative today with that of the shop steward of the 1960s and 1970s in relation to dealing with individual union members' problems at work. It also refers to national union guidance aimed at workplace representatives in handling individual grievances. This establishes the industrial relations context for the review of the literature on UK union positions on workplace mediation to be discussed in part 4. In focussing on the individualisation of workplace conflict it is not being argued that the collective dimension has become irrelevant, however, as is referred to below, the writer agrees with Colvin (2016) that IR theory has not caught up with the individualisation phenomenon.

<u>The resolution of individual workplace conflict – now and then</u>

Assuming that an individual employee is unable to resolve a conflict with a co-worker or line manager themselves and wants the matter resolved, in a unionised organisation, the typical path taken is to approach a senior manager, HR or if the 'complainant' is a union member, a union representative. If unresolved, the problem may become a written or formal complaint or grievance. Typically, in larger and public sector organisations, the formal stages of a grievance or dignity at work procedure will involve an investigation and hearing. An appeals procedure may also be invoked.

Although the complaint may affect others in the workplace, procedurally and legally, it is treated as being the property of the individual complainant, notwithstanding that at some stage, a union representative, embodying the collective interests of union members, may be involved in dealing with it. Informally, *ad hoc* mediation - by a manager or HR officer - may be attempted early on, and a union representative might also act as a go-between, mediating informally between the disputants. Where employers use a more formal mediation process, mediation can be attempted at any stage in the conflict, although the conventional wisdom is that it is most likely to resolve the problem, if used early in the conflict before it has escalated and/or become formalised. If the complaint is not resolved within the organisation and it involves contractual or statutory employment rights, it could then progress through a series of processes and eventually end up being heard by a court. If the complainant is a union member, union lawyers will assess the prospects for success if the matter were to be litigated. The union may attempt to negotiate a settlement. If the prospective claimant wishes to pursue legal action and ACAS conciliation is unsuccessful, employment tribunal (ET) judges then attempt ADR of various kinds. If the claim is not settled, withdrawn or otherwise disposed of, it will be decided by a court.

The vast majority of individual workplace complaints never reach the courts (Genn, 1999; van Wanrooy *et al.* 2011, p. 27; Jordan *et al.* 2013) or do not involve justiciable issues. However, notably in public sector organisations, formal dispute resolution procedures mimic aspects of the legal process such that they are described in the literature as 'quasi-judicial' (Saundry, McArdle and Thomas, 2011, p. 13) or 'semi-judicial' (Jones and Saundry, 2016, p. 111). Consequently, where evidence is lacking that an employer's rule has been broken or an employee's rights have been breached, the individual complaint is unlikely to be upheld. Cases involving "less serious" bullying and harassment can fall into this category (Latreille, 2011); and workplace mediation has offered an alternative process for resolving these so-called interest-based disputes.

As will be discussed, union guidance (Unite 2014; UNISON, 2016a) urges workplace representatives to look for potential collective issues in individual grievances and to organise around them. From a union perspective, it is axiomatic that workplace union representatives should address the systemic causes of bullying with employers.

However, faced with an individual union member who may have come forward reluctantly and wishes their complaint about being bullied by a manager or co-worker to be handled sensitively and privately, it would be understandable if the union representative paid little heed to advice to seek to collectivise the issue. This hypothetical but (in the writer's experience) realistic example illustrates the tension between the organising model adopted by most UK unions and the servicing model. UNISON has evolved an approach based on 'mutual reliance between organising and servicing' (de Turberville, 2004; Waddington and Kerr, 2015, p. 203), in which supporting individual members is seen as underpinning and complementing the union's collective response to workplace issues. Importance is placed on the representation of individual members and the strategic use of the law in defending members' interests. Nevertheless, it is implied that unless individual casework generates or supports organising work, it should not be prioritised by branch officers and stewards (Waddington and Kerr, 2009; 2015). The thesis asks, in relation to internal union relations, whether these tensions were an issue for UNISON representatives who supported the use of mediation in the workplace, and if so, how they dealt with them.

Advising and representing individual union members takes up a significant amount of British workplace representatives' time. An analysis of data from the 2011 Workplace Employment Relations Study (WERS) showed that 78 per cent of workplace representatives spent time on grievances and disciplinaries (Charlwood and Angrave, 2014, p. 27). The data do not distinguish between grievances and disciplinaries which are inter-related but also separate procedurally and conceptually. In this context, it is relevant to note that UK employers use mediation for grievances and related employee complaints but rarely for disciplinary cases. In respect of UNISON, a 2005 survey of lay representatives (N = 2,425) showed that 94.1 per cent of branch secretaries engaged in advising members on employment and related issues and 92.7 per cent represented members in grievance/disciplinary cases. Of 17 listed duties, these activities were ranked as the first and second most important duties of branch secretaries. The percentages in respect of stewards engaged in advising and representing members were lower than for branch secretaries but these activities also ranked in the top three most important duties of stewards (Waddington and Kerr,

2009, pp. 37-38). It is not known if this picture has changed dramatically in the past decade. While they do not claim to be representative, the thesis' findings offer some insight into the contemporary activities of UNISON branch representatives in advising and supporting individual members.

Comparing the operation of individual dispute resolution today with the 1960s and most of the 1970s, according to the literature of the period, the picture would have been very different. The grievant would typically have been a semi-skilled male, white, manual worker; and a union member of a closed shop in manufacturing or heavy industry (Goodman and Whittingham 1969; Beynon, 1973; Batstone, Boraston and Frenkel, 1977). He would have had access to a nearby union steward who (if he thought the worker had a justified complaint) would "go through procedures" laid down in the collective agreement and raise it with the supervisor and so on until it was resolved. In some instances, procedures might not be followed where industrial action could be taken (often for short periods) in solidarity with the worker, to force the employer's hand. The law on employee rights would rarely have featured in the steward's assessment of how to handle the dispute.

These pervasive images of British industrial relations still influence the thinking of British IR writers, particularly those in the pluralist and CLS camps. It is also relevant to mention that in relation to individual dispute resolution, the situation of vast numbers of workers - particularly women, minority groups and to a lesser extent non-manual employees - did not receive much attention from mainstream IR researchers (referred to briefly below). More broadly, while noting some IR writers' work on 'new areas of individual employment rights', Colvin (2016, p. 3) makes a convincing case that 'the field's more general theories and models have not caught up with the shifting nature of employment relations'. In relation to individual dispute resolution, the writer of this thesis would also argue that IR theory appears to often fail to adequately address how unions should respond to the 'individual rights revolution in industrial relations' (Colvin, 2016, pp. 2-3) in order to survive and prosper.

In the early 1970s, the *Industrial Relations Code of Practice* (1972) noted that 'individual and collective disputes are often dealt with through the same procedure' (Department of Employment, 1972, p. 26). In industry, it was not uncommon for a

distinction to be made between 'procedural' and 'unconstitutional' means of resolving disputes. Procedural formalisation at plant level was seen by the Donovan Commission (1968) as essential to regulate conflict such as stoppages on the factory floor over disciplinary action or dismissals of individual workers. A noticeable feature of written procedures from manufacturing industries at that time was that the initial stage invariably involved the worker raising their complaint directly with the foreman (Thomson and Murray, 1976, p. 60). Under Ford's procedures, for example, the steward only came into the picture if the worker's approach to the supervisor failed to resolve the issue (Beynon, 1984, p. 140). On paper at least, this informal first stage feature of UK organisations' dispute resolution procedures has endured. However, the literature of the 1960s and 1970s indicates in industries where workers and stewards worked in close proximity, the steward might get involved immediately, sometimes at the foreman's behest.

Having been approached by a worker, the shop steward could quash an individual's grievance if it seemed trivial or hopeless, or was seen as an 'individualistic demand' which would undermine the work group's collective interests. Other options open to the steward were to mediate between the worker and manager to reach an acceptable resolution; to strongly argue the worker's case, and if not resolved satisfactorily, push for the issue to be taken up by convenors or full-time union officials; or to take 'unconstitutional action'. This could include organising industrial action in support of the worker where that was judged to be the quickest or most effective way to obtain a satisfactory outcome for the individual and the work group (Beynon, 1973; Batstone, Boraston and Frenkel, 1977). However, the folkloric image of the militant steward of those times overshadows the more mundane reality for it appears that in the late 1960s at least, many stewards saw themselves as - to quote the famous phrase - 'more of a lubricant than an irritant' (McCarthy and Parker, 1968, p. 56).

The roles of shop stewards or workplace representatives, as they are now often called, still encompass all of these options, although there has been a marked overall decline in the mobilisation of workers by union representatives to take industrial or direct action in support of individuals. In brief, it has been widely argued that the individualisation of the employment relationship since the mid-late 1970s can be

explained by the expansion of individual statutory employment rights (Dickens and Hall, 1995; 2003; Dix, Sisson and Forth, 2009; Colling 2012; Saundry and Dix, 2014), and since 1979, by the decline of union organisation and collective representation in UK workplaces (Charlwood and Metcalf, 2005); and, from the mid-1980s, the spread of Human Resource Management (HRM). These developments have contributed to the 'judicialization' of individual dispute resolution and formalisation of procedures for organisational dispute resolution. Davies and Freedland (1993, p. 418) describe 'judicialization' as a process by which 'courts (and tribunals) replace voluntary procedures as dispute settlement machinery'. It can also be detected 'within voluntary procedures', where 'decisions are taken by reference to legal criteria rather than to criteria developed autonomously by the parties'. In addition, a raft of legislation since the early 1980s has made it increasingly difficult for unions to take lawful industrial action.

Another important influence in the individualisation of conflict, largely overlooked in mainstream pluralist literature, is the impact of diversity management in the UK, which arrived from the US in the early 1990s (Kandola and Fullerton, 2000), and was adopted by public sector employers and large private sector organisations. Like mediation, diversity management can be seen as Janus-faced. Healy, Kirton and Noon (2011, p. 10) argue that:

> It became a hot topic in the UK around the mid 1990s, following a period of disillusionment by equality activists concerned that organisations seemed to be paying no more than 'lip service' to equality.

However, it also appealed to employers (and employees) who were uncomfortable with the concept of positive discrimination which ran counter to the principle - deeply ingrained in dominant British liberal values - of treating everyone equally. Diversity enabled every employee to have multiple identities, many of which were added to what became protected characteristics under the *Equality Act 2010*. For HR managers, managing diversity had to be reconciled with managerial prerogative. There was clearly potential for conflict where managers in the frontline of delivering organisational change and business performance also had to be diversity-aware and mindful of anti-discrimination law. These tensions and changes in work organisation were recognised implicitly by the 2000 *ACAS Code of Practice* on disciplinary and

grievance procedures. Alongside traditional issues such as terms and conditions and new working practices, grievances might arise over 'relationships at work' or 'organisational change' (ACAS, 2000, p. 15).

An important addition to the 2000 *ACAS Code*, reflecting changes in HR practice instigated by developments in legislation and case law, was the recognition that:

> Some organisations may wish to have specific procedures for handling grievances about unfair treatment e.g. discrimination, bullying and harassment, as these subjects are often particularly sensitive' (ACAS, 2000, pp. 17-18).

Reflecting the influence on domestic law and HRM practice of European directives on equal treatment which recognise individual dignity and worth as the foundation for equality rights (Fredman, 2002), bullying and harassment policies became "dignity at work" policies, with associated dignity at work complaints procedures. The concept of individual dignity could be readily harnessed to diversity management and dignity at work policies and procedures proliferated, notably in public sector organisations. The Equality and Human Rights Commission *Code of Practice on Employment* (2011) endorsed the move to procedural specialisation:

> An employer may in addition [to grievance and disciplinary procedures] wish to introduce a separate policy designed specifically to deal with harassment. Such policies commonly aim to highlight and eradicate harassment whilst at the same time establishing a procedure for complaints, similar to a grievance procedure, with safeguards to deal with the sensitivities that allegations of harassment often bring (EHRC, 2011, p. 266).

The EHRC *Code* (2011, p. 268) advised that employers should treat workers with respect and dignity and ensure their workers treated each other similarly, 'to help avoid disputes and conflicts with and between workers with different protected characteristics'. Consequently, it was 'good practice to have a clear policy on "dignity and respect in the workplace". It was also 'good practice and in the interests of both employers and their workers to try to resolve disputes so as to avoid litigation'. The EHRC (2011) *Code* went further than the reference to workplace mediation in the *ACAS Code* (2000) in recommending that:

> Employers should have different mechanisms in place for managing disputes, such as mediation or conciliation. Where it is not possible to resolve a dispute using internal procedures, it may be better to seek outside help (EHRC, 2011, p. 268).

It is not known whether this prompted employers to use workplace mediation but it was nevertheless an endorsement of mediation by the leading equality body for Great Britain.

Arguably, procedural specialisation, combined with judicialisation, militated against the informal resolution of individuals' dignity at work complaints. In some cases, informal resolution would be inappropriate. Certainly in public sector organisations, stewards could represent individual members in at least the formal stages of dignity at work procedures. However, from a union perspective, there could be a risk that the procedural treatment of dignity at work complaints as a distinct sub-set of grievances might further detach them from collective fora in which the systemic issues underlying "more serious" complaints could be challenged by unions.

Procedural specialisation did not obviate the problem of unsatisfactory outcomes in dignity at work cases that were unlikely to be upheld through lack of evidence but which involved conflict that was damaging to working relationships and the individuals concerned. As a catch-all, complaints of bullying and/or harassment could encompass a wide range of issues not necessarily covered by statutorily defined discrimination. Indeed, it could be argued that the imprecise label 'dignity at work' would be likely to invite a wide range of complaints. In cases where it appeared that the problem lay in the relationship between the disputants and there was no clear breach of the employer's rules or a potential claim, workplace mediation could appear to be an ideal practical solution. Its ethos was also compatible with that of diversity management - mutual respect, tolerance of individuals' difference and individual (party) self-determination (discussed in part 3). By making specific reference to mediation in its *Code*, the EHRC reinforced the pro-mediation message transmitted by the *ACAS Code* (2009a) and accompanying *Guide* (2009b).

In her socio-legal study on bullying and behavioral conflict at work, Lizzie Barmes (2016) noted the paradoxical effect of "doing the right thing" which can enmesh UK public sector employers in damaging formal dispute procedures that have imported adversarial legal practices and are underpinned by the individualised nature of employment law. Barmes argues that this forces employers to treat employees as individuals, when their grievances stem from issues to do with the collective

organisation of work. The effect is to entrench managerial prerogative and to undermine the socially emancipatory aspects of equality law in particular. This line of argument might suggest that, as an individualised process, workplace mediation has the potential to further undermine the collectivisation of individual conflict, even in organisations where unions are present. It might also suggest that mediation could be a double-edged sword – resolving cases more satisfactorily for parties where the complaints were based on misperceptions of discrimination, but possibly also framing discrimination issues in mediation as misperceptions on the part of individuals. These possibilities are recognised in the IR literature (Latreille, 2011; Bennett, 2016; Branney, 2016) but they have not been explored in any depth. Union representatives tended to be cautious about mediating cases that involved justiciable issues and the evidence indicated that overt discrimination cases were not mediated in UK user organisations. The thesis seeks to further explore trade union perspectives on these issues.

Zooming out to the wider political and economic context in which employers that were to adopt workplace mediation were operating in from the late 1980s (when UK community mediators first crossed over to workplaces), it is relevant to note certain key influences which have had a bearing on the individualisation of conflict and the incidence and evolution of workplace conflict. Because many user organisations (that is, organisations using workplace mediation) are in the public sector, the focus below is on developments in that sector. As will be discussed, the uptake of workplace mediation by UK employers corresponds with these developments.

Bach and Winchester (2003, p. 290) charted the impact of the 'modernization of public services' in the 1980s and 1990s which brought 'radical changes in the organisation and management of public services' and 'altered traditional forms of employment relations'. An 'important component of Conservative reform' was 'the devolution of managerial responsibility to more autonomous organizational units' (Bach and Winchester, 2003, p. 289). This included 'the devolution of responsibility for personnel practice to local managers':

> At the same time, however, central government accrued unprecedented levels of control over the funding and management of nominally independent service providers through strictly enforced cash limits and demands for annual 'efficiency gains' (Bach and Winchester, 2003, p. 289).

Increased pressures on local managers and employees produced tensions in working relationships and individual conflicts which did not lend themselves to resolution in formal procedures. Operational managers were caught in the middle and often inadequately equipped or supported to manage conflict informally (Jones and Saundry, 2012). Since the 2008 financial crash, government austerity measures have reduced the size of the workforce in local government and the civil service and accelerated changes in the organisation of work, such as alteration of the mix of staff and re-profiling jobs in the NHS (Bach and Givan, 2011; Bach, 2016), and casualisation in higher education (UCU, 2018). In light of the impending 'human casualties', in 2009, the Public Sector People Managers' Association urged local authorities to set up workplace mediation services (Baker, 2009). Stephen Mustchin (2017, p. 307) argues that in Royal Mail, privatisation brought 'an increasing emphasis on efficiency and performance which directly impacted on the labour process and the nature of work':

> The management culture historically described as 'institutionalised authoritarianism' (Gall, 2003[a], p. 28) was exacerbated by liberalisation and privatisation, as managers strove to create the kind of lean organisation presumed desirable to a majority shareholder. The multiple sources of pressure driving authoritarian managerial relations and work intensification led to further weakening of (already low) trust relations between workforce and management (Mustchin, 2017, p. 307).

As will be discussed, upon privatisation, recognition of the commercial risk posed by the potential for outbreaks of industrial action prompted the introduction of IR mediation. It aimed to resolve local collective conflicts by focussing on improving the relationship between individual CWU representatives and managers.

From a psychological perspective, conflict between individuals can be distinguished from team or group-based conflict. In relation to the former, three types of conflict are identified: 'task conflict' (conflict over what to do); 'process conflict' (disagreements over how to complete a task); and 'relationship conflict'. Relationship conflict is framed as 'interpersonal incompatibilities' which generate tension and friction and associated negative feelings' (CIPD, 2015b, p. 5; citing Behfar, Mannix and Peterson, 2011; and Jehn and Mannix, 2001). Such conflicts may be interpreted as bullying by those adversely affected. In the UK IR literature, relationship conflict tends to be designated as 'interest based' as opposed to 'rights-based'. In large UK organisations at least, once formalised as complaints, relational or interest-based conflict is channelled

into grievance or dignity at work procedures. From a soft unitarist perspective, these quasi-judicial procedures (and employment tribunals) fail to address the nuances of relational conflict and carry the 'danger of artificially labelling conflict… as bullying and harassment' (CIPD, 2015b, p. 5). Pluralists might agree that formal procedures have serious weaknesses in resolving relational conflicts but also share with critical perspectives, a view of conflict in which individual workers are 'members of a collective entity' (Barmes, 2016), that is, the workplace. Particularly from a critical IR perspective, union representatives might be expected to have concerns not only about the individualisation of conflict, but also, as Deakin (2014) argues, its personalisation in mediation (discussed in part 3), further distancing the underlying issues from collective solutions. In this regard, the views of UK union representatives are not explored in the UK literature. On the face of it, in a highly unionised environment such as Royal Mail, adoption of a *collective* dispute resolution procedure underpinned by psychological notions of *individual* interests appears all the more curious.

The contemporary literature on conflict management in UK organisations makes reference to union representatives who recognised that negotiated resolutions often resulted in better outcomes for members than 'win-lose' employer adjudications; and that informal resolutions could be brought about more quickly and with the likelihood that less damage would be done to the health and career prospects of the individuals involved (Latreille, 2011; Saundry and Wibberley, 2014). These advantages could also accrue to individual union members who participated in mediation (Saundry, McArdle and Thomas, 2011) despite the fact that invariably they represented themselves in workplace mediations (Latreille, 2011). On the face of it, this indicated that union representatives who were positive about mediation trusted the process, and by implication, the mediators; and/or that the risk of recommending mediation to a member was mitigated by the existence of a procedural backstop should it fail. It is not discussed in any detail in the literature, but it appeared that the default position in user organisations was that complainants retained the option of reverting to the formal grievance procedure.

The literature on UK union attitudes towards and experiences of workplace mediation is discussed in more detail in part 4 of the literature review. The following sub-section

focuses on the historical and contemporary role of union workplace representatives in dealing with individual grievances.

The role of workplace union representative in resolving individual workplace conflict

In the 1960s and 1970s, for union members, 'the shop steward was "the union" (McCarthy, 1967, p. 68; citing Marsh, 1963, p. 20). This may still be the case where small numbers of employees work in cohesive groups in highly unionised workplaces. But in many contemporary workplaces, for union members or prospective joiners, the first point of contact with the union could be with the branch or region via email or social media, or a national telephone helpline. If personal assistance is requested for an employment-related problem, in UNISON, the union contact is most likely to be a branch official such as the branch secretary or caseworker, or a steward. UNISON branch officials - who are lay representatives - have first-line responsibility for dealing with individual members' grievances and disciplinaries.

To set the scene for this study - which focuses on unions with a public sector presence (UNISON) or heritage (the CWU) - it is relevant to briefly mention some distinctive aspects of the history of UK public sector unionism. Firstly, the public sector has a long history of procedural dispute resolution originating with the Whitley reports of the early twentieth century (Callaghan, 1953; Wedderburn and Davies, 1969). Secondly, accompanying the public service ethos in employment, the concept of the State as a "good employer" encouraged union recognition and union-based consultation and negotiation (Terry, 1995, pp. 206-207). Bach and Winchester (2003, p. 287) argue this did not survive the impact of the Thatcher governments' policies:

> For most commentators, the 1980s witnessed the collapse of the traditional pattern of public sector industrial relations and the end of the 'model' employer aspirations of the state.

Thirdly, historically, there is a strand of union militancy in public sector unions including some prominent public sector unions with substantial white collar memberships. An example is the former National Association of Local Government Officers (Ironside and Seifert, 2000). NALGO ceased to exist when UNISON was formed in 1993. From a critical perspective, to the extent that militant traditions live on and militancy in various guises endures, it is conceivable that this would be reflected in

some branches' resistance to the use of an employer initiative such as workplace mediation. However, this does not emerge in the existing literature on UK workplace mediation.

It is arguable that the dominance of the individualisation of workplace conflict theme in pluralist IR writing and the CLS writers' preoccupation with collective conflict can overshadow the importance attributed by unions to representing individual members *before* the era of individual employment rights. For example, in the 1970s, in the private and public sectors:

> Stewards were taking on an ever-increasing load of individual employee representation through grievance and disciplinary procedures. Indeed, despite the greater attention paid to collective bargaining, anecdotal evidence indicated the vital *importance of such individual representation in winning membership loyalty and commitment* [writer's emphasis] (Terry, 1995, pp. 207-208).

This is illustrated by the following quote from a 1979 Transport and General Workers Union (TGWU) education and training pamphlet:

> The membership's contact with the Union through the bargaining process is only occasional, and it is mainly through the continuous efforts of shop stewards organising, representing and offering advice and assistance on the spot, that the Union comes home to workers on an everyday basis. *No issue is more likely to influence members' opinion of the Union than the handling of individual grievances*, [writer's emphasis] whether relating to discipline, underpayment… or whatever (TGWU, 1979, p. 50).

Although this is not stressed in identical terms today by unions such as Unite (2014) and UNISON (2016a), the link between the quality of representation and the member's evaluation of the union is still recognised.

The most dramatic changes since the late 1970s for UK unions have been the decline in membership - referred to in the introduction to the thesis - and collective bargaining coverage. Although union density is much higher in the public sector, the proportion of public sector employees whose pay and conditions of employment are covered by a collective agreement has fallen from the high water mark of 75.1 per cent in 1998 to 57.6 per cent in 2017 (BEIS, 2018, p. 42). Analysis of the 2011 WERS data by Hoque and Bacon (2015, pp. 9-11) also showed the decline in the presence of union representatives in public sector workplaces. In workplaces with union recognition, public sector workplaces were still more likely to have a union representative (38 per cent) than were private sector workplaces (26 per cent). However, comparing the 2011

figure with historic data (Charlwood and Forth, 2009, p. 77) cited by Hoque and Bacon (2015, p. 9) the decline from 2004 to 2011 is particularly marked:

> The proportions of public sector workplaces where unions are recognised with union representatives present were 82 per cent in 1980, 85 per cent in 1984, 73 per cent in 1990, 71 per cent in 1998 and 63 per cent in 2004 (Charlwood and Forth 2009, p. 77).

The 2011 data may appear less bleak bearing in mind that union representatives in the public sector tend to be found in particularly large workplaces. Thus 71 per cent of the public sector workforce was employed in workplaces that have a representative. However, the historic data show that public sector workers' access to a workplace union representative has continued to decline. The percentages of union members employed in public sector workplaces with union recognition and a workplace union representative were 92 per cent in 1980 and 81 per cent in 2004 (Hoque and Bacon, 2015, p. 10; citing Charlwood and Forth 2009, p. 78). Moreover, in 2011, 62 per cent of public sector workplaces did not have a representative (Hoque and Bacon, 2015, p. 10).

Hoque and Bacon (2015, p. 11) also examined the 2011 WERS data on time spent by lead union representatives on representative duties:

> In workplaces with union recognition, only 2.8 per cent of public sector workplaces… have a union representative that spends all or nearly all of their working time on their representative duties.

Lead representatives in the public sector spent 14.5 hours per week on average on their representative activities. However, Hoque and Bacon (2015, p. 12) stress that non-lead representatives were likely to spend much less time on representative activities than this, and to spend less time on representative duties.

In relation to unionised organisations, from a critical perspective, it could be argued that a declining union presence both incentivises and enables employers to resolve conflicts using informal approaches (including mediation) that do not require union representation, and in that respect, workplace mediation could be seen as having a displacement effect. The decline in collective bargaining and/or collective influence might prime workplace union representatives to resist any erosion of the bastion that is individual representation, particularly as they would appear to have no representational function in mediation. Alternatively, they might see opportunities in

"new" dispute resolution processes, such as workplace mediation, to expand their offer to new and existing members, especially if the perceived value of transactional benefits of union membership was diminishing.

Although it was not examined in any detail in the literature, it appeared that union presence was more important than union strength (in terms of membership density) in motivating employers to seek unions' support for the use of workplace mediation. In the public sector, despite the decline of the 'model employer' standard, analysis of the 2011 WERS worker representative survey data showed that:

> A large majority of lead union representatives in the public sector (66 per cent) either strongly agree or agree that union representatives work closely with management when changes are being introduced in their workplace. The corresponding figure for lead representatives in the private sector is 71 per cent (the difference is not statistically significant p = 0.117) (Hoque and Bacon, 2015, p. 17).

In the UK literature on workplace mediation, the union representatives who participated in the research tended to be lead representatives. It is not known what proportion may have been on full-time release. In relation to the WERS analysis, Hoque and Bacon (2015, pp. 17-18) found that:

> In the public sector, more *full-time* [writer's emphasis] lead union representatives than non-full time union representatives either agree or strongly agree that union representatives work closely with management when changes are being introduced in their workplace, with the figure for 'agree' plus 'strongly agree' increasing to 82 per cent among the cohort of full-time lead representatives.

Proponents of the incorporation thesis might alight on these figures to argue that lead representative élites tend to be more supportive of employer initiatives than rank and file members and that being close to management distances them from the membership. This argument is propounded more often than it is put to the test, and while this study did not canvass non-activist union members' opinions of workplace mediation, insights were offered by the union interviewees. It is also noted that in-depth research into Irish union members' views of a union-management partnership and union effectiveness revealed a more nuanced picture than that painted by critics or advocates. Overall, the evidence offered 'modest support for the position of the advocates' (Roche and Geary, 2002, p. 683).

Given the expansion of UK statutory employment rights, it is probably true as a generalisation that union workplace representatives' awareness of justiciable complaints or 'legal consciousness' (Menkel-Meadow, 2011) has expanded since the 1980s. This is discernible, for example, from the content of workplace representatives' training courses, recent editions of UNISON and Unite representatives' handbooks and TUC guidance for workplace representatives. As will be discussed in part 4, references to mediation in these guides are sparse and, in the case of UNISON, mostly discouraging. In general, in these handbooks, little attention is paid to attempting informal resolution or advising workplace representatives how to go about it.

The Unite handbook for community, youth workers and not for profit sector representatives (2014, p. 12) advises that workplace representatives should adopt 'an organising approach… [which will] empower your members so that they will become activists, identifying and addressing injustice in the workplace.'

Similarly, the UNISON guide on member representation states:

> Your job is to help the member – not to act in the member's place; to empower the member to articulate their arguments; to work with the member to try to solve the problem… (UNISON, 2016a, para. 1.1.2).

In analysing the member's problem, Unite representatives are advised to consider possible legal angles and also the collective dimension:

> A member may complain of being bullied, but that might indicate a wider problem of corporate bullying. If more than one person is affected, it might be that you need to bring other affected members together and approach the problem collectively. Most issues have a collective angle. The case of a single manager bullying a single member of staff raises broader questions of how well managers are trained and supervised that might need to be addressed through the negotiating committee (Unite, 2014, p. 18).

Having agreed with the member how the grievance will be progressed, Unite representatives are advised to 'try to divide the tasks so that the member is taking the initiative as much as possible, with you providing support as necessary' (Unite, 2014, p. 18).

It might be imagined from the national guidance that informal resolution involving workplace union representatives was all but dead. However, Wibberley and Saundry (2016. p. 144) have argued that while 'relationships [between employee

representatives and managers] and consequent structures of informal resolution [were] under significant pressure', particularly in unionised organisations, union representatives still played an important role in resolving conflict. For example, reviewing five British case studies of conflict management, they identified that 'the most consistent finding… was the central importance of employee representation (both union and non-union) in underpinning effective conflict resolution' and that '…employee representation plays a vital role in facilitating early and informal processes of conflict resolution' (Wibberley and Saundry, 2016, pp. 140; 143). Their findings are supported by a body of older evidence that where unions were present, they played important roles in facilitating the informal resolution of workplace conflict (Saundry, Antcliff and Jones, 2008; Kerr and Waddington, 2009; Saundry, Jones and Antcliff, 2011; Charlwood and Angrave, 2014). It is also well established in IR literature that union representatives prefer to resolve disputes informally wherever possible (Thomson and Murray, 1976; Wibberley and Saundry, 2016). High trust union-management relationships facilitate informal resolution (Jones and Saundry, 2012). As workplace mediation is widely perceived as a less formal approach to resolution than the formal stages of grievance procedures, perhaps unsurprisingly, in his thematic review of eight ACAS/CIPD case studies and related survey data, Latreille (2011, p. 10) found that in user organisations, 'overall… positive working relationships were very much the norm' between unions and managers.

A relatively recent CIPD survey (2015a) weighted to be representative of British employers, showed that of the respondent organisations that recognised a union (44 per cent), more than half (58 per cent) reported that they felt union representatives were helpful in resolving individual workplace disputes, while one quarter (26 per cent) did not feel they were helpful (CIPD, 2015a, p. 3). Employers in the private sector were most likely to find union representatives not helpful: '31 per cent compared with 20 per cent in the public sector' (CIPD, 2015a, p. 17). The soft unitarist message from the CIPD was that unions could play a positive role in managing conflict in the early stages of individual disputes. The survey also detected a slow but definite move in public policy and employer practice towards 'a more workplace focussed, informal style of dispute resolution', said to be generally supported by most unions and employers (CIPD, 2015a, p. 3). It was asserted that employers and trade unions

'generally take a pragmatic approach in deciding whether or not to seek a settlement of a claim'. In the writer's experience, many trade unionists would probably agree, but from a union perspective, some public policy moves to support 'a more workplace focussed… style of dispute resolution' (CIPD, 2015a, p. 2) have been seen as attacks on workers' rights and, as will be discussed elsewhere in the thesis, it was conceivable that workplace mediation could suffer by association. However, in theory at least, employers can operate workplace mediation without union involvement, and as Wibberley and Saundry (2016, p. 144) signal, the 'erosion of union organisation' and the 'representation gap' raise the question as to whether employers that recognise unions with declining memberships would be attracted to mediation, conducted by an impartial third party, as an alternative indirect voice mechanism. It is to the phenomenon of workplace mediation, in the UK context, that the literature review now turns.

Part 3: Mediation

This part of the literature review locates workplace mediation within the wider field of mediation and sets out a definition of facilitative mediation, the most commonly practised model by UK workplace mediators (Latreille, 2011; Bennett, 2013). In practice, the facilitative model can accommodate a range of mediator styles. Facilitative mediators might also import techniques from, for example, the transformative model (the model which is used by the US Postal Service REDRESS mediation programme). Part 3 then outlines the core tenets or foundational principles of workplace mediation: mediator impartiality, voluntary participation, party self-determination and confidentiality. It is also noted that in the literature, UK workplace mediation is described as a less formal dispute resolution process than grievance or disciplinary procedures and that user organisations maintain that most mediated cases result in the parties reaching an agreement. Lastly, part 3 charts the origins and development of workplace mediation in the UK.

<u>Defining workplace mediation</u>

Workplace mediation is a sub-field of mediation. The multi-disciplinary literature on conflict resolution is replete with different definitions of 'mediation'; and as Hermann, Hollett and Gale (2006, p. 19) note:

> The literature… lacks consensus with respect to definitions of key concepts and variables. A panoply of conceptual and operational definitions acts as a rich resource and a source of confusion for scholars and mediation practitioners.

In the field of employment, 'mediation' is sometimes used generically to describe a range of ADR processes, from informal *ad hoc* mediation to collective dispute mediation. It might be added that definitional confusion is not only a problem for scholars and practitioners but perhaps more importantly for potential parties, user organisations and trade union representatives.

There is no single definition of mediation. Essentially, it is a form of assisted negotiation. Facilitative mediation is described in the *ACAS Guide* (2019) which accompanies the *ACAS Code of Practice 1: Disciplinary and grievance procedures* (2015a) as follows:

> Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome (ACAS, 2019, p. 9).

The impartiality of the mediator, a core tenet of workplace mediation (see below), is not mentioned. However, the Foreword to the *ACAS Code* (2015a, pp. 5-6) states:

> Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible… [they] should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary or grievance issue.

The definition or, more precisely, the description of workplace mediation used for this study, and the rationale for it, is explained in the methodology chapter.

Mediation practice can be divided into two main approaches: problem solving models and models that seek to transform conflictual relationships. The latter grouping includes narrative mediation (Winslade and Monk, 2000) and transformative mediation (Bush and Folger, 2005). Evaluative and facilitative mediation are problem solving models.

Essentially, facilitative mediators undertake the role described above in the *ACAS Guide* (2019). Their job is to manage the process and to intervene impartially in ways that support the parties to reach an agreed outcome. What is agreed between the parties is not a matter for the mediator to seek to influence or evaluate. By adhering to these practice guidelines, the mediator observes a core tenet of facilitative mediation - party self-determination (discussed below).

In the UK academic literature on workplace mediation (discussed in part 4 of the literature review), none of the featured organisations had adopted the evaluative model. (ACAS collective dispute mediation is an example of a type of evaluation mediation.) Most workplace mediation cases involve the resolution of interpersonal conflict or dysfunctional working relationships for which evaluative mediation is considered ill-suited. However, evaluative or directive techniques may be used by *ad hoc* mediators in organisations, for example, where a manager mediating a conflict between colleagues gives a clear steer on ways to resolve the issue.

The transformative model (Bush and Folger, 2005) was adopted by some UK community mediation services and transformative techniques may also be taught in workplace mediation training. However, in its pure form, it is not widely practised by UK workplace mediators mainly because, in contrast to the facilitative model, reaching agreement is regarded as peripheral to transforming the conflict interaction between the participants. Arguably, this limits its marketability to employers interested in bringing workplace conflicts to an end by less costly means than formal grievance procedures. (The term 'grievance' is used here and elsewhere in the thesis where appropriate, as a generic label for employee complaints covered by formal grievance or dignity at work procedures.) As referred to in part 1, in the USPS, the transformative model is practised by REDRESS mediators. It might be assumed that the USPS would prioritise the settlement of EEO complaints; however, to gain craft employees' acceptance of mediation, it was necessary to differentiate it from litigation or arbitration. In EEO litigation, management won 95 per cent of cases (Nabatchi and Bingham, 2010, p. 222). For this reason, the use of evaluative forms of mediation was rejected. It is relevant to mention here that US *grievance mediation* can have a quasi-evaluative element (Feuille and Kolb, 1994), as illustrated in Deborah Kolb's

ethnographic studies of 'dealing making' labour mediators (1985; 2001; see also Kolb and Kressel, 2001).

Another motivation for USPS adopting the transformative model was said to be:

> …to move conflict management upstream to foster individual learning of better communication skills. Transformative mediation's focus of party empowerment and recognition was consistent with this goal (Amsler, 2014, p. 286).

USPS management saw its use as a way 'to ultimately make a positive difference in the climate of the workplace… to improve communications between supervisors and employees… and to reduce our formal EEO complaints (Zuczek, 1999, pp. 3-4). As Cynthia Hallberlin (2001, p. 378), one of the instigators of REDRESS put it, 'I needed more than deals. I was looking for improved relationships'. Although the national postal unions were not partners in this endeavour, if relationships on the shop floor improved, this might filter through to union-management relations. Although, in 2000, the Califano Commission found that 'constructive relationships' [existed] at some times and in some places' (Califano *et al*. 2000, p. 98), it observed that:

> For decades, labor-management relations in [USPS] have been characterized as adversarial…. Problematic relationships exist… day-to-day on the workroom floor and in official dealings between management and unions at national, area and district levels (Califano *et al*. 2000, p. 99).

As discussed in part 4 of the literature review, the goal of transforming the conflict culture of the organisation features in some of the UK case studies. Later in the thesis, it will also be discussed in relation to the adoption of IR mediation in Royal Mail.

Returning to the subject of mediation models, each model is associated with a set of mediator techniques. However, in the writer's experience, many UK workplace mediation practitioners draw on techniques associated with the facilitative and transformative models and regard this as legitimate provided that the core tenets of party self-determination and mediator impartiality are adhered to. Also, facilitative mediation can encompass a range of practices and styles, from the use of techniques which are barely distinguishable from those of transformative mediators to techniques which are covertly directive. Trainers in facilitative workplace mediation tend to discourage directive approaches but encourage mediator pro-activity in managing the process and (as it is often put) "working with the parties" to "move forward" towards resolution. The danger of a borderline directive approach is that parties are less likely

to commit to an agreement if it is not the product of their ideas and efforts. However, generally the facilitative mediator is not uninterested in the parties reaching some form of agreement as that is a goal of facilitative mediation, and certainly the employer has an interest in resolution. Moreover, the parties may look to the mediator to help them where they have agreed to try mediation because ostensibly they want to resolve the problem and have so far failed. In any mediation, the mediator is a powerful figure – every intervention on their part (or failure to intervene) has consequences. The thesis later explores how these issues play out in workplace mediation from the perspective of union representatives.

Core tenets and common features of UK facilitative workplace mediation

In brief, the foundational principles of facilitative workplace mediation practice derive mainly from philosophical ideas underpinning the North American community mediation movement of the 1960s (Shonholtz, 1984; Menkel-Meadow, 2005). These principles or core tenets are that the mediator should be impartial, participation should be voluntary, the outcome should be determined by the parties not the mediator, and that the process should be private and confidential.

The concept of neutrality or impartiality in mediation is highly contested (Kolb, 1985; Silbey and Merry, 1986; Greatbatch and Dingwall, 1989; Cobb and Riskin, 1991; Astor, 2007); and this writer subscribes to the widely held view among scholar-practitioners that it represents a 'mythic frame' (Kolb, 2001, p. 490). It is therefore relevant to examine in relation to UK user organisations, who selects workplace mediators, who they are, and the training they receive. In subordinate-manager mediations, how mediators manage power imbalance assumes particular significance, given that the parties are unrepresented and they determine the outcome. The thesis explores union perspectives on these facets of workplace mediation, in the context of the themes of incorporation, displacement and union revitalisation.

The term 'impartiality' is used in the thesis rather than 'neutrality' because the former tends to be used more by UK practitioners. While distinctions are made between these terms in the literature on mediation, the differences are not crucial in regard to the subject matter of this thesis.

The practical basis for the core tenet of voluntary participation is that unwilling participants are less likely to reach agreement and stick to it than those who choose freely to participate in good faith. But for employers, there is a risk that if offers of mediation are widely declined, its benefits will not be realised. Accordingly, there is evidence from British workplaces that a significant proportion of participants have felt varying degrees of pressure to participate, mostly from the employer (ACAS, 2011a; 2013). Interestingly, it was mostly managers who felt some pressure to participate, in the sense that 'their cooperation was expected by their superiors and HR' (Bennett, 2016, p. 181; see also Latreille and Saundry, 2015, pp. 43; Saundry, Bennett and Wibberley, 2016). Some leading UK proponents of workplace mediation have advocated forms of 'mandatory mediation', for example:

> UK plc… makes it clear employees are expected and required to attempt to resolve their conflicts through mediation in the first instance. It takes away none of their rights, they are not obliged to reach agreement; they are not even obliged to actively engage. What they are obliged to do is initially meet a mediator privately and take part in a joint meeting which they may or may not wish to engage in fully, it doesn't matter (Graham, 2015, p. 2).

There were no examples of procedural forms of mandatory or quasi-compulsory mediation in the literature on UK users. However, in light of the pro-compulsion strand of opinion in parts of the mediator movement and the shift to quasi-compulsion in employment mediation (with the introduction of statutory early conciliation in 2014), the thesis seeks to explore whether employers' procedures included quasi/compulsory elements, and if so, how union representatives responded.

The kernel of party self-determination is that the outcome of the mediation is decided by the parties not the mediator. This distinguishes mediation from formal procedures in which the employer is the arbitrator. Consequently, workplace mediation has been portrayed as 'empowering' for participants (especially subordinates) and as a more 'democratic' form of dispute resolution (Ridley-Duff and Bennett 2011). However, the concept of empowerment in mediation has been contested (Grillo, 1991; Dingwall and Greatbatch 1993; Benjamin, 1995; Coben, 2000; 2004), including by critical friends of the use of mediation in employment and the workplace (Sherman, 2003). Critics argue that there is a gap between theory and practice, in that mediators exert more influence over the process and outcome than advocates of party self-determination

acknowledge. Also, in so far as it occurs, the levelling of power in mediation between participants is often not sustained beyond the mediation room (Wiseman and Poitras, 2002; Saundry, Bennett and Wibberley, 2016).

Grievances and dignity at work complaints are usually dealt with confidentially, however workplace mediation takes confidentiality to a higher level. As a rule, what is said in the mediation remains strictly confidential. Parties may be required to sign an agreement to mediate to that effect. In theory, confidentiality enables parties to be open about the issues and their concerns. It is also a matter for the parties to agree what can be said about the outcome of mediation and to whom in the organisation or elsewhere. Arguably, this may diminish the potential for mediation to contribute to organisational learning for both employers and unions. It also has implications for unions in the context of revitalisation. Research has shown that in UNISON, between 1997 and 2012 – a period during which the union implemented two successive national organising and recruitment strategies:

> …a recommendation to join UNISON from a work colleague' and "I joined on my own initiative…" accounted for more new members than direct recruitment by lay representatives and FTOs [full-time officers] (Waddington and Kerr, 2015, pp. 202-203).

Furthermore, 'the most influential feature of a recommendation to join UNISON from a work colleague was "how UNISON represents individual members" (Waddington and Kerr, 2015, p. 202). Consequently, 'lay representatives… need to be seen to be adequately representing members…' While these outcomes underscore the importance of individual casework, confidentiality associated with individual dispute resolution procedures presents challenges in terms of 'being seen' to represent members. It is particularly challenging in relation to mediations which generally occur less frequently than grievances and disciplinaries and do not have win-lose and/or quantifiable outcomes that can be anonymised and reported to members. Moreover, union members who have been participants in mediation will most likely not be at liberty to talk to work colleagues about their experience, and may or may not associate the union with their experience in any event. These issues and their implications for unions are explored in later chapters.

Confidentiality combined with party self-determination might be expected to raise concerns with union representatives given the structural power imbalance in manager-

subordinate mediations. If a union member believes that they have been treated unjustly in mediation, by the mediator/s or the other party, that is not, in itself cause for complaint. In theory, parties are free to terminate their mediation at any time and they are under no obligation to reach an agreement.

In the literature, UK workplace mediation is distinguished from grievance, dignity at work and disciplinary procedures by its relative informality. For example, Gibbons (2007, p. 38), the CIPD (CIPD/ACAS, 2008, p. 8) and the TUC (ACAS/TUC, 2010, p. 3) described workplace mediation as 'informal'. CMO guidance for user organisations has tended to refer to mediation as being less formal (Crawley and Graham, 2002; Liddle, 2017). Latreille (2011, p. 6) noted that user organisations tended to refer it as 'less formal' although this 'may convey a slightly misleading impression':

> Mediation is certainly likely to be less formal compared with grievance and disciplinary procedures. However, as a process mediation can itself be quite formalised, and, while flexible, will often be quite structured.

The description 'less formal' has replaced 'informal' in CIPD publications (2013; 2015b; 2016). The CIPD goes so far as to assert that the portrayal of workplace mediation as 'informal dispute resolution is… only really true in comparison with legal options. Compared with informal discussions, it follows a clear structure and process…' (CIPD, 2015b, p. 25).

Latreille (2011, p. 6) suggests that the informality seen in mediation might refer to 'the more private nature of the mediation process and outcomes compared with the greater transparency of discipline and grievance procedures'. However, it could be argued that strict confidentiality in mediation enhances its formality. (For example, in the writer's experience, the importance of maintaining confidentiality has been explained to parties by making an analogy with patient confidentiality.) It may also be that the 'greater transparency' of formal procedures is only a matter of degree and that confidentiality in dispute resolution, irrespective of the procedures used, is problematic. Barmes (2016, p. 195) found that in large UK organisations, confidentiality posed 'a legal conundrum':

> Legal obligations of confidentiality which organizations impose (e.g. contractually) can obstruct the resolution of problems. It was observed that complete confidentiality often cannot be maintained and patchy knowledge has all sorts of damaging internal effects.

> Equally, obligations to keep quiet prevent issues being systematically addressed because they cannot be openly acknowledged.

In relation to employers' *formal* procedures, Barmes (2016, pp. 195-196) observes that:

> There is something curious about hiving off work-related issues with wider implications into confidential, individually oriented processes. That seems, however, to be how organizations routinely approach the individualization of employee relations in general, and the internalization of individual legal rights in particular.

On the lesser formality of mediation, there was evidence in the literature, based mainly on managers' accounts, to suggest that the key distinguishing feature that led to mediation being perceived as less formal than grievance procedures was mediation did not entail representation and that in most cases, parties attended unaccompanied (Latreille, 2011, p. 31). The thesis seeks to further explore whether union presence was associated with formality in the minds of union representatives and their views on accompaniment in mediation. From radical and critical pluralist perspectives, understanding mediation to be informal or less formal may contribute to union representatives accepting the standard practice of non-accompaniment when it may be detrimental to their interests and those of individual union members who participate in mediations. These arguments and their implications are examined later in the thesis.

Turning briefly to the concept of success in UK workplace mediation, UK data indicate resolution rates in user organisations of 90 per cent or more (CIPD 2008; Bailey and Efthymiades, 2009; Latreille 2011; Saundry and Wibberley 2012; Saundry, McArdle and Thomas, 2013; Latreille and Saundry, 2015). Certainly at first blush, union representatives might be sceptical about the high success rates claimed for mediation and possibly suspect that it was being used by employers to neutralise and shut down conflict which was inherent to the 'structured antagonism' of employment relationship (Edwards, 1986). A different conclusion might be drawn from consideration of more detailed statistics on outcomes. In this regard, ACAS statistics on workplace mediation outcomes distinguish between 'full and partial agreement'. For example:

> Of the 203 mediations ACAS was involved with in 2017-18, 195 (96 per cent) reached full or partial agreement (ACAS, 2018, p. 9).

ACAS mediation outcomes are recorded by mediators. Roger Wornham (2015, pp. 174-176 compared their assessments with evaluations by mediation participants in the period 2007-08 to 2012-13. The comparison showed that mediators were consistently more positive in their assessments of resolution than participants. Based on feedback from participants in workplace mediations conducted by ACAS mediators in 2011-12 and 2012-13, respectively, 14 per cent and 19 per cent of participants felt the 'underlying issues had been completely resolved' (ACAS, 2013, p. 7). Bearing in mind that ACAS mediation was a brief and often late intervention in long-running conflict, it is perhaps not surprising that 48 percent of participants (in 2011-12) and 40 per cent (in 2012-13) felt the mediation had 'partly resolved the underlying issues'. However, in the view of 38 per cent of participants (in 2011-12) and 41 per cent (in 2012-13), the mediation had 'not at all resolved' the underlying issues (ACAS, 2013, p. 7). These data illustrate some of the complexities of measuring the success of mediation (Latreille and Saundry, 2014, pp. 196-197; Wornham, 2015; Wornham and Corby, 2015). For unions, in terms of the "friends or foes" question, the data could lead to different conclusions being drawn. Employers and mediators might take a pragmatic view that if the disputants are able to resume a functioning working relationship as a result of mediation, it has been successful (Bennett, 2016, p. 187). Union representatives who supported its use have shared this view (McArdle and Thomas, 2016, p. 283). On the other hand, within user organisations, the data might suggest that mediation could serve as a procedural mechanism to divert systemic conflict into a highly confidential cul-de-sac. The thesis seeks to further explore union perspectives on these issues.

Having outlined the core tenets and common features of UK facilitative workplace mediation, the following section traces its origins and gives a historical outline of its take-up by UK employers.

Origins and development of UK workplace mediation

The core tenets of UK workplace mediation do not derive from the world of employment but from community mediation. British community mediation has its roots in the US community mediation movement and inherited its underpinning ideology. Community mediators from local authority-funded services started crossing over from mediating neighbour disputes to workplaces around the late 1980s. In 1990,

Conflict Management Plus, the first CMO specialising in workplace mediation, was formed. The first formalised internal workplace mediation scheme in England was set up in 1996 by Lewisham Housing Department at the instigation of a union representative who was also a mediator for the Department's community mediation service (Reynolds, 2000). The London Boroughs of Croydon and Hounslow set up in-house services in the late 1990s, as did Bradford City Council and Kent County Council (Reynolds, 2000, p. 168). Workplace mediation was also being used in parts of the civil service and some Government agencies (Boulle and Nesic, 2009, p. 352). In 1998, the Department of Health set up a conciliation scheme which (unusually) included an evaluative mediation stage within the grievance procedure (Boulle and Nesic, 2009, p. 332; Reynolds, 2000, pp. 171-172).

While workplace mediation was not a creation or offshoot of HRM, the core tenet of self-determination and associated notion of individual empowerment can be seen as being compatible with related HRM concepts; and HR managers have been the main instigators of its use by UK employers. Mediator training also draws on concepts from negotiating theory such as interest-based bargaining (Parker Follett, 1941; Walton and McKersie, 1965; Ury, Brett and Goldberg, 1993), except that the interests in question are considered to be those of the disputants as *individuals*. Importantly, as will be illustrated later in the thesis, in seeking to create or rebuild the foundations for a constructive relationship between the parties, the mediator uses a range of 'attitudinal structuring tactics' (Walton and McKersie, 1965). However, from an IR perspective, the parties in workplace mediation are not synonymous with neighbours in dispute – they are in an employment relationship; and particularly in subordinate-manager mediations, as Deakin (2014) argues, 'the organisation' is also a party.

From the mid 1990s, the State has played a major role in enabling the growth of ADR in Britain, including, spasmodically, workplace mediation. Government interest in ADR focussed initially on the reform of civil justice. Hazel Genn (2010, p. 196) has highlighted the success of the 'mediation movement', spearheaded by the (then) Centre for Dispute Resolution and the ADR Group, in promoting 'the potential of mediation as the answer to the problems of cost and delay in civil justice' (Genn, 2010, p. 197). Following the Woolf Reports (1995; 1996), 'ADR, and in particular mediation, was presented as a central element in the reform of civil justice' in England and Wales

(Genn, 2010, p. 197). Judges were to encourage the use of mediation, and a series of revisions to the Civil Procedure Rules (1998-2003), gave the courts discretionary powers to order costs against parties deemed to have unreasonably refused an offer of mediation.

The drive to reduce costs and delay was replicated in the field of administrative justice (which includes employment jurisdictions), and it has continued under successive governments since the mid 1990s. Alarmed at the rising cost of the (then) Employment Tribunal Service, the Labour Government introduced statutory grievance and disciplinary procedures in 2004, but prior to that, it set up the Employment Tribunal System Taskforce (Gaymer, 2006). Influenced by the Woolf reforms, the Taskforce recommended:

> …greater emphasis on the prevention of disputes.... Schemes promoting mediation within organisations, the development of better internal grievance and disciplinary systems and greater use of external mediation services, offer the potential of solving more disputes earlier (Taskforce, 2002, p. 13).

Its recommendations promoted mediation and more UK CMOs specialising in workplace mediation were formed between the mid 1990s and early 2000s. Alongside the ETS Taskforce, the Better Regulation Taskforce recommended 'a more proactive role for ACAS' in addressing workplace problems (Podro and Suff, 2005, p. 9). ACAS subsequently ran a series of ADR pilots in firms with less than 50 employees (Fox, 2005; Seargeant 2005). After the pilots concluded, in 2004-05, ACAS made its workplace mediation service available to all employers on a charged-for basis. (Internal ACAS sources vary as to precisely when the service was established (Wornham, 2015, p. 21). The writer has referred to the ACAS annual reports for 2004-05 and 2005-06.) In 2005, ACAS was also providing accredited training courses for workplace mediators (ACAS, 2006).

Although the government's focus had been on assisting small firms to resolve disputes without recourse to litigation, ACAS pointed out that 'larger organisations, particularly… in the public sector', were 'more ready to embrace ADR… by developing in-house mediation schemes' (Podro and Suff, 2005, p. 2). ACAS noted that the public sector was undergoing a 'huge degree of change as part of the government's modernisation programme' and would be likely to be receptive to mediation as 'the

most cost-effective method of resolving disagreements in the workplace' (Podro and Suff, 2005, p.7). As alluded to in part 2, modernisation encompassed a drive for efficiency savings in the public sector (Gershon, 2004). In 2005-06, in addition to its Certificate in Internal Workplace Mediation (CIWM) open courses, ACAS ran 'organisation specific courses… in a range of public sector organisations including police authorities, higher education providers, NHS trusts and local authorities' (ACAS, 2006, p. 21).

The next major development was the Gibbons Review (2007) of employment dispute resolution in Great Britain. Gibbons made a plea for the use of more informal, early dispute resolution in organisations and specifically for greater use of workplace mediation. The Review's recommendations led to the repeal of the statutory grievance and disciplinary procedures and the publication of a revised *ACAS Code of Practice* (2009a) which mentioned workplace mediation in the foreword and provided advice on its use in the accompanying *ACAS Guide* (2009b). The revised *Code* (2009a) and *Guide* (2009b) raised awareness of workplace mediation as an option for individual dispute resolution among employers and stimulated interest in its use (Rahim, Brown and Graham, 2011). ACAS responded by developing its workplace mediation service in 2008-09 and expanded its accredited training for organisations in workplace mediation skills (ACAS, 2009c). New CMOs sprang up, offering training, consultancy and external mediation. Again, it appeared to be mainly larger organisations, mostly in the public sector, that set up internal workplace mediation services or schemes.

However, Gibbons' review did not lead to an ADR revolution in employment (Wood, Saundry and Latreille, 2017). Despite protestations that '…significant growth in mediation of workplace disputes… has the potential to lead a major and dramatic shift in the culture of employment relations' (Department for Business Innovation & Skills (BIS) and HM Courts & Tribunals Service, 2011b, p. 13), modest Government initiatives in 2013 to pump-prime its wider use seem to have petered out. Its focus shifted back to mechanisms to reduce claims to the employment tribunals, culminating in 2013 with the introduction of fees in the employment tribunal and Employment Appeal Tribunal (England, Scotland and Wales). The fees regime was abolished in 2017 following a successful legal challenge by UNISON. However, the policy objective remains - as the President of the Employment Tribunals (England and Wales) explained

- ‘to contain employment disputes within the workplace but where that cannot be… to ensure that they do not proceed into the ET too readily’ (Doyle, 2018). Accordingly, employment tribunal judges must encourage parties to use ADR wherever practicable and appropriate; but this is largely ADR *outwith* the workplace. State policy has contributed to the elevation of the employer as ‘the central actor in individual employment rights’ (Colvin, 2016), and it is in this context that UK employers have been encouraged to adopt workplace mediation. However, as outlined in the introduction to the thesis, it has remained a ‘minority activity’ (Saundry *et al.* 2014, p. 9), found mostly in larger organisations in the public sector and public administration (CIPD, 2008; CIPD 2015a, p. 3). Future prospects for the use of workplace mediation in the UK and implications for unions are discussed briefly in the concluding chapter.

Part 4: UK workplace mediation and trade unions – an overview

The first section of this part of the literature review gives an overview of positions taken by national union organisations in response to State encouragement aimed mainly at employers to use workplace mediation, outlined in part 3. It examines the stances taken by the TUC and Scottish TUC, and by the two largest UK unions, Unite and UNISON, both of which have members employed by organisations using workplace mediation. These national union perspectives set the scene for the second section of part 4 which reviews the literature on the use of workplace mediation by unionised UK employers.

National union positions on workplace mediation

From the late 1990s, the TUC and some unions, including UNISON, made submissions in response to government consultations over the use of ADR in civil justice and employment, supporting the principles of voluntary participation, regulation of ADR practitioners and procedural fairness (Lord Chancellor’s Department, 1999; Bickerstaffe, 2000).

On dispute resolution in employment specifically, the Labour Government produced the White Paper *Routes to Resolution: Improving Dispute Resolution in Britain* (Department of Trade and Industry, 2001). Alarmed at the seeming trend towards litigation of individual employment disputes, the Government wanted employers to ‘raise the standard of dispute management in the workplace’ (DTI, 2001, p. 14) and to

incentivise parties to use ADR, especially ACAS conciliation. It also signalled support for the use of workplace mediation but made no specific proposals to encourage its adoption. In its response, the TUC contended that 'wider collective resolution of employment rights disputes would produce a steady decrease in the volume of individual rights litigation' (TUC, 2001, p. 2). 'Away from the context of individual applications to tribunals', the TUC took the view that mediation 'may provide a solution to an employment rights dispute, particularly where the dispute affects more than one worker and relates to a continuing problem' which unions would regard as being more appropriately dealt with (at least in unionised organisations) through collective grievance or disputes procedures. The suggestion in the White Paper that private providers as well as ACAS should be enabled to provide conciliation services was 'only supported by the TUC if the mediators were required to meet ACAS standards.'

In relation to the promotion of workplace mediation, the next significant development was the Gibbons Review (2007). Following Gibbons' recommendation to repeal the statutory grievance and disciplinary procedures, a motion carried by the 2007 TUC Congress on 'dispute resolution and employment rights' set the tone and direction of TUC policy:

> The objectives of any replacement procedures must be to… protect and/or enhance existing employment rights… [and] promote the internal resolution of disputes via trade union representation and collective bargaining (TUC, 2008a, unpaginated).

It was agreed that the General Council should (amongst other things):

> …press for new procedures that… actively promote the constructive role of trade unions in dispute resolution and prevention… [and] strengthen the right of individuals to be represented at grievance and disciplinary hearings (TUC, 2008a, unpaginated).

The resolution did not specifically pick up on Gibbons' recommendation that unions, along with employers, should be 'challenged [by Government] to commit to implementing and promoting early dispute resolution, e.g. through greater use of in-house mediation, early neutral evaluation and provisions in contracts of employment' (Gibbons, 2007, p. 30).

The first specific mention of workplace mediation was made in the 2008 TUC *General Council Report:*

> The General Council has always supported the principle that wherever possible employers and employees should seek to resolve disputes at an early stage using internal workplace procedures, rather than resorting to litigation (TUC, 2008b, p. 24).

> In February [2008], the TUC organised a joint seminar with ACAS on The Future of Dispute Resolution at Work. Issues discussed included… the role for mediation in unionised workplaces (TUC, 2008b, p. 25).

Meanwhile, in Scotland, the University & College Union (UCU) Scotland Assistant General Secretary, David Bleiman gave a presentation on workplace mediation to a higher education seminar (2008a), outlining developments in Scottish universities. For example, Dundee University set up an in-house scheme in 2008. Bleiman also sat on the steering group of the UK Higher Education Institutions' (HEI) Improving Dispute Resolution (IDR) Project, and was responsible for coordinating its work with the HE unions (IDR Project, 2009, p. 21).

Bleiman's presentation outlined 'principles for introducing mediation in a unionised environment'. The first principle was that 'unions can champion mediation, or could effectively block it'. The audience of mainly HR managers were advised to:

> Talk to your campus unions at the earliest opportunity about design, implementation and training. Work with the unions, do not bypass them, or at best mediation will be a minor side show and at worst an utter failure or irrelevance (Bleiman, 2008a).

The principles were developed in a discussion paper (Bleiman, 2008b) for trade union members and representatives, ("*Should I try mediation?")* as, at that time, 'the TUC had not been in a position to issue such a guide' (HE IDR Project, 2009, p. 21).

In 2009, the Scottish TUC Congress carried a resolution on individual employment disputes and mediation instigated by Bleiman and moved by UCU Scotland. It welcomed the abolition of the statutory disciplinary and grievance procedures and the subsequently enhanced role for ACAS in conciliation and mediation of individual disputes. The resolution began by affirming that 'collective action… will generally be the best way to resolve problems arising in the workplace' while noting that '…where members have to (or choose to) pursue matters individually, they may use internal procedures such as grievance or may seek union advice on legal claims. A further option is mediation.' Acknowledging that union members and representatives would seek advice and assistance from their union where employers adopted mediation, the resolution set out the basis for union support and guidance as follows:

> Congress believes that mediation schemes should only be introduced after negotiation involving the recognised unions at the design stage. Mediation should be available to individual employees where appropriate, and should only ever proceed on the basis of informed consent. Union reps should have training, so as to be able to advise members of the pros and cons and ensure that adequate safeguards are in place. Negotiators should ensure that members entering mediation do not thereby lose the right to pursue their concerns through formal procedure, in the event that mediation fails.
>
> Congress calls on the General Council to work with affiliates and other interested parties, including the TUC and ACAS, to develop information resources and training on mediation awareness, negotiating mediation schemes and safeguarding member interests (STUC, 2009, pp. 48-49).

There was no concomitant UCU motion to the TUC Congress, and in the absence of motions from affiliates, the TUC did not develop an equivalently detailed formal policy on union involvement with workplace mediation. The TUC tends to be cautious about being seen to move ahead of affiliates in the absence of explicit policy direction from Congress (Heery, 1998), although when there is a broad consensus on issues, it can 'act strategically to fill in gaps that emerge as individual unions focus on issues of importance to members' (Simms, Holgate and Roper, 2018, p. 340). Workplace mediation was not a priority issue for affiliates. Where local union representatives were involved with employers' initiatives, there is little evidence in the UK literature, with some exceptions, that workplace or branch level knowledge and experience was transmitted or filtered upwards to the national unions. These internal union issues are a gap in the literature which this thesis seeks to address.

The revised *ACAS Code* (2009a) and accompanying guidance on workplace mediation gave an impetus to employers to review their grievance and discipline policies and consider the use of mediation (Rahim, Brown and Graham, 2011). ACAS ran briefings for employers and this seems to have galvanised the TUC into action. During 2008-09:

> The TUC… ran a series of eight regional events with ACAS. More than 850 union reps and full time officers attended… and received detailed briefings on changes to dispute resolution rules and new ACAS services, including pre-claim conciliation and workplace mediation (TUC, 2009, unpaginated).

Before moving on to the next development which was, and remains, the centrepiece of TUC output to affiliates on the subject, it is relevant to mention that in 2008, ACAS and the CIPD produced a joint guide on workplace mediation for employers. The intended audience also included union representatives (CIPD/ACAS, 2008, p. 3). For example, it was recognised that 'the way… mediation arrangements [were] introduced and

embedded' in organisations was 'crucial to ensuring their effectiveness in resolving internal conflict'. Where trade unions were recognised:

> …this requires… gaining their support…. The support of trade union and employee representatives can be particularly useful in lending the use of mediation credibility and promoting trust in the process (CIPD/ACAS, 2008, p. 16).

If there were collective consultative arrangements within the organisation, mediation should also be discussed and agreed with employee representatives (CIPD/ACAS, 2008, p. 17).

According to TUC sources, ACAS instigated the co-production of a companion guide for union representatives with the TUC (ACAS/TUC, 2010). In many respects, the key soft unitarist/pluralist messages of the two guides were the same. For example, mediation was portrayed as a management initiative and process, in which unions should be stakeholders. However, the safeguards set out in the STUC 2009 resolution were reflected in the ACAS/TUC guide. The foreword, authored jointly by the TUC General Secretary and the Chair of ACAS, stated:

> Mediation is not offered as a panacea, and there are some types of conflict where it will not be suitable. However, when used appropriately, it can offer a way to avoid the potentially destructive effects of drawn-out conflict…. It is not… a replacement for trade union representation, and nor should it undermine the valuable role of trade union representatives. It is, rather, a complementary process (ACAS/TUC, 2010, p. 1).

The guide listed situations to which 'mediation is particularly well suited' and 'situations where mediation may not be suited' and included a 'mediation checklist' for trade union representatives. However, the guidance did not endorse the position taken by Bleiman (2008b) in regard to accompaniment in mediation. On 'the need to ensure there is not a power imbalance between the parties in the mediation process,' Bleiman (2008a) argued that 'generally in employee disputes this can be achieved by ensuring that union members are *entitled to be accompanied* [writer's emphasis] by a union rep in mediation'. The difference between accompaniment and representation was highlighted in his discussion paper:

> Employees who decide to use mediation should feel they can be supported and even accompanied by a union representative, as they would in any other process used to resolve problems at work. It is important to note that mediation is a kind of negotiation but is a negotiation… in a distinctly different environment operating under special

> ground rules, so that a representative has a rather different role and will need some training (Bleiman, 2008b, p. 18).

In contrast, the ACAS/TUC guidance (2010, p. 11) endorsed implicitly the core tenet of party self-determination and mediators' ability to balance power, advising that 'mediation is most successful when no representatives are present'. Occasionally, accompaniment in mediation meetings might be appropriate where 'an employee feels particularly fragile because the mediation deals with issues such as bullying or harassment', but otherwise, where present, the role of representatives was to provide 'moral support' and be 'on hand to talk or offer advice in break out sessions'. If support was to be provided by a union representative, 'this must be agreed by all the parties in the mediation'. It was acknowledged 'representation may well be necessary' and could be provided by 'a carer or signer for a disabled employee' or by an interpreter for a 'non-English speaker'. The guidance was modelled on that set out in the CIPD/ACAS guide (2008, pp. 27-28) which had drawn attention to the 'pitfalls of representation'. A later version of the CIPD/ACAS guide added:

> Allowing representation/accompaniment at the separate meeting may allay fears that an individual has and enable them to see that they do not need that person in the joint meeting (CIPD/ACAS, 2013, p. 28).

A year after the ACAS/TUC guide had been published, the TUC set out its position on workplace mediation in more detail in its response to the Coalition Government consultation, *Resolving Workplace Disputes* (BIS/HMCTS, 2011a). On the importance of gaining union support:

> The TUC believes that the success of workplace mediation has often been dependent on schemes having been negotiated and agreed with trade unions rather than imposed by employers. Reaching agreement achieves buy-in from staff and reduces mistrust (TUC, 2011, pp. 11-12).

The TUC did not cite any examples of schemes that had been 'negotiated and agreed'; nor had the TUC/ACAS guide (2010, p. 9) recommended that the introduction of workplace mediation should be a matter for negotiation. Instead, the emphasis was placed on unions being consulted by employers, particularly in regard to 'key areas… how mediation fits with disciplinary and grievance procedures' and 'selection of mediation providers and mediators'. While the UK literature revealed that employers did consult unions over introducing workplace mediation, none were introduced

following formal negotiation, including the ELPCT scheme (Saundry, McArdle and Thomas, 2011), although its operation was overseen by a joint union-management steering group (Bailey and Efthymiades, 2009).

The TUC response included a detailed statement on the appropriateness of mediation. (This is quoted at length because the material is central to the analysis which follows later in the thesis.)

> [It] may be particularly well suited in situations where relationships have broken down between team members or between a manager and a member of staff. It may also be helpful in some instances of bullying, harassment or discrimination subject to the facts of the case. However mediation is not a panacea and its use will not be appropriate in some circumstances.

It set out the following parameters for its use:

- Mediation must always be voluntary. No individual should be pressurised into agreeing to mediation.
- It is essential that mediation is not used as a means of undermining or by-passing union representation or formal workplace procedures….
- Mediation is not appropriate where a decision about right or wrong is required…
- Unions are also unlikely to support the use of individual mediation where a number of workers face the same mistreatment in the workplace. Due to the confidentiality of the process, it will not be possible to establish a precedent which can be applied to the wider workforce.
- Mediation should only be used where the parties involved have the power and authority to resolve the issue (TUC, 2011, p. 11).

The appropriateness of mediation in instances of bullying, harassment or discrimination complaints was qualified:

> Mediation will not be appropriate in discrimination or bullying cases where there is a need for the issue to be investigated or the affected individual requests that it should be investigated. In such cases formal procedures should be used (TUC, 2011, p. 11).

On the subject of internal mediators:

> It is essential that mediators act in an impartial manner and are seen to be independent of management. In some instances this can be achieved through the use of in-house mediators with both employees and managers being trained…. In some instances union reps will volunteer to be trained as workplace mediators (TUC, 2011, p. 12).

There was no objection in principle to union representatives serving as in-house workplace mediators, perhaps surprisingly given the positions taken by Unite and UNISON (see below). Owing to its work on the subject with ACAS and familiarity with the UK case study evidence, the TUC may have been more attuned to what was

happening in unionised user organisations with in-house services (discussed in the next section) than national union head offices.

Where employers had in-house services, the TUC drew attention to the desirability of having a well resourced, diverse and representative team of mediators:

> Where in-house mediation is developed it will be important that a range of mediators are appointed giving regard to their seniority, race, gender, age, officers and departments and their roles within the organisation, including trade union representatives. Employee mediators must be provided with paid time off, cover and training to perform their role (TUC, 2011, p. 12).

Its response on the use of external mediators reflected TUC concern that the government was keen to stimulate the "mediation market" which could open the floodgates to unregulated practitioners inexperienced in employment relations:

> Where external mediators are used, their appointment should be agreed by management and a recognised trade union or workplace representatives…. mediation should only be provided by individuals who are trained and have expertise in employment law and workplace relations. While Acas mediators and some professional consultants provide an expert service, there are growing numbers of consultants offering mediation services who have very limited knowledge of employment relations. Their involvement in mediation can lead to individuals losing out on their rights or to an escalation of disputes (TUC, 2011, p. 12).

In comparison, the tone of the response to *Resolving Workplace Disputes* (BIS/HMCTS, 2011) from Unite was a little cooler towards mediation:

> Unite supports the resolution of workplace disputes at the earliest possible stage and considers that this is normally best achieved through agreed internal procedures between the employer and employees. The use of mediation within Unite is limited. This reflects as much the positive impact of collective organisation in the workplaces where its members work rather than any outright antipathy to the concept of mediation (Unite, 2011, p. 5).

The only area of marked difference between the responses of Unite and the TUC was on the subject of internal mediators:

> The Union can see no advantages to in-house mediation. There are, however, obvious disadvantages. In particular, it is difficult to see how an "in-house" mediator could be seen as independent by an employee. Further, an "in-house" mediator employed by the employer would have an inevitable conflict-of-interest whenever seeking to resolve a dispute which was, in reality, between the employer and an employee and not simply between employees (Unite, 2011, p. 6).

UNISON went further, exhibiting a critical CLS perspective:

> Any mediation scheme could not use in-house staff – this would be seen by individuals and their unions as just another branch of the organisation's HR department, lacking the necessary impartiality (UNISON, 2011, p. 3).

In other respects, UNISON's responses on mediation were not dissimilar to those of Unite and the TUC. Although the TUC trod cautiously in regard to union representatives serving as in-house mediators, it did not discount that possibility as apparently Unite and UNISON did. What is most striking about the two affiliates' responses is that they bore little relation to what had been happening in many unionised user organisations, notably in the public sector, where in-house services had been set up, and where, in some cases, union representatives had been serving as in-house co-mediators. This indicated that information exchange and shared learning about experiences of workplace mediation between branches, regions and head offices were very limited. This facet of UK unions' experience is explored further in the thesis as it is relevant particularly to the incorporation and revitalisation themes; and these internal union issues have not been researched in any depth in the UK literature.

The National Union of Rail, Maritime and Transport Workers (RMT) is the only example known to the writer of a British union which has made a national decision not to support an employer's use of workplace mediation. Network Rail has an in-house mediation service. In its guide to mediation, the section on representation stated:

> As this is an informal meeting the process does not allow for witnesses or representatives except in exceptional circumstances and never at the joint meeting (Network Rail, 2017, p. 6).

In 2017, the following national RMT advice was sent to branches:

> …the NEC has decided that as a union we will **not** be supporting this process. Whilst we recognise the benefits of dealing with working relationships informally in some instances, we have concerns over the following:
>
> - The lack of trade union involvement
> - The appointment rather than fair selection of mediators
> - The interaction of the mediation process with the individual grievance procedure.

(Email to the writer from RMT national office, 15 October 2018.)

Evidently, it was not the principle of workplace mediation that was objected to, but the apparently unilateral approach taken by the employer to its introduction and use.

National union positions on workplace mediation can also be gleaned from guidance produced for workplace representatives. In part 2, it was noted that informal dispute resolution was not strongly advocated in the cited Unite and UNISON handbooks. The Unite representatives' handbook for the community, youth workers and not for profit sector acknowledged that mediation could be an option in resolving individual complaints:

> Find out what redress the member wants and explore all options. Sometimes, informal resolution of a grievance through mediation is a better solution than a formal process which generates a lot of antagonism (Unite, 2014, p. 12).

It was not explained what is meant by 'mediation'. Overall, the tone of the guidance is adversarial. For example, it outlines 'lines of attack during a grievance or defences in a disciplinary' (Unite, 2014, p. 21). The advice on negotiating with management is also cast in terms of positional bargaining.

In relation to resolving bullying and harassment complaints using workplace mediation, the UNISON guide on member representation (2016a) adopted a somewhat hostile stance. It warns workplace representatives:

> Your member should not suffer any detriment and any loss should be restored. Beware [*sic*] solutions based on "mediation" that imply some equal fault between two employees and that the employer has no responsibility (UNISON, 2016a, p. 32).

It can be presumed that "mediation" refers to *workplace* mediation. While understandably seeking to protect the rights of individual members, the guidance does not countenance the possibility that some bullying or harassment complaints will not be satisfactorily resolved by rights-based approaches.

Separate UNISON guidance on harassment at work (2016b) has a different tone. It includes a comprehensive 'model dignity at work policy: preventing bullying and harassment at work'. Under the section on 'informal approaches', it states that 'mediation may… be a way of dealing with harassment or bullying situations depending upon the nature of any allegations' (UNISON, 2016b, p. 32). It explains clearly what workplace mediation is. The model policy recommends that, as a preventative measure, the employer should enable employees to access 'help with mediation at an early stage' (UNISON, 2016b, p. 30). Although there is no mention of union representatives' role in relation to mediation, the model policy does offer guidance on

the circumstances in which informal resolution is inappropriate. If informal action fails, or 'the issues raised are too serious to be suited to mediation, or the victim wants a full investigation… and has made a formal complaint', under the model policy, 'the complaints procedure should be initiated' (UNISON, 2016b, p. 32).

TUC guidance on bullying and harassment for union representatives (2018) does not mention workplace mediation. There is a strong emphasis on deploying health and safety law and individual statutory rights in taking up the issue with employers and in representing members. Representatives are also advised to 'try to make a collective complaint' and 'if the person agrees [to] seek the support of other workers' (TUC, 2018, unpaginated). Union representatives are urged to press employers to adopt policies and procedures that 'identify work organisation and staffing issues that contribute to workplace bullying and harassment'. More recently, research on sexual harassment experienced by LGBT people at work has led the TUC (2019, p. 31) to call for a 'shift in the onus of dealing with sexual harassment' from 'individuals who are silenced by hostile workplaces' onto employers. It recommends changes to the law, including the introduction of a new legal duty on employers to prevent harassment on the basis that reliance on affected individuals to come forward does little to change workplace cultures.

Were these changes to be implemented, there would still be, as there are presently, individual complaints that are not suited to rights-based approaches to resolution. In this respect, union guidance for workplace representatives is deficient. There is little acknowledgement of the role of informal dispute resolution and the potential benefits of mediation for union members in some cases, and little practical advice for workplace representatives on discussing the appropriateness of mediation with individual members and how they might be supported if they participate in mediation. These issues are returned to in the concluding chapter.

UK workplace mediation in unionised organisations – reviewing the literature

In the academic literature, the vast majority of UK employers using workplace mediation recognised trade unions. This section reviews the literature on the involvement of unions in connection with the introduction of workplace mediation by employers; its operation; and the outcomes and impact of its use in organisations.

Apart from its intrinsic logic, this approach was influenced by that of Herrman, Hollett and Gale (2006, p. 19) whose 'testable model' allows for multi-disciplinary analyses of mediation 'from beginning to end'. The body of work considered in the review includes case studies of UK user organisations: Saundry, McArdle and Thomas (2011); Saundry, (2012); Saundry and Wibberley, (2012a; 2012b); Latreille and Saundry (2015); and associated thematic analyses: McArdle and Thomas (2016); Latreille and Saundry, (2016a, 2016b) and Saundry *et al.* (2016). It includes interview-based studies of user organisations and union representatives' experiences (Bennett 2013; 2014); and thematic reviews of the UK case studies and related data (Latreille 2010; 2011; Saundry and Wibberley, 2014). It also refers to analyses of data of participants' experience of mediation, most of whom were employees of unionised organisations: Saundry, Bennett and Wibberley (2013; 2016) and Bennett (2016).

The UK literature explores in some depth employers' motivations for introducing mediation and it is in relation to this 'beginning' phase that union reactions and responses receive the most attention in the case studies. The review of the literature on the operation of workplace mediation in organisations considers firstly the role played by union representatives in advising members on options to resolve individual grievances or complaints, union involvement in gate-keeping and the types of cases selected as suitable for mediation. It then examines existing material on union representatives' role in mediation and their experience of the process, including their perceptions of individual mediation outcomes. Lastly, the review considers what the literature reveals about outcomes and impact of employers' adoption of workplace mediation for trade unions as institutions - comprising voluntary members, lay activists and salaried staff - and for their collective influence at workplace/employer level.

Overall, the review identifies significant gaps in the literature in regard to union representatives' attitudes towards, and experiences of, workplace mediation. This was particularly apparent in relation to the operation stage. The implications are explored later in the thesis in the context of the writer's findings on union representatives' views and experiences of the mediation process itself, that is, what actually happened in mediation meetings. Given the existent literature's predominant focus on conflict management in user organisations, it was to be expected that research would concentrate on outcomes and impact of the adoption of workplace mediation

primarily from the perspective of the employer. However, as will be seen, the literature did yield some insights into the consequences for unions which the thesis seeks to further explore.

Introduction of workplace mediation: Employer and union positions

Lynch (2001) identified the motives for the introduction of integrated conflict management systems (ICMS) in US organisations as the "five C's": compliance, cost, crisis, competition and culture. Latreille (2011) examined these factors in the context of UK organisations' introduction of mediation and found that cost was the main driver. User organisations were motivated to reduce costs associated with running investigations and formal grievance procedures, including management time, and the indirect costs of workplace conflict reflected in (for example) sickness absence and lost productivity.

Where a 'grievance culture' had developed, typified by a heavy reliance by line managers and unions on the use of formal individual dispute resolution procedures, the costs and negative impact of conflict on working relationships and organisational business aims could precipitate a 'crisis' in the sense that key management players realised that the status quo was not sustainable. This view might also be shared by unions, as in ELPCT (Saundry, McArdle and Thomas, 2011, p. 19).

Latreille (2011) also found that 'compliance', and in most cases 'competition' for employees were not important drivers in relation to UK employers. The writer would argue however that 'compliance' is a key factor in UK employers' retention of formal individual dispute resolution procedures, including among mediation users. While grievance and disciplinary procedures are not statutorily required, organisational standards of procedural justice are nevertheless overseen by the courts (Barmes, 2016) and penalties attach to failure to comply with the *ACAS Code of Practice on Disciplinary and Grievance Procedures* (2015a). Even if the incidence of claims is low, perceived risk of "getting it wrong" procedurally has acted as a powerful incentive for employers to retain formal procedures (Jordan *et al.* 2013, p. 62).

The UK literature explores employers' rationale for introducing mediation in some depth. While union motivations were not subject to the same scrutiny, it is apparent

that there was common ground with employers in that, as a rule, early resolution of disputes was regarded as preferable (Saundry, McArdle and Thomas 2011; Latreille and Saundry, 2015; Saundry *et al.* 2016). Both management and union participants observed that the longer individual disputes persisted the harder they became to resolve - a phenomenon that conflict escalation theory seeks to explain (Bazerman and Neale, 1983). This took a toll on the disputants personally and affected their productivity – not infrequently one or both disputants took stress-related sick leave. In conflicts involving individuals, the use of formal procedures could do lasting damage to working relationships between the protagonists and their work group. As an ELPCT union representative observed, through successful mediation, 'you've got the member back to work; you've got the situation where there's a better working environment' (McArdle and Thomas, 2016, p. 283).

Unresolved conflict had obvious costs to the employer but also costs to the union – it tied up representatives' time, with diminishing returns for the union where the outcome was not what the union or member wished for. This was against a backdrop of declining numbers of stewards in workplaces and, in many public sector organisations, reduced facility time (Mitchell, Coutinho and Morrell, 2012). Even where unions were initially wary of the employer's motivation (Saundry, McArdle and Thomas, 2011; 2013; McArdle and Thomas, 2016), as is discussed below, they were quick to grasp that there would also be organisational benefits for the union, as well benefits for members (ACAS, 2011b; Saundry *et al*. 2016).

In user organisations where industrial relations appeared to be reasonably good, managers were likely to consider union representatives to be 'more of a lubricant than an irritant' (McCarthy and Parker, 1968, p. 56) when it came to resolving individual conflict (Saundry and Wibberley, 2014; Saundry *et al.* 2016). From a radical perspective, the co-management of employee discontent could be seen as indicative of union weakness. The literature does not offer much information about the extent to which workplace unions could or did resort to collective procedures or action to deal with issues concerning individual employees. However, historically, even well organised unions have favoured early, informal dispute resolution for interpersonal conflicts in the workplace or disputes concerning working relationships. Collective action was not necessarily the first line of defence (McCarthy and Parker, 1968;

Batstone, Boraston and Frenkel, 1977; Thomson and Murray, 1976). Importantly, the UK case study evidence strongly suggests that workplace representatives would not have supported mediation if they had not believed that the benefits for the union (as an organisation) and for individual members would outweigh possible disadvantages.

In the case study organisations, workplace mediation was introduced at the behest of the employer, often on the initiative of an individual instigator or 'animator' (Roche and Geary, 2002). Beyond the academic UK literature, in other secondary sources, there are very few examples of trade union officials having been instigators. In East Sussex County Council, workplace mediation was introduced in 2007 at the suggestion of a local UNISON official who had used it in the past (IDS, 2009; CIPD, 2014). Unusually, the model used incorporated standard practices from commercial mediation, such as opening presentations followed by caucuses, that is, private sessions held by the mediator separately with each party (CIPD, 2014). (In the writer's experience, generally, having met the parties separately before the joint mediation meeting (when both parties are present) workplace mediators tend to keep the parties together at that meeting. However, mediators may hold short private sessions, if they or a party feels it would be helpful or necessary.) Another example of a union instigator was David Bleiman (UCU) who advocated its use and arranged training for UCU branch caseworkers in Scotland. But in the case study organisations, on the face of it, few if any representatives mentioned having had prior experience of workplace mediation and the extent of their pre-existing knowledge of workplace mediation is not known. In this thesis, it will be argued that notwithstanding their IR experience, union representatives' lack of knowledge about workplace mediation placed them at a disadvantage in critically appraising its core tenets and underpinning ideology.

There were no examples in the case studies of workplace mediation being introduced in the teeth of outright union opposition or cases of withdrawal of union cooperation; and, it seemed, very few cases of inter-union differences over mediation, at least among the main unions (ACAS, 2011b; Saundry, 2012; Saundry and Wibberley, 2014). For reasons unknown, in Bradford MDC, Unite chose not to get involved in a departmental pilot of a conflict resolution initiative, and while GMB and UNISON representatives were supportive, UNISON decided not to put representatives forward for training (Saundry, 2012, p. 21). Around the same period, Incommunities Housing

Trust (formerly Bradford Community Housing Trust) set up a workplace mediation scheme with support from Unite, UNISON and GMB; although GMB support was apparently qualified - GMB 'were keen to ensure that participation should always be voluntary' (ACAS, 2011b, p. 1). A complex set of inter-union and intra-union responses is indicated by these examples, suggesting that local circumstances rather than national union policies on workplace mediation were the key determinants of workplace representatives' responses.

Union reactions to the introduction of workplace mediation

Apart from the ELPCT studies (Saundry, McArdle and Thomas 2011; 2013; McArdle and Thomas, 2016), little is known about how union representatives' reached decisions to cooperate (or not) with employers' moves to introduce workplace mediation. For example, it is not known if workplace representatives' responses reflected formal national or regional union policy or whether they acted independently, out of ignorance or flagrant disavowal of it. Alternatively, there may have been no established union policy, and in those instances, branch or branch leaderships' decisions filled a vacuum.

Applying a critical discourse analysis, McArdle and Thomas (2016, p. 278) found that 'building high trust social relations between key individuals' – particularly the HR instigator of the introduction of mediation and lead union representatives - was crucial to the successful introduction of workplace mediation. They found that 'the roles of key individuals on the way mediation developed was very influential'; that 'these individuals did not always adhere to the expected collective views and responses' and that ultimately the 'social practices of individual actors' were critical in fixing discursive meaning through 'articulation', more so than 'broader structural or socio-political factors, such as the policy positions of the various groups [HR, staff side and operational management]' (McArdle and Thomas, 2016, pp. 269, 273). From a radical perspective, this would ring alarm bells and conjure images of maverick stewards distanced from the rank and file and too close to management.

From a critical pluralist perspective, this writer would argue that McArdle and Thomas (2016, p. 281) overplay the extent to which the shift in the union representatives' position (from hostile to cooperative) represented 'a very self-conscious and calculated

move', and underplay the strategic approach taken by the acting HR director, the instigator, to change hostile lead union representatives' (and managers') attitudes. While the writer agrees that the 'process' employed by the acting HR director 'cannot really be seen as one of simple manipulation and co-option' (McArdle and Thomas, 2016, p. 280), from an IR perspective, the process enacted by the instigator (on behalf of management) was part of a strategy to reduce formal grievances and transform the conflict culture. From a pluralistic perspective, this was acknowledged by Saundry, McArdle and Thomas (2013, p. 227):

> Mediation… was not simply introduced as an additional tool for dispute resolution but was explicitly targeted at what was perceived as a 'grievance culture'. In this way it was seen as a means of restructuring the attitudes of the key actors.

The process offers a master class in attitudinal structuring (Walton and McKersie, 1965; Brett and Goldberg 1983; Goldberg, 2015). It involved carefully planned and staged mediation familiarisation and training sessions aimed at particular managers, HR officers and union reps. Getting participants to the point where they would agree to support the use of mediation hinged on re-framing their view of conflict and of each other as adversaries in astutely facilitated air-clearing sessions which Walton and McKersie (1965, p. 266) would recognise as 'levelling conferences'. Arguably, if this strategic approach had not been taken, it must be doubted that leading union representatives would have embraced mediation on the 'calculated' basis that it would bring mutual gains and solve the problem facing representatives of a mounting pile of (it was implied) potentially unmanageable grievances.

From a soft unitarist/mainstream pluralist position, the case study literature assumes that union cooperation would be helpful if not essential in ensuring the successful implementation of mediation in unionised organisations. There was an evidential basis for this, particularly in NHS organisations where partnership working existed to varying degrees. For example, Bennett (2013, p. 199) cites a coordinator of an NHS mediation scheme: 'the unions are a key element in the process, both in its implementation and as partners to its subsequent success'. From a union perspective, Bleiman (2008) endorsed this view.

In his thematic review, Latreille (2011, p. 3) found that most user organisations considered trade union backing for schemes to be 'essential' and 'most had consulted

during the introduction of schemes'. This was associated with the fact that most user organisations were unionised public sector employers. However, generally, it was not clear from the literature to what extent union representatives had negotiated over the introduction of workplace mediation in consultative or negotiating fora, and whether, for example, they had made their support conditional on the outcome of a trial or contingent on agreement that mediation would not be used for disciplinary cases, and/or that facility time would be increased. Employers might pro-actively offer these inducements, as occurred in ELPCT (Bailey and Efthymiades, 2009). There were no examples in the literature of unionised employers introducing mediation unilaterally but conceivably, as an essentially 'managerial process' (Banks and Saundry, 2008), it could happen, particularly if collective consultative processes had fallen into abeyance or union resistance was expected to be negligible or ineffective. (It is noteworthy that in the UK literature, it was evident from the case studies of NHS user organisations that formalised structures for partnership working provided a vehicle for consultation and union engagement.) Where employers introduced workplace mediation unilaterally and did not seek to win over the unions, it might be expected that union representatives would actively or passively resist its use.

In contrast to the findings of the thematic review (Latreille, 2011), an analysis of CIPD (2008) data by Latreille (2010, pp. 12-13) showed that of respondent employers that had used mediation, 'lack of support from the workforce/trade union' was the least significant hindrance to its greater use. However, 'lack of trust in the mediation process by employees' was a significant inhibiting factor, particularly in the public sector (CIPD, 2008, p. 8). Latreille (2010, p. 12) drew on North American sources and, in a UK context, Dolder (2004), to suggest possible causes of mediation participants' mistrust, such as involuntary participation or pressure to settle; distrust in the impartiality of manager or external mediators; fears about power in hierarchical relationships in mediation; and concerns about forms of diversity imbalance. Arguably, union representatives might share these concerns and possibly raise them with members - especially potential mediation participants - or seek to address them through their involvement with employers' mediation services. Based on a quantitative analysis of the CIPD data, Latreille (2010, p. 18) also found that:

> The data indicate that… lack of trust in the mediation process is perceived as more problematic [by managers] in organisations where the most recent mediation did not resolve the issues compared with those where full resolution was effected (31.0 per cent compared to 9.8 per cent respectively).

However, 'the vast majority of those in the survey reported their organisation's previous experience of mediation as being positive in the sense of either full or partial resolution of the issues' (Latreille, 2010, p. 20). The literature on union views of disputants' experiences in mediation and outcomes is reviewed later in this section.

Interestingly, in the USPS, where (as previously mentioned) the leading national unions did not endorse the use of the REDRESS mediation programme, in various locations its use was supported by local union representatives. Apparently, there has been no academic research published on USPS unions' attitudes and experiences of REDRESS (Branney-Amsler email correspondence, 30 August – 1 September 2014). It might be speculated that internal union conflict over REDRESS' use may have been obviated partly by the protective measures that, for example, the APWU adopted. APWU representatives attending mediations as disputants' companions did so in an individual capacity, unless they were specifically authorised to act on behalf of the union. Moreover, union representatives had authority to vet REDRESS settlements to ensure their provisions did not impact detrimentally on collective bargaining agreements. In the existing UK literature, there were no examples of nationally introduced workplace mediation schemes. (As mentioned elsewhere in the thesis, Mustchin (2017) refers to provision made for mediation in Royal Mail under the 2014 *Agenda for Growth* national agreement, in the context of a wider study of changes over three decades in industrial relations in Royal Mail.) In contrast to REDRESS in the USPS, in Royal Mail the introduction of mediation was agreed with the national union. In relation to mediation at the workplace, the views and experiences of CWU representatives - at and below national level - are explored in the thesis.

Incorporation

The literature on UK unionised user organisations reveals that the expectation of being accused of collusion was a commonly cited reason for representatives' wariness about becoming involved with the use of workplace mediation (Latreille, 2011; Saundry, McArdle and Thomas, 2011; Saundry 2012). In ELPCT, it was found that initially, 'most

union representatives had mixed feelings about the [mediation] scheme' especially those who did not participate in mediator skills training. But apparently they were won over by the union ADR Lead. Known as "the grievance king", stewards trusted that he would not have been 'sucked in' by management. Furthermore, 'as the scheme progressed… it was suggested that the introduction of mediation had facilitated informal processes of resolution which in turn generated improved outcomes for members…' (McArdle and Thomas, 2016, p. 283).

The potential for union representatives, particularly those outside the 'inner circle' of lead staff side representatives and trainee mediators, to perceive union cooperation as cooption was arguably high in ELPCT as, uniquely, the lead UNISON representative was appointed to the post of co-coordinator of the mediation scheme (the 'ADR Lead') – not in his union capacity, but as an employee of the Trust. However, by undertaking the co-coordinator role on a part-time basis, he was able to remain on full-time release for union duties for two days a week. The other co-coordinator was a HR manager (Bailey and Efthymiades, 2009, p. 4). The ADR Lead appointment could be seen as management ceding power to the unions or as a masterstroke in co-option. For example, in another NHS organisation, Looker (2015, p. 134) noted that UNISON partnership representatives who had taken on secondments in 'joint/union management roles' to champion (among other things) partnership working had attracted criticism. A UNISON regional organiser described the arrangement in these terms:

> This was a partnership between senior UNISON representatives and senior management that was not based on equal power but on how a clique of people on both sides came to a mutual win/win situation regardless of the impact on the union. I have never experienced a partnership agreement that helps organising (Looker, 2015, p. 134).

In this regard, the ELPCT study did not explore union representatives' perceptions beyond the Trust.

The co-coordinator role itself can be interpreted as a friend or foe in that:

> The ADR Lead… promote[d] the mediation scheme with frontline staff and coordinate[d] the set up of mediations, including the sensitive discussions with parties prior to mediation (Bailey and Efthymiades, 2009, p. 4).

On one hand, this gave a gatekeeper who was also a lead union representative an unprecedented measure of control over the types of cases that were mediated; on the other hand, who better "to sell" the employer's project to employees? As will be discussed more fully later in the thesis, charges of co-option by lead ELPCT union representatives were denied and they pointed to 'wins' for the union including, in the case of UNISON, an increased membership.

Turning to the design of mediation schemes, in his thematic review of ACAS and CIPD evidence on workplace mediation, Latreille (2011, p. 39) observed that:

> Perhaps part of the reasons for the absence of problems with unions in the implementation of mediation schemes is that organisations where unions were present typically involved them from the outset, including the design of the scheme.

For example, Latreille (2011, p. 38), citing Saundry, McArdle and Thomas (2011), described the participating unions at ELPCT as 'full contributors in the design and running of a scheme…' However, while the scheme was 'jointly owned' (Bailey and Efthymiades, 2009, p. 10) it seems that the basic scheme design, potential mediator pool, and selection of the mediation course (and CMO to deliver it) had been decided before the unions' cooperation was secured. After the mediators had been selected and trained, a 'mediation protocol' was devised with their 'support and input' (Bailey and Efthymiades, 2009, p. 4).

Northumbria Health Care NHS Foundation Trust (NHCT) was an exemplar in regard to the level of union involvement in the design of schemes. Unusually, NHCT unions were involved at the inception of the in-house scheme in that they had taken part in joint discussions about 'conflict hot spots' and how to best deal with them (Latreille and Saundry, 2015, p. 18). The instigator for the use of mediation at NHCT was a clinical consultant psychologist in the occupational health department (Latreille and Saundry, 2015, p. 18). In East Sussex County Council, the instigator, a UNISON regional official, sat on the management project team which designed the scheme (CIPD, 2014). At the University of Sunderland, 'trained unions [were] involved in [the] development of the [in-house] scheme via the Joint Consultative Committee' (HE Equality Challenge Unit, 2007, p. 19). At Dundee University, the mediation initiative – for students as well as staff - was led by the Legal Counsellor (Academic Affairs). She convened an Early

Resolution Group with representation from the campus unions (University of Dundee, 2009).

Judging from the literature, the strategic direction for the use of mediation was set by management in all cases. Unions were consulted on employer proposals but it is not apparent that they were subject to negotiation. It is not clear to what extent unions were involved in revisions to grievance and dignity at work policies which included mediation as an option. For example, in NHCT, there is nothing to indicate whether the unions had any major objections to a revised grievance procedure which stated that 'only in cases where local resolutions cannot be found and mediation is not seen as viable should the formal grievance procedure be invoked' (Latreille and Saundry, 2015, p. 19). This might be seen as positive in prioritising informal resolution; or it could be interpreted as a step in the direction of compulsory mediation. It may have been that union responses depended not so much on the extent to which they were consulted by the employer but on the degree of trust between union representatives and their management counterparts.

Unions may prefer to have an arms-length relationship with the running of mediation services. The TUC regarded mediation as an employer's process and anticipated that unions would play a modest role in its introduction:

> …ensuring that employers inform and consult trade unions on the way in which mediation policy affects collective agreements or other methods of dispute resolution when they are considering, setting up, or implementing, mediation schemes (ACAS/TUC, 2010, p. 9).

The preservation of employee rights was uppermost for the TUC - in particular, it was concerned that consultation should take place over 'how mediation fits with discipline and grievance procedures'. Another key concern was that unions should be consulted over 'the selection of mediation providers and mediators' (ACAS/TUC, 2010, p. 9). As will be seen, in practice most unions have had very little influence over employers' choices of CMO consultants, trainers and mediators.

Mediator selection and training

The case studies and additional data examined by Latreille (2011) show that in-house mediators were drawn from a variety of sources. In small organisations, the mediator

could be a single HR professional. In large organisations, mediators were selected from the team of HR practitioners, from HR staff and line managers, or from applications submitted in response to advertisements to all staff, as in the Ministry of Justice (CIPD/ACAS, 2008). Employees who were also union representatives might apply as individual employees or be specifically invited to attend mediation training and to join the mediator pool (as in ELPCT). Some organisations used external mediators exclusively or to supplement their in-house service (as commented on in the thesis findings).

The TUC position was that 'trade union representatives… can be a potential resource for employers who are looking to recruit internal mediators' (ACAS/TUC, 2010, p. 13). As mentioned previously, national Unite and UNISON position statements did not countenance this possibility. The TUC concern was that 'where representatives do act as mediators, however, they should avoid mediating for individuals who they also represent' (ACAS/TUC, 2010, p. 13) as this would pose a conflict of interest and impugn the principle of mediator impartiality. Latreille (2011, p. 41) found that views diverged among union and other interviewees from user organisations as to whether employee/union representatives should act as mediators. While it could lend credibility to the process, as mentioned, there were also potential conflicts of interest, similar to those which occur when a dispute involves two members of the same union. However, the collusion angle, whether union mediators were serving employers' interests, was not explored in any depth in the literature.

In their thematic review of five case studies undertaken between 2009 and 2011, Saundry and Wibberley (2014, p. 33) noted '…there was a conscious attempt to recruit mediators who played important roles within the day-to-day management of conflict' and 'trade union representatives who tended to deal with the majority of employee grievances were explicitly targeted'. It was hoped that their recruitment would not only ensure that the in-house schemes would receive referrals but also, as an operational manager in one organisation put it, with "…a trained understanding of what mediation was, it would enable [them] to see conflict differently" (Saundry and Wibberley, 2014, p. 33). Union representatives who had attended mediator training but did not go on to serve as mediators for whatever reason could nevertheless be an asset. It could be expected that they would be able to give more informed advice to

members than untrained representatives (and managers) and encourage union members to take up the option of mediation. At Bradford MDC, union representatives did not become involved as mediators for the Employee Advisory and Mediation Service, set up in 2002 or as 'resolution officers' in a later departmental pilot (mentioned earlier), apart from a representative from an unnamed union. However, in 2008, the three main unions did participate in joint training on the IR Framework – a partnership agreement intended to bring about more informal resolution of collective and individual disputes. The training was said to have broken down barriers, challenged stereotypes and built trust between union representatives and managers who attended, and facilitated more informal, early resolution of differences (Saundry, 2012, p. 18). In regard to training for in-house mediators specifically, apart from the revelatory experience of the ELPCT lead UNISON representative, little is known about the views of mediation that representatives took away from the training and (again with the exception of ELPCT) whether they went on to refer cases to their in-house service.

The operation of workplace mediation

Saundry, McArdle and Thomas (2011, p. 38) argue that union involvement in the operation of mediation schemes is more likely to bring about change in the conflict culture of organisations:

> …simply consulting over the introduction [of] mediation will not be enough. If… unions are excluded from the operation of the scheme, mediation will be less likely to have any impact on their broader attitudes to conflict and employment relations within the organisation.

The operation stage comprises the pre-entry process of gate-keeping and the mediation process itself. This sub-section examines what can be gleaned from the literature about union views and experiences about the operation stage, including accompaniment in mediation.

Gate-keeping is a pivotal point of control in the operation of an organisation's mediation service or scheme. The gate-keeper decides which cases are appropriate for mediation (or some other process), liaises with the potential participants, often appoints the mediator/s, and prepares evaluations of the service for reporting to senior management and sometimes staff side representatives. In the case studies, the

gate-keeper or 'mediation co-ordinator' was almost always a management representative, from HR or occupational health (Latreille, 2011; Saundry, McArdle and Thomas, 2011; Saundry, 2012). The coordinator received referrals from HR officers, disputants' managers, disputants themselves, and in some cases, union representatives. (Atypically, in ELPCT, the unions claimed to be the source of most referrals – no doubt partly because the lead UNISON representative also served as a scheme co-coordinator).

It was clear from the case studies that some types of complaints were generally considered by union representatives to be inappropriate for mediation, such as clear breaches by managers of the employer's procedures or policies; however, as will be discussed, employee complaints do not necessarily fall into neat categories, and how disputes are categorised (and by whom) for the purposes of resolution raises critical issues about the exercise of power by unions and management.

The case study unions identified the types of cases they felt were particularly suited to mediation, as opposed to formal procedures. Principally, they concerned interpersonal conflict, including dysfunctional working relationships, poor communication and poorly perceived management style and practice (CIPD, 2007; Bennett 2013, pp. 190-91).

Bullying and harassment complaints were considered appropriate for mediation provided they were not "serious" cases, for example complaints which could or should be referred for formal investigation (Latreille 2011, pp. 24, 40; Latreille and Saundry, 2015). This was consistent with CIPD and TUC guidance on the types of cases for which mediation is and is not suitable. Identical advice was given (possibly reflecting ACAS' influence) that 'perceived discrimination issues' could be mediated but it required a 'judgement call', and mediation 'may not be suitable… if the individual bringing a discrimination or harassment case wants it investigated' (CIPD/ACAS, 2008, p. 11; ACAS/TUC, 2010, p. 5). Updated CIPD guidance added that '…*serious* cases of bullying and harassment, and *clear* cases of discrimination *may* need [writer's emphasis] to be dealt with by more formal procedures' (CIPD/ACAS, 2013, p. 12); advice which was perhaps intended to encourage employers to be less reticent about proposing mediation for complaints of alleged harassment and discrimination.

From a critical perspective (within radical and pluralist frames), the designation and treatment of work-related conflict as 'interpersonal' is problematic because of its tendency to overlook the operation of power relations inherent in the employment relationship (Ironside and Seifert, 2003; Hoel and Beale, 2006) and societal inequalities in the workplace (Gwartney-Gibbs, 1994; Deakin, 2014, pp. 58-59). The dominant psychological explanations of bullying which personalise the problem (Einarsen *et al.* 2011) fit neatly with workplace mediation ideology which teaches that the resolution of conflict lies in uncovering the underlying 'interests or needs' of the *individuals* involved. Interestingly, in the case studies, union and management representatives readily identified underlying *structural* causes of conflict which could precipitate charges of bullying and harassment and unfair treatment, such as performance management and sickness absence control, especially as they operated in austerity-hit public sector organisations (Saundry *et al.* 2016).

Union representatives recognised that there was a boundary line between bullying and harassment and an 'interpersonal issue' (Latreille and Saundry, 2015, pp. 40-41). Where they perceived the boundary line to lie is important because it would be likely to influence the advice given to individual members, and whether the representative considered mediation to be the appropriate route to take initially. But little is known from the UK case studies or indeed wider contemporary IR literature about the factors which union representatives take into account in advising individual members on the options for resolving workplace conflicts and disputes. Judging from the TUC and CIPD guidance and the case study findings, there appeared to be near unanimity between employers and union representatives as to the types of cases suitable for mediation. A possible explanation is that unions and employers shared a judicialised perspective on individual workplace conflict - issues involving employee rights should be dealt with through formal procedures, while other issues could be dealt with informally, including by mediation. Moreover, as the case studies attested, formal procedures were regarded as ill-suited to resolving interest-based issues. For example, in the experience of an ELPCT representative, for these issues, the formal route was unlikely to meet individual members' expectations and could possibly make matters worse (Saundry, McArdle and Thomas, 2011, p. 20).

Leaving aside the question of the representativeness of the case studies, a radical CLS analysis might interpret this harmonious picture as being redolent of union incorporation and antithetic to mobilisation. A critical pluralist analysis would reject this as simplistic but underline the tension between the recognition by union representatives of underlying structural causes of individual workplace conflicts on one hand, and their support for mediation of individual conflicts on the other, which (as argued earlier) personalises the issues involved. This approach raises questions about the consequences for union organisation. Did union support for mediation help sweep structural causes of conflict under the carpet; or did union representatives take up those issues on other fronts and focus on how best procedurally to meet the needs of individual members; and with what effects on union organisation? Another tension exists in relation to workplace justice. If unions are to wield the 'sword of justice' in pursuing rights at work, they must uphold (and be seen to uphold) contractual and statutory rights. In this sense, they can serve as bulwarks against the privatisation of justice (Colling 2004; Dolder, 2004), but not if they are complicit in the mediation of rights-based cases. On the face of it, the conflation in organisations' dignity at work policies of 'harassment', as defined by the *Equality Act 2010*, and 'bullying' (a more amorphous concept in law) raises the risk of complaints being wrongly triaged for mediation. The literature is largely silent as to what role workplace representatives play in this regard, how they frame 'interpersonal conflict' and their approach to borderline rights/interests-based complaints. UK courts acknowledge that harassment claims can involve "grey areas" (Barmes, 2016, p. 201), and given the cost to employers of processing formal complaints, it is perhaps not surprising that CIPD guidance nudges employers to be bolder in suggesting mediation for discrimination complaints. Of course employees' complaints are settled and claims are compromised on the basis of negotiation. The difference in workplace mediation is that individual employees represent themselves and lack immediate access to the expertise that union representatives possess or should possess.

Accompaniment and Mediation Meetings

In the literature and secondary sources on UK workplace mediation, the most noticeable gap exists in relation to union representatives' views on the mediation process itself; and where they were present, what part they played.

In his thematic review, Latreille (2011, p. 31) found that very few user organisations permitted 'representation' in mediation. Effectively this meant accompaniment. Only in the ELPCT case study (Saundry, McArdle and Thomas, 2011), is union accompaniment in workplace mediation explored in any detail. An ELPCT UNISON representative's view was captured in a quote (reproduced below) which featured in the TUC (2010) and CIPD (2013) guides co-produced with ACAS. Accompaniment to 'the initial meeting with the mediators [was] acceptable, allowing rapport to be established and for the rep to withdraw for the main session'. However, it had occurred in 'only one out of 32 mediations' (ACAS/TUC, 2010, p. 12). Representation was not recommended 'beyond the first stage' for these reasons:

> I tell them it's about the two people in the dispute dealing with the issues. It's not about the law…. Perceptions of turning up with a rep can escalate the conflict rather than support the mediation process. We find… having staff side mediators helps to diffuse concerns and reassure the parties (ACAS/TUC, 2010, p. 12).

The quote replicates ACAS and CMO guidance on accompaniment in mediation.

From a radical perspective, the message that accompaniment was superfluous if not undesirable imparted during mediation training could be seen as integral to employers' incorporation project. It raises concerns about union displacement. From a pluralist perspective, it might argued that union representatives found the ideology of workplace mediation to be consistent with their experience of informal dispute resolution, where in the first instance, it would be accepted that individual employees in an interpersonal conflict were best placed to talk directly to each other, possibly facilitated by a mediator, without a union steward necessarily needing to be present. As discussed in part 2, historically, the first stage of many large UK employers' dispute resolution procedures encouraged individual workers (unaccompanied) to take up their complaint with the supervisor. Thus the equation of non-accompaniment with early, informal dispute resolution is well established in British industrial relations. As workplace mediation has also been portrayed as an informal or 'less formal' procedure it might explain why non-accompaniment in mediation was not necessarily regarded as alien or unacceptable by union representatives.

The views expressed by the ELPCT union representative (quoted above) were no doubt shared by management. Having mediators drawn the staff side would reassure

employees that the mediators were a balanced team and not "all management". However, from a critical pluralist perspective, the suggestion that having staff side co-mediators did away with the need for accompaniment can be challenged on the basis that staff side co-mediators are not present as union representatives and must be impartial as mediators. Paradoxically, this can be seen as an unintentional admittance that impartiality is unattainable and mediators will have, and will possibly act on their biases. Alternatively, it offers false assurance particularly to subordinates in mediation that staff side mediators would protect their interests. In any event, not all unionised organisations had internal mediators who were union representatives or from non-managerial grades.

In contrast to the position taken by the TUC, Scottish UCU leader David Bleiman (2008b, p. 18) made the case for accompaniment:

> Employees who decide to use mediation should feel they can be supported and even accompanied by a union representative, as they would in any other process used to resolve problems at work.

He acknowledged accompaniment was a matter of choice for individual union members and explained that accompaniment would not equate to representation:

> Unless the mediation is at an early stage or about an issue on which you are very comfortable to speak for yourself, you may prefer to be accompanied by a trade union representative in mediation. Bear in mind that mediation is a negotiation under very special ground rules, so that your union representative would not be acting as your spokesperson in the way which might occur in a formal grievance hearing (Bleiman, 2008b, p. 18).

In the UK academic literature, there is no discussion of possible benefits of union accompaniment in the case studies or accounts from union representatives who had accompanied members in mediation meetings. Moreover, Ridley-Duff and Bennett (2011, p. 112) claimed that their 'practical experience' [of mediation] led them 'to argue that union representation in individual mediation meetings adds little of value to the process or the union member's case in mediation'. The distinct role of accompaniment is not mentioned.

The value that accompaniment can add to procedural justice in mediation was set out by Bleiman (2008b, p. 22):

> Your union rep can be very helpful as a person who can look out for your well-being and whom you can consult as the mediation progresses… your union rep can also help safeguard against any management abuse of the process of mediation, bad faith on the part of management and, if the worst comes to the worst, can help you to extricate yourself if the mediation turns sour.

In mediation ideology, the mediators attend to these issues - an article of faith that appeared to have been accepted by union interviewees – but Bleiman, an experienced mediator, recognises implicitly that impartial mediators are limited in the extent to which they can protect individual participants' interests.

Research on the subject of how UK workplace mediators manage power imbalances is scarce, partly owing to the absence of independent observers of the process. Given its importance in a workplace context, power imbalance is acknowledged but not examined in any depth in the UK literature (see below). Moreover, as Deakin (2014, p. 85) observes, in relation to UK workplace mediation, there has been very little written from a critical perspective. The mainstream pluralist IR perspectives implicitly accept the validity of the core tenets of mediator impartiality and party self-determination, for example, Saundry, Bennett and Wibberley (2016) and Bennett (2013; 2014). Based on participants' feedback, Saundry, Bennett and Wibberley (2016) explored the concept of voice in workplace mediation, comparing participants' experiences, especially subordinates, to employee voice in formal procedures. It was acknowledged that mediators cannot alter the fundamental power imbalance in the employment relationship. Nevertheless they argue that:

> Critically mediation is conducted by an impartial third party (as opposed to a manager) and the outcome is owned by the parties… not decided by the employer. These properties… attenuate asymmetries of power *within* [authors' emphasis] the mediation room (Saundry, Bennett and Wibberley, 2016, p. 18).

The attenuation takes the form of subordinates being able to 'contest the behaviours, and in some circumstances, the authority of their managers' (Saundry, Bennett and Wibberley, 2016, p. 18). This would appear to occur mainly because mediation allows participants to speak for themselves in a controlled, non-adversarial setting which encourages them to express their feelings. Apart from reporting that parties felt mediators 'to be impartial and have allowed both parties to explain their positions' (Saundry, Bennett and Wibberley, 2016, p. 13), nothing is said about how mediators' actions contributed to the attenuation of asymmetrical power. Bennett (2013) appears

to accept mediators' assertions that they managed power imbalances but as Deakin (2014, p. 86) points out, he 'gives little insight into how'. Likewise Wornham (2015, p. 101) found in the international literature 'how to actually balance power was left rather vague'. Bennett (2014) refers to mediators enforcing ground rules and allowing parties' uninterrupted time. Mediators in Deakin's (2014) study identified techniques such as stopping mediations if one party is bullying the other (which, in the writer's experience, workplace mediators rarely do); subtly suggesting breaks at points that may favour the weaker party; and not addressing the more powerful party first. From a critical pluralist perspective (and, again in the experience of the writer), power imbalance is multi-faceted and complex and cannot be neutralised by basic process management. The extent to which mediators attenuate or dilute power imbalance can be very difficult to judge. Power imbalance often plays out subtly in the ways parties communicate with each other, hence it is not surprising that Saundry, Bennett and Wibberley (2016, p. 16) found 'no clear evidence' of power asymmetries seeping into the mediation room. From a union perspective, the findings of this study indicated that in regard to the *process*, it was important that union members who were parties did not feel the mediators were overtly biased. The UK literature confirms that most parties in workplace mediation were satisfied with their mediator. However, little critical attention is given to the relationship between the mediator and the organisation - whether they are externals, managers, or co-mediator pairs as described earlier. The fact that the co-mediators in this study included union representatives adds another dimension to the question of whose interests are primarily served by mediation and mediators.

The subject of power imbalance in mediation did not emerge as a key issue from the accounts of union interviewees in the UK case studies. Union views on the mediation process only featured in any detail in the ELPCT case study. Most of the ELPCT union interviewees were in-house mediators who recounted their experience of the process primarily from their perspective as mediators. The writer's study sought views from a wider spectrum of union experience, including from representatives who advised members on the option of mediation and who had accompanied members in mediations. (The writer's mediation experience and her 2014 survey of union

representatives (Branney, 2016) indicated that accompaniment occurred more frequently than existing literature suggested).

As discussed earlier, mediation is cloaked in confidentiality. It appeared that representatives appreciated that confidentiality was essential in mediation (Latreille, 2011) but it is not known if they had concerns about confidentiality masking unfairness in the mediation process or unjust outcomes. The case studies indicate that union representatives did receive some feedback about members' experiences of mediation and, in some organisations, summary information on the use of the scheme from mediation coordinators. An advantage of union representatives being mediators was that in some organisations they would attend in-house mediator debriefs (Latreille, 2011), where presumably mediators would share reflections on their practice and how they dealt with dilemmas and challenging cases, in confidence. This would at least give union (and management) representatives an impression of the overall justice of the process, although it might be expected that "wearing two hats" might sometimes also pose dilemmas for union representatives.

The implications of confidentiality in mediation for unions as organisations are not explored in any detail in the UK literature. For example, little is known about whether confidentiality and the extent to which employers were prepared to share data on their use of mediation were seen by unions to be barriers to organisational learning about workplace mediation. If, at workplace/branch level, unions' access to information was limited, what were the consequences? Did it impact on the tenor of the advice given to members individually and collectively? Overall, the UK literature yielded little material on links between individual mediations and the implications for unions as organisations and their role in collective dispute resolution.

Outcomes and impact of the use of workplace mediation – the union experience

There has been no specific study devoted to assessing the implications of the use of UK workplace mediation for trade unions as organisations or institutions. In the context of the overarching themes of incorporation, displacement and union revitalisation, this sub-section considers what can be gleaned from the existent UK literature about union perspectives on outcomes and impact of the use of workplace mediation and identifies gaps which this thesis seeks to address.

Incorporation or independent engagement?

Extrapolating from the radical CLS critique of partnership (Carter and Fairbrother, 1998; Upchurch, Croucher and Flynn, 2012), the consequences of union involvement in workplace mediation might be summarised as entrenching 'branch élites', distancing them from the wider membership through enhancing lead representatives' position and status; and yielding fairly minor incursions into managerial prerogative. Workplace mediation could be said to be yet another preoccupation with the procedural resolution of individual issues, diverting union representatives' focus from the union renewal agenda of organising and mobilisation.

While it appeared that close involvement with workplace mediation was largely confined to an inner circle of leading union representatives, for example, at ELPCT, McArdle and Thomas (2016, p. 281) concluded 'it would be inaccurate to see the developments as involving the co-option of union officials'. Lead representatives denied they had been "brainwashed". In ELPCT, initially sceptical stewards, outside the inner circle of union partnership leads and those who had attended mediation training, were prepared to go along with trialling the use of mediation, as proposed by the lead UNISON representative, because it was thought highly unlikely that he would have been gulled by management (Saundry, McArdle and Thomas, 2011).

In Bradford Metropolitan District Council, as a precursor to piloting a workplace mediation scheme, an 'IR Framework' had been negotiated in 2008 'to develop partnership working and manage both collective and individual conflict in a less formal and more consensual manner' (Saundry, 2012, p. 16). In contrast to ELPCT, not all the unions supported the IR Framework, and apparently, in some quarters, scepticism persisted:

> Some union members and representatives felt that the relationship between unions and management had become too close. Union respondents accepted that some of their members had a perception that they were now *'in bed with management'*, [author's emphasis] however, they argued this was not the case. They claimed that they were still prepared to challenge management in the strongest terms but only when necessary and appropriate (Saundry, 2012, pp. 17-18).

In ELPCT, union representatives also 'reserved the right to represent their members in the strongest possible terms through formal procedures if that was necessary'

(Saundry, McArdle and Thomas, 2011, p. 37). The researchers 'found no evidence' of 'labour as a passive recipient of change… and no sense that trade unions had become more compliant'. On the contrary, union interviewees 'saw the extension of mediation over a wider range of issues as a way of confronting the unreasonable exercise of managerial prerogative' (Saundry, McArdle and Thomas, 2011, p. 37).

Enhancing unions' collective influence?

In ELPCT, the unions' engagement with mediation appeared to have enhanced their collective influence. Although there was no evidence of a marked decline in formal disciplinary proceedings (in contrast to formal grievances), the improved relationships with HR and managers that grew out of union involvement with mediation opened new channels for informal processes of resolution and discussion between, for example, HR and lead representatives as to how disciplinary issues might be handled, whereas previously union representatives would not have been consulted or involved at an early stage (Saundry, McArdle and Thomas 2011, p. 37).

In relation to individual grievances, on the face of it, paradoxically, it seemed that UNISON was prepared to forsake the formal grievance procedure for many cases when previously it had apparently 'won' at most grievance hearings. This was attributed to a pragmatic acceptance on the union side that there was a need to 'stop all these grievances'; that individual grievances were running at unsustainable levels. However, it also emerged that 'most' of the individual complaints raised with representatives involved bullying and a union representative was quoted as saying '…even where they are dealt with by a formal grievance they *don't tend to go anywhere'* [writer's emphasis] (ACAS/TUC, 2010, p. 12; CIPD/ACAS, 2013, p. 28). In other words, in contrast perhaps to grievances over terms and conditions, these cases were not 'won'. The evidence that better outcomes for individual members could be achieved in mediation was also said to have won over sceptical stewards.

From a pluralist perspective, unions derive power partly from employers' acceptance of their legitimacy (Simms and Charlwood, 2010, p. 128). Recognition yields formal or structurally based legitimacy power. Another dimension to legitimacy is relational – in a mutually respectful relationship, unions are likely to have more legitimacy power

than in situations where the union-management relationship is poor. Arguably, where unions' coercive power is low or is exercised ineffectively, legitimacy power assumes more importance. In ELPCT, it was probably not an unlikely prospect that the unions (or for that matter, some managers) could "kibosh" mediation (Saundry, McArdle and Thomas, 2011, p. 16) although the lead UNISON representative soon came to realise that mediation offered a better alternative for many members with fair treatment (dignity at work) complaints and the 'levelling' (referred to earlier) entailed in the mediation training enabled the air to be cleared between individuals on both sides. Union-management relationships improved, enhancing UNISON's legitimacy power. The tangible gains for the union were better outcomes for individual employees with interest-based grievances and in some instances, those facing disciplinary charges. The thesis seeks to explore whether the ELPCT union experience was replicated elsewhere. Based on this survey of the UK literature, the ELPCT case stood out as being unique, rather than as an exemplar. The 'before mediation', highly adversarial patterns of interaction between unions and management - with proxy battles being waged in individual grievance proceedings - did not exist in any other organisation. The transformation of conflict management stemmed from changes in the relationships between key personalities on both sides, with the introduction and use of mediation being used as the vehicle for building trust and affecting change. In other organisations, the introduction of workplace mediation had a positive impact on the conflict culture of organisations where reasonably good industrial relations were the norm but where individual dispute resolution was highly formalised. The adoption of mediation, often in tandem or associated with other changes to policies or procedures, facilitated and encouraged attempts at early, informal resolution (Saundry, McArdle and Thomas, 2011; Saundry, 2012; Latreille and Saundry, 2016a; 2016b). However, in these cases, in contrast to ELPCT, its adoption appeared to have had little effect on unions' collective influence.

Displacement

Union displacement does not emerge as a major theme in the UK literature. On the face of it, employers' proposals to adopt workplace mediation did not arouse overt fears of displacement specifically among union representatives. In most cases, initial caution and uneasiness about its introduction appeared to abate in the case study

organisations. There was no evidence that residual wariness hardened into active resistance, although choosing to disengage could be interpreted as a form of passive resistance.

Bennett (2013) suggests that retention of formal procedures should mediation fail assuaged representatives' fears about displacement. In ELPCT, McArdle and Thomas (2016, p. 283) found that union representatives did not feel undermined because the option of reverting to formal procedures if mediation did not work was retained, and there was 'a clear demarcation' between 'individual disputes appropriate for mediation and collective representation process'. However, as illustrated above, wariness and scepticism were not uncommon reactions, certainly initially, particularly among those who were not in the leadership groups most closely associated with its introduction. In his cross-sectoral study of mediation users' experiences, Bennett (2013) also detected a lingering sense of uncertainty about the implications of the use of workplace mediation for union representatives:

> For most of the union representatives interviewed, their general support for the potential benefits of mediation was still tempered by a concern that as a process it could be in conflict with their traditional role of representing their members in a dispute (Bennett, 2013, p. 199).

Arguably, these reactions are symptomatic of a range of anxieties which could include fear of displacement. From a critical perspective, it could be argued that employers could offset fears of displacement by offering lead representatives in particular new roles as co-mediators, and joint steering group members. Perhaps more importantly, as mentioned, in ELPCT for example, there was little diminution in the incidence of formal disciplinary cases (Saundry, McArdle and Thomas, 2011, p. 26). Presumably, therefore, union members continued to request union representation. The evidence from the UK literature also indicated that union representatives could be more open to informal alternatives for resolving disputes than front-line and middle managers (Latreille, 2011; Saundry and Wibberley, 2014; Latreille and Saundry, 2016b). If anything, they may have been more affected by perceptions of displacement than union representatives.

Institutional benefits for unions and challenges

Where union representatives were supportive of workplace mediation, the most frequently cited institutional benefit was that its use saved representatives' time and branch resources. Mediation was invariably a quicker and less time-consuming process than taking complaints through organisations' formal grievance procedure (Latreille, 2011; Latreille and Saundry, 2015). The writer's study seeks to further research such savings and other institutional benefits, or losses, arising from union involvement with workplace mediation. On the deficit side, just as hard-pressed, poorly supported managers might be tempted to off-load time consuming, difficult complaints into mediation, arguably, so might union representatives, to the possible detriment of affected members and workplace justice. The question also arose as to what union representatives did or would do with time saved. In regard to institutional challenges, because the literature concentrates on user organisations, there is little reference to relations between workplace representatives at branch level and other officials or membership groupings within their unions. In light of national union stances on workplace mediation, the thesis seeks to explore whether workplace representatives' support for mediation caused any internal tensions.

There is only one example in the UK literature of a union claiming to have increased its membership as a consequence of its support for, and involvement with, workplace mediation. In ELPCT, 'UNISON claimed that over the last two years membership had doubled' (Saundry, McArdle and Thomas, 2011, p. 28). However, there was little accompanying explanation or analysis of this reported outcome - the implication was that the union was seen by employees as being more effective. Given its significance to the revitalisation question, this study sought to follow up the earlier research in order to pinpoint what it was about the union's association with mediation that prompted non-members to join the union; and to explore whether the ELPCT UNISON experience had been replicated in other user organisations. These and other findings on outcomes and impact are discussed in chapter five.

CHAPTER TWO: METHODOLOGY

The methodology used for the study is discussed in this chapter. It explains the rationale for the chosen research strategy and gives an overview of the research design. The primary research took place in two main phases and, in sequential sections, the methods used to collect data in each phase are set out and discussed. This is followed by a section which considers researcher positionality, including examples of methodological challenges and how they were dealt with. The chapter then describes the methods used to collate, analyse and interpret the data gathered. It discusses the approach taken to validity in interpreting data in order to make analytic generalisations from the study's findings. The concluding section identifies and discusses the limitations of the study.

Research strategy

The thesis employs a qualitative research strategy. This is better suited to exploring the complexities of people's attitudes and experiences of organisational phenomena, such as union representatives' handling of workplace disputes, than a quantitative strategy. Qualitative research tends towards interpretivism and a subjective stance (Cassell and Symon, 2004; Gill and Johnson, 2010; Bryman, 2012), 'taking human interpretation as a starting point for any analysis' (Cassell *et al.* 2009, p. 516). With some exceptions, the mainstream of qualitative IR research (as featured in the literature review) gravitates towards the objectivism end of the 'epistemological subjectivism-objectivism continuum' (Gill and Johnson, 2010), where this study is also located. Ontologically, the realist paradigm represents the position that 'while we cannot separate ourselves from what we know… objectivity is an ideal [that] researchers strive for through careful sampling and specific techniques'. Given the methods used for this study, on balance, it is more ontologically realist than subjective. Validity, in the sense of 'adequacy, trustworthiness, accuracy, and credibility' (Cohen and Crabtree, 2008, p. 334) of the research is considered important. Leaning towards interpretivism, more attention is paid to researcher positionality than is evident in most realist pluralist IR writing, reflecting my belief that 'feminist-influenced methodologies' (Holgate, Hebson and McBride, 2006, p. 310) can enrich IR scholarship.

Scholars who subscribe to a realist ontology and interpretivist epistemology may describe their approach as critical realism (Bhaskar, 1978; Edwards, 2005; Edwards, O'Mahoney and Vincent, 2014). Critical realism appears to offer a neat way out of the interpretivist/realist conundrum, in its 'double recognition' of objectivism and subjectivism (Edwards, O'Mahoney and Vincent, 2014, p. 3). However, as Hammersley (2009) argues, it is possible to be both realist and critical without being a critical realist. Importantly, the methodology of this study is not driven by the search for 'causal powers or mechanisms' (Hammersley, 2008, p. 51) which seems to be the hallmark of a critical realist approach. Also, in terms of IR frames of reference, the study is more pluralist than critical in its basic orientation in that it adheres to the core feature of pluralism - 'the pluralist conception of interests' in the employment relationship:

> Workers may share common interests with their employers but for pluralists this 'structured antagonism' [citing Edwards, 1986] is always present. It is also axiomatic for pluralists, however, that an accommodation can be found between opposing interests. The interests of workers and employers can achieve balance… (Heery, 2016, p. 37).

While critical realists have argued (against post-structuralist positions) for the 'indispensability… of the concept of "interests"' (Heery, 2016, p. 74), the critical perspective sees the interests of workers and employers as being 'starkly opposed' (Heery, 2016, p. 72). It is therefore difficult to imagine a critical realist study posing the question, are workplace mediation and trade unions friends or foes; or at least reaching the same answer as this study.

In relation to IR perspectives, I have nailed my colours to the mast of critical pluralism, (Heery, 2016). While my perspective is rooted in pluralism, it errs towards the critical perspective in relation to both workplace mediation and trade unions as institutions, albeit in both cases, from the stance of being a critical friend. My attraction to a critical pluralist perspective has been heavily influenced by my lived experience. For around forty years, I have worked in the field of employment relations, as a trade union official initially and latterly as a consultant, Employment Appeal Tribunal member, arbitrator and workplace mediator. My approach is therefore that of a scholar-practitioner, which has strengths and weaknesses. Roche, Teague and Colvin (2014, p. 8) contend that:

> Conflict management and dispute resolution has been a notoriously under-theorized area. In part this may derive from its close connection to the world of practice and the

> reality that many of the leading thinkers have been scholar-practitioners, well aware that the neat models of theory often do not translate cleanly into the messy world of practice.

The following section explains the research design chosen to study the 'messy world of practice' inherent in the duality of the question, workplace mediation and trade unions: friends or foes?

Research design

In summary, the research design for the study - the framework for the collection and analysis of data (Bryman, 2012 p. 715) – entailed two phases of research. The first phase comprised three strands: an initial scoping exercise to identify unionised user organisations in the UK from secondary sources; an online survey of UK trade union representatives, to obtain an overview of UK union representatives' experience of workplace mediation and attitudes to individual dispute resolution; and interviews with national union officials, to gather data on national union policies or positions on workplace mediation and their knowledge of its use in organisations where they had recognition. The results of these data gathering exercises were used in identifying potential case studies to be undertaken in the second phase. This comprised exploratory multiple case studies of two unions' involvement with workplace mediation – the CWU and UNISON. Interviews were conducted in these unions with national officials and representatives below national level who had been involved with employers' use of workplace mediation. Most of the case study interviews were with lay workplace representatives whose employers had an in-house mediation scheme or service. Template analysis (King, 2004; Gibbs, 2014) was used to organise and analyse the interview data thematically.

In the UK literature on conflict management and workplace mediation, qualitative approaches such as case studies, interview-based studies and thematic reviews, are strongly represented. An advantage of using a qualitative research strategy for this study, including case studies, is that it facilitates comparison of the findings with existing research on UK workplace mediation and trade union involvement. In this sense, triangulation (Eisenhardt, 1989; Cohen and Crabtree, 2008) would assist with evaluating the reliability of the findings. It might also highlight gaps in existing knowledge and potentially allow for 'analytical generalization' (Hartley, 2004).

The bulk of this chapter describes and discusses the methods used in each phase of the research.

The first phase of data collection

An initial scoping exercise was undertaken in 2014 to gather data on UK organisations that were using, or had used, workplace mediation, from secondary sources including the UK literature, CMO client lists published on their websites, HR publications and personal knowledge from having practised as a workplace mediator. Close to 200 user organisations were identified, of which two-thirds were public and third sector organisations. A high proportion of these organisations were unionised. Drawing on my insider knowledge (discussed later in this chapter), supplemented by online sources, it was possible to identify the recognised unions. The resulting data were used in the second phase (see below).

As part of the scoping exercise for the study, it was decided to conduct an online survey of UK trade union representatives. Entitled *Dealing with Individual Union Members' Disputes at the Workplace*, the original aim of the survey was to gather high level data on union representatives' exposure to workplace mediation, the nature of their involvement with it and their attitudes towards its use by employers. By being open to representatives across the UK, the survey might also yield responses from geographic areas and sectors under-represented in the existing UK literature of workplace mediation. The online tool used to develop, run and analyse the survey was provided by Bristol Online Surveys. The chosen survey instrument was a questionnaire. Initially, my intention had been to restrict the questions to the subject of workplace mediation, apart from a short section on 'you and your union role'. However, the seeming dearth of contemporary data on the related subject of dealing with individual employees' complaints at work, that is grievances and complaints under dignity at work procedures, led to questions being added on union representatives' attitudes towards, and experiences of, employee complaints procedures. Being more familiar territory to most prospective respondents, it was considered that the inclusion of questions on this topic might encourage responses. Using Oppenheim (1992) as a guide for the survey design, the draft questions were piloted with a group of 11 lay and

full-time representatives from different unions, with revisions being made in light of the feedback. (The survey questionnaire is attached at Appendix I.)

The TUC hosted the link to the online survey on its employment rights webpage. It was open for completion, on an anonymised basis, between August and October 2014. Advised by the TUC to expect a low return, I emailed approximately 200 union contacts to ask if their union would advertise the survey to branches. Consequently, the final sample was the product of convenience sampling and snowball sampling (Bryman, 2012). The total number of responses (528) exceeded my expectations. Around 44 per cent of respondents (230) had had some form of involvement with workplace mediation.

The survey defined workplace mediation as 'a way of dealing with conflict between individuals in the workplace using a third party (the mediator) to assist them to resolve their differences themselves'. The aim was to keep the definition simple, unambiguous and non-normative. The adjective 'impartial' was consciously omitted from the description of the third party. There was a possibility that UK union representatives might not consider in-house mediators (particularly HR or other managers) to be 'impartial' or 'independent' (ACAS, 2019). Also, in Great Britain, impartiality is strongly associated with *external* third parties, such as ACAS conciliators. In this study, the definition of 'workplace mediation' excludes ACAS conciliation, ACAS dispute (collective) mediation and equivalent Labour Relations Agency processes in Northern Ireland. In wording the questions and information for respondents, efforts were made to minimise the risk that respondents would equate ACAS conciliation with workplace mediation – a phenomenon which appeared to have happened with some responses to the Workplace Employment Relations Study (WERS) 2011 management questionnaire (Wood, Saundry and Latreille, 2014). The word 'informal' was also absent from the definition as some respondents who had completed the pilot version of the survey fed back that, in relation to dispute resolution procedures, 'informal' meant different things in different organisational settings.

It was also explained that the definition of workplace mediation did not include union representatives acting as *ad hoc* mediators in the course of their everyday activity. This

was considered justifiable on the basis that I wished to focus on respondents' views and experiences of mediation as a management process for dealing with individual (as opposed to collective) disputes in the workplace, where the employment relationship had not ended. Originally, it was also intended to exclude *ad hoc* mediation by managers. However, adding to the exclusions would have required precise distinctions to be drawn between different types of mediation by managers, making the survey over-complicated and possibly confusing for respondents. Also, although it was not specifically said to be included, by not excluding *ad hoc* mediation by managers, it was possible that data would be supplied about union representatives' role in this type of informal dispute resolution. This decision was vindicated partly by later research which indicated a shift in some large organisations' policies towards encouraging informal dispute resolution and emphasising line managers' responsibilities in this respect (CIPD, 2015a; Royal Mail Group Ltd., 2018; Royal Mail Group, CWU and Unite, 2018).

For consistency, it was important to ensure as far as possible that participants in both phases of the research had the same understanding of what was meant by 'workplace mediation'. For the purposes of the study, the intention was to limit the scope of 'workplace mediation' to employers' provision. Within organisations, this included arrangements where a manager or management representative, not directly involved in the dispute acted as the mediator; or, more commonly, where the employer had a mediation scheme or service with a team of in-house mediators. Selected by the employer, these mediators could be volunteer members of staff, managers, HR personnel or staff in specialist roles such as occupational health. In some cases, in-house mediator teams could be comprised of union and management representatives. Alternatively or additionally, employers might use external mediators from, for example, HR consultancies, CMOs or ACAS (CIPD, 2011, p. 12). With the first and second phase interviewees, it could be clarified in discussion what was meant by 'workplace mediation' for the purposes of the study. This was more challenging in relation to survey respondents.

The survey results did not reveal any previously unknown industries or services where workplace mediation was being used or unexpected data about which unions had had involvement with workplace mediation. The highest number of responses (161) came

from UNISON representatives. Surprisingly, there were 101 responses from the banking and financial services union Accord, which had 24,177 members in 2014 (TUC, 2015). In contrast, 75 responses were received from Unite representatives – Unite being the UK's largest union at that time. The comparatively high response rate from Accord was attributed mainly to the internal publicity given to the survey. Of the Accord respondents, 22 had had involvement with workplace mediation which suggested Accord could be considered as a potential case study union (see below).

The third strand of the data collection in the first phase comprised interviews with national officials from unions known to have had involvement with workplace mediation and central union organisations. The main objective of these interviews was to gain an overview of national union policies and/or positions taken on workplace mediation. It was also envisaged that this strand of data collection would assist in identifying a short-list of case study unions for the second phase of the fieldwork.

From the data on user organisations which recognised unions, letters of invitation to participate in individual interviews were sent by email to 26 national officers in 18 unions with representation in the four countries of the UK. With the exception of a Northern Ireland union, all the unions were affiliated to the TUC and/or STUC. (In contrast, the online survey had been open to non-affiliates, although it was hosted by the TUC.) Besides seeking UK-wide representation, the selection of the sample was designed to include unions recognised by employers using workplace mediation in the public, private and not-for-profit sectors. These unions also represented employees across a range of occupations. The individuals who were contacted held senior roles, including lead negotiator/service head, research officer, legal officer, head of education, deputy/assistant general secretary and general secretary. In UNISON, six national officers were invited to participate to obtain representation across the largest service groups and the four UK countries.

A participant information sheet was sent with the invitation. In a question and answer format, it explained 'what is this study about; who is the researcher; how will the research be carried out; why am I being asked to participate; if I take part, what assurance can you give me about confidentiality; and what happens if I want to

withdraw from this study?' Those interviewed in person were asked to complete and sign a consent form. Those interviewed by Skype or telephone were sent the consent form by post. Signed consent forms were obtained from all interviewees. A complaints procedure was emailed to participants in advance of telephone interviews. A hard copy was given those interviewed in person. With some adaptations, the same protocol was followed for the interviews in the second phase of the fieldwork.

Prospective participants and interviewees were given assurances in regard to their anonymity. However, previous to this study, two interviewees had been publicly associated with their involvement with workplace mediation. In one case, the individual's employer, union, union role, and role in connection with the in-house workplace mediation service (at that time) had been named in published research. This individual had also spoken on public platforms about their experience and also their involvement with workplace mediation with their current employer. The other person was the author of published material on workplace mediation and prior to his retirement, he had been a leading advocate for the use of workplace mediation in his region and nationally in the sector represented by his union. Neither individual had objections to being identifiable, or in the latter case, being named. In another case, owing to the participant's unique role, it was agreed that draft extracts of the thesis using quotes from their interview transcript (in context) would be shared with them for approval. Another interviewee wished to approve the quotes that would be used from their interview but in the event, none were used. On a related point, in the thesis, the identities of union representatives' employers or the organisations which recognised any of the participant unions have been anonymised except where they have already been identified in published research (such as East Lancashire Primary Care Trust and Northumbria Healthcare NHS Foundation Trust), or where their association with the union and/or workplace mediation is a matter of public record, for example, Royal Mail.

Between July and October 2014, 13 interviews were conducted with officers from the following organisations: the CWU, FDA (formerly the First Division Association), Managers in Partnership, National Association of Co-operative Officials (NACO), Prospect, National Union of Rail, Maritime and Transport Workers (RMT), Transport

Salaried Staffs' Association (TSSA), UNISON, and the TUC, Scottish TUC and a confederation of general unions. A former University and College Union (UCU) Scotland national officer was included in this sample, owing to the prominent role this individual had played in promoting workplace mediation, particularly in Scotland. Two full-time regional UNISON officials were interviewed as they had been referred to me by national officers. At the suggestion of a national union contact, a regional official from another union was also interviewed; however the data was not used for the study - see the section on researcher positionality below.

The second phase of data collection: the case studies

My original aim had been to undertake comparative case studies of at least four unions. It was envisaged that possible candidates might be the CWU, the Public and Commercial Services Union (PCS), UNISON, UCU and Accord. In planning the second phase of the fieldwork, it was realised that it would not be possible logistically to undertake four case studies. The second phase of data collection would involve interviews at sub-national level, mainly with workplace representatives in organisations using workplace mediation. Undertaking two to three multiple case studies was considered feasible and likely to enable the research aims to be met. The long list of candidates for case studies became a short list of UNISON, CWU and Accord. National officers in these unions had supported the study and there was no impediment to proceeding to identify UNISON branches to contact. However, the inclusion of Accord was abandoned after a request for expressions of interest among workplace representatives initiated by the Accord national office yielded only one positive response.

<u>Selecting the case study unions</u>

CWU was sought as a case study organisation primarily because, uniquely in the UK, it is party to a jointly agreed and administered national mediation service in Royal Mail. Privatised in 2013, Royal Mail is a large employer. In 2016-17, it employed 138,693 people in the UK, of whom 92 per cent were in operational roles (Royal Mail plc, 2017a, p. 44). CWU is the recognised union for Royal Mail operational and administrative employees. To be precise, it was the postal constituency of CWU that participated in the study, in respect of Royal Mail, as opposed to the Royal Mail Group

which includes Parcelforce Worldwide. Its employees are covered by separate bargaining arrangements and although mediation is used, there is no direct equivalent to IR mediation. CWU also has a telecoms and financial services constituency. While it is understood that workplace mediation was used in British Telecom, apparently it was not a joint initiative as it is in Royal Mail. In 2014, my initial inquiry about national CWU involvement with workplace mediation had been directed to the postal side of the union and after its formal support for the study had been given (see below), no further attempt was made to involve the union's telecoms and financial services constituency.

To my knowledge, there are no existing academic studies specifically on the use of IR mediation by CWU and Royal Mail. As mentioned earlier, a distinctive feature of IR mediation is that its operation is jointly regulated by Royal Mail management and the CWU. The parties are union representatives and managers. It is a collective dispute resolution procedure which applies the model of individual facilitative workplace mediation. The CWU case study was restricted to IR mediation. Separately from IR mediation, the facilitative workplace mediation process is used in Royal Mail for mediation of individual bullying and harassment complaints and grievances. However, early indications were that CWU were concerned to safeguard the privacy of individual members who had had bullying complaints mediated and ensure the confidentiality of these mediations, so the inclusion of workplace mediations as part of the CWU case study was not pursued. UNISON representatives' experience was also of the facilitative model of workplace mediation but used for the mediation of breakdowns in working relationships between individual employees and individual dignity at work complaints and grievances. As will be seen, the roles played by union representatives in IR and workplace mediation are different.

CWU was formed in 1995 when the Union of Communication Workers, representing mainly Post Office workers, merged with the National Communications Union, representing former Post Office engineers in British Telecom and Girobank. CWU has 192,508 members (TUC, 2017, p. 46). Women comprise 19.7% of the membership (CWU, 2018 p. 5). Black and minority ethnic (BAME) members who have declared their ethnicity account for eight per cent of the membership (CWU, 2018, p. 5). In 2016, the union had 107 branches in the UK (CWU, 2016: 7-9) ranging in size from under 50 to

just under 6,000 members. In Royal Mail, the total number of operational employees (126,523) far exceeds that of administrative staff (2,357) (Royal Mail plc, 2018a, p. 48). In 2017-18, around 87 per cent of employees in these grades were CWU members (Royal Mail plc, 2018a, p. 45). In 2017-18, 70.9 percent of Royal Mail and Parcelforce Worldwide employees had full-time contracts (Royal Mail plc, 2018b, p. 4). Royal Mail and Parcelforce Worldwide employees are based at around 1,400 postal delivery offices, 38 mail centres and six regional distribution centres in the UK (Royal Mail plc, 2017b, p. 3). In summary, the profile of CWU postal constituency resembles that of the industrial unions of the 1970s – predominantly white, male, blue-collar workers in full-time employment.

UNISON was selected as a case study union because most of the identified user organisations were public sector employers which would most likely recognise UNISON. This would enable cross-sectoral comparisons of UNISON representatives' involvement in different user organisations. The existing UK literature neglects some sectors in which UNISON is represented, for example police forces, ambulance services and schools; and in general, local authorities are not well represented in the UK literature compared with higher education institutions and hospital trusts.

UNISON was formed in 1993 as a result of three public sector unions merging: the National Association of Local Government Officers (NALGO), the Confederation of Health Service Employees (COHSE) and the National Union of Public Employees (NUPE). It is the second largest union in the UK, with 1,216,659 members (TUC, 2017, p. 70). The membership profile is very different from CWU. Women comprise 77 per cent of the full membership (UNISON, 2016c, p. 50). Apart from gender, UNISON does not publish comprehensive demographic data about its members. Some data are publicly available. For example, the 2018 equality survey of the membership showed that, based on approximately 19,400 responses, 52 per cent of respondents were 50 years of age or older; 5.5 per cent described their ethnic origin as Black, that is, encompassing census categories other than white; 13 per cent described themselves as a disabled person; eight per cent identified as LGB and 0.4 per cent as transgender or having a trans history (UNISON, 2018a, pp. 1-2). UNISON rules provide for self-organisation at national, regional and branch level for four constituencies: Black

members; women; disabled members; and lesbian, gay, bisexual and transgender members. (The CWU does not follow the model of self-organisation but its rules provide for representation at all levels of the union of these groups within its membership.) Nearly half of UNISON members work part-time (UNISON, 2019a). UNISON represents members in a wide range of mainly public sector occupations, including managerial employees. The union has 1,200 branches ranging in size from a few hundred to over three thousand members. While CWU postal branches cover a single employer, in UNISON:

> [Branches] are sometimes made up of members working for one employer, such as a council, NHS trust, police force, university or utility company. However, most branches cover members working for a number of employers based in a particular geographical area and providing similar types of services (UNISON, 2019b).

UNISON membership surveys (2000; 2001; 2009) indicated that 'the proportion of members with a lay representative present at their workplace fell from… 70.2 per cent in 2000… to 52.3 per cent in 2009 (Waddington and Kerr, 2015, p. 195). These global figures mask variation in membership density among employers that recognise the union, as was indicated by UNISON interviewees in my study.

There are similarities between the two unions. Originally, their predecessor unions represented mostly public servants, thus CWU and UNISON share a heritage of Whitleyism, as can be seen in collective bargaining arrangements and dispute resolution procedures prevailing among employers of the core membership. Both unions subscribe to 'fair representation and proportionality' in relation to their internal democracy and organisation. Politically, they are left leaning – in terms of their national leadership, CWU arguably more so than UNISON. They have both experienced privatisation and outsourcing of services in areas of their core membership. They have evolved organising strategies to deal with current and future challenges to their viability. As it is relevant to the theme of union revitalisation discussed in the thesis, the following paragraphs charts these challenges in more detail.

CWU membership has fallen by 30.4 per cent since 1995 and 'headcount reductions are expected to continue in Royal Mail as a result of competition, cost cutting and increased automation' (CWU, 2018, p. 8). Notwithstanding, CWU sees itself as 'a strong industrial trade union with high membership density in our core recognised

employers' and a union which is 'well equipped to service and meets the needs of existing core members' (CWU, 2018, p. 8). However, it recognises the need to adapt in order to attract younger and self-employed workers. In the postal sector, for example, union density was 40 per cent in 2016, owing to 'changes in the market such as the growth of unregulated parcel companies and couriers working on a flexible basis' (CWU, 2018, p. 22).

In the period in which austerity hit the public sector, between 2010 and 2016, UNISON membership fell by 11 per cent (CWU, 2018, p. 5). In recent years, membership has fluctuated. A net gain in 2016 was not sustained the following year despite the recruitment of 155,000 new members during 2017. In local government, there was a net loss of 8,000 members in 2017-18, owing mainly to 'severe cuts to staffing levels (UNISON, 2018b, p. 5). Membership in schools 'was down by more than 7,000 during 2017' (UNISON, 2018b, pp. 5-6). In the health care and community service groups, the membership showed a slight net growth during 2017 and a net gain of 4,000 members in the private sector (UNISON, 2018b, pp. 4-5). In the late 1990s, UNISON adopted a national organising strategy. This has evolved but essentially it has entailed a national strategy to inculcate an organising culture in the union. The implications for workplace representatives dealing with individual members' problems in organisations using mediation is considered later in the thesis, in relation to the union revitalisation theme.

Case study design

According to Yin (2009, p. 2), 'in general case studies are the preferred method when (a) "how and why" questions are being posed, (b) the investigator has little control over events, and (c) the focus is on a contemporary phenomenon within a real-life context'. Studying two unions and their involvement with mediation at workplace level entailed a multiple case design with embedded, multiple units of analysis (Yin, 2009). For each union, the embedded units of analysis were union representatives and specifically their involvement with (or resistance to) the use of workplace/IR mediation within different employer organisations - in the case of UNISON - and different Royal Mail workplaces in the case of CWU. In UNISON, there was no national direction of the use of workplace mediation so branches were relatively detached units of analysis. In

contrast, in the CWU, IR mediation was a nationally led initiative with the employer. Consequently, within the CWU, there were distinct but connected units of analysis at national, divisional and workplace level. (CWU divisions are sub-regional areas which corresponded to geographic divisions in Royal Mail.)

The case studies: recruiting participants

For the second phase of the fieldwork, the aim was to conduct around 40 semi-structured, in-depth interviews with CWU and UNISON representatives below national level, and particularly at workplace level. This would entail non-probability purposive sampling of heterogeneous cases. As described below, different methods were used to recruit UNISON and CWU participants.

UNISON

The structure and culture of UNISON allows for considerable branch autonomy. In terms of access for research, normally branch officials would expect to be able to decide whether they wished to participate in research studies without seeking permission from regional or head office, enabling researchers to approach branches directly, albeit this was insider knowledge on my part. It was also an advantage that while I had left UNISON in 1999, I had retained professional links with the union and had an informal network of contacts, particularly at national and regional level which facilitated the recruitment of participants for the study. However, I had very few contacts at branch level and did not personally know any of the workplace representatives who were interviewed in the second phase of the research.

A sample population of approximately 120 branches, drawn from the four largest service groups and all UNISON (UK) regions, was selected from data collected during the initial scoping exercise identifying employers that had used workplace mediation and recognised UNISON. The service groups were local government, which includes the police and justice sector, health care and education. The individual branches and branch contacts were identified using the UNISON online branch directory, supplemented by branch websites. Anticipating a low response, it was estimated that 120 invitations would yield the target number of around 20 UNISON interviews. To make the logistics of conducting the interviews manageable, invitations were issued in

tranches, by email or letter if an email address was not available. Follow-up letters were sent in many cases where there were shortfalls in responses from particular service groups or from branches covering employers with established workplace mediation services. In total, 113 invitations were issued by me to branches between June and November 2017. In addition, on my behalf, the UNISON national officer for police staff wrote to the union's 41 police branches, inviting them to participate in the study. I also wrote (by email) to 11 UNISON regional secretaries (one having been contacted in the first phase), asking if they would circulate the invitation to participate in the study to regional organisers and other regional staff who may have been involved in advising/working with branches in regard to the introduction or use of a workplace mediation service by the employer, or who had supported or advised individual union members who had participated in workplace mediation. (This letter also advised that interviews would be taking place with a number of branches whose employers used mediation.) To my knowledge, four regional secretaries circulated the invitation. Most branches did not respond to the invitation. Very few branches replied to decline. A breakdown of the positive responses is set out below. The interviews took place between June 2017 and January 2018.

CWU

It was considered that a formal approach to CWU at national level would be required to secure the union's agreement to the participation of CWU representatives involved with mediation nationally and at field/workplace level. Initial cooperation had been forthcoming in that I had interviewed a national CWU representative in the first phase of the fieldwork. However, I was mindful that IR research in Royal Mail involving the unions and management could prove problematic (Beirne, 2013) and that CWU would be sensitive to the fact that IR mediation was a joint union-management project. In 2016, I had also become aware that the previous year, initial work on an academic research project on the impact of the *Agenda for Growth* agreement on industrial relations and employee engagement (Royal Mail plc, 2015, p. 56) had been discontinued. This research may have traversed some of the same ground as my study. Therefore, following an initial email, in July 2017, I wrote formally to the CWU Deputy General Secretary (Postal) to request approval and assistance from CWU for

the second phase of the data collection. The letter stated that the study had the support in principle of the TUC, and that 'the researcher is a former UNISON national official (now a part-time PhD student)'. It was explained that the next phase would involve interviews with branch/workplace representatives and full-time regional officials who have experience of workplace mediation. In the CWU, this could be in regard to IR (industrial relations) mediation and/or mediation of bullying cases in Royal Mail. It was stated that the research project concerned trade unions – it was not a joint project with any employer or other organisation, and did not involve interviews with managers or employers of union members. The request was approved by the CWU Postal Executive Council and a CWU national official was deputed to liaise with me over the administration of the research. In September 2017, a letter written by my CWU national contact in the name of the Deputy General Secretary (Postal) was sent to 97 CWU unit and area representatives throughout the UK who had participated in IR mediation, 27 divisional officers, and one CWU mediator asking if they would be willing to participate in the study. The contact details of 15 respondents were forwarded to me to follow up and arrange the interviews. In October and November 2017, interviews took place with 14 of those respondents. Data was included in the study from interviews with 13 of these respondents (see below).

Comparing different methods used to recruit participants

Both methods of recruiting participants had their strengths and weaknesses. In regard to UNISON, I had a large measure of control over the process whereas this was not the case with CWU. The main drawback of the independent approach was the time and effort required to recruit participants largely unaided and the possibility that branches may not support a study that did not have national union endorsement, although for reasons explained earlier, the latter consideration was unlikely to figure highly. More likely reasons for choosing not to participate would be lack of involvement in, or experience of workplace mediation, and not having time to devote to being interviewed, particularly about a non-priority issue. In relation to CWU, its support for the study was crucial to obtaining access to CWU participants. It is doubtful that sufficient participants could have been recruited independently via CWU branches. I had very few existing contacts in the union below national level, and having been a

national union negotiator, I had no wish to "blunder about" doing research in IR territory without the consent of the union nationally, particularly as IR mediation was a joint union-management initiative. Coincidentally, the study was also being conducted at a time of heightened tension in industrial relations between Royal Mail and CWU. Beyond managing access to participants, the CWU imposed no other stipulations on the research, so the possible pitfalls of union sponsorship were avoided (Martin, 2013).

As mentioned previously, the existing UK literature has few examples of union resistance to workplace mediation and it was envisaged that it would be difficult to recruit representatives who had passively or actively chosen not to engage with the employer in respect of the use of workplace mediation. To counteract this possible effect, the initial letter to CWU and email to UNISON branches stated that the study was not a joint project with employers. (It did state that the researcher was a former UNISON official.) Further information mentioned the "friends or foes" research question. An unforeseen consequence was that where workplace union-management relationships were good, a couple of UNISON representatives queried why the employer would not be involved in the study and/or they offered to involve HR. Given the opportunity to explain the rationale for the omission of employers, it ceased to be an issue; but it is accepted that the union-only focus could have been off-putting for some representatives. As to the advantages or otherwise of declaring my former union role, in only one case was it specifically fed back that my association with UNISON was the critical factor in the branch leadership deciding to participate in the study.

The interview samples

Table 2.1 below gives a breakdown of the sample of interviewees in both phases of the fieldwork. As it turned out, the neat distinction between national officials being interviewed in the first phase, and CWU and UNISON representatives below national level being interviewed in the second phase of the fieldwork was not maintained. Serendipitously, three regional union officials were interviewed in the first phase. In the second phase, interviews were held additionally with two CWU officials closely associated with the operation of the national Royal Mail-CWU team of mediators (one of whom was a national lay official); a UNISON education officer; and a national official

with Accord. In the case of CWU, these interviewees' roles did not exist in 2014 as the national IR mediation team had not been established at that time. The additional UNISON interview was sought as UNISON workplace representatives' training had emerged as an issue from the second phase interviews. The background to the Accord interview is explained below.

For coding and analysis, the useable data gathered in both phases of the fieldwork were grouped by union (CWU; UNISON: other) with each interviewee being identified by their role (national official; regional/field representative; workplace representative) as shown at table 2.1 below. (The term 'interviewee' – as opposed to 'participant' - is used deliberately as there were three additional UNISON respondents who contributed data, by email correspondence, but who were not interviewed.)

Table 2.1: Interviewee sample by union and role: First and second phases of the fieldwork

UNION ROLE	CWU	UNISON	OTHER UNIONS	TOTAL
National officials	3	3	10	16
Regional/field representatives	3	4	-	7
Workplace representatives	9	18	1	28
Sub total (by union)	**15**	**25**	**11**	**51**
Face-to-face interviews	13	14	9	36
Telephone interviews	2	11	2	15
Average length of recorded interview (minutes)	64	53	64	59
Recorded interview time (hours)	16	20	12	48

The useable CWU sample comprised 15 interviewees: nine unit representatives - also known as 'IR representatives' - based in postal delivery offices and mail centres (covered by eight branches); three field representatives (divisional and area representatives); and three national level officials, including a former CWU field representative appointed to the IR national mediation team. (One respondent was not interviewed as they withdrew from the study; and the data from one interviewee has not been used because formal consent to its inclusion was not received.) The CWU interviewees were based in Wales and eastern, northern and southern England.

The UNISON sample comprised 25 interviewees: four regional organisers based in Scotland, northern England and the Midlands; 18 branch officers from the Midlands, northern and southern England, Scotland and Wales; and three national officers. The UNISON national interviewees represented two service groups and the national education service. (Although not interviewed, a national officer from another service provided background information.) Between them, the four regional officials (England and Scotland) covered branches in the four service groups represented in the study.

With two exceptions, the interviewees of other unions (listed earlier) were national officials, six of whom were based at union head offices; two were based in northern England and one in Scotland. The sample also included a retired national union official (Scotland) and a former UNISON workplace representative (northern England).

All the CWU participants were from the postal constituency of the union and all the workplace representatives were employed by Royal Mail. In contrast, the UNISON workplace representatives were from branches in these service groups in the UNISON structure – health, local government, police and justice, and higher education. Table 2.2 gives a breakdown of the UNISON participants who were workplace representatives, including two respondents who were not interviewed. Throughout the thesis, 'workplace representative' applies to UNISON branch officers and stewards and also CWU unit representatives. At workplace level, most UNISON participants were both branch officers and workplace representatives, in that they undertook the duties of branch officers as well as advising and representing individual members, as indicated in table 2.2 below.

Table 2.2: UNISON branch participants by service, country and union role

SERVICE	COUNTRY	NUMBER OF BRANCHES	ROLE OF BRANCH PARTICIPANTS
Health	England	6	Workplace representative/branch officer
including	Wales	1	Workplace representative/branch officer
ambulance trusts	Scotland	1	Workplace representative
Local authorities	England	4	Workplace representative/branch officer
Police	England	2	Branch officer
Higher education	England	3	Workplace representative/branch officer; branch officer
	Scotland	1	Workplace representative/branch officer

Note: There were six participants in the four local authorities. A fifth local authority features in the study, not included above as the relevant interviewee was a regional officer not a branch representative.

Apart from the designations 'national officer/official', 'regional organiser/officer official', 'branch officer/official' and 'workplace representative', the specific roles of the UNISON participants have not been identified to protect their anonymity. Therefore the data do not necessarily represent the full range of union roles undertaken by individuals. For example, a number of workplace representatives held staff side positions, two were convenors, and some of these interviewees held elected offices at regional and/or national level. The labelling system and abbreviations used for identifying the contributions of the anonymised participants in later chapters is set out at table 2.3 below.

Table 2.3: Key to union participant labelling

Participants' unions:	
C	Communication Workers Union (CWU)
S	Scottish Trades Union Congress (STUC)
T	Trades Union Congress (TUC)
U	UNISON
UC	University and College Union
(…)	Interviewee formerly a representative of the (named) union
Participants' union roles:	
B	Branch official/workplace representative (UNISON)
F	Field representative (CWU divisional and area representatives)
L	Local representative (CWU unit/industrial relations representatives)
N	National representative (CWU and UNISON)
R	Regional official (UNISON organiser/officer)
Type of participation:	
I	Interviewee (recorded interview; transcription approved by interviewee)
(I)	Interviewee (notes of discussion taken; approved by interviewee)
(s)	Written statement received from participant (not interviewed)
Union interviewees – numbering system	
CWU and UNISON interviews that were part of a series are numbered. For example, CWU *local* representative interviewees are numbered CLI-1 to CLI-9; CWU *field* representatives, CFI-1 to CFI-3; CWU *national* representative interviewees, CNI-1 to CNI-3; and similarly for UNISON interviewees. Interviews which were not part of a series are not numbered; for example, (U)BI, a former UNISON branch representative.	
Employer organisations	
Anonymised employers of UNISON workplace representatives are labelled as follows: NHS organisations - NHS A, NHS B, etc; local authorities - LA A, LA B, etc; police forces - PF A and B; and universities - University A, University B, etc. (All CWU unit representatives were employees of Royal Mail.)	

Table 2.4 below gives an overview of the CWU and UNISON case studies. It sets out a summary of the key features of mediation in each of the cases. In relation to the CWU, the mediations were all IR mediations, conducted under the auspices of a national collective agreement, by co-mediators from the joint union-management national IR mediation team in Royal Mail. IR mediation is available as a voluntary option to resolve collective disputes or disagreements over negotiable issues between CWU representatives and management at an early stage. In the CWU cases, the parties were mainly individual CWU unit representatives (also known as 'IR reps') in delivery offices or representing CWU members on particular shifts in mail centres, and their line managers. IR mediation could also be used by CWU field (area and divisional) representatives and their management counterparts, and the three field representatives in the CWU sample had been parties in IR mediations. However, in relation to the study, their main role was in facilitating the resolution of local disputes in their patch. In this capacity, below national level, divisional representatives in particular acted as union side gatekeepers for IR mediations involving unit/IR reps and their managers (as discussed in later chapters).

In the CWU sample, mediations involving field representatives as parties concerned disputes or disagreements in large workplaces (such as mail centres) or groups of workplaces (such as delivery offices) in various geographic localities in Royal Mail. The mediations in which the parties were unit reps and their managers were limited in scope to those individual units. A wide range of 'industrial' issues were dealt in IR mediations; for example, disagreements over the local interpretation or application of collective agreements. However, local disputes often featured communication or relationship issues between individual line managers and unit representatives. This facet of IR mediation is discussed in more detail in later chapters. Listening sessions – a form of workplace conflict diagnosis undertaken by IR mediators from the national team – are not included in table 2.4 as, technically, they were not IR mediations. (Listening sessions are described in more detail in chapter 5.)

In contrast to the CWU cases, all the UNISON cases featured workplace mediations relating to individual employees' grievances, in different public sector organisations. Additionally, in three cases, employers' workplace mediation services were also used on occasions for group mediations. These mediations aimed at resolving conflictual

working relationships within departmental sections or teams. Typically, individual and group mediations arose from complaints of bullying or problems with working relationships, mostly but not exclusively involving line managers and subordinates. Examples mentioned by UNISON interviewees of (what were in this sample) atypical cases are discussed in chapter four.

None of the UNISON national officials who were interviewed had been involved in an advisory (or any other) capacity with the implementation of workplace mediation services. In the UNISON interviewee sample, three regional organisers had worked with branches where employers used workplace mediation. As a rule, UNISON regional officials did not deal with individual grievances although regional organisers in the sample had assisted branch representatives dealing with complex individual grievances which had rights-based elements. Examples were also cited by regional organisers where they had supported individual members in such cases and workplace mediation had been an option, either taken up or rejected by the parties. With one exception, UNISON interviewees who were branch/workplace representatives had advised union members on options to resolve dignity at work complaints or individual grievances, including workplace mediation. As shown at table 2.4, some UNISON branch/ workplace representatives served as co-mediators for employers' in-house mediation services. Others had accompanied union members who had been parties in mediations. In contrast to CWU field and unit representatives, UNISON representatives were not parties in workplace mediations.

In the UNISON cases, the majority of employers provided an in-house mediation service. As reported by the UNISON interviewees, the composition of mediator cadres varied and some employers retained the option of using external mediators.

Table 2.4: Overview of the Communication Workers Union and UNISON case studies

Union	**Employer**	**Type of mediation**	**Nature and scope of mediation**	**Mediation provider**	**Role of union interviewee *vis-à-vis* mediation/s**
CWU	Royal Mail	Industrial Relations (Voluntary) mediation	Collective workplace disputes; relationship issues between individual union reps and (mainly) unit managers	In-house: National IR mediation team (seconded management and union co-mediators)	National level: CWU officials involved in setting up IR mediation; joint management of the national IR mediation team (CNI-1; CNI-2); co-mediator, national IR mediation team (CNI-3)
			As above - in some cases, mediated disputes affected or involved more than one workplace (unit/shift)		Field level (CWU divisions and areas): Gatekeeper/advisors re IR mediation cases; parties in some IR mediations (CFI-1; CFI-2; CFI-3)
			Mediations re disputes in individual units (delivery offices /mail centre shifts)		Unit level: CWU workplace (unit/IR) representatives who were parties in IR mediations (CLI-1; CLI-2; CLI-3; CLI-4; CLI-5; CLI-6; CLI-7; CLI-8; CLI-9)
UNISON	Public sector organisations	Workplace mediation	Relating to individual grievances - mainly bullying complaints and working relationship issues between individual employees and line managers	- Re misc. employers: In-house (management mediators, management and staff); and use of external mediators	National level: No direct role re workplace mediation (UNI-1; UNI-2; UNI-3). Regional level: Regional organisers - advisors to branch reps re individual cases of union members offered/involved in workplace mediations (URI-1; URI-3; URI-4) Branch/workplace level: *See below*
	Local Authority A			In-house: Management and staff mediators	Advisor to individual members (UBI-2; UBI-4) Companion in mediations (UBI-4)
	Local Authority B			In-house: Management and staff/union co-mediators	Advisor to individual members; co-mediator (UBI-16)
	Local Authority C			In-house: HR mediators	Advisor to individual members (UBI-6; UBI-7)

UNISON *cont'd*		Workplace mediation	As above		
	NHS A			In-house: Management and staff mediators; option to use external mediators	Advisor to individual members; past experience as a companion in a mediation (UB(I)-1)
	NHS B		As above; also group mediations	In-house: Management and staff side co-mediators	Advisor to individual members; co-mediator (UBI-3)
	NHS C			In-house: Management and staff co-mediators	Advisor to individual members; companion in mediations (UBI-8)
	NHS D			External (solo) mediators	Advisor to individual members; companion in a mediation (UBI-10)
	NHS E			In-house: Management and staff side co-mediators	Advisor to individual members (UBI-11)
	NHS F			In-house: Management and staff side co-mediators	Advisor to individual members; co-mediator; past experience as a companion in a mediation (UBI-12)
	NHS G		As above; also group mediations	In-house and external: Management and staff mediators and use of external (solo) mediators	Advisor to individual members; companion in mediations (UBI-15)
	NHS H		As above; also group mediations	In-house: Management and staff co-mediators	Advisor to individual members; co-mediator (UB(I)-17)
	Police Force A			In-house originally: Management and staff co-mediators - now externals	Advisor to individual members; companion in mediations (UBI-5)
	Police Force B			In-house: Management and staff co- mediators	Advisor to individual members (UBI-9)
	University B			In-house: Management and staff mediators	Advisor to individual members (UBI-14)
	University C			In-house: Management and staff mediators	Advisor to individual members (UBI-18)

Table 2.4: Notes

The table omits UNISON participants who were not interviewed but supplied written information (national official UN(s); branch representatives UB(s)1 - Local Authority D; and UB(s)2 – University D); and UNISON interviewees who had had no experience of employers' workplace mediation services (regional organiser URI-2; and branch representative UBI-13 - University A, where *ad hoc* mediation was used).

For a guide to the labelling system used for union interviewees (in the Role of union interviewee *vis-à-vis* mediation/s column), see table 2.3.

Entries in the column headed 'Roles of union interviewee…' record representatives' *main* role/s vis-à-vis mediation. For example, in some cases, UNISON interviewees had also participated in consultations with employers over the introduction and implementation of workplace mediation services.

Data on personal characteristics of participants

The online survey included a question on the gender of respondents. Further questions on personal characteristics were sacrificed in order to limit the length of the questionnaire. It was also expected that the response rate would be too low to yield sufficient demographic data for meaningful analysis. Data on personal characteristics was not collected from interviewees in the first phase of the fieldwork as the main purpose of the interviews was to gather information on unions' national policy positions on workplace mediation. Information about personal characteristics was requested from interviewees in the second phase of the fieldwork. In most of the existing literature on workplace mediation, little is said about the personal characteristics of workplace representatives. There is little discussion of the differential impact of bullying and harassment on particular groups of employees and its implications for the processes used to resolve such complaints, union representatives' role in supporting affected members, or internal union debates about these issues. In so far as interviewees might comment on issues from a particular identity-based perspective, it was considered important that individuals' identities were not ascribed to them by me (a white, non-disabled female). It was also considered important that anonymity did not render invisible differences in personal characteristics and (such as it was) the diversity of the sample.

In the second phase of the fieldwork, 35 CWU and UNISON interviewees were asked if they would complete equality monitoring forms; 34 forms (97 per cent) were returned.

Not all questions were answered in every case. A summary of the responses is set out below. This gives a picture of who the interviewees were – the data sub-sets are too small for meaningful statistical analysis. Apart from data on the gender profile of UNISON lay representatives, comprehensive data on other personal characteristics of union representatives are not publically available for either union; and in any event, it was never intended for the participants to be a statistically representative sample of union lay or full-time representatives.

Of the 14 CWU respondents, 12 were male. Of the 20 UNISON respondents, seven were women (35 per cent) and 13 were men (65 per cent). The gender distribution was the same in respect of UNISON workplace representatives, that is, excluding national and regional officials. In this respect, subject to the caveats in the preceding paragraph, the sample did not reflect the gender profile of UK UNISON lay representatives. In 2016, 52 per cent of accredited stewards and 50 per cent of branch secretaries were women (UNISON, 2016c, p. 50).

In regard to ethnicity, three of the CWU respondents were from Black and Minority Ethnic (BAME) groups; 11 were white. Of the UNISON respondents, 90 per cent (18) were white; two interviewees were from BAME groups.

One CWU respondent and five UNISON respondents considered themselves to be a disabled person.

For CWU and UNISON respondents, the most commonly occurring age group (the mode) was 46-55. However, the UNISON respondents had an older profile; 35 per cent were in the 56-65 and over age groups, compared with 14 per cent of the CWU respondents. Data on the number of years spent as a union lay representative showed that of the 15 (of 18) UNISON interviewees, the average length of service was 16.9 years. In contrast, the CWU unit representatives were less experienced. The average length of service for all CWU unit representatives in the sample was 6.6 years.

In regard to sexual orientation, all 34 respondents identified as heterosexual. There was a mix of responses on religion/faith/belief. Excluding three ‘prefer not to say’

answers, of the 31 respondents who answered the question, 20 respondents selected Christianity. Other responses included atheism, other religion, Islam and humanism.

The interview process

In both phases, the interviews were semi-structured. Otherwise known as the 'structured open-response' interview (King 1995), this was chosen as being the most appropriate interview type. Following the criteria set out by King (1995, pp. 16-17), the interviews were not seeking to formally test hypotheses; factual information was to be collected but with uncertainty as to what and how much participants would be able to provide; and the nature and range of participants' likely opinions about workplace mediation and its impact on the union were not well known in advance and would not be easily quantified.

Some revisions were made to the interview schedule for the second phase of interviews (at Appendix III) to capture the data being sought mainly from workplace representatives in user organisations. It was estimated that if all the questions were asked, the interview could take around two hours. Asking for that amount of representatives' time was considered unrealistic and the requested time was initially stated to be up to an hour and a half. Feedback from prospective interviewees indicated that this was likely to deter acceptances, so the time requested was reduced to up to an hour. In practice, not all questions were relevant to every interviewee's experience and the questions were focussed on the topics about which the interviewees were most knowledgeable.

The interview schedules setting out the guide to topics to be covered are included at Appendices II and III.

In the second phase, most face-to-face interviews with CWU representatives took place at the union office located at the postal delivery office or mail centre, or in the canteen or a vacant room on the premises. For convenience, in two cases, the interview took place in a meeting hall and another union's head office. Face-to-face interviews with UNISON representatives were held at branch offices located at

employers' premises, UNISON venues and, in one case, out of necessity, a supermarket tearoom.

Aggregated data on the type and length of the interviews are set out in table 2.1 above. The data on average length of interviews and recorded interview time exclude unrecorded time spent on preliminary matters at the beginning of interviews and the next steps at the end. The average duration of the CWU interviews (64 minutes) was longer than the UNISON interviews (53 minutes), mainly because the UNISON sample included more interviews conducted by telephone (see below).

Leaving aside the 'other union' interviews, a significantly higher proportion - 44 percent - of the UNISON interviews (11) were conducted by telephone, compared with 13 per cent of the CWU interviews (2). The CWU interviews were undertaken in a relatively compressed period which made it easier to coordinate interviews in adjacent geographic areas. The UNISON interviews took place over a longer time period and the locations were more widely dispersed. A number of UNISON interviewees also found it more convenient to be interviewed by telephone.

The average duration of telephone interviews was shorter than face-to-face interviews. The average face-to-face CWU interview was 15 minutes longer (66 minutes duration); and the average face-to-face UNISON interview was eight minutes longer (57 minutes duration). It was easier for participants to end telephone interviews than it was in face-to-face interviews. For various reasons, seven interviews were less than 40 minutes in duration (17.5 per cent); six with UNISON representatives and one with a CWU representative. With these exceptions, the interviews were in-depth in that they focused on interviewees' involvement with workplace mediation and experience of it.

A common concern about telephone interviews is that it is harder to establish rapport with participants although an alternative view is that some interviewees feel more in control of the situation and more relaxed (Novick, 2008). Reviewing my fieldwork log, based on my perceptions, the evidence was inconclusive. In one case where a face-to-face interview had to be cancelled and could not be rearranged in the time available, the offer of a telephone interview was declined on the basis that 'most people are different on the phone [to what] they might be in person', and this participant

withdrew from the study. With telephone interviews, there is also a risk that written consent will not be obtained from participants. Reminders had to be issued to some telephone interviewees. (Written consent was not obtained from one CWU participant and their interview transcript was withdrawn from the study.) The face-to-face interviews included one conducted using Skype video. Although there can be technical glitches with video applications, I was more comfortable with a medium in which I could respond to the participant's visual cues and body language.

According to Huddy *et al.* (1997, pp. 197-198), there is some evidence that gender-of-interviewer effects may be more pronounced in telephone interviewing because 'other cues that might influence face-to-face survey responses are absent'. This was most noticeable when the topic was related to gender equality. While the effects of gender and other identities affect the respondent/researcher relationship (Ward, 2016), irrespective of whether the interviews were over the telephone or face-to-face, with some exceptions, probably the most salient aspect of my identity for respondents that I was most conscious of, was my trade union 'insider' background.

With two exceptions, interviews were audio-recorded and professionally transcribed verbatim. For two short telephone interviews, one of which was unscheduled, I took notes and sent them to the interviewees for comments and approval. After the transcripts had been checked for transcription errors, they were sent to participants for checking and approval. All bar two transcripts were approved by interviewees, with minor amendments being made in a minority of cases. Two transcripts were treated as having been approved where the interviewees did not respond to requests to approve their transcript, or to final reminder letters sent by post stating that unless the researcher was advised to the contrary by a specified date, approval would be assumed.

Researcher positionality

For this study, my conception of the qualitative interview was not 'neopositivist' or 'romantic' (Alvesson, 2003) but somewhere in-between, corresponding to what King (2004, p. 12) describes as 'realist interviewing' – an approach consistent with a realist ontological stance. The requisite interviewing skills have much in common with the

communications skills required of facilitative mediators, such as establishing rapport, active listening, asking mostly open questions, summarising back to check understanding, and maintaining an empathic but non-judgemental position. I found the 'best practices' recommended by Kvale 1996 (cited by Roulston, 2010, p. 202) to be useful criteria against which to self-assess the quality of the interviews, along with strategies for interviewer reflection highlighted by King (2004, p. 20). These included putting my presuppositions down in writing at the start of the study and consulting this list throughout the research process; keeping a research diary; and listening to audio recordings with a focus on my performance as an interviewer. Throughout the fieldwork, I kept a logbook which included my reflections on the interviewing process, recorded as soon as practicable following each interview. This had an element of 'stream of consciousness' (Eisenhardt, 1989, pp. 538-539) to encourage reflexivity, that is, 'the critical appraisal of one's own research practice' (Cassell and Symon, 2004, p. 5). The early entries included practical learning points about the use of digital recording equipment and reminders to avoid multiple or long-winded questions. Throughout the fieldwork I monitored my interventions and also reviewed their nature and extent while coding the transcripts, reflecting on whether I may have biased any interviewees' responses.

Coming to the study with considerable prior experience of trade unionism and workplace mediation, it was difficult at times to avoid the temptation to lapse into short periods of discussing issues relating to mediation. Some of the national union interviewees were past and present colleagues who knew my background. In the second phase of the fieldwork, in initially contacting prospective participants, I disclosed my former union role but not my workplace mediation experience. Nor, as a rule, did I mention the latter in introducing myself at the outset of interviews, out of concern that it might bias interviewees' responses. However, there was no intention to withhold this information and in every interview, at an apposite moment (as I judged it), I mentioned that I had practised as a workplace mediator. Where interviewees were also mediators, it was impossible to avoid some exchanges about practice and, on reflection, I considered this to have been mutually beneficial. I did not have any particular concerns about inducing biased responses from interviewees in the second phase by having disclosed my union background in the invitations to participate in the

study. In interviews, it helped establish rapport and saved time in that participants did not have to explain the basics of union organisation or dispute resolution procedures. On the rare occasions I detected that power imbalance in the relationship could affect the quality of the interview owing to a participant's perception of my expertise or experience (being older than most interviewees), I took care to notice 'participant reactivity' and to refrain from intervening in a way that might influence the participant's responses. Researcher positionality is also commented on in the next section on the collation, analysis and interpretation of data.

The purpose of the study is to make an original contribution to knowledge. Irrespective of my final conclusion in answer to the workplace mediation and unions: friends or foes question, I believed from the outset that the findings could be of interest and use to trade unions, and made this clear in the participant information sheet:

> It is envisaged that the results of this study will be relevant and useful to trade unions and their members, for example, in relation to policy development and guidance for activists. The results will be made available to participating unions, the TUC and STUC.

It is also hoped that the findings would be of interest to a wider audience including employers and workplace mediators. From a realist perspective, following Hammersley with Gomm (2000, p. 164), I regard my position as a commitment to this research field not 'motivated bias', where the researcher is 'serving some goal other than the pursuit of knowledge' and thereby indulges in 'wilful and negligent bias'.

Two representatives who were sent invitations to participate in the second phase contacted me to ask about my "line" on workplace mediation. My position was to answer that question openly if it were asked, along the lines I have set out earlier in the thesis. Both individuals agreed to be interviewed. Nobody asked about my take on mediation at or during their interview. On one occasion, an interviewee suggested that I might be disappointed by their scepticism about mediation which prompted me to explain that the study sought to explore whether workplace mediation was a friend *or* foe to trade unions, and that all viewpoints were valid. In most cases, the interviewees were experienced union representatives and, overall, their responses confirmed my assumption that they would be unlikely to tailor their responses to what it might be assumed the researcher would want to hear. However, the experience of being

interviewed did influence a small number of UNISON interviewees who said that they intended following up certain issues with the employer. For example, a question about data sharing with the union in regard to the number and outcomes of mediation in the organisation reminded some interviewees that they no longer received this information, or prompted the realisation they had never received it.

In regard to the interviews held in the first phase, an ethical issue arose in connection with consent which demonstrated a pitfall of researcher positionality. The section on confidentiality in the participant information sheet stated that:

> The information you provide will be anonymised, that is, your name will not be recorded or quoted in the researcher's thesis or any paper or article that may be published. In addition, every care will be taken to not reveal any information about you individually from which you could be identified.

Based on my experience as a national official and participant in a number of academic studies, my initial assumption was that national officials would expect their union to be identified. Generally, full-time union officials and, in some unions, senior lay representatives act as spokespersons for their organisations. It was also anticipated that for this study, national officers would refer to publicly stated union positions or policies, which they duly did. On reflection, it was considered that the wording of the participant information and consent form left some ambiguity as to whether the name of individual's union would be anonymised, although my recollection was that it was mentioned verbally to the interviewees that I wished to name the participating unions.

I did not make the same assumption about union workplace representatives to be interviewed in the second phase of the fieldwork. In spring 2017, preparing for the second phase of data collection, the documentation for participants was reviewed and updated. The wording of the anonymity section of the consent form was revised to make it explicit that in signing the form, permission was being given for the name of the interviewee's union to be cited in the thesis and any publications or reports arising from the study. In all other respects, anonymity would apply. After completing the second phase of interviews (see below), the interview transcripts from the first phase - which had been approved in late 2014 and set aside - were reviewed in preparation for the template analysis. Being mindful of the outstanding difference in consents given in

the two phases and the *General Data Protection Regulation 2018*, in May 2018, I wrote to the individuals interviewed in the first phase to ask if they would consent formally in writing to their union's name being cited in the thesis, explaining that this had not been clear from the wording of the original consent form. All the interviewees gave consent apart from two individuals (not from CWU or UNISON), including the aforementioned regional official, who could not be contacted. Accordingly, the transcripts of their interviews were not used for the study.

Collation, analysis and interpretation of data

Template analysis was used as the method to collate and analyse the data. Essentially, this involved the production of a list of codes representing themes identified in the textual data (King, 2004), which, for this study, comprised approved interview transcripts and notes of interviews, and written statements received from union representatives. In organisational research, King (2004, p. 257) claims that template analysis 'works particularly well when the aim is to compare the perspectives of different groups of staff within a specific context'. This could apply equally to UNISON and CWU representatives' experiences of workplace mediation, and as a method it was consistent with my epistemological and ontological approach. The steps recommended by King (2004; 2014) were followed – identifying an initial template; systematically coding the data; checking and revising codes (adding/deleting) to produce a final template. This process was done manually, using Excel spreadsheets to create data matrices. The draft higher order codes reflected the topics covered by the interview schedules: context and background; the introduction of workplace mediation in the (employer's) organisation; the operation of workplace mediation; and outcomes and impact.

The analysis of the transcripts of the interviews from the first phase (mainly with national union officials) produced 12 higher order codes. Using these codes as a guide, an initial list of lower order codes was compiled from reading the transcripts. The transcripts were then marked up (by paragraph or sentence as appropriate) with a number corresponding to its higher and lower level code, for example, '3.5', 3 denoting the higher level code of 'Introduction of workplace mediation', and '.5'

denoting the lower order code of 'IR/conflict climate in the organisation'. (Some draft lower order codes were sub-divided again to capture specific data, for example, '3.5.1' denoted comments on 'managerial competence/attitude or style in conflict handling'.) The same process was adopted for coding the interviews and other participant data from the second phase of the fieldwork. However, the finalisation of the codes was an iterative process. Before the second phase of interviewing was completed, the codes used for the first phase were tested on a sample of ten approved transcripts from the second phase of interviews. This identified gaps in the higher level codes, largely because the interviewees were mostly workplace representatives who had had more direct involvement with workplace mediation than national officials who comprised the majority of the first phase interviewees. The list of higher order codes was expanded to 15, with further adjustments being made to the lower order codes once all the second phase transcripts had been approved. Data were also compiled on the union roles and experience of the interviewees and branch characteristics.

Spreadsheet matrices were developed using separate worksheets for the higher level codes. (Where the higher level codes were closely related, they were entered on the same worksheet.) The associated lower level codes were entered in columns. On each worksheet, each interview formed a separate row, grouped by the interviewee's union. (CWU and UNISON interviews from the first phase were included in these groupings.) The matrices were then populated with short excerpts or summaries of key points from interviewees' transcript. In many cases, quotes or page references to quotes were included. Revisions to the lower order coding were made during this process, adding, deleting and rationalising some codes. The resulting matrices allowed for common features and differences to be identified within and between the CWU and UNISON interviews. The analysis of the coded data is written up in the three chapters on the findings.

Turning to validity in qualitative research, according to King (1995, pp. 31-32):

> A study is valid if it truly examines the topic which it claims to have examined… the concern is for the validity of interpretations – whether a researcher's conclusion that x is the main theme to emerge from an interview is valid. The involvement of other people… is crucial to considerations of validity in interpreting data from qualitative research interviews.

Validity of interpretation must be underpinned by the internal validity of the research. The techniques used – exploratory multiple cases studies, semi-structured interviews, verification of transcripts by interviewees, the systematic approach taken to data analysis - have been described earlier in this chapter. In regard to validity in interpreting data, obviously a lone researcher is in a different position from a team of researchers, which serves to highlight the importance of solo researcher reflexivity. Involvement of 'other people' (King, 1995, p. 32) included the interviewees in so far as they were asked to check their transcripts for accuracy and invited to make amendments. In a couple of cases, I also went back to interviewees to check the accuracy of my interpretation of aspects of their data.

Importantly, this thesis follows preceding studies of UK workplace mediation. In interpreting the data and making 'analytic generalizations' the existing literature was consulted to check whether the findings were 'consistent with or different from extant research' (Hartley, 2004, p. 331). This form of triangulation (King, 1995, p. 32) was complimented by the use of secondary sources and archival material, including user organisations' dispute resolution policies, union conference records and responses to government consultations. In regard to validity and 'the involvement of other people' King (1995, p. 32) cites Reason and Rowan (1981, p. 243) that 'the only criterion for the "rightness" of an interpretation is *inter-subjective* [original authors' emphasis]… that it is right for a group of people who share a similar world'. This is not to say they will have similar *views*. In the existing literature on workplace mediation, 'rightness' as judged by non-participant experts tends to be treated as supplementary to neo-positivist or empirical validity tests. For example, in his thematic review of workplace mediation Latreille (2011, p. 9) mentions that 'anecdotal discussions with practitioners suggest that many of the themes identified resonate strongly with the experiences of others'. For this study, I drew on my own practitioner knowledge of trade unions and workplace mediation and similarly, 'anecdotal discussions' with former union colleagues and other mediators. The thesis also explores perennial themes and debates in IR research regarding UK unions and employer initiatives – union incorporation; displacement; and decline versus revitalisation. This thematic approach brings different IR perspectives (Heery, 2016) to the interpretation of the data and multiple perspectives are considered. Where there was no existing critique of aspects

of workplace mediation and union involvement from a critical perspective (for example), a putative critique has been constructed.

Treatment of the 'other union' interviewees' data and online survey data

The decision was taken in writing up the draft findings to omit data from six of the 11 'other union' interviews. Having coded all the data from the fieldwork, it was apparent that although some of these interviews gave insights into aspects of workplace mediation in particular sectors, this data would be extraneous to the main analysis based on the CWU and UNISON case studies. For similar reasons it was decided not to include an analysis of the 2014 online survey responses in the thesis. A published summary and analysis of the survey findings (Branney, 2016) is included at Appendix IV. Methodologically, the survey was not integral to the study in that the results did not determine the selection of the case study unions or generate hypotheses for testing. Although the number of respondents was higher than expected, the survey used non-probability sampling so the results were not representative and could not be generalised to the entire population of UK union representatives. Of the 528 responses, there were 15 useable responses from CWU representatives but it was not known if they were from the postal or telecoms and financial services constituency. Of the CWU respondents, seven had had some experience with mediation – mainly attending briefings and advising members about participating in mediation; and in three cases, attending workplace mediations with individual members, the other party and the mediator. Of the UNISON respondents, 92 had had some involvement or association with workplace mediation in the last two years. (Further reference is made to these responses in this chapter and elsewhere in the thesis.)

Limitations of the study

There were gaps in both the CWU and UNISON samples. In the CWU sample, field officials, especially divisional officers, were under-represented, owing to a very low positive response to the invitation to participate. This was significant because these officials are joint gate-keepers of IR mediation (with their Royal Mail counterparts). No CWU regional officers were interviewed; however, generally unit-level issues are not dealt with regional officers but by unit, area and divisional representatives. Only a small number of UNISON regional officials responded to invitations to be interviewed.

This may have reflected their limited availability but also the nature of their responsibilities in that individual representation in UNISON is conducted mainly by branch officials. (Of the UNISON survey responses, 25 were from regional officials in England and Wales, of whom just over two-thirds (17) had had some involvement with workplace mediation.) In contrast to UNISON, there were no branch secretaries in the CWU sample, because they were not among the CWU participants in IR mediation (the sample population selected by CWU for the study). Their omission could be considered less significant in that it was understood they were not directly responsible for IR matters.

Interviews were not sought from UNISON representatives in the smaller service groups - community, water, environment and transport, and energy. One voluntary organisation that recognised UNISON was identified by the initial scoping exercise. The intention was that this organisation and possibly other third sector user organisations could be picked up through the invitations to multi-employer branches, particularly in local government, which covered members employed by third sector organisations and outsourced services. (Of the UNISON survey respondents, 13 voluntary sector representatives had had involvement or association with workplace mediation in the last two years.) The scoping exercise did not detect employers using workplace mediation in the water, environment, and transport sectors that recognised UNISON; and there were very few UNISON survey respondents who were representatives in these sectors. In the energy sector, British Gas and EDF were identified as user organisations, but for logistical reasons this information was not followed up with UNISON.

The number of UNISON participants from local authority branches was low. (In contrast, just over half of the UNISON survey respondents who had experience of workplace mediation represented local government members.) In CWU, there were few representatives from mail centres and none from regional distribution centres. This may reflect the pattern of take-up of IR mediation. Because the CWU sample was restricted to representatives who had been participants in IR mediation, the study did not include the direct voices of representatives who resisted or opposed its use, although some scepticism was expressed (as is discussed in the findings).

There are few cases of UNISON branches actively opposing the use of workplace mediation. It is possible that its opponents would not be attracted to participate in interviews, despite the duality of the research question, if they felt the research aimed to, or had the effect of, giving credence to union support for the use of workplace mediation. However, the range of views expressed about workplace mediation by interviewees indicated that self-selection bias had not skewed the findings towards strong advocacy of, or opposition to, its use.

For both unions, it was decided not to include rank-and-file members who had experienced mediation in the sample population. Recruiting parties who were union members via their union branch would have added another layer of complexity, not least over confidentiality issues. Consequently, members' views of mediation and their relationship with union representatives in dealing with their grievances, and issues to do with union democracy were not explored, apart from some references being made by CWU interviewees' to members' low awareness of IR mediation. Lay union representatives consider themselves to be close to the membership and this also applied particularly to CWU area representatives, some of whom are based at large workplaces. Area representatives are also postal employees, as are divisional officers, on secondment to CWU. Nevertheless, rank-and-file members did not have a direct voice in regard to the issues discussed in the study. This is a possible area for future study.

Among the UNISON sample, there were no interviewees representing a self-organised group. The letter inviting branches to participate in the study did not specify the category of representative being sought for interview but outlined the subject of the research, stating that 'I would be interested in talking to an appropriate local representative(s)'. Respondent branches chose branch officers/stewards who dealt with individual members' cases. As a rule, these representatives would be formally accredited by the union to act as companions/representatives in grievance and disciplinary proceedings. Although it is not encouraged, in circumstances where 'a member may ask to be represented by someone other than their workplace rep', UNISON guidance advises:

> One option is for a member of the [appropriate] self-organised group or the branch equality coordinator to work with the steward and member and remain involved throughout the process. However, everyone must clearly understand that only one representative acts for the member – the steward (UNISON, 2014, p. 12).

In addition to their roles as branch officers and stewards/unit representatives, a small number of interviewees held or had held elected positions in the branch related to equality or on equality-related committees at regional or national level. However, they volunteered to be interviewed primarily because of their involvement with workplace mediation, in the case of CWU as unit representatives, and in UNISON as representatives accredited to act for individual members.

The absence of formal voices from UNISON self-organised groups, equivalent CWU spokespersons, and more widely from members who identify with one or more of these constituencies within their union and its relevance to workplace mediation is commented on in the concluding chapter in relation to areas for future research. This study explores the process that UNISON representatives go through in supporting individual members to decide which dispute resolution procedure would be best suited to resolve their complaint. However, it does not explore the interaction between representatives and members from the perspective of individual members or their perception of the performance of union representatives in supporting them over the life cycle of their complaint. While these issues have relevance for all union members who approach the union for help, they have particular salience for groups that are reported to be disproportionately affected by bullying and harassment at work, as is discussed in the concluding chapter.

It proved difficult to achieve interview samples with representation from CWU and UNISON across the four countries of the UK. There were no interviews included from representatives in Northern Ireland and none from CWU representatives in Scotland. While the geographic representation of union branches and employers is wider than most of the existing UK literature - particularly the organisational case studies - the number of participants based outside England was too low to explore in any depth the implications for the use of workplace mediation of different State and/or national employer policies on industrial relations where these are devolved matters.

A limitation on comparative analysis across the UNISON and CWU case studies was that, at workplace level, IR mediation and workplace mediation are not directly comparable processes in respect of the roles played by union representatives. CWU unit representatives are parties in IR mediation whereas UNISON lay representatives are supporters of members who are parties or prospective parties, and sometimes they also act as companions in workplace mediation. CWU unit and field representatives were not asked specifically about their representation or support of individual members whose complaints of bullying had been mediated, although the subject of workplace bullying and the associated formal procedures in Royal Mail was mentioned by a number of interviewees. Allowing for the fact that the CWU sample had not been selected on the basis of participants' experience of *workplace* mediation of individual complaints, in this sample, the overall impression was that the unit representatives had had very little direct experience of supporting members who had been parties to mediations carried out by the Royal Mail in-house service. Consequently, it was not possible to compare the experiences of UNISON interviewees who had assisted individual members in mediated cases with CWU interviewees who had done likewise. Both sets of representatives were likely to have assisted members in *ad hoc* mediations conducted by managers. However, this was not explored as it was secondary to the main focus on the operation of in-house mediation services and there was insufficient time available in interviews to explore this type of mediation.

Previous UK studies show that line managers' and HR perspectives on union representatives' attitudes and behaviour in dealing with individual members' problems at work provide valuable insights (Saundry, McArdle and Thomas, 2011; Latreille and Saundry, 2015; Barmes, 2016; Saundry *et al*. 2016; Saundry, Fisher and Kinsey, 2017). The absence of employer representatives in this study can therefore be seen as a limitation. However, their omission can be justified in that the study has a particular focus on unions as institutions and whether workplace mediation is a friend or foe in relation to their institutional interests.

Lastly, the selection of the case study unions restricted the in-depth examination of union experiences of mediation in the workplace to representatives in public sector organisations (excluding the civil service) and a privatised public service. Little is known

about union involvement with the use of workplace mediation in other sectors, including in organisations that do not recognise trade unions.

The following three chapters set out and discuss the findings of the primary research. Chapter three examines the introduction of workplace mediation within the unionised organisations which featured in the study. Chapter four covers the operation of workplace mediation in these organisations and chapter five considers the outcomes and impact of the use of workplace mediation from the unions' perspective.

CHAPTER THREE: INTRODUCING WORKPLACE MEDIATION

Introduction

This chapter sets out and discusses the findings of the primary research in relation to the interviewees' attitudes towards, and experiences of, the introduction of workplace mediation in user organisations. To give a national overview, the first section outlines the contemporary positions of the TUC and STUC, based on interviews with national representatives of those bodies. The second section sketches in the background to the introduction of mediation in Royal Mail, particularly IR mediation. It then examines whether national union support for IR mediation was regarded within the CWU as incorporation before turning to the findings on the experiences of CWU representatives below national level, particularly workplace representatives who were parties in IR mediations. It discusses whether their cooperation was indicative of micro-corporatism or independent engagement. The question of union displacement is also discussed.

The third section discusses the findings on the introduction of workplace mediation from the perspective of the UNISON interviewees. Unlike the CWU cases which featured a single employer, the UNISON cases involved employers in different services. The section begins with a brief overview of the national position on workplace mediation in each of the service groups represented in the UNISON sample. The findings in relation to the interviews with regional and workplace representatives are then set out. The nature of UNISON involvement in workplace mediation at local level was related to the extent to which individual employers sought to involve the union and this is reflected in the way in which the findings are presented and discussed in relation to the incorporation question. The findings on displacement in relation to the UNISON cases are also discussed.

The fourth section focuses on the selection and training of union in-house mediators, as these processes could be seen as vehicles for incorporation. It considers CWU and UNISON interviewees' experiences respectively. The chapter ends with a summary assessing the incorporating potential of workplace mediation training and union representatives serving as mediators. This sets the scene for the findings which are

considered in the following chapter on union representatives' perspectives on the operation of workplace mediation.

TUC and Scottish TUC contemporary positions on workplace mediation

In 2014, according to the national TUC representative interviewed for the study [TNI], the TUC position on workplace mediation remained as it had been at the time of the publication of the ACAS/TUC *Guide* (2010) and the TUC response to the government consultation on resolving workplace disputes (BIS, 2011a). In summary, the TUC supported early informal dispute resolution wherever possible and was sympathetic to ADR subject to certain safeguards. In unionised workplaces, mediation should not replace existing procedures, particularly grievance and disciplinary procedures. It was stressed that the use of mediation should not in any way undermine the role of the trade union representative within the workplace.

Since 2011, there had been little cause for the TUC to develop its policy or activity on workplace mediation. Interviewee TNI observed that active Government promotion of mediation had waned in recent years. The introduction of tribunal fees had achieved its objective of reducing ET claims. It appeared that the use of in-house mediation had declined in parts of the public sector owing to the impact of austerity. Affiliated unions had made no demands on the TUC for further policy guidance. In regard to educational provision on workplace mediation for union representatives provided by, or under the auspices of the TUC, it appeared to be patchy across TUC regions, if not very limited overall.

In Scotland, the implementation of the 2008 Congress resolution marked the high point of STUC activity on workplace mediation. The STUC interviewee recalled that although the UCU Scotland motion had been carried without controversy, there 'had not been carte blanche acceptance' [SNI] of the use of mediation on the STUC General Council. For example, concern had been expressed that mediation could be misused 'to get rid of people'. Following the 2008 Congress, the STUC issued guidance (Bleiman, 2008b) and supported ACAS briefings held in Scotland on the revised *ACAS Code of Practice* (2009a) and ACAS' enhanced role in dispute resolution. There had been little STUC activity since then; as in England, workplace mediation was not a priority issue for affiliates [SNI].

Under the Scottish National Party government, the political climate has been more favourable to social partnership compared to that at Westminster. The report of the *Working Together Review* (2014) acknowledged the role played by unions in workplace conflict management although it did not include any specific recommendations on workplace mediation. Further work on workplace dispute resolution by the Fair Work Convention, also set up by the Scottish Government, has focussed on exhortation to follow best practice in industry. Lack of progress in implementing key recommendations of the *Working Together Review* led the STUC (2018, p. 4) to emphasise that the Scottish Government 'should prioritise action to increase trade union membership and collective bargaining'. However, as mentioned below, statutory requirements for partnership working in NHS organisations in Scotland have acted as a catalyst for employers to introduce workplace mediation schemes or services.

The priorities of the TUC and STUC reflect those of the affiliated unions. An important part of their role is 'coordination and representation on common issues' (Simms, Holgate and Roper, 2019, p. 338, referring to the TUC). At national level, within affiliated unions, workplace mediation was not an issue which demanded a policy, or any other, national response. Where it may be an "issue" for workplace representatives or branches, this had not surfaced or registered at higher echelons in most unions. None of the individual unions which participated in the research had specific national conference policy on workplace mediation.

The next section explains the background to the introduction of mediation in Royal Mail.

Introducing Voluntary (IR) Mediation in Royal Mail

The CWU case study in this thesis focuses on Industrial Relations (IR) mediation in Royal Mail, which is a voluntary option - applying mostly at workplace (unit or shift) level – for resolving collective disputes at an early stage, within defined dispute resolution processes which culminate at national level in external mediation if disputes are not resolved within set timescales. The adoption of 'Voluntary Mediation', also known as 'IR mediation', was the only example in this study of mediation in the workplace being introduced company-wide on a joint basis as a consequence of national collective bargaining. Collective dispute resolution processes are laid down in

the 2014 *Agenda for Growth, Stability and Long Term Success* national agreement (*AfG*). The *AfG* agreement revised the national collective dispute resolution procedures, chiefly the 1994 *IR Framework Agreement,* adding 'new processes to strengthen dispute resolution' including Voluntary Mediation (*AfG* Section 4, Industrial Stability, paragraph 5.2). Unusually, if not uniquely for a British collective agreement, *AfG* has certain legally binding provisions set out in an appended *Legally Binding Agreement* (*LBA*). The *LBA* includes the revised IR Framework, entitled the *Achieving Local Agreement Procedure.*

In brief, references to Voluntary Mediation in the *LBA* established that it was a voluntary option which could be used 'at any point in the *Achieving Local Agreement Procedure*'; and that the mediators were to be provided with written 'points of agreement and difference' and 'appropriate evidence' by the parties to enable the mediators to facilitate the reaching of agreement. Importantly, the *LBA* stipulated that 'where agreement with the assistance of the Voluntary Mediators cannot be reached within one week of their appointment, the disagreement will move automatically to the next stage of the *Achieving Local Agreement Procedure*…' (*LBA* Schedule 3*,* Dispute Resolution Procedures*,* paragraphs 2.16-2.18).

On terminology, CWU interviewees tended to use the term 'IR Framework' when referring to the *Achieving Local Agreement Procedure*, as incorporated within the *LBA*. In the thesis, '*LBA*' and 'IR Framework' are used interchangeably (depending on context) when referring to the legally binding *AfG* dispute resolution procedures. Formally, (in *AfG*) IR mediation is 'Voluntary Mediation' but as very few CWU interviewees used the latter term, the thesis mainly refers to it as IR mediation. The CWU interviewees referred to themselves as "reps" and, with some exceptions, this shorthand for CWU representatives is used in the three findings chapters.

The *Agenda for Growth* negotiations took place over two years (2012-2014) in the context of the privatisation of Royal Mail which occurred in 2013. *AfG* explicitly recognised the parties' mutual interest in ensuring the commercial survival and growth of the company. For Royal Mail, 'industrial relations' and in particular industrial action was (and still is) identified as a 'high risk' to be mitigated by better management or containment of conflict; procedurally, through encouraging early resolution of

disputes; and as a longer term project, through employee engagement and new dispute resolution methods aimed at reducing adversarialism and changing the conflict culture of the organisation (Royal Mail plc, 2014, p. 45; Royal Mail plc, 2015, p. 56; Royal Mail plc, 2016a, p. 40).

AfG picked up where a previous national agreement, *Business Transformation 2010 and Beyond* (*BT2010*) left off, in regard to changing the conflict culture of the organisation - an objective apparently shared by the national CWU negotiators:

> The whole purpose of *BT2010* and subsequently of the *Agenda for Growth* agreement was about changing the culture of the business, to move away from an adversarial model to one where it was of mutual interest [CNI-1].

Another aspect of *BT2010* indirectly paved the way for the introduction of IR mediation. *BT2010* initiated a review of all HR policies in consultation with the unions, including the bullying and harassment procedure [CNI-1]. The review identified procedural formalism as a barrier to moving to a mutual interest model:

> We felt what was required to… changing [sic] the culture was to involve more informal resolution [CNI-1].

Consequently, the 2013 *Bullying and Harassment Procedure Agreement* encouraged informal resolution of complaints and referred to the availability of 'third party' assistance (a line manager, union rep, colleague or the bullying and harassment helpline). 'Mediation' was mentioned as an option to restore relationships.

It appears that the proposal to use workplace mediation came from Royal Mail. HR had had previous contact with the Total Conflict Management Group (TCM) a UK conflict management organisation (CMO). In 2007, TCM had trained 'fifteen senior managers… in core mediation skills to support a cultural change programme' (Liddle, 2007).

While national CWU interviewees (all from the postal side) were familiar with ACAS dispute resolution services, workplace mediation (as opposed to *ad hoc* mediation) was something new. In British Telecommunications plc (BT) where CWU has recognition, mediation for individual grievances had been introduced 'across all lines of the business' by 2012 (BT, 2012, p. 118). However, the CWU structure – with separate Postal and Telecoms & Financial Services constituencies – did not appear to facilitate knowledge sharing. If national postal representatives had discussed the BT

mediation experience with their counterparts in the Telecoms constituency, it was not mentioned by the Postal interviewees. (Internal union sharing of knowledge and experiences of mediation is discussed further in later chapters.)

Royal Mail and CWU Postal took a joint approach to setting up the in-house mediation service in 2013-14 [CNI-1]. Jointness in this regard did not represent a break with IR tradition. In Royal Mail, policies and procedures concerning individual dispute resolution and employee rights, such as grievance and disciplinary policies and procedures, were subject to negotiation and agreement. It had also long been recognised that dealing with workplace bullying was a joint issue. Involvement with setting up the internal workplace mediation service and acceptance of the need to change the conflict culture in Royal Mail paved the way for CWU national negotiators to agree to adopt IR mediation as part of the *AfG* national agreement. Agreement on *AfG* was reached in principle in December 2013, and accepted by the CWU membership in February 2014.

Apparently both Royal Mail and CWU came to the view early on that it would be preferable to have an in-house mediation service, not least because this was the most cost-effective option [CNI-1]. As there was no existing in-house provision, following a procurement exercise in which national CWU officials were involved, in 2014, the Total Conflict Management Group (TCM) was contracted to provide the bullying and harassment workplace mediation service for a two-year period. TCM also assisted with establishing the in-house service. For example, TCM trained Royal Mail and CWU mediators recruited to the inaugural national IR mediation team; and initially, the team was managed by a seconded TCM consultant. (In addition to the mediation of bullying complaints, TCM mediators also undertook IR mediations while the in-house mediators were being recruited and trained.) Since 2016, the national IR mediation team has been jointly funded and directly co-managed by Royal Mail and CWU, with IR mediations and mediation of bullying and harassment complaints being undertaken by mediators from the national team. Following a review of the grievance procedure in 2018 (Royal Mail Group Ltd., CWU and Unite, 2018), mediation of individual grievances has been added to the service offered by the national IR mediation team [CNI-2].

In relation to the *AfG Achieving Local Agreement* dispute resolution procedure, the in-house national IR mediation team conducts voluntary mediations but not 'special mediation' (see below), or 'external mediation'. On the sole occasion external mediation has been used (at the time of writing), it was undertaken by a mediator from the ACAS panel.

As mentioned earlier, IR mediation is available to CWU representatives and Royal Mail managers where they jointly agree that it would be helpful in resolving a disagreement or dispute over a negotiable issue, at any point in the *Achieving Local Agreement Procedure*. In practice, it is intended for use mainly at workplace level, and in the CWU sample, in most cases the parties were unit reps and their line managers. Voluntary mediation may also be used in 'early warning/flashpoint' situations, where, for example, a walkout in a delivery office may be imminent.

In cases where unballoted industrial action has occurred, there is separate provision for 'special mediation'. The purpose of special mediation is 'to secure an immediate return to work while issues and grievances are investigated'. The mediators are not drawn from the national IR team but appointed from a national panel of CWU officials and managers. They are not required to be certificated mediators; rather the panel members have been 'jointly selected for their ability to intervene in conflict situations and broker solutions'. From the ratification of *AfG* until late 2017 (when the thesis fieldwork had largely been completed) the special mediators had never been called on despite numerous occurrences of unballoted action. Under the *LBA*, if unballoted action continues for more than 48 hours, national representatives 'will refer the matter to external mediation' (*LBA,* para. 4.5).

CWU: Incorporation or independent engagement?

In CLS literature on labour-management partnership, incorporation is often attributed to agreements made with employers by *national* union officials with little support, if not opposition, from rank and file members. Thus the introduction of IR mediation provides a classic example for the purposes of assessing whether national CWU cooperation with the introduction of IR mediation represented incorporation or independent engagement with the employer to maintain union influence and strength.

Equally importantly in relation to IR mediation, there is the question of micro-corporatism (discussed below).

The CWU national leadership accepted that (in particular) unofficial industrial action was destabilising for the business and that in the face of privatisation, it was in members' interests to demonstrate the union's credibility:

> The CWU want this business to be successful…. We do have the best terms and conditions in the industry and obviously we want to continue to improve that, and we believe that mediation would give us the strength to say that we <u>can</u> do deals, we <u>can</u> negotiate, [speaker's emphasis] and we are true to our word, we will try to stop these wildcat strikes, and… we will be part of the solution, going forward [CNI-2].

It was recognised that 'difficult [interpersonal] relationships' could lead to disputes over work-related issues between individual unit reps and managers, and that relationship rather than transactional issues might lie at the root of some workplace disputes:

> There was a massive problem with the industrial relations in the business, and you would find wildcat strikes… and we never ever dug into what the issues were, it was as if we were putting a plaster over things…. *Agenda for Growth* is… about trying to resolve the problems before you need to go on strike, to get a resolution [CNI-2].

Existing dispute resolution procedures were not well suited to resolving issues where the relationship was the problem. With its focus on *individual* participants' interests, facilitative workplace mediation is designed to resolve relationship issues. Addressing a relationship problem between a rep and manager could also clear the way for resolving an IR problem. Later sections examine CWU interviewees' views as to how this played out in practice.

For the CWU nationally, the main objective in the *AfG* negotiations was to secure certain guarantees from the company to preserve and protect terms and conditions of employment after privatisation, and allied to that, to maintain some control over changes to the labour process and employment levels, and by extension, to protect trade union organisation. In return, it was prepared to agree to 'elaborate systems of dispute resolution and mediation' intended to 'prevent unofficial industrial action' (Mustchin, 2017; pp. 303, 301). From a pluralist perspective, *AfG* represents not incorporation but a classic negotiated deal between parties where power is balanced. The CWU leadership was perceived (wrongly) in some quarters as having signed up to

a “no strike agreement” [CNI-2]; however the CWU membership voted by a large majority to accept *AfC.*

Below national level, initial reactions within the CWU to IR mediation were closely linked to representatives’ attitudes towards the *AfG* agreement. Initially, this unit representative was wary of *AfG,* seeing it in a wider context of State support for employers to pull the unions’ teeth:

> I did think at first, is this the beginning of the end to try and dismantle the Union, because they did it with dockers and they did it with miners and we’re the only ones – well, big… union that they don’t like, so to speak [CLI-7].

However, a unit rep whose delivery office was said to have a reputation for militancy saw the *AfG* IR Framework as a mechanism to ‘avoid management executive action or industrial action’ [CLI-5], that is, to deal with potential unilateral action by *either* side. Rather than weakening the union, the revised IR Framework was perceived as offering reps additional levers to pull in dealing with unit managers who flouted various provisions of national agreements by acting unilaterally over, for example, the organisation of work within units. Importantly, as will be discussed, rep CLI-5 understood voluntary IR mediation to be ‘national mediation’ in that it was undertaken under the auspices of *AfG* and the IR Framework/*LBA*. Therefore mediation agreements were in effect nationally enforceable agreements.

Unit rep CLI-4 saw the relationship between the union and employer as an ongoing conflict of interest between the employer’s drive for profit and the union striving to prevent erosion of nationally agreed protections. The *AfG* IR Framework was welcomed as a mechanism for curbing the behaviour of some externally recruited managers who, in this rep’s account, used privatisation and shareholder interests to justify an “I’m doing it my way or no way” approach:

> With regards to the IR Framework… these managers with that attitude… have been told “You have to discuss things, you have to sort things out; that’s not how we do things here in Royal Mail” [CLI-4].

In contrast, interviewee CFI-3 considered that the union had to be wary of the misuse of IR mediation by the employer, notwithstanding that it might help some reps shift from inflexible and ‘Luddite’ positions that were not in their interests:

> I think there's a place for mediation.… [However] …I wouldn't want Royal Mail to use it as an excuse to soften our lead national agreements… to bypass our agreements and they would quite happily tie a local rep who's not quite as knowledgeable of the agreements… in knots to… get them to sign a local agreement which counteracts [a national agreement]…I don't think mediation should be used for those wrong purposes, on either side [CFI-3].

These concerns are discussed in more depth in the next two chapters.

Nationally led promotion of IR mediation commenced once the national IR mediation team was in place. Aside from the availability of the service, it was important to communicate that the IR mediators were not 'managers', as, for example, a branch secretary quoted in Mustchin's study (2017, p. 301) believed, but CWU reps and managers seconded to the national mediator team.

Take-up of IR mediation was 'very slow in the beginning' [CNI-2]. To explain and promote the service, the joint team of national mediators did 'road shows… up and down the country' [CNI-2] at CWU divisional meetings (attended by area and divisional reps), branch committee meetings and management forums and team meetings. It was emphasised that if IR mediation was not successful, the dispute reverted to the IR Framework procedures 'so you've got nothing to lose by giving it a go' [CNI-2].

At the 2016 CWU postal industry conference, a progress report on mediation was made to delegates, introduced by Terry Pullinger, Deputy General Secretary (Postal). Unusually for a senior UK union official, he had undertaken mediator training, and was strongly supportive of its use:

> I believe we have not fully examined the positive potential of mediation as part of our reaching agreement toolkit and how we can also use it to improve the culture of the workplace – both from a collective and individual perspective (CWU, 2016a).

(By 'individual perspective', he was referring to mediation of bullying and harassment complaints.) The conference report of the presentations made by two CWU national mediation team members highlighted their previous union experience, as a 'delivery area rep and branch secretary', and as a 'frontline CWU rep' (CWU, 2016a).

The conference report concluded by quoting the 'CWU executive member who jointly line manages the mediation team':

> The presentation had been “very well-received” by conference delegates. “It’s clear that mediation is a useful tool for the CWU and Royal Mail…. We want this to continue and for branches to make more use of it going forward” (CWU, 2016a).

A national CWU interviewee recalled that ‘there was no opposition really’ [CNI-3] to IR mediation at CWU postal conference when it was introduced and, judging from publicly accessible secondary sources, it seems that neither the use of voluntary IR mediation nor bullying and harassment mediation had aroused controversy at CWU postal conferences. This is not surprising if, as some field level interviewees commented, the vast majority of rank and file members would not have come into contact with IR mediation. The participants in bullying and harassment mediations are not union representatives and managers but individual postal workers and, in the main, line managers. These mediations are conducted similarly to workplace mediation in other sectors (see the UNISON case studies). Royal Mail reported that in 2015/16, 92 per cent of bullying and harassment mediations ‘have been successful in reaching an agreement between the parties involved, without the need for a full hearing’ (Royal Mail plc, 2016a, p. 46). In 2016/17, 87 per cent of mediations ‘resulted in a successful agreement between the parties involved’, as did 94 per cent in 2017/18 (Royal Mail plc, 2018a, p. 50). Leaving aside the contested nature of what constitutes success in mediation, on the face of it the statistics would indicate high levels of party satisfaction with the service. Even if bullying and harassment mediations were less successful than claimed, arguably low use - relative to the size of the workforce - and confidentiality militate against vocalising of dissatisfaction by participants in ways that would produce motions to conferences.

At local, field and national level, reps observed that awareness of mediation among the membership was low. For example:

> Members know very little about mediation the truth be told. It is representatives that deal with the mediation process… the vast majority [of members] never have a bullying and harassment case [and] never become a rep, so… if you ask them what mediation is they would probably say “heard of it but I don’t know what it is” [CFI-1].

A unit rep commented:

> I think a lot of them [members] need educating… a lot… are not aware. And being honest, when I had that issue going on with my [line] manager, I didn't know anything about mediation… it was my area rep who said he's going to speak to… the [line

> manager's] manager about us having mediation… the divisional rep also got involved and then we were able to get mediation done [CLI-1].

Unit rep CLI-5 discovered voluntary mediation while reading the then new *AfG* agreement. 'I thought in principle the process was fantastic'. However, 'the stories' were that national mediation was literally the last resort' (a possible confusion with *external* mediation), so rep CLI-5 did not attempt to use it until a 'last resort' situation arose in the unit.

In researching local union reactions to the introduction of IR mediation, branch secretaries *per se* were not included in the CWU interviewee sample, although individual unit or area reps might also hold branch officer positions. CWU branch secretaries do not have a formal role in the IR dispute resolution procedures. Below national level, the IR Framework designates responsibility for IR matters on the union side, to unit representatives (in individual workplaces), area representatives (who represent large workplaces or groups of delivery offices), and divisional representatives who have geographic areas of responsibility which were broadly coterminous with Royal Mail divisions.

The historical background is that in the early 1990s, Royal Mail made concerted efforts to remove branch secretaries from direct involvement with negotiations and industrial relations (Gall, 2003a). Under the 1994 *New IR Framework* (*NIRF*), disputes that could not be resolved at unit level passed to area reps, then (if unresolved) to divisional reps and their management counterparts, before a strike ballot could be called or industrial action taken. Broadly, this structure has been retained under *AfG/LBA* with additional provisions to militate against industrial action being taken.

Under the 1994 *NIRF,* a divisional representative described their role as '…policing by being in constant contact and on tap 24 hours a day to resolve disputes' (Gall, 2003a, p. 49). However, Gall found that 'generally speaking, divisional reps have played a key role in mobilising collective action, rather than being Royal Mail's "firefighters" (Gall, 2003a, pp. 49-50). Branches were also said to have preserved strong union organisation and accountability at local level by, for example, electing branch secretaries to area rep positions. Royal Mail was later to seek the abolition of the CWU divisional officer post (Gall, 2003a, p. 50) unsuccessfully. The role now appears to be

well established, and as will be discussed, divisional reps occupy a key gate keeping role in relation to IR mediation.

Returning to 2014, initially there were 'pockets' in the regions 'that were having nothing to do with mediation' [CNI-3]. These pockets included historically militant areas within CWU. Internal factional politics were not specifically mentioned as a factor but the frequency of elections within CWU meant, as an interviewee put it, 'you've always got to watch your back'. Consequently, around election time, reps might be cautious about using an untried dispute resolution procedure, such as voluntary mediation, especially where it was thought by influential voices in the branch to be just "another Royal Mail thing". But among CWU interviewees in this study, there was little sense that *AfG* represented incorporation of the union at national level. On the contrary, at the time of the fieldwork, there was a strong sense of unity. The CWU nationally was leading a high profile campaign in support of its "Four Pillars" pay and conditions claim and had successfully balloted members in support of national industrial action.

It is noteworthy that the word 'partnership' is not to be found in *AfG*. The concept had negative associations for CWU in regard to previous employer initiatives introduced under the partnership banner (Gall, 2003a). Billy Hayes, elected CWU General Secretary in 2001, set the tone on the CWU side:

> I'm not against working with the employer; it's what used to be called collective bargaining… But I've found anything that is announced as "partnership" is more like supplication than negotiation (Hayes, 2006, cited by Upchurch, 2009, p. 244).

Around the time of privatisation, partnership fitted neither the reality of industrial relations in Royal Mail nor the culture of the union, or for that matter, the business. But arguably, *AfG* and its dispute resolution procedures represent a 'labour-parity partnership' (Kelly, 2004), even if the 'p' word itself is studiously avoided. While *AfG* recognised mutuality of interest and the need to shift from an adversarial conflict culture, ultimately, if disputes cannot be resolved through the agreed dispute procedures, both sides fall back on the exercise of coercive power. Crucially, because IR mediation is a voluntary option, it did not represent the same threat to terms and conditions as some previous Royal Mail-inspired employee involvement or collaborative initiatives. And, importantly, collaboration over the use of IR mediation,

as laid down in the *LBA,* gave the union significant control over its use, as discussed in the next chapter. It was not necessary to mobilise to immobilise IR mediation. If divisional reps (the main first-line gatekeepers on the union side) were not enthusiastic about IR mediation for whatever reason, where a local dispute could not be resolved through their intervention and that of their Royal Mail counterpart, IR mediation could be side-stepped and the dispute would proceed to the next or higher stage of the IR Framework. Similarly, area representatives could choose not to promote IR mediation as an option for resolving local disputes. Where unit representatives were resistant to mediation or deeply sceptical about it, there was little incentive for divisional and area representatives (who are elected lay officials and former postal workers) to heavily pressure them to participate (see the next chapter). It might be conjectured that there were powerful disincentives to pressure reps into IR mediation, such as potentially doing damage to relationships with unit reps and branches; and in terms of efficiency, if mediations failed (as they might with at least one recalcitrant party) the dispute would still remain to be resolved.

As part of rolling out *AfG,* the union nationally supported *Together for Growth* (*TfG*), a flagship training and development programme to facilitate the culture change both parties had signed up to. IR mediation was one element in a package of *AfG*-related measures to support a process of changing the conflict culture in the organisation. In this regard, the company placed considerable importance on the *TfG* programme:

> As part of our collaborative approach with the CWU, the *Agenda for Growth* is supported by our '*Together for Growth'* programme, an industrial relations and business skills package for managers and CWU representatives designed jointly to improve the way that managers and unions work together (Royal Mail plc, 2016b, p. 35).

Launched in 2014, Royal Mail invested over £9.5 million in the *Together for Growth* programme and by 2016, it had been delivered 'to over 6,000 managers and union representatives… 87 per cent of managers and union representatives… completed the three, one day modules' and apparently the same percentage 'would recommend the programme to their colleagues' (Royal Mail plc, 2016a p. 46). From a radical perspective, *TfG* was an obvious attempt to incorporate CWU reps.

A number of interviewees in this study had attended *Together for Growth* events with their managers. There were mixed reactions to *TfG* joint training among reps

interviewed for this study. Unit rep CLI-7 who attended the training thought it was 'brilliant'. The tasks involved joint problem solving in mixed union-management groups. The rep saw this as a precursor to IR mediation:

> I thought "ah, that's why they got us working together, that's why they put us in groups to see where things would go and what outcomes would be" and now you've got a CWU and a manager mediator who are teamed up together [CLI-7].

Rep CLI-7 supported the objectives of the training programme:

> …for management and the CWU to work more closely together without having arguments or disagreements; and also that we could show a united front if needs be with members of staff to support each other - for managers to support the staff and for us to support the manager as well, which technically now that's become my role…. I'm there to support the manager… and then my manager supports me… but the way I look at it is they've got another manager in here for nothing even though they're union [CLI-7].

This is reminiscent of Tony Lane's observation that the shop steward could be 'an unpaid personnel officer' (Lane, 1974, p. 223). At the time of the fieldwork, industrial relations in this rep's unit were said to be good. The quote taken in isolation is suggestive of incorporation and reps "policing" rank and file workers. However, *TfG* did not dislodge the rep's view that the employer's hidden agenda with *AfG* was to weaken the union and when it came to the "Four Pillars" campaign:

> [Royal Mail] thought they'd test the water… because if we hadn't a vote [for national industrial action] like we got… 90 per cent, they'd have thought "right then, it's the demise of the Union" …but it didn't work out like that unfortunately for them [CLI-7].

For a couple of representatives in the sample, the *TfG* joint training sessions conveyed a clear message from the top of the organisation to line managers that they 'should value the staff, treat them with dignity and respect…show them a duty of care [because] when you do that, you get the best out of them' [CLI-1]. Although this rep and the unit manager attended the same session, apparently the message did not hit home:

> I have got so many emails… to my… manager reminding him of those things, but he completely ignored me [CLI-1].

In the view of field representative CFI-1, *TfG* had not helped the take-up of IR mediation:

> The initiatives that were taken to engage us with the employer from *the Agenda for Growth* were generally seen to be a bit weak and woolly. We had… meetings that were set up under that [AfG] to try and encourage people to work better together…. Most of the people that went on it were fairly dissatisfied with… it… because it came under that same umbrella of working close with the employer and the union. I think that didn't help it [IR mediation] to get a great start [CFI-1].

Mediation in the workplace: Union displacement?

Mediators, be they union or management, could be seen to have a displacement effect in two respects. Firstly, where mediation of bullying complaints took the place of formal grievance meetings, there was no role for the member's representative in the process. This was said to have created a subliminal suspicion of mediation. According to a national CWU official, speaking in 2014:

> I think many of our people viewed mediation with some suspicion because… they felt it kind of alleviated the trade union role… 'We represent, we know what's best for our members; we know what's best for the individual. Why do we need somebody else to come along and deal with that?" But nobody said that, so… it was alienating an awful lot of people and I think it still is… and there's still a lot of education required. It's relatively new… in our field [CNI-1].

Secondly, certainly initially, in relation to IR mediation, there was a fear that mediators would displace representatives' negotiating role in resolving disputes. It seemed that there was a misconception in some quarters that IR mediators would arbitrate industrial disputes:

> It was very difficult to get people to buy in originally because some… felt that they were having their autonomy taken away from them… they thought it would be the mediators making the decision. So it was very, very difficult for us to get some groups, some managers [and] some reps to actually… say "okay, I'll give this a go" [CNI-2].

A former union representative who was a member of the national mediation team recalled:

> You're always going to get that fear of someone taking your role over and that was one big thing when it first came out…. When we [the national IR mediation team] first set up, everyone thought we were just coming along with agreements and we'd say "no, you're right - you're wrong". We had divisional reps saying "they're replacing us" [that] we were taking work off them… which wasn't the case' [CNI-3].

Fear of role displacement was allied to the fear of incorporation:

> It only takes… a couple of people to say "well, hold on a minute, we're not getting involved in this…. You've got the fear of "it's another Royal Mail thing" [CNI-3].

There was also concern that power imbalance and party self-determination in mediation could lead to a unit rep being 'tied up in knots' by a canny manager and lulled into signing a local agreement that eroded national agreements [interviewee CFI-3]. In fact, checks were in place to prevent reps and managers doing local deals which contravened national agreements (see chapter four).

By 2017, concern about displacement among reps was said by CWU interviewees to have abated. Crucially, control over referral of disputes to IR mediation rested with divisional reps and heads of IR. They could also vet the industrial relations content of mediated agreements as part of the ratification process (Royal Mail and CWU, 2015a; 2015b).

Unwillingness to use IR mediation was said to have gradually broken down as understanding of the process had grown [CNI-3], albeit in this mediator's view, a well resourced promotional campaign was needed to boost take-up. In contrast, interviewee CFI-1 perceived enduring scepticism, on both sides:

> I would say that the vast majority [of representatives] were sceptical and are still sceptical; and I would say that's mirrored from the employer's [and]… the managers' point of view as well [CFI-1].

The next section examines UNISON representatives' attitudes towards, and experiences, of the introduction by employers of workplace mediation.

Introducing workplace mediation – UNISON experiences

There was no procedural equivalent to voluntary IR mediation in the UNISON cases or examples of nationally led labour-management initiatives on workplace mediation. There had been periodic expressions of support for workplace mediation by employers' organisations and by NHS partnership bodies but implementation was largely a matter for local employers. Consequently, the study found considerable variation in union representatives' experiences of workplace mediation, not only within the same sector but also, in one case, within the same organisation. In terms of internal union relationships, in contrast to the CWU cases, it was noticeable that in each organisation using mediation, the UNISON branch dealt with it mostly in isolation

from other branches in the same sector, the regional office, national service group and other national structures. (The implications of this are discussed in the concluding chapter.)

National UNISON service group positions on workplace mediation

The stances adopted on workplace mediation by national employers that recognised UNISON were outlined in the literature review. This sub-section gives an overview of national collective bargaining relationships in so far as they are relevant to the research question, from the perspective of national officers who were interviewed or who made written comments.

The NHS

In 2014, during the fieldwork for this study, a senior national official in the UNISON Health Care Service Group advised that there was no national agreement in the NHS on workplace mediation, and 'I'm not aware how extensive it is [used] at local level' Mention was also made of the 'well developed social partnership model in the NHS, although… this varies across workplaces depending on local relationships' [UN-s].

As will be seen from the interviews with UNISON representatives in NHS organisations, the existence of partnership structures facilitated union involvement in the introduction of workplace mediation. Interviewees in NHS trusts recalled that staff side unions had mostly been consulted through local partnership fora. The distinction between consultation and negotiation was not always clear - consultation could result in changes suggested by staff side representatives being agreed to by management, but this did not appear to be formal negotiation over the introduction and operation of workplace mediation services. It could be argued that where changes in policy or procedure were made in response to union input or union representatives successfully vetoed a management proposal, it is immaterial whether this occurred in consultative or negotiating fora. Moreover, it was indicative of independent engagement. However, it was not clear to what extent union representatives took the initiative in discussions on policy or protocols on mediation use. The evidence from the ELPCT case study suggested that the management lead who was the instigator or 'animator' (Roche and Geary, 2002, p. 669) in introducing workplace mediation foresaw potential union objections and was prepared to accommodate them where that was mutually

beneficial (Saundry, McArdle and Thomas, 2011). For example, the union lead representatives were adamant that disciplinary cases should not be mediated [(U)BI]. This was either 'conceded' or had not been management's intention in any event as it would have aroused opposition among line managers who did not want to relinquish control over disciplinary matters.

In the NHS organisations whose representatives participated in this study, there appeared to have been a move within HR towards actively trying to shift away from the traditional formalised dispute resolution culture to encourage more informal resolution, with line managers having a more active role and responsibility in that process. The objective was to cut the direct and indirect costs of formalised conflict and also, in some cases, to enhance team working to enable better patient care. In some NHS organisations, UNISON representatives welcomed new dispute resolution processes such as workplace mediation and facilitated meetings; in others, representatives' experience was that workplace mediation had become a quasi-compulsory, 'tick-box' process (discussed in the next chapter).

Local government

In contrast to the NHS, 'there has never been a culture of partnership in local government' [UNI-1] and workplace mediation had not been on the agenda of the national negotiating body, the National Joint Council for Local Government Services (England, Wales and Northern Ireland).

According to the national interviewee from the Local Government Service Group, the 'very negative industrial relations climate' at national level in recent years could have transmitted the 'wrong' message to local government branches that collaborative problem solving was not 'where we want to be' and that branches supporting mediation could be seen within the union as 'too soft' or 'opting out' [UNI-1]. Additionally, branches were preoccupied with fire-fighting:

> [The] mayhem out there… 40 per cent budgets cuts, redundancies and reorganisations… could mean that there's more of a place for mediation in some of that, but… things are… changing from day to day [and] I suspect there's not the space in most local authorities, even if people wanted to do it at the moment [UNI-1].

This national representative 'had never been aware of any local mediation programmes'.

Higher Education

Higher education institutions were similar to local government organisations in that there was no direction or concerted encouragement from national joint negotiating bodies or employer associations to member organisations to adopt workplace mediation, notwithstanding the extensive work done to promote the use of mediation in HEIs by the HE Funding Council for England (HEFCE) Improving Dispute Resolution (IDR) project, referred to in the literature review.

In the national bargaining machinery, the Joint Negotiating Committee for HE Staff (JNCHES), the national employer's side were said to not consider workplace mediation 'a big thing' – they 'were happy to talk about it but it was not something for national bargaining' which had 'gone through a process of winding down' or at least narrowing in scope so that 'something like mediation would be down to institutional level' [UNI-2]. The JNCHES employers' unwillingness to expand the national bargaining agenda in this respect partly explained the lack of engagement with workplace mediation at national level in the UNISON Higher Education Service Group. However, UNISON interviewee [UNI-2] recalled that the national trade union side of the JNCHES were 'sceptical' about the HEFCE IDR Project, 'particularly the academic unions', on the basis that workplace mediation 'could potentially cut out the trade union role as defender of the person in front of the employer... potentially interfering with the union-employer relationship'. Consequently, the national staff side 'didn't pursue a national role' in relation to workplace mediation, although UNISON was aware that some of its branches were 'pretty involved' although this was 'localised' and there was 'no demand for a national framework' [UNI-2]. The UNISON interviewee [UNI-2] was uncertain if the University and Colleges Employers' Association (UCEA) 'did anything about mediation'. (In 2018, the UCEA was running courses on mediation awareness.)

Police

There was no provision in the 2017 *Police Staff Council (England and Wales) Pay & Conditions of Service Handbook* on workplace mediation. However, the scoping

exercise undertaken by the writer (described in chapter two) indicated that around a third of GB police forces have had a workplace mediation service at some time. For example, West Midlands Police launched its scheme in 2004 'with the involvement of the Police Federation and other unions' (CIPD/ACAS, 2008, pp. 19; ACAS/TUC, 2010; CIPD/ACAS, 2013).

UNISON workplace representatives' experiences of the introduction of workplace mediation

In this sub-section, the findings on workplace representatives' experiences of the introduction of workplace mediation are set out and discussed. In all cases, the employer took the initiative in introducing workplace mediation. A significant factor in determining UNISON branch leaderships' reactions was the extent to which individual employers were prepared or wished to engage the unions in introducing workplace mediation. The findings are grouped according to the patterns which emerged from the data in respect of employer positions and union responses. As perceived by the UNISON participants in the study, employers' approaches ranged from unilaterally introducing workplace mediation to actively seeking collaboration with the union. None of the interviewees' branches took an overtly hostile stance to the introduction of workplace mediation but most branches were not highly enthusiastic about it, and there was one case where the branch withdrew support for its use. The 'branch' is mostly used as shorthand for the branch leadership.

Unilateral introduction by the employer: Coping strategies by the union

In the sample, there were two local authority examples of what the union perceived as unilateral introduction of workplace mediation by the employer. The response of the branch in Local Authority A (or more specifically, usually the branch leadership) could be described as adopting a pragmatic coping strategy.

In a Local Authority A, the researcher interviewed two UNISON representatives in different services. Both reported that the union had had little involvement in its adoption around 2005 or its re-launch in 2012. 'We were just basically told it's going to happen and then they asked for volunteers' [to train as mediators] [UBI-4]. 'I think it would have been better to have… introduced it with our agreement… but that's not

how the Council likes to do things' [UBI-2]. The branch had not taken a formal policy decision in response, but 'we discussed it…. We didn't think we should reject it out of hand… because they will get people into mediation, so we thought, well, we best try to help people in that process' [UB1-4].

The motivation for its introduction was 'to try to reduce use of the grievance procedure' [UBI-2]. In one service, 'grievances were going through the roof' owing to 'a hostile, aggressive management style' with 'American-style bullying from the top of the structure right the way down to frontline managers' [UBI-4]. The union raised this issue of 'systemic bullying' with a new head of service who 'put an end to it' and instigated the use of workplace mediation in the department. 'So what happens now, a grievance is submitted and both sides would immediately be asked if they'd prefer mediation' [UBI-4]. Although the bullying issue in that department/section had been dealt with, austerity ensured the continuation of a target-driven approach to managing staff in social services and housing, for example. The pressure was perceived by rep UBI-4 as managerial bullying:

> People are being targeted for performance challenge… they get a disciplinary on that and then sickness goes up, then they get disciplined on that [UBI-4].

Both representatives in Local Authority A were also senior branch officers. Although industrial relations were described as 'OK', years of cuts to budgets and services had taken their toll on the relationship with the employer; rep UBI-4 described it as 'the Cold War', while interviewee UBI-2 observed that:

> The employer tries to sideline us wherever possible… and is just not particularly responsive to staff or union concerns… it's not really in their interest… we're not particularly powerful at the moment. So they don't really have to listen to us that much, so they don't [UBI-2].

In Local authority D, there had been no engagement with the UNISON branch over the introduction and use of workplace mediation: 'HR has not sat down with us' [UB(s)-1]. Forms of mediation had been used in the council since 2005. The 'desire for it [had been] greater from management' and the UNISON interviewee thought its use had 'trailed off'. It transpired that the in-house service, apparently using mediators from HR, had been replaced by the use of external mediators. Despite the disconnection between HR and the union over workplace mediation, the branch representative said

that both management and the branch liked to try to resolve things informally, and union representatives acted as 'informal mediators' in (for example) negotiating settlement agreements over exit packages – activity that had increased under the pressures of cuts and workforce reduction.

Management initiative: Branch cooperation

This category included a local authority, police force and university branch. In Local Authority C, mediation had initially been undertaken by HR officers. The branch's senior officers had had some concerns about confidentiality and the competency of unqualified mediators. The council switched to using external mediators, then around six years ago some HR officers undertook mediator training and they have since provided the service. The UNISON branch covered the council, including schools, and over 100 other employers. Membership density within the council was around 50 per cent. The scenario of cuts and outsourcing was similar to the other local authorities but unlike Local Authority A, industrial relations with the council were said to be 'very good' [UBI-6]. Rep UBI-7 added:

> We're fortunate… we do have very good working relationships with most managers and HR departments here [UBI-7].

In relation to schools, the branch caseworker had 'worked very hard with head teachers, to maintain… relationships because I know it furthers my aims and that of my members' [UBI-7]. Workplace mediation was provided by HR to schools and council departments on a charged-for basis. Owing to good relationships and everyday informal contact between HR and the union, the branch was comfortable with HR mediating – its main concern was that mediators were competent.

According to the representative interviewed in Police Force B, an in-house service had existed for quite a number of years. Initially, mediation had been 'part of the respect and dignity at work (RADAW) process' [UBI-9]. The grievance procedure now incorporated RADAW. The branch did not have a formal policy on the use of workplace mediation:

> We… refer to the organisation's grievance procedure which includes mediation as a remedy [UBI-9].

Informal resolution was the preferred *modus operandi* of the branch leadership:

> We've gone out of our way to make sure we have a real good relationship with the senior HR officer who deals with… grievances. I think that's been the key… that link between the trade union and those that deal directly with the grievances. Because they know they can pick up the phone to us and say "I've had a complaint, we've had a grievance again from this individual. What do you think about it? What should we do?" We can say…"we think this individual just needs this, this, or this. That's achievable" [UBI-9].

The branch representatives' involvement centred on advising individual members on their options when they approached the union for assistance and liaising informally with HR over the handling of complaints. Interviewee UBI-9 found mediation to be 'one of the most useful tools to resolve workplace issues'; and members were encouraged to try it in cases judged (by reps) to be suitable (as discussed in the next chapter). However, some cases were pursued formally, including to the employment tribunal. While the relationship was not adversarial, it was not one of incorporation.

University B had used workplace mediation for at least five years, according to the branch representative [UBI-14]. The impetus for its introduction was not known - the representative was not an employee of the university at the time. The branch did not have a policy on workplace mediation.

The branch representative described the university as:

> …a fair and decent employer [with] pockets… where that is not true and it is nearly always the line manager who is the source of the issue…. It's in those… situations where I think mediation can play a role because often it's around miscommunication [UBI-14].

There appeared to be little engagement between HR and the union over the operation of workplace mediation in the university and neither had proactively approached the other. Although the representative had 'cultivated a fairly good informal relationship' with a senior HR officer, in regard to in-house mediation service:

> We're probably swimming in different pools, which is a shame really, that we are not overlapping more than we do [UBI-14].

This was one of a few occasions during the fieldwork where an interviewee was prompted to find out more about their employer's provision for workplace mediation as a result of being asked to participate in the study.

Union involvement sought by the employer: Guarded engagement by the union

This category included cases where, to varying degrees, employers sought union involvement with the introduction of workplace mediation and branches accepted their overtures, on the basis of guarded engagement. This could also be described as critical engagement in some cases in that branch representatives were not wholly convinced of the merits of workplace mediation; however, this was not based on a highly developed understanding of workplace mediation or its ideology. It will be argued later in the thesis that unions should engage critically with workplace mediation but that this requires representatives to be knowledgeable about it at a conceptual as well as practical level. The respective branches in this category had members in a police force, four NHS organisations and a university.

According to representative UBI-5, in Police Force A, exposure to in-house workplace mediation began with collaborative working between neighbouring forces to make savings after the 2008 financial crash. In regard to HR services, workplace mediation was identified as a candidate for joint working. In 2014, these forces adopted a common mediation policy covering police officers and police staff. It appeared that Force A at least set up its own in-house service, although the recruited mediators were trained alongside those from the other forces. As in other organisations in this study and the UK literature, there was an instigator, in this case, the HR manager who led on individual dispute resolution in Police Force A. The relationship between HR and UNISON was said to be 'very good' [UBI-5]. HR was keen to involve UNISON and the Police Federation at the outset.

The representative recalled that mediation was portrayed by the employer as 'a jolly good idea' and as if 'this would solve the problems of the world' [UBI-5]. While open to its use in principle, this was from a critical rather than a converted stance:

> I think their ulterior motive was to reduce the number of fairness at work [complaints] and grievances because… they were something that was collated and counted. So… it was in their interests to try and knock them on the head before they got into our hands… that was… their plan of action. I don't think it was successful [UBI-5].

In regard to UNISON reps' experiences, Police Force A was exceptional in not being explicit about its motivation for using workplace mediation. Interviewee UBI-5 was

clear that reducing formal employee complaints had not been articulated as an objective.

Fast forwarding to 2017, owing mainly to cuts in HR staff, including crucially the HR instigator, and the loss of trained mediators, the in-house service had withered away - 'we've lost that internal skill' [UBI-5]. Police Force A did use external mediators, but sparingly, in UNISON's experience. As rep UBI-5 observed, mediation did not succeed in knocking grievances on the head. However, there was currently 'a big push to try to resolve things [fairness at work complaints and grievances] sooner, and at a more local… and lower level' [UBI-5]. This represented:

> …a marked change for us because in the past... people have gone formally [into the] grievance procedure quite quickly.… Now they're saying, "you've got to go informal and you've got to exhaust that before we go anywhere else", which I think in some respects is a backward step but I can also see why they're doing it. And some things are very suitable for dealing [with] very low-level, and other things just aren't [UBI-5].

In regard to issues unsuited to informal means of resolution, representative UBI-5 referred to the impact that the rank structure in the police has on informal dispute resolution. Where, for example, a member of the police staff is managed by a senior police officer, there is a 'step change between the ranks' and that officer 'feels the buck stops with them and they can make the decisions. It's …quite difficult for people to get in the middle of that and try and facilitate things [UBI-5]. In a similar vein, some NHS UNISON branch interviewees commented that where there was a significant gap in the grading between parties in a workplace conflict, this could act as a barrier to the higher status individual agreeing to mediation or to resolution if they regarded it as involving an inappropriate incursion on their authority. Notwithstanding their critical stance towards mediation, representative UBI-5 lamented the demise of the in-house service and (what was perceived to be) restricted use of external mediation owing to cost, at precisely the time when more options for informal resolution were needed.

In NHS organisation E, according to the branch representative, workplace mediation had been introduced around 2007 as an option for resolving bullying and harassment complaints:

> Very often it was very difficult to actually find conclusive evidence of bullying and harassment, so it was felt that a better approach would be about trying to resolve differences informally [UBI-11].

The introduction of workplace mediation 'was more a Trust initiative – I don't think the unions asked for it' [UBI-11]. As part of the Trust's arrangements for partnership working, 'we have a policy group that negotiates all the policies' [UBI-11]. In regard to workplace mediation, the branch representative recalled:

> It was one of those things where they [management] talked to us about it, but it wasn't really a negotiated thing. It was just this is coming in and they would like Staff Side to be onboard with it really. I don't think anybody voiced any major objections and said "well no, we don't want it" [UBI-11].

The branch did not have a formal policy on workplace mediation – 'we just… follow the Trust policy really' [UBI-11]. Industrial relations with the employer were said to be 'quite good… on the whole it's reasonable' [UBI-11].

In 2016, the in-house mediation service was re-launched. The impetus on this occasion was high levels of stress-related sickness which, the branch representative said, was quite often symptomatic of 'relationship difficulties… and obviously it was costing the Trust a lot of money with people being off sick' [UBI-11]. The service was relocated from HR to Occupational Health. The existing mediators were predominantly HR staff although apparently there were at least a couple of mediators who were union reps [Interviewee (U)BI].

The reasons for what could be described as partial engagement on the part of the branch with workplace mediation, both the original and new service, related to the perceived institutional interests of the union – with limited resources, the priority was to provide representation for members. While the branch made referrals to the service, there was also some scepticism about the success rate claimed for mediation and a view that mediation was being overly promoted as the "go-to" process for resolving individual complaints. Historic internal union tensions and current inter-union competition may have played a part in shaping the branch leadership's attitude to mediation. Some years earlier, the coordinator of the re-launched service in NHS E had been a lead UNISON representative (for this branch) in another NHS organisation, (NHS I). In NHS I, UNISON members subsequently formed a breakaway branch. After transferring to NHS E, the former lead representative had left UNISON and, at the time of the fieldwork, was a branch officer for another union.

In NHS A, UNISON had supported the introduction of workplace mediation. The UNISON interviewee, who was also a staff side representative, considered it to be an initiative that 'needs to get trade union agreement' [UB(I)-1]. Its adoption had been facilitated by partnership working which had been in place since *Agenda for Change* (2004). The option of workplace mediation was part of the Stage 1 Grievance Procedure. The drawbacks of the formal individual grievance procedure were recognised:

> The grievance procedure is very destructive… management and HR [particularly] get very entrenched defending the manager [UB(I)-1].

The Trust had 'qualified internal mediators' and there was now also the option of using external mediators, depending on the circumstances of the case. The in-house mediators were said to be volunteers (as opposed to paid roles) who were qualified to mediate by virtue of their professional role or training. Interviewee UB(I)-1 had had 'limited exposure to cases that ended up in mediation'. With that caveat, and taking into account what was said about the operation of mediation in the trust (referred to in the next chapter) while supportive of its use, the union appeared to be partially engaged rather than critically engaged with the process. This was not because of concerns about conflict of interest or priorities over deployment of union resources; rather it seemed that mediation was a managerial process with which UNISON cooperated for the benefit of members.

In NHS D, an ambulance service, where individual complaints (under the dignity at work procedure) were mediated, only external mediators were used. As a precursor to the operation of workplace mediation (discussed in the next chapter), it is relevant to mention that interviewee UBI-10 identified the arrival of a new chief executive a few years ago as being pivotal to the shift to informal dispute resolution and the 'relative sea change' in industrial relations. Previously, in the representative's view, industrial relations in organisation D had been 'fractious… If someone had a minor issue, they were turned into grievances straightaway'. Communication with management was minimal or difficult 'because there was no mutual respect on both sides… it wasn't… possible to sit down and have a mature conversation and solve a problem'. The incoming chief executive had 'a view that everything is in partnership as much as it is possible' and a genuine willingness to involve the unions. Although the new culture

'was not the finished article', it had percolated down the management ranks, as evidenced by the willingness of line management to increase facility time:

> My [line] manager… recognised what I was doing and took me off the road… and said "Look, if you want to do union work, go away and do it; solve the problems if you can, stop them escalating" [UBI-10].

In NHS G, workplace mediation had been introduced around 2010. At that time, the organisation 'was starting to get bogged down with the weight of employment relations cases [such as] bullying and harassment, grievance, sickness absence and disciplinaries' [UBI-15]. The arrival of 'a new HR director… with fresh ideas' led to its introduction. Individual cases became bogged down because of the tendency for issues to be dealt with formally, rather than informally in the first instance. Some managers' reluctance to manage partly accounted for this:

> …because the managers felt… if they always forwarded something to a hearing then it alleviated their duty and responsibility to be accountable for a decision….They could go to a panel and let the panel decide… We felt as if managers were just robotically putting people through formal procedures [UBI-15].

Members whose cases did not involve a 'formal issue' could be denied a negotiated resolution. In this respect, mediation offered an alternative:

> Even if we [the union] say to people "we don't think this is a formal issue", there was no way to provide any other solace… so without mediation, there was no way for us to turn around [to management] and say "let's have a conversation" [UBI-15].

Aside from the requirements to engage the unions under partnership working, the new HR director was willing to involve the unions from the outset in new initiatives. This is an example of an instigator who had experience of workplace mediation in another NHS organisation. Thus the unions were 'co-partners' – for example, there were two 'leads… one workforce [HR] and one trade union' [UBI-15] who were the first points of access to mediation.

The branch had no formal policy on workplace mediation. As a partner, the union saw itself as 'a critical friend' [UBI-15]. On the use of mediation and its strengths and weaknesses, 'we could definitely see advantages… as well as disadvantages' [UBI-15]. This was particularly the case in relation to the operation of workplace mediation and the outcomes, as discussed in later chapters.

In response to the invitation to participate in the study, a written response was provided by a UNISON branch officer [UB(s)-2], University D branch. According to secondary sources, initially University D ran a pilot workplace mediation scheme, using external mediators. ACAS then trained in-house mediators and the service was launched in 2016. The branch was approached by HR with a request for union reps to train as mediators. The invitation was declined:

> Our skills are paid for by our UNISON members…. We are trained as stewards by UNISON. We are accountable to the… membership and decided that we could not also act as mediators for the University. Our duty is to act for our members as stewards and officers [UB(s)-2].

At the highly guarded end of the spectrum, the view was taken, presumably by the branch leadership, that:

> …the mediation scheme can have its place in low key situations but in our experience, it is not suitable for someone who is being bullied to face the bully. There is an unequal power balance and the bully who has honed their skills, continues to bully during the mediation. I believe that there has been much research on this [UB(s)-2].

Workplace mediation: Union-employer collaboration

This category included cases where there was active union cooperation with the use of workplace mediation, or union-management collaboration. (In this sense, collaboration is not intended as a synonym for incorporation.) There were one local authority, one university and four NHS organisations in this category.

Of the five local authorities represented in the study, only one case could be described as being an example of collaboration between the union and employer, with the union being engaged unreservedly in the use of workplace mediation. In local authority B, workplace mediation had been introduced in 2011 as an alternative to the formal grievance procedure. The branch representative explained:

> We had large levels of grievances. Those grievances in many cases went back many years, they were never properly resolved, and they were costing staff, our members and the Council large amounts of money, and they usually would end with somebody leaving, whether it was via them resigning or a compromise agreement or other form [UBI-16].

From the union's perspective:

> With… so many grievances… we could not support our members in the way that we needed and wanted to support them, and so we would direct them to mediation as well to try and get them to talk to the people [other party/parties] before raising grievances [UBI-16].

The branch had lost stewards through retirement, redundancy and outsourcing, leaving only a handful of 'active stewards' to represent a large, dispersed membership. As will be discussed, the use of mediation resulted in a dramatic decrease in formal grievances. Consequently, the stewards' and branch officers' workload had become manageable. But the branch leadership's willingness to support the use of mediation was not purely instrumental in the sense of being a convenient way of managing the volume of individual members' cases. It was underpinned by the branch representative's strong belief in the efficacy of informal resolution and that better outcomes for members could be achieved through mediation, bearing in mind that most cases concerned breakdown in working relationships or miscommunication (see the next chapter). Not all issues were suitable for mediation – interviewee UBI-16 was clear that some cases should be dealt with through formal procedures.

In response to an approach from the employer, the branch leadership had been 'very happy' to be involved. The branch representative's prior experience of workplace mediation appeared to have been pivotal to this decision:

> I certainly had experience of mediation previously and I had seen very positive outcomes from that mediation… everyone on the branch committee said "right, it's what you've been talking about for a long time – let's do it" [UBI-16].

In this sense, the UNISON representative acted as an instigator on the union side. Mediation 'certainly to me seemed a way of reducing the number of grievances but [also] having a long-term effect on the relationships of the parties to the disputes' [UBI-16]. Unresolved conflict was also seen as being detrimental to the quality of service provision and 'the people that we were meant to serve'.

When asked why the employer had invited the union to be involved in introducing workplace mediation, the branch rep said one reason was that 'the company… doing the training said it always works better if the unions are involved' [UBI-16]. Crucially, there had been a change of leadership in the branch around ten years ago which had laid the groundwork for the employer's invitation to the union to be involved in mediation:

> I believe that one of the reasons why HR spoke to… UNISON about becoming trained mediators is the way that they saw us working, and the way that we worked was probably very different to previous branch secretaries here and certainly my experience in other [public sector] unionised organisations. We don't work in a way that is "we're at war with our employer" - we work in partnership [UBI-16].

University C launched its in-house mediation service in 2011. Workplace mediation had been introduced in consultation with the three unions represented on the Joint Negotiating Committee (JNC):

> It was good that we were involved, we were listened to; it was something that our opinion, our advice was actively sought…"is this a good thing, is this something that you guys will be able to work with?" [UBI-18].

According to the UNISON representative, the unions 'were very happy to have an alternative to the formal grievance procedure… because it's going to solve a lot of issues that currently would go into a formal grievance procedure when they maybe didn't need to' [UBI-18].

Industrial relations were said to be 'very good' with 'quite a good, positive relationship' [UBI-18] between UNISON and the employer. As in Local Authority B, this had not always been the case:

> The HR Department are very focused on "we want to work with you guys, we don't want this to be a constant battle", so there's a lot of seeking our input and our advice and making us aware of things… and it's not always the way it's been in the past… it used to be, you were on opposite sides of the table and you spent hours arguing with each other… they're moving away from that which is beneficial for everybody [UBI-18].

In NHS F, workplace mediation had been used for bullying and harassment complaints since the early 2000s:

> Our policy starts off… in bullying cases and maybe harassment cases… informal routes are recommended in the first instance before it goes down the formal route. And then… if people do a grievance about bullying or whatever, and they go for an interview, they're always asked "do you want this to go formal or do you want to go to mediation?" So… it's basically attempted at every stage [UBI-12].

The UNISON branch had been supportive of its use, mainly because of the deficiencies of the formal procedures:

> We [the branch] did find going through formal grievance procedures… the resolutions weren't good because quite often… whether the complainant won… or lost the case, you [the parties] ended up working together again. So… the Trust and… [the union]

> were finding ourselves having to use mediation even after going through the formal procedure… where people had refused to do it prior to going formal [UBI-12].

Rep UBI-12 had believed 'for some years… that mediation in its place works really well and you have to do it because there are some circumstances [where] nothing else works. Mediation's the only thing that works' [UBI-12].

Initially, the Trust used external mediators but 'it was taking months… to get organisations in' [UBI-12]. Managers also undertook *ad hoc* mediation. In the branch's experience (as in Local Authority C), competency had been an issue:

> Quite often managers would try and do informal mediation. They weren't trained - they cocked it up - it always went wrong when they did it…. People are "oh yeah I'll do mediation" but… it's not mediation and it doesn't work [UBI-12].

Around 2012-13, a group of in-house mediators were selected and trained. The branch had no concerns about accepting the invitation for union representatives to participate in mediator training:

> It was never an issue… The only disagreements we had… was [sic] [in regard to] one of our reps, but it wasn't against doing the actual training. It was… the style [of the training] he didn't agree with which was… his choice. He wants to be a rep and he can't put another hat on [UBI-12].

Overall, industrial relations in this trust were said to be good. NHS organisation F had started formal partnership working in the late 1990s, based on the TUC Partnership Principles. It developed under *AfC* and mediation was seen as an 'add-on' to joint working. The UNISON representative regarded partnership working as resilient enough to withstand shocks to the system which did occur:

> You have to revert back to confrontational industrial relations - that… style at times. But we tend as a Staff Side… to do our best to avoid that because we find it far quicker and we end up with better results than working in conflict all the time [UBI-12].

In NHS H, a partnership approach was taken to mediation – in keeping with the statutory direction to NHS Boards in Scotland to work in partnership with recognised trade unions. Following discussion at Board level, an in-house workplace mediation service was set up in 2014. Prior to that, the employer used external mediators. The UNISON interviewee [UB(I)-17] - who was a hospital partnership lead - thought that cost was a factor in the decision to shift to an internal service. The mediation service sat within the HR Directorate. Mediation was recommended as the first port of call to

resolve workplace conflict informally in regard to individual complaints and in some team/group conflict which, as interviewee UB(I)-17 observed, 'can affect a whole department'.

Initially, there had been 'some resistance' to the introduction of the internal mediation service among UNISON branch members and stewards, reflecting concern that this was 'passing on the work [of union representatives] to 'someone else' [UB(I)-17], and that staff would not be represented in mediation (discussed in the next chapter). But apparently branch support for its use had come to be 'embraced by all' apart from a couple of members whom the representative thought would be unlikely to change their position.

In one case, NHS B, the organisation had been the subject of an earlier, published case study (Latreille and Saundry, 2015). An interview was sought with a UNISON branch representative in NHS B to further explore trade union views and experiences. In NHS organisation B, 'there had been a very strong push towards partnership working and… making that meaningful' (HR manager, cited by Latreille and Saundry, 2015, p. 39) and there was a constructive relationship between HR and staff side' (Latreille and Saundry, 2015, p. 39). At the time of this writer's fieldwork (2017), in terms of the relationship with UNISON, broadly this remained the case:

> It's [the relationship] not too bad… we are supposed to be working together because we're a foundation trust.... It doesn't always happen but I think they are prepared to listen. Our branch secretary and his deputy have weekly meetings with our chief executive and head of HR. So we do have an ear and we do have a voice. It is not perfect but it does exist… we have at least got a foot in the door [UBI-3].

In NHS B, the 2005 staff survey results showed above average (for NHS trusts) levels of stress and experiences of bullying and harassment (Latreille and Saundry, 2015, p. 17) and new Health & Safety Executive stress management standards prompted a joint union-management analysis of conflict hotspots with a view to being proactive 'as opposed to just waiting until things went pear-shaped' (trade union representative, cited by Latreille and Saundry, 2015, p. 18). This paved the way for union support for mediation.

In NHS C, an ambulance service, workplace mediation had been introduced mainly to reduce the length of time it took to resolve dignity at work complaints, particularly at

the investigation stage. The *Dignity at Work* policy and procedure had been substantially revised in 2017. Emphasis was placed on early, informal resolution and the role and responsibilities of line managers were significantly enhanced. Under the policy, if the line manager decides that the complaint is not a potential breach of disciplinary rules, that manager conducts fact-finding and considers options for 'local resolution' such as 'contacting both parties to understand the issue', mediation, or a 'facilitated conversation'. While it is up to the line manager to decide on the most suitable option to resolve the issues, taking account of the views of the complainant, the policy states that working in partnership with union representatives is likely to help achieve a resolution. This policy and other HR policies were taken through the partnership machinery and, according to the UNISON representative, the *Dignity at Work* policy had been rigorously debated in formal partnership meetings. The branch did not have a formal policy on workplace mediation - there was no perceived need for it [UBI-8].

The working relationship between UNISON and HR and senior management was said to be good. The backdrop to this was the appointment of a 'very trade union orientated' chief executive who invited ACAS to work with the senior management team and staff side to draw up a partnership agreement 'and it's still there and it works quite well' [UBI-8]. Examples of the representative's critical engagement with the operation of workplace mediation are given in the next chapter.

Union cooperation withdrawn

There was one example in the study of the union's experience of workplace mediation which led the branch to withdraw cooperation in regard to its use. In authority E, mediations were conducted by HR staff. Around 2012, the workplace mediation element of the bullying and harassment complaints procedure had been 'beefed up' which the branch had agreed to [URI-1]. It became a 'fairly significant part' of that procedure. However, under conditions of austerity, according to UNISON, mediation had been used in connection with a small number of disciplinary cases which had culminated in dismissals. The example was given of a UNISON member facing disciplinary charges who had agreed to mediation with the endorsement of their 'very experienced' steward [URI-1]. In mediation, the parties agreed that their working

relationship had broken down, and apparently agreed this could be fed back to the employer. With no suitable alternative post available, the member was eventually dismissed on the grounds of breakdown in trust and confidence. The branch representatives and the regional organiser believed that had mediation not occurred, the disciplinary sanction would have been a final written warning. Following this case, the branch formally advised the employer that it was withdrawing its support for the use of in-house mediation, including in bullying and harassment cases. The branch did not instruct members not to participate but advised them to be extremely wary about agreeing to participate. HR was unable to retrieve the situation with the union. The regional organiser [URI-1] understood that this remained the branch position three years on.

UNISON: Introducing workplace mediation - role displacement?

In this study, some opposition to UNISON representatives serving as mediators was ideological, in the sense that to mediate was seen as acting in the service of the employer. Although it also related to conflict of interest, the major concern was more instrumental - that having 'union' mediators could cause confusion or disgruntlement among members who might wonder why they were paying their union subscriptions if representatives were not acting solely as reps and possibly spending time on non-members' problems as well.

Another explanation offered for union representatives' reluctance to embrace mediation was fear of role displacement or self-interest on the part of full-time officials or workplace representatives on paid release. UNISON branches were under pressure from higher levels in the union to recruit members. For most employees, taking out union membership as an insurance policy meant having union advice and representation if they were involved in any formal disciplinary or complaints procedure. Branch representatives and regional full-time officials were highly conscious that individual members expected value for money and (in this study) particularly in the NHS, if they were dissatisfied with their union, they could opt out or join a rival union. Consequently, it could be argued that branch representatives had a vested interest in the status quo and were wedded to formal approaches to dispute resolution. Alternatives such as workplace mediation could be seen as threatening

because they diverted cases away from procedures in which employees (if union members) would often be represented. This view envisaged no role for the union in the mediation process (discussed in the next chapter) and overlooked activities other than individual representation that branch officers and stewards undertook (Waddington and Kerr, 2009).

The findings of this study did not support the vested interest hypothesis. Most UNISON interviewees acknowledged weaknesses in the formal procedures especially in bullying cases and most welcomed mediation in principle as an alternative in appropriate cases. There was some scepticism over claims made for the success of mediation which, from a critical pluralist perspective, is arguably justified. Reservations or concerns about mediation centred on its perceived misuse by employers - particularly where mediation had been introduced unilaterally - and poor mediator skills, as will be discussed in the next chapter. In the UNISON sample, where representatives had taken on mediator roles, there was no sense among them or apparently other branch representatives that this resulted in union displacement, even where the number of formal grievances had plummeted, as in local authority B. Most branches had too few active stewards and the use of mediation could save representatives' time (see chapter five). Importantly, the UK case studies indicate that the use of workplace mediation made little impact on the incidence of formal disciplinaries. Although one interviewee in this study commented that 'there's probably been less disciplinary investigations' [UBI-12], overall, there was little indication that demand for union representation in disciplinary cases had declined since mediation had been introduced.

Union in-house mediators: Incorporation or independent engagement?

When organisations introduce a workplace mediation service or scheme, a key decision to be made is whether to use in-house or external mediators (or both); and if in-house mediators are to be used, who will they be? In unionised organisations, to some extent, the UK literature suggests that the choices that were made reflected the orientation of the employer towards union involvement. Employers in this study that sought union support for their use of workplace mediation mainly used in-house mediators selected from recruitment exercises open to all employees. Union representatives might apply as individual employees, or in some cases, they were

invited to train and serve as mediators because they were union representatives. (As mentioned earlier, not all union branches accepted the invitation.) These employers used the co-mediation practice model, that is, two mediators per mediation. This enabled a balanced pairing of a 'union' mediator and a 'management' mediator although – as would be impressed upon them during mediator training – in their roles as mediators, they would be acting impartially and not in an advisory or decision making capacity.

By training and serving as in-house mediators, union representatives enter into the heart of the process. From a critical perspective, this opens up the prospect of incorporation. From a pluralist perspective, it can be argued that it enables unions to have influence over an essentially managerial process. This study did not involve interviews with employers but it could be hypothesised that unitarist and soft unitarist employers would tend to use management personnel or management appointees as in-house mediators. (Accord sources indicated this was the case in parts of the UK banking and financial services sector, for example.)

The following sub-sections examine the findings in respect of union views and experiences of the selection and training of in-house mediators in relation to the incorporation theme. The practice of co-mediation is discussed in the next chapter on the operation of workplace mediation in user organisations.

The CWU experience

As a joint initiative, unsurprisingly, Royal Mail and CWU opted for a co-mediation model for IR mediation. The *AfG* agreement stipulated that there would be 'two mediators, one a manager and one a union official [per mediation] …drawn from a national panel, whose members will be selected by Royal Mail and the union…' (*AfG*, Section 4, paragraph 5.2). Had the mediators been 'management', it is unlikely they would have been accepted by CWU representatives. There had also been indications that external mediators had been misperceived by CWU representatives as being 'management'. Cost factors aside, for both sides, there may also have been a view that for IR mediation, internal mediators would have a greater knowledge of the IR culture and workings of the organisation. Ten mediators were recruited – five from operational grades and five from management grades. Successful candidates were

seconded initially for a two-year period. By 2017, the national IR mediation team had reduced to seven - four CWU and three management mediators.

As an aside, when applications were invited from all Royal Mail employees for mediator posts in the national IR mediation team in 2014, there were 'over 700 responses' [CNI-2]. Interviewee CNI-2 found this unsurprising 'because it was something new'. In contrast, another national CWU interviewee was 'absolutely flabbergasted' by the response but thought it indicated acceptance of the need to change the conflict culture in Royal Mail:

> Where it [mediation] was viewed as suspicious previously because we've had this culture for such a long time… we convinced people that there was a need to do something different and… people wanted to be part of that [CNI-1].

An alternative view from a local CWU representative was that:

> A lot of union reps… in my experience… are very good mediators… negotiators, are very fair minded people.... They've got rich experience in dealing with people issues… and are concerned, not just about operational issues which tend to be more the focus with managers, they are just as… or even more concerned with people issues, and… can bring to… a mediation table, the human touch. I think that's why so many did apply because they felt they would be of benefit [CLI-5].

To the writer's knowledge, applicants from operational and administrative grades were expected to be CWU members but not necessarily union representatives.

The UNISON experience

In the NHS organisations in the study, mediators were drawn from staff side and management side representatives of local partnership bodies [NHS B; E; F] or selected from applicants which included (in a individual capacity) stewards or members [NHS A; C; G; H]. One NHS organisation [D] did not have an in-house service but used external mediators.

Information was available about mediator selection for four local authorities in the study. In Local Authority A, the mediators were recruited from staff applicants. Local Authority B had invited union representatives to train as mediators along with staff applicants. Mediations were undertaken by HR in Local Authority C. In Local Authority D, mediations had originally been undertaken by HR but were now carried out by the external employee assistance programme provider.

There was a mixed picture in universities and police forces. In Police Force A, branch representatives participated in interviews to select the CMO to undertake the mediation training but declined an invitation to have representatives train as mediators. The branch decision reflected unease about how union representatives mediating could be perceived by members:

> They [the employer] were encouraging us to train, and we felt that wasn't what we should be doing… that [it] was going to put us in a difficult position because… people see us, particularly those that are on full time release… as representing the union…. I didn't want to be in a position of… taking that hat off and going in and representing, or mediating between non-union members or even union members. I just think it put us in a very difficult situation. So… although we were involved in the set up, certainly we didn't want to get involved in becoming mediators ourselves [UBI-5].

The concern did not seem to be about UNISON representatives being seen by members to have been co-opted by management, rather it reflected discomfort about conflict of interest and a sense that it would be 'wrong' [UBI-5] for representatives to act as scheme mediators when their job was to serve the branch membership. This was not expressed as union reps "doing management's job for them," however there was no sense that the presence of union co-mediators could be beneficial for members who were parties in mediations.

In Police Force B, mediators were drawn from employee applicants. A UNISON steward was a mediator but in an individual capacity. In University C, a couple of members (but not representatives) were mediators. In University B, apparently none of the mediators were representatives or union members. A UNISON interviewee with previous HR experience of setting up an in-house scheme in another university recalled that the recruitment of in-house mediators:

> …was based… on people self-selecting. We [HR] took no cognisance of whether or not they were trade union reps. The net effect… was that none of them were… union reps, because… union reps weren't interested [URI-4].

Lack of interest was attributed by interviewee URI-4 more to the lack of organisation in UNISON higher education branches than perceived conflict of interest. However, as mentioned earlier, the University D branch did perceive a conflict and declined the invitation for reps to serve as mediators [UB(s)-2].

In NHS E, the UNISON branch did not take a position against its representatives training as mediators but it did not encourage it either, mainly on grounds that they were scarce resources and the branch's priority had to be providing representation in formal procedures. The Trust invited the Staff Side to nominate union representatives to attend training and serve as mediators. Invitations were also issued to other groups of staff. Interviewee UBI-11 explained there was a capacity issue for UNISON:

> We weren't opposed to it but none of the UNISON reps… put themselves forward to do it…. Those of us who have got full-time secondment were fully occupied anyway. So it was really the time commitment as much as anything, rather than we had issues with the process… quite a few of our workplace reps are clinical, they struggle to get facility release anyway, and our concern was that if we were asking for people to be released for mediation then… we would have difficulty… [with] people being released to actually do representation… which for us had to be the priority [UBI-11].

Allied to this was the consideration that 'quite a lot' of parties for whom 'we would have to perhaps invest a significant amount of time in doing the mediations might not even be union members' [UBI-11].

Interviewees that had attended training with managers and/or other staff selected to be in-house mediators were mostly very positive about it [UBI-16; UBI-3; UBI-12; UBI-18; (U)BI]. NHS rep UBI-12 said the training was 'really good'. It had got across the difference between being an impartial mediator and a representative:

> You do have to totally work differently than what you would… if you're representing someone…. It was just so different because you've got to be conscious that you're not representing anyone and you've got to be right down the middle [UBI-12].

Invited by HR, UNISON rep UBI-18 had been encouraged to attend by the other campus unions:

> We work quite closely with UCU and Unite and they said as well, "we had some reps who had done it [mediation training] the last time… and said it's a really good thing – we [UNISON] should do it.

This representative felt in a better position to advise members on the mediation option having attended this introductory course:

> It gave me a better idea of what's actually… being done in the [mediation] room…. I did find it very beneficial in terms of UNISON because I knew a bit more what I was talking about. When I was talking to members, I could say…" this actually is what it looks like, these are the sort of questions that you get asked, this is how the process goes", and I

> have found it helped reassure members a bit more; they have that bit more ownership, they knew what they were walking into [UBI-18].

As mentioned above, some UNISON interviewees observed that not all their colleagues found mediator training to be transformative or convincing. In this study, however, there was only one interviewee, from CWU, who had been deeply sceptical during the training, despite being a strong 'believer' in early, informal dispute resolution:

> I did sit there thinking… there's no way that you're going to get unions and managers round the table in a day and I did say it was just American rubbish… when I saw the booklet… I did put that across to the trainers and say "I can't see that working" [CNI-3].

The training did not dispel these doubts:

> I didn't believe the process… would work because of the relationships within Royal Mail… and obviously my experiences [as an area rep] over the last few years [CNI-3].

It took the experience of an actual mediation for rep CNI-3 to believe that the mediation process worked:

> But once I'd done that first mediation… it just worked, and it was the uninterrupted speaking time, that there was a powerful part of it… I [rang] another mediator and said "[it] works - I can't believe it works" [CNI-3].

Incorporation or independent engagement: A summary

Particularly from a radical perspective, moves by soft unitarist and pluralist employers to seek union support for the use of workplace mediation could be seen as attempts to dilute resistance from workplace union representatives to a managerial project. In the UK literature, it is evident that employers were motivated to gain union support for the use of mediation as this was likely to lend it credibility among employees and contribute to complaints being referred for mediation. From a pluralist perspective, mutual gains flowed from union-management cooperation - efficiency gains for the organisation and better outcomes for employees involved in grievances relating to problematic working relationships.

In the UNISON cases in this study, employers' immediate objective was to reduce the number of formal grievances - mostly bullying and harassment complaints. In Royal Mail, it was to reduce the incidence of unballoted localised industrial action. Involving

the unions as stakeholders or partners was likely to assist in allaying workplace representatives' misconceptions about mediation and fears of role displacement. Crucially, in this respect, no employer in this study made radical changes to the formal stages of its employee complaints procedure as a result of adopting workplace mediation.

In Royal Mail as in ELPCT, IR and workplace mediation respectively were key vehicles in the employer's strategy for changing the conflict culture of the organisation. In NHS B, mediation was a key component in an organisational approach to managing conflict designed to improve employee well-being and indirectly standards of patient care. Organisations' strategic objectives were transparent and supported in Royal Mail by CWU nationally, and in these NHS trusts, by UNISON lead workplace representatives. Union non-cooperation was a risk factor which could jeopardise the effective use of mediation (Latreille, 2011). In this study, apart from Royal Mail, organisations were probably capable of running mediation services without union endorsement, albeit sub-optimally. A possible exception in the UNISON sample was NHS C, an ambulance service. NHS C branch was well organised with high membership density. It had an influential voice at the partnership table and communication channels with senior management; and (as will be discussed) a leadership with the confidence to override procedural elements of mediation, such as quasi-compulsory participation, where the union considered them inappropriate in certain individual cases. In the NHS generally, whether unions were weakly or strongly organised, the existence of local partnership structures appeared to behove employers to consult the unions. In local authorities, universities and police forces, whether employers chose to engage the unions or tried to engage them, appeared to depend on a mix of factors including whether they regarded mediation as a managerial process, the state of industrial relations and possibly whether they anticipated a negative reaction from UNISON branch leaders.

Workplace mediation had been an unknown quantity to most interviewees in this study prior to their exposure to it in their employer's organisation. Union involvement at the outset, for example, in tendering for the CMO to undertake mediator training, contributed to representatives' knowledge of mediation and instilled confidence in the choice of CMO. However, this degree of jointness was uncommon. Apart from CWU, more commonly, where it occurred, stakeholder engagement with UNISON and other

recognised unions took the form of invitations to branches or staff sides for representatives to attend mediator training with management staff, and in NHS organisations, consultation over policy changes in respect of mediation.

From a critical pluralist perspective, participants in mediation training are exposed to the ideology of workplace mediation which manifests itself in the core tenets of mediation practice. The analysis of conflict is based on psychological perspectives, so while role-plays may be based on real workplace scenarios, the various CMO resolution models (which are broadly the same) treat conflict as individualised and implicitly divorced from the inherent conflict of interest in the employment relationship. However, in the writer's experience, the training often strikes a chord with union representatives' experiences of dysfunctional working relationships and the inadequacies of adversarial procedures in resolving these conflicts. Much of what is taught appeals to people's common sense. In this study, by the end of the training, only a handful of representatives were not signed up to mediate. According to the interviewees, recalcitrants did not want to, or could not envisage themselves occupying an impartial role. From a radical perspective, these representatives resisted being co-opted.

In this study, when the question of cooption arose, UNISON representatives who became mediators indicated that they were capable of "wearing different hats". Being impartial in mediation did not mean they were any less committed to representing individual members in formal grievance and disciplinary procedures or pursuing their collective interests in negotiations. This was also the defence offered by staff side representatives who were mediators in ELPCT (Saundry, McArdle and Thomas, 2011; McArdle and Thomas, 2016). The co-option issue loomed large in ELPCT partly because the mediation training was designed consciously by the HR director and CMO to help turn around the conflictual relationship between key union representatives and individual managers who were specifically invited to train as in-house mediators. Moreover, in the UK conflict management literature, ELPCT is cited as a torch-bearer for the role that workplace mediation can play in changing an adversarial conflict culture.

Arguably, the ELPCT case study was unique in that the HR instigator targeted union representatives and managers in dysfunctional relationships to participate in mediation training and serve as in-house co-mediators. This was an integral component of a strategic plan to change the conflict culture of the organisation. In contrast, in the writer's study, it was found that workplace mediation was introduced by two organisations *after* the conflict climate had changed, following a change in the leadership of the branch. In Royal Mail, although the employer (with union support) had embarked on a longer term IR cultural change programme, this did not involve converting union opponents to 'the promotion of industrial stability' (as *AfG* put it) through the medium of mediator training. It was important to have manager and staff/union mediators to lend IR mediation credibility with postal workers and management. It is highly likely that those recruited (who underwent psychometric tests) would have been predisposed to consensual dispute resolution, even if some doubted initially (such as interviewee CNI-3) that IR mediation would actually work owing to the adversarial climate beyond the training room.

This study found that UNISON and CWU interviewees who had attended mediation training did not exhibit deep scepticism about the employer's motives. Industrial relations were not said to be poor in any of the organisations where UNISON representatives trained as mediators. While a CWU interviewee [CNI-3] disliked the 'American' nature of the training, there was little if any critical assessment among interviewees of what the trainees were taught. Consequently, it appeared that trainee and practising union mediators rarely questioned or challenged key aspects of its operation. In the sample of interviewees, mediators and those closely involved with the management of services (with the exception of CWU gatekeepers below national level) were the most supportive of the use of workplace mediation. It will later be argued that most union representatives are not equipped (by union organisations) to critically appraise the ideology of workplace mediation and the practices that flow from it. From a critical pluralist perspective, the thesis will conclude that for the good of unions, and workplace mediation as a dispute resolution method, this should be addressed.

CHAPTER FOUR: THE OPERATION OF WORKPLACE MEDIATION

Introduction

This chapter sets out the findings in relation to union representatives' attitudes and experiences of the operation of workplace mediation in organisations - the 'pre-entry' stage and the process of mediation, that is, what happened during mediation meetings. The first section examines the extent and nature of union involvement with gate-keeping arrangements in in-house mediation services, firstly in Royal Mail and then in the user organisations featured in the UNISON cases. It also outlines the types of cases which were mediated. The second section discusses the role played by CWU gate-keepers in relation to unit representatives' participation in IR mediation; and approaches taken by UNISON representatives in advising individual members over the options for resolving their complaint, where this included workplace mediation.

The chapter then turns to the findings on union representatives' views and experiences of the mediation process itself. The third section discusses representatives' perspectives on the mediation process and in particular, mediator activity. In relation to the theme of incorporation, the position of union co-mediators is briefly discussed. The fourth section focuses on accompaniment in mediation. It includes first-hand accounts from UNISON representatives who had accompanied members in mediation and contrasts their views with those of representatives who relied on feedback from members who participated in mediation unaccompanied. The final section reviews the findings on the operation of workplace and IR mediation from the perspective of the participants in the study, particularly in relation to the incorporation or independent engagement theme.

Union involvement in gate-keeping and the selection of cases for mediation

Gate-keeping involves assessing whether cases are suitable for mediation, and if so, making arrangements for mediations to take place. It may involve triage, that is, the assessment of alternative processes or procedures to determine which is the most appropriate to use in each case, subject to the caveat (which applied in most organisations in this study) that ultimately the choice rests with the disputants, in theory at least.

Gate-keeping is not simply an administrative function. It is pivotal to the exercise of control of the mediation process. From a unitarist perspective, employee or union involvement in the management or oversight of gate-keeping would probably not be countenanced. From a radical perspective, joint gate-keeping could be seen as incorporation and a minor concession made by the employer to enhance the credibility of mediation with union representatives and employees. From a pluralist perspective, union involvement in gate-keeping could have mutual benefits for the employer and union and enhance union influence over the handling of individual workplace conflict.

The gate-keeping process for IR mediation was unique in this study as it was jointly conducted. Nationally, Royal Mail and CWU had agreed that the CWU divisional representative and the Royal Mail head of IR would discuss the suitability of disputes for voluntary mediation and referrals in their territory (Royal Mail and CWU, 2015a). They also participated in the 'triage' of cases referred for mediation – a process that was coordinated by the in-house national IR mediation service. This was the context in which CWU representatives experienced gate-keeping for IR mediation. As will be discussed, there was little adverse reaction to union involvement in these processes from interviewees and no criticism of the national co-management of IR mediation.

In Royal Mail, the HR Gateway Service – not the national IR mediation service - acted as the gatekeeper in bullying and harassment mediations. Since the IR mediators added bullying and harassment mediations to their portfolio, there had been liaison between the Gateway Service and the co-managers of the national mediation team over case referrals [CNI-2] but this was not understood to have extended to joint gate-keeping.

In relation to the UNISON cases, gate-keeping was usually undertaken by an HR officer. In the UNISON sample, there were no examples of joint gate-keeping. (Even in ELPCT, the scheme co-ordinator who was also a union partnership lead did not occupy the co-ordinator post in his union capacity.) In NHS organisation G, it was mentioned that there was a union ADR lead who was the first point of contact for union referrals to the mediation service but it was not known if this was a joint gate-keeping role.

Although gate-keeping was often performed by HR or the in-house occupational health service, examples were given by interviewees where there were informal discussions between the branch secretary and the HR contact as to the suitability or otherwise of a particular case for mediation or another process [UBI-9; UBI-7; UBI-16]. In Local Authority C:

> Usually things end up in mediation because either we suggest it, or HR suggest it and when we're involved, mainly it's both… quite often I have a conversation with the HR officer and say "I think this one's for mediation; shall we give it a try?". Obviously, we don't represent all the people involved so HR also make that decision on their own quite often [UBI-6].

In some organisations, union co-mediators could play a role in the gate-keeping process, for example, by liaising with prospective parties, as in Royal Mail; and in the case of UNISON co-mediators, by encouraging parties to mediate. UNISON rep UBI-3 (NHS B) who was also a co-mediator, said that '98 per cent' of people agreed to a joint mediation session following a telephone conversation with the co-mediators. The majority of cases in NHS B were bullying and harassment complaints. Reluctance to participate was attributed to employees 'not fully understanding' the mediation process and a 'lack of trust' that it would be confidential. From the representative's account, the co-mediators' telephone call was not a hard 'selling job' but an explanation of what would happen which also offered reassurance that mediation was voluntary and confidential.

Turning to the types of cases selected for mediation, in Royal Mail, examples of the 'many types of issues' said to be referred for IR mediation included 'annual leave, holidays, absorption, start and finish times' [CNI-2]. On the face of *AfG* and the *LBA*, it might appear that IR mediation dealt solely with transactional issues, however the accounts given by representatives in the study indicated that the issues were transactional and relational, and that mediators focussed mainly on *relational* issues, using the facilitative model and much the same techniques as in *workplace* mediation.

Consistent with the existing UK literature, UNISON representatives reported that most cases that were mediated involved complaints of bullying and dysfunctional working relationships, sometimes described as 'personality clashes'. UNISON rep UB(I)-17 observed that there is 'often an element' of bullying in cases where working

relationships were poor or had broken down. In Local Authority C, mediation could help stop issues 'getting out of hand' and unnecessarily becoming formal disputes. As one of the UNISON branch representatives explained:

> In the main, the cases that end up at mediation tend to be ones where… both parties could be acting better. I've dealt with quite a few cases where managers and a member of staff have had real difficulties communicating, and it's just got out of hand and… management are talking about disciplinaries, the member is talking about grievances and really actually what they needed to do was… try to find a way to work together [UBI-6].

Retrospectively, some UNISON representatives considered that mediation had been damaging to the member's interests. The examples mentioned were atypical of the type of complaints referred to mediation in the organisations in this study: one example related to disciplinary issues (Local Authority E) and another to a complaint about reasonable adjustments (Local Authority A), although in both cases, the working relationship between the subordinate and manager was also an issue. In neither organisation had the union been involved in gate-keeping. Rep UBI-2 (Authority A), whose sole experience of mediation was this case, concluded that it should not be used for 'serious' (rights-based) issues; while as mentioned in the previous chapter, the outcome of the other case led the branch to withdraw cooperation for the use of workplace mediation [URI-1].

All the UNISON representatives in this study were clear that blatant cases of bullying and potentially demonstrable unlawful harassment should not be mediated; and in the main, this did not appear to be a point of contention with HR gate-keepers. All the organisations in the UNISON sample were public sector employers with dignity at work policies and procedures. Arguably, a positive side to the expansion in statutory protection for employees is that union representatives and HR officers have a 'legal consciousness' which makes employers wary of breaching statutory or contractual employee rights (Barmes, 2016). UNISON guidance (2016a; 2016b) encourages workplace representatives to deploy rights-based arguments in pursuing members' individual and collective interests.

In bullying and harassment cases said by interviewees to be 'less serious', the mediation process was recognised as being much less destructive than formal processes could be. If agreement was reached in mediation, it indicated that the parties were satisfied with the outcome, although it was not always clear (as will be

discussed in next chapter) that union representatives knew the outcome of mediated cases. Overall, among UNISON representatives, the deficiencies of formal procedures were often acknowledged but there was less certainty as to the benefits of mediation.

Deakin (2014, p. 208) concluded that the appropriateness of mediation for bullying and harassment complaints was 'highly contingent', depending on 'a number of factors' including 'greater recognition of different forms of bullying and harassment…the skill and integrity of the mediator… and the need for an organisation to be seen as a party to mediation' (Deakin, 2014, p. 17). The UK literature does not enquire into the skill and integrity of mediators in any depth and party self-determination is contrasted favourably with the exercise of 'managerial prerogative' in deciding the outcome of formal grievances (Ridley-Duff and Bennett, 2011; Bennett 2013; Saundry, Bennett and Wibberley, 2016). The contingencies identified by Deakin (2014) are explored in this study from the perspectives of union representatives. From a critical pluralist perspective, the extent to which subordinates transcend managerial prerogative in mediation is called into question. What happens in workplace mediation has a bearing on whether union representatives regard it as a friend or foe and, taking into account the outcomes and impact of mediation (chapter five), the implications of the findings for unions are discussed in the concluding chapter.

From a CLS radical perspective, mediation is likely to be seen as an individualised route to dispute resolution in which issues are personalised and isolated individuals bear responsibility for "resolving" problems which stem from the collective nature and organisation of work and which ultimately require collective solutions. Furthermore, unions do not defend individual members' interests in mediation because they have no recognised role in the actual process. Paradoxically, the TUC, and it would seem many union representatives concur that their presence in mediation serves little purpose. Thus it can be argued that union representatives' support for mediation is self-defeating and collusive. These charges are examined in light of the findings on union representatives' views and experiences of the operation of mediation.

Where workplace mediation was an option in unionised organisations, the nature of the advice offered to members by union representatives is arguably central to the co-option/independent engagement question. Were members dissuaded from or

propelled into participating in mediation; or was the tenor of representatives' advice neutral? The findings in respect of these questions are examined in the next section.

Influencing union members' choices - which dispute resolution option to take?

As outlined above, unlike UNISON regional representatives, CWU divisional representatives had a formalised gate-keeping role in the process by virtue of the national IR Framework. Because the CWU sample of unit representatives only included those who had been parties in IR mediations, it is not known, more widely, what proportion of CWU unit reps may have rejected soundings or requests made by their area or divisional representative to attempt mediation. Notwithstanding the seniority of divisional representatives and their formal responsibilities for IR mediation, it might be surmised that unit representatives known to be likely to refuse mediation would not be strongly encouraged to use it, and area and divisional representatives who were sceptical about IR mediation probably would not go out of their way to recruit participants.

There was no suggestion from any interviewee that CWU nationally had pressured divisional or area representatives to press unit reps to use IR mediation. In this study, with one exception (see below), there was no apparent tension between unit reps and area or divisional representatives over the use of IR mediation. This finding echoes that of Mustchin (2017) who found a closeness in views over IR issues between these representatives. As currently serving or former postal workers, servicing the postal membership exclusively, area and divisional representatives were in touch with unit reps' and members' workplace experience and issues. (Divisional representatives are Royal Mail employees on secondment to CWU, unlike CWU regional officers who are employees of the union and serve both constituencies of the membership. Some area representatives are on secondments to Royal Mail; others receive facility time for union duties and may also be branch officers.)

It was said that occasionally a little 'arm twisting' might occur on the part of an area representative or delivery sector manager to get a unit rep and manager into mediation [CNI-3]. If successful, this might result in fewer unnecessary or fruitless referrals to the next stage of the IR Framework which was designed to deal with industrial not relationship issues. In the CWU sample, one unit rep [CLI-8] had felt

'persuaded really' by a field representative to participate in mediation. Rep CLI-8 believed that the issues in dispute were industrial not relational but agreed to mediation because, in their experience, alleged breaches of national agreements by the employer were sometimes not progressed beyond area level and when they were, it was 'long and drawn out getting anything done' through the IR Framework procedures. However, the experience of mediation reinforced this rep's scepticism and their resolve not to participate in IR mediation again.

It can only be conjecture in the absence of hard evidence from the findings, but it is not improbable that there could have been occasions when divisional representatives referred disputes to IR mediation precisely because they recognised that the key issue needing to be addressed was a dysfunctional interpersonal relationship between, for example, a unit rep and delivery office manager. Mediation agreements that dealt with interpersonal communication and behavioural issues posed no threat to collective agreements. If anything, these types of disputes could be a time consuming distraction from 'real' industrial problems. If successful, IR mediation might reduce the likelihood of interpersonal conflict getting in the way of the unit rep and manager resolving differences over industrial issues, and possibly reduce requests to area or divisional reps to intervene.

In the UNISON cases, from a critical perspective, workplace mediation can be seen as posing a threat to union interests in that it could be accessed and participated in by union members and non-members, without any need for union advice or support. A pluralist would also recognise that this could undermine the rationale for being a union member. However, there is some UK evidence that in public sector user organisations, individual participants in mediation did seek union advice in relation to their complaint. In a sample of 25 cases of mediation, 19 of which were in public sector organisations, in 14 of the latter cases, at least one of the parties in these mediations had sought union advice and support at some stage in relation to their case; although unions were only directly responsible for referring two cases to mediation within the sample (Saundry, Bennett and Wibberley, 2013, pp. 11-12; 17).

As "help when I have a problem at work" has been shown to be the principal reason why employees join unions and remain members (Waddington and Whitston, 1997;

Waddington, 2006), it might be expected that a union member would approach their union for advice when mediation was being mooted as a possibility by a manager, HR or the occupational health service. But little is known about the nature of the advice given or support offered. The conversation between a union rep and member could be pivotal to the member's decision to choose mediation or reject it. In this study, in user organisations, branch representatives were asked about their approach to advising members who came to them with an individual complaint. Where there was a potential breach of the employer's policy or rules, typically the options were to attempt to resolve the issue under the informal stages of the grievance or dignity at work procedure (which could include mediation) or to lodge a formal complaint which triggered an investigation. Mediation might also remain an option after the conclusion of the formal procedure.

In discussion with members on the options for resolving individual complaints, representatives' approaches varied from neutral to directive. To give an example of the former approach, rep UBI-11 (NHS E) described a typical conversation with a member:

> If they decide to go ahead and lodge a complaint… normally… they will be asked… do they want to proceed with a formal complaint or would they consider mediation. And they would then be given the opportunity… to speak to the mediation coordinator. I would explain that it's a voluntary process and that it can be successful in certain circumstances, but it would be important that both sides would… want to resolve the differences and go into it prepared to see each other's point of view and try to repair the relationship. But I would stress that it would be voluntary; that it can be very useful, or it can, in some circumstances make matters worse. And… it has to be that person's decision. I would always say "it's got to be your decision. I can't make the decision for you" [UBI-11].

Asked about the advice given about formal procedures, the representative explained the downside:

> I would ask them, what outcome are they looking for? …I would obviously assure them that… whichever route they took, they'd have my full support. But I would point out… that investigations… people find them very stressful and it can be difficult to get conclusive evidence because there might not be any witnesses and the investigators can't make a decision just based on what they think if there's no evidence. Even if there are witnesses, sometimes witnesses can be either… scared of repercussions themselves; particularly if… the alleged bully is their manager too…. So the person [complainant] can end up, at the end of that process, feeling very let down by the system, [and] let down by their colleagues who they don't feel have supported them. … If the eventual outcome is that the complaint isn't upheld due to lack of evidence they can really feel extremely let down [UBI-11].

Mediation was 'likely to be suggested' at the end of the formal procedure but in the rep's experience, 'it's probably not going to work because both sides have gone through the mill too much' [UBI-11].

Based on 'quite negative' feedback from members who had participated in mediation, the representative opted for a cautious, agnostic approach when advising members:

> You… could go to one and think "…that was great - it was a really good outcome".... But then if you say to your next member "oh it's brilliant… go for it", and they have an absolutely grim experience, it's not really going to do your credibility much good is it? Or vice versa… you could be really put off by seeing a bad example and allow that then to skew the advice that you gave [UBI-11].

However, this branch did make referrals to the mediation service and it was evident that the downsides of formal procedures and mediation were discussed with members. Other interviewees concurred that it was down to the member to decide if mediation was the appropriate option. A regional organiser explained:

> I would like the member to tell me what they want as an outcome. Because I physically can't live in their shoes to [sic] say "if you go into mediation… all your problems are going to be fixed" and they're not [URI-3].

In contrast, regional official URI-4 favoured a more directive approach:

> The member is almost certainly going to have little to no experience whatsoever of these kinds of [dispute resolution] processes. Quite often people are blind-sided by the conflicts that they find themselves in…. When I hear a rep or an officer say… "I looked at this situation and… I asked the member what they want" [this] in my view is often a classic get out of jail card…. [As] the member is not in a position to be able to judge whether or not their expectations are realistic; whether or not they are overshooting or massively undershooting. They just don't know [URI-4].

This official was prepared to challenge members' unrealistic expectations of tribunal awards but also individuals' preparedness to tolerate chronic bad treatment and avoid formally complaining for fear of "rocking the boat":

> I find myself saying… this situation is wrong…. If they're [the other party] not going to change, the decision has to be based on, are you prepared to continue to put up with this? [URI-4].

Rep UBI-15 (NHS G) explained that branch representatives took a pro-active stance in relation in advising members:

> We lay out the options but at the same time, we give advice. We also… in some cases tell them… the best option… because for a member, laying everything out on the table

> is… confusing. And… [we] then explain the road map, because each of these options has a road map [UBI-15].

In bullying situations, rep UB(s)-2 (University D) indicated that it was important that the member was aware of potential risks to their well-being in considering whether to participate in mediation:

> I have advised UNISON members, that if they are requested to consider mediation in cases of bullying, to think carefully before agreeing. Are they up to it mentally and emotionally? They may have already been off sick with the effects of bullying [UB(s)-2].

In relation to advising members on the option of mediation specifically, rep UBI-15 (NHS G) said that in some cases it was 'not a way' to get to the 'root causes… of the bigger problems' [UBI-15]. Moreover, mediation was seen as the end of the line if it failed:

> Mediation… has no more road map than agree or not agree at the end of the day [UBI-15].

In contrast, if the member lost at a hearing, the decision could be appealed and the case could potentially culminate in legal proceedings. However, the rep recognised the disadvantages of formal procedures and in advising members, took into account their 'resilience'. It could be preferable to compromise a potential claim than to 'go through the arduous journey' [UBI-15] of internal hearings and eventually a tribunal case.

In Police Force A, in the representative's experience, 'frequently' mediation was 'not fully explained' by HR gatekeepers to potential users, consequently 'they don't know what it is and they're very reluctant' to use it' [UBI-5]. However, the branch representatives had a predilection for the use of formal procedures and if a member favoured mediation but it was considered inappropriate, rep UBI-5 would say so:

> Absolutely, because… it just makes it difficult for them… afterwards… particularly if it's not resolved at mediation…. If you choose a course of action and it doesn't work out, if there was a better formal course of action then I think that's what you should have taken [UBI-5].

In practice, having 'two bites of the cherry' had not happened:

> In my experience, the very few cases… that went through [to mediation] were suitable. I don't believe that there was any that should have been… disciplinaries or anything like that because… our first thought is if there's sufficient evidence to go with something formal then that's what we would go with [UBI-5].

In University C, having spoken to management or HR about the option of mediation, rep UBI-18 pointed to the benefit to members of having access to advice from a trusted source:

> The information that we give is no different to the information… that HR or management would give - but there is that element of "it's coming from the union" and we are always seen as very much on the side of the member and I think… I can say something to a member that someone in HR has told them, but they tend to believe us more [UBI-18].

In addition to outlining the options for dealing with a workplace conflict, the representative described what happened in the mediation process:

> Mediation will always come in at… that initial meeting [with the member] when you get the overview of what's happened and what's gone on…. I'll talk through what that process looks like - "you would meet the mediator, the [other] person would meet with the mediator - that there'd be a joint meeting where you'd be looking at trying to come up with ways that you can take things forward. The mediator isn't going to tell you "this is the fix, and this is what you're all going to do". It's very much about you and… person B working this out together, with some support; rather than just you're going to be told "this is the fix and this is what we're doing" [UBI-18].

In contrast, in University B, the in-house service had not engaged with the branch, or vice versa, although some mediators were also union reps (but did not serve in that capacity) and rep UBI-14 was open to its use in principle.

In the experience of rep UBI-18 (University C) 'fear of the unknown stymies members' engagement' with mediation:

> We get members who, because they don't know what a process is going to look like, will write it off very quickly as "I don't want to do that" and being better placed to say "actually you know, this is what happens… these are the outcomes that are aimed for" has offered a lot of reassurance and it has meant that I've seen a mild increase in members saying, "actually, yeah, that is something that I think I would consider", [for] …interpersonal issues, where it is appropriate [UBI-18].

This representative felt 'better placed' to explain the process having attended an in-house introductory course on workplace mediation.

The UNISON branch representatives in Police Force B took a slightly more pro-active approach to advising members on their options. 'If we think it's going to be effective', representatives would explain 'what mediation will be like' and encourage members to participate:

> We will say… you should give it a go at least. We encourage members to say "well it might not go well". And if it doesn't go well that's fine, let's get back around the table and discuss what we're going to do. But if you can… please give it a go because it might work out really well for you. Because… quite often, grievances are almost against the organisation if they're against a manager, and we will say [to] members that when you… confront the employer about issues, it's slanted towards them [UBI-9].

The implication was that mediation might avert the formal grievance procedure in which the organisation could 'close ranks' behind the manager and the range of possible solutions would have narrowed. Informal resolution 'avoids [management] closing up and it avoids us closing up as well' [UBI-9].

An example of a more pro-active approach to advising members on grievance and disciplinary matters was given by rep UBI-16 (Local Authority B). Representatives were prepared to explain the standards of behaviour expected of employees where managers had not done so, because lack of clarity over reasonable expectations of staff contributed to workplace conflict:

> We do tell our members what reality is in many situations where the managers haven't for years. We are very clear when we're working as union reps about what we would expect of our members [as employees] and in a way, it's quite difficult for some of those members to hear from us what managers haven't told them for a very long time [UBI-16].

From a radical perspective, 'policing of members' and the pro-mediation stance taken by the above branch could be interpreted as micro-corporatism, undermining the basis for collective mobilisation in defence of employees' interests. From a pluralist perspective, the branch representatives' honesty could be seen as laying the foundation for averting disciplinaries, dismissals and formal grievances which had damaging consequences for union members. By collaborating with the use of mediation and (importantly) accompanying employer initiatives, such as line manager training in conflict management, the branch was actively supporting the organisation in building capacity to deal with workplace conflict more effectively – a mutual gain for the employer and union.

In this study, in NHS organisations, formal policies or protocols on dignity at work complaints referred to mediation as a first or early option at the informal stage. Some interviewees indicated that there was an expectation that mediation should be

attempted in their organisation and some policies had quasi-compulsory elements. The approach taken by union NHS representatives in these organisations was to recommend that members attempt mediation to protect the individuals' and unions' institutional interests. For example, rep UB(I)-1 (NHS A) indicated that reference to mediation in the formal grievance procedure (stage 1) led the union to 'always recommend it'. Participation was voluntary but the union took care not to jeopardise the member's access to a grievance hearing. If the complaint was lodged as a formal grievance, the grievance panel would know if the offer of mediation had been declined and could consider that the union member (on the advice of the union) had acted unreasonably in turning it down.

There was also a quasi-compulsory element to mediation in NHS organisation C. The 2017 *Dignity at Work* policy included a section on 'failure to engage in local resolution' in cases of 'workplace conflict':

> It is required that all employees will proactively engage with these processes…Where an employee refuses to engage in a process seeking to resolve a Dignity at Work issue without due or reasonable cause or does so in a way which is obstructive then the local manager may either consider this behaviour as part of the overall complaint and/or consider the matter a conduct issue and deal with [it]'…under the Disciplinary Procedure (NHS C).

The branch representative was not overly concerned about the operation of this section in regard to cases involving 'workplace conflict' (which was distinguished in the policy from bullying complaints). In any event, if the branch representatives decided it was clearly inappropriate to mediate an individual complaint, they would resist its use:

> [Quasi-compulsion]…it's not something we were strongly against because 99 per cent of what we deal with was workplace conflict… not necessarily bullying. But… where UNISON sat with this… even if it was compulsory, if we didn't think that it was appropriate to have mediation then we'd be saying "no, I'm sorry, it's not appropriate and we want it investigated" [UBI-8].

Asked if HR would be receptive to the union's objection, the branch representative replied:

> Not necessarily - they might share a different view. If we felt strongly enough we'd stand our ground and insist [UBI-8].

This was a well organised branch in a service with higher than average union density than was found generally in NHS organisations, and with the capacity to take

industrial action – not that this was in prospect in this instance. Importantly, the leading representatives had a good relationship with senior management and could raise issues directly at that level where necessary. On the rare occasions that rep UBI-8 (or the member concerned) believed that enforced mediation was inappropriate, the union would use those contacts to devise an acceptable alternative approach to resolution.

In NHS G, in individual cases where the union expected mediation to fail, the representative would submit a grievance in writing in advance of the mediation, in order to expedite the progress of the complaint through the procedures:

> Sometimes the mediation helps us to… circumvent the first stage… because when it says "what have you tried to do to resolve this in the first instance", we can say "mediation - and it was unsuccessful" [UBI-15].

A UNISON regional organiser [URI-3] referred to 'tick-box' approaches to mediation in NHS organisations and the above example illustrates how a branch might 'tick the box', apparently because (in contrast to NHS C) it had no option. Arguably this co-opts the union into a process which may be harmful to the individual members obliged to participate. If the misuse of mediation occurred on any scale, it could ultimately undermine the integrity of mediation in the eyes of employees.

The mediation process: Union representatives' views and experiences

From a critical pluralist perspective, mediator neutrality can be regarded as mythical and party self-determination as chimerical. The latter core tenet of mediation downplays the way in which outcomes are shaped by mediators, including in facilitative workplace mediation. Mediators are powerful figures and their behaviour is a crucial consideration in assessing whether UK workplace mediation is a friend or foe in respect of the interests of trade unions and their members. What happens in the privacy of the mediation room is a gap in the UK literature and the mainstream pluralist UK literature tends not to concern itself with the concepts of mediator impartiality and party self-determination partly because user organisations and mediation participants rarely question them. The radical perspective would regard the mediator as an agent of the employer and, by extension, the union representative who also serves as a co-mediator as incorporated.

This section sets out and discusses the findings of union representatives' experiences and views of the process of workplace mediation which have hitherto been largely unreported in the UK literature on workplace mediation. It begins with CWU representatives who have been participants in IR mediation and then turns firstly to UNISON representatives who have accompanied members in workplace mediations and secondly to UNISON representatives who had had feedback from members who had participated in mediations unaccompanied.

Mediator activity - CWU representatives' views and experiences

Assessments of the mediators' performance by CWU representatives who had been participants in IR mediations were mostly positive.

> The mediation process… I thought was very good actually; …they [the mediators] were very thorough and very professional… I don't think I could have guessed which one [was CWU/management] because they were both quite similar [CLI-2].

On mediators' impartiality:

> They were not there to make any judgement; they were just there to also see how they could build a better relationship between both of us to make it work, if possible… for the betterment of the business [CLI-1].

(It was not known if that objective had been voiced by the mediators and/or the rep.)

> The Royal Mail manager who was part of the mediator team would call me… but he wasn't like… on the manager's side, he was still a mediator [CLI-4].

> They were brilliant... they were quite impartial - both of them to be fair which was good [CLI-9].

On the mediators' skills:

> They were very good listeners… very good at asking pertinent questions… very good at trying to get to the root of the issue… at trying to understand my perspective, even if, maybe I wasn't looking at it from the right angle…They were open to listen and be non-judgmental with what I was saying [CLI-5].

> …particularly [in] the uninterrupted session… there was no ambiguity about the fact that you had to shut up… So because of their good skills in that respect, the uninterrupted session was actually very well managed because it was uninterrupted from both sides [CLI-5].

> If anything bad was bought up… bad opinions of one another… they didn't advise us on anything at that point; it was more… like a listening session….They didn't jump in and talk over us… so we were able to get our views and opinions on the table [CLI-9].

These experiences seemed to be typical. It was corroborated by a field representative: 'I haven't heard anybody saying anything bad about the mediators [CFI-1].

There were indications that when distributive issues were to the fore (in a minority of mediations in this sample), from reps' accounts, it seems that mediators could shift towards the directive end of the facilitative spectrum to secure a resolution. For example, in proposing draft wording for an agreement:

> We [the parties]… listened to their [the mediators'] recommendations and then a national mediation agreement was… agreed… between the CWU and the manager and the national mediators. I was very much involved in the input of the wording, as was the manager [CLI-5].

In another mediation over a collective issue, the mediators' deviation from a purely facilitative approach was observed by the rep:

> When we [the parties] were both in the room together… although they [the mediators] are not supposed to lead, they were actually saying to the manager at various times "are you really trying to say that?"; "are you sure that that's what you want me to record?" [CFI-1].

Beer with Stief (1997) note that the temptation to evaluate is likely to be stronger when the issues are transactional, and this writer would add, when insider mediators (as in Royal Mail) who are experienced representatives and managers are likely to have a better grasp of possible IR/operational solutions and their viability than an external mediator. The above accounts suggest that mediators, consciously or unconsciously, realised the limitations of purely facilitative practice in disputes over (collective) distributive issues and, in order to reach an agreement, adopted a more pro-active approach. Pro-active styles and pressing tactics are commonplace in commercial mediation (de Girolamo, 2009, p. 267) and can also form part of the 'settlement-oriented' mediator's toolkit in US grievance mediation (Kolb, 2001, pp. 461; 473). In ACAS individual conciliation (Dix, 2000) and collective conciliation, pro-active styles can also be deployed by conciliators (Ruhemann, 2010). From accounts given by CWU interviewees, on occasions mediators did give parties a steer or nudge on collective issues but not to the extent of evaluating parties' positions. In the writer's experience, there can be a grey area between active facilitation and quasi-evaluation. However, CWU parties did not necessarily find steers or nudges from mediators to be unwelcome or unhelpful.

While active engagement by mediators could be helpful, unskilful interventions were perceived as unhelpful:

> The [manager] mediator, who was the more prevalent of the two… was trying to make too much of an impression… was too keen… and there were a lot of interventions on [this mediator's] part which disrupted the flow of the mediation [CLI-6].

There were other criticisms of mediator activity. Two CWU interviewees thought that the mediators had wanted to focus on their relationship with the manager when for them, the issues concerned industrial not interpersonal relations. Consequently, rep CFI-3 thought the mediation was 'a waste of time', as did the manager, apparently. Rep CLI-8 was critical of the mediators 'playing up the relationship [issue]' and 'to be honest, I just felt like they're doing it because they're justifying their own jobs, rather than helping sort issues out' [CLI-8]. Arguably, these criticisms also point to the limitations of a purely facilitative approach when collective bargaining issues are on the table.

<u>CWU representatives in mediation: co-option or independent engagement?</u>

Unlike their UNISON counterparts, CWU representatives were parties in mediation and therefore the study was able to capture some data on the experience of mediation from their perspective as participants.

Although the mediation model applied in IR mediation treated reps as *individuals*, some CWU interviewees were clear that they had participated in their capacity as a union representative not as an individual:

> **S**ome of the things I was saying… about the manager's character… speaking as a representative for the unit - was what the unit members had conveyed to me about this manager. And I also personally agreed with much of what had been said by the members [CLI-5].

In particular, less experienced CWU reps and some with "macho managers" found having uninterrupted time in mediation personally empowering, where, for example, in the workplace, managers had 'ignored' them [for example, CLI-1], not acted on complaints about bullying and disrespectful behaviour by supervisors, or behaved uncivilly:

> I found it very good for my own benefit of being able to… speak my mind and view [sic] my opinions to my boss without having him… shut me down or laugh in my face [CLI-9].

For some reps, the fact that the mediators were part of a national team invested them and the process with authority. They perceived that it put a national spotlight on their dispute or in some instances, the behaviour of a manager. It was believed, therefore, that the issues would 'not be taken for granted':

> In this [delivery] office, the… manager was saying, "I will do as I please", and [nothing] …I was going to say to him was going to change that attitude and the only thing that could change that attitude was this mediation [CLI-4].

Although it was understood mediators were not arbitrators, bringing in 'national' officials (the mediators) indicated to this and other reps that there would be a response from the higher echelons of Royal Mail and CWU. Bearing in mind that a modified form of confidentiality (discussed later) applied to IR mediations, the assumption that unit/shift-level disputes and alleged breaches of national agreements - often arising from a manager's behaviour - would not go unnoticed was not without some foundation (as discussed in the next chapter).

From a critical pluralist perspective, empowerment experienced in mediation is an individualised, psychological phenomenon, the effects of which are unlikely to alter the power dynamics of workplace relationships beyond the mediation room, at least where there are hierarchical or status differences between the parties. From a pluralist perspective, Saundry, Bennett and Wibberley (2016) also concluded that mediation had little impact on power relations outside the mediation room. In the CWU sample, however, there was evidence of a post-mediation effect. The personal empowerment experienced in the mediation process enhanced some unit reps' capability in their union role:

> [The mediators]… challenged me about how I'd put things across… in a good way.… And …even now I think back to one or two comments they made and it makes me approach things slightly differently; because I can be… too 'softly softly' sometimes… and… I need to let the manager know I'm not happy about a situation [CLI-3].

It is well established in pluralist IR literature that low trust relationships between managers and union representatives are a key component of poor industrial relations (Dietz, 2004; Hall and Purcell, 2012). Workplace mediation seeks to explore the underlying interests that lead individuals to behave and react in certain ways, enhancing each person's understanding of the other's motivation or situation. As a union convert to mediation observed, mediation processes can 'humanise' managers

in the eyes of union representatives (Saundry, McArdle and Thomas, 2011, p. 17) and vice versa. Certainly there were examples given by CWU reps of mediations where the manager had revealed sensitive personal information that cast light on their behaviour. In the quote below, it was the union representative who 'opened up':

> I won't call it bonding but… you're opening up to each other a bit more which you don't tend to do in the workplace because you don't have time and… it's not really a manly thing is it, sharing your emotions…. I thought… that I wouldn't even talk about something like that [a health issue], because my view on it would be that if I opened up… and talk[ed] about emotions, it would make me as a rep look quite weak [CLI-9].

From a radical perspective, this 'humanising' process could be seen as an exercise in co-option, obscuring the real (organisational) motivation of the manager behind a façade of personal circumstances with which the rep, as an individual, is expected to sympathise. By reducing conflicts of collective interest to interpersonal disagreements, the mediation process acts insidiously to undermine the worker's identity as a union representative. However, the evidence from the CWU interviewees was that this did not happen. For example, while rep CLI-5 empathised with the personal difficulties revealed by the manager, this did not deflect him from pursuing a solution to the collective issue in dispute. Empathising with a manager did not lead to reps accepting the status quo or acting as a conduit to justify the manager's position or actions to the members. In cases where managers were said to be disrespecting reps or staff, the reps wanted the situation to change, notwithstanding managers' personal problems.

Rather than co-opt union representatives, the evidence was that some CWU interviewees perceived mediation as *strengthening* their position in the unit where they were otherwise unable to counteract unilateral action or intolerable behaviour by management. This could occur through mediation enhancing individual representatives' problem-solving skills and confidence or, as it was perceived by some reps, by changing the situation as a result of involving higher level authority - the IR mediators. The outcome is examined in more depth in the next chapter.

<u>Mediator activity - UNISON representatives' views and experiences</u>

The UNISON interviewees comprised three categories: representatives who had direct (first-hand) experience of workplace mediation (through being mediators or accompanying members during mediation sessions, or prior experience of coordinating

mediation services); those who had indirect experience (such as advising members on options for resolving complaints and receiving feedback from members on mediation); and those who had had very little contact with the mediation service in their organisation.

In contrast to the CWU unit and field reps, none of the UNISON representatives had attended workplace mediations as a party. Of those with direct experience of the process, in addition to four practising mediators (excluding a mediator who was formerly a UNISON representative), seven had accompanied UNISON members in mediations. At regional and branch level, just under half (ten) of the UNISON interviewees had no direct experience of the workplace mediation process. Their involvement was mainly advising members on options for individual dispute resolution, including mediation, and receiving feedback from members who had participated in mediations. Some representatives in the UNISON sample had also been involved in formal discussions with the employer about its use. Compared with the CWU reps, the UNISON interviewees' views about the *process* (including the performance of mediators) were more mixed.

In Local Authority A, UNISON interviewee UBI-2 had been 'personally involved' with one mediation when advising a disabled member in regard to the employer's alleged failure to make reasonable adjustments. The dispute had affected the working relationship with the line manager and mediation had been agreed to by both parties. The representative had 'not [been] allowed' to attend the mediation. The member had fed back that the mediation had been a 'disaster' because the [internal] mediators 'didn't stop the manager' behaving in a bullying and intimidating manner [UBI-2]. This experience led rep UBI-2 to conclude that mediation '…potentially… could be useful in cases where there's a problem of bad communication' but for 'really substantial problems', the representative would not recommend its use to members. The confidentiality of mediation left the union powerless to challenge the bullying which it was claimed had continued in the mediation in any subsequent formal proceedings.

> Where there's… really substantial problems which aren't to do with communication [where]… one of the parties has power over the other… I recommend members don't partake in it because of the confidentiality agreement. It means managers can basically just try and bully them out of a job. And there's nothing you can do about it [UBI-2].

On mediator impartiality, in a different service in Local Authority A, based on direct experience, rep UBI-4 found that in-house (management) mediators were 'useless …they usually end up taking sides and that's not the way they should be doing it' [UBI-4]. The rep attributed this to the impossibility of in-house personnel being impartial:

> If you're in line management or in a senior position and you're a mediator, your day job walks in the room with you, it's unavoidable ….We have people who are set in their way, and they're walking in the room with preconceived ideas [UBI-4].

The representative thought that 'the only way around that is to get independent mediators from outside the… authority' [UBI-4]. This interviewee was in favour of union representatives being in-house mediators in principle but stressed that they could not mediate in their employer's organisation. Across the UNISON sample, this was a minority view. In the main, interviewees accepted that in-house mediators were capable of acting impartially. Occasionally, managers could object to 'union' mediators as a staff side mediator recounted:

> There are times when… people have objected to me doing it as a union rep…. It's a prejudice that the occasional manager who may have had a bad experience or something in defending someone - "oh, I'm not having him" [UBI-12].

Trade union officials could also have doubts about the neutrality of external mediators with former *union* backgrounds:

> If the unions think, "well it's somebody that's turned from the unions", that's more dangerous to you… at least with HR, you know what you're getting… someone who's… not brutal, but they operate in a different way… [UBI-10].

Some CWU reps experienced union mediators as more empathetic than manager mediators. UNISON interviewee UBI-10 agreed but commented wryly on the manipulative skills of ex-union mediators:

> People with union backgrounds do tend to stand out, how they operate, and how they're working. I think it's sensitivity and empathy, or the appearance of giving that, when you actually don't mean it [UBI-10].

Very few UNISON or CWU representatives who had direct experience of mediation thought a mediator had displayed any bias. However, it was apparent that some interviewees were conscious that mediators could not 'check their experience with its biases and preconceptions at the door' (Kolb, 2001, p. 477), and that mediators who

were managers - or external mediators appointed by management - would most likely have an employer's worldview. Members had perceived this bias:

> The member [voluntary sector] thought it [the mediation] was a dreadful experience…. She felt… she was being accused… [after] a falling out with the manager and… the mediator was trying to reinforce that she has to be submissive. She felt like the mediator… was defending the organisation in the way it happened. So she didn't feel it was impartial [URI-3].

That experience deterred the member from taking up the option of mediation on another occasion in a different organisation.

For UNISON regional rep URI-4, given workplace mediation was a management initiative, mediators were not truly independent third parties and user organisations' expectation was that mediation would resolve many disputes that would otherwise have ended up in formal hearings:

> I believe that when you locate the responsibility for the mediation process with the employer… not inevitably, but you are entering a strong gravitational field that is pulling you towards a particular perspective. Mediators as agents of an employer as opposed to independent third parties… are driven to produce a result [URI-4].

The goal of facilitative workplace mediation is for the parties to reach agreement. For rep URI-4, paradoxically, the drive for settlement made genuine resolution less likely:

> In internal mediation… what I find is… the majority of workplace mediators… engage in behaviour that is clearly designed to cut to the chase; close things down.... Instead of exploring the conflict - minimise it, downplay it, devalue it, move to a settlement [URI-4].

Referring to their previous experience (outwith UNISON) as a scheme coordinator, the focus on settlement was indicative - for this interviewee - of the 'great difficulty… maybe more than half… of the in-house mediators had… in reconciling their role as independent mediator with their status as an employee' [URI-4]. While this 'difficulty' was not articulated by the union representatives who were mediators in this study, the goal of achieving resolution seemed uppermost in their minds, although it was accepted that realistically some mediations would fail or perhaps not get to the root of the conflict but result in an accommodation whereby the parties 'would not be best friends' but would be able to work together in a professional manner [UBI-12].

Union co-mediators – co-opted or independently engaged?

Bearing in mind this was not a study of mediators, the fieldwork did provide an opportunity to ask mediators who were also union representatives about their perception of conflict of interest in mediation and how they managed internal (intra-psychic) and external challenges to their impartiality in the mediator role. Three representatives in this study who were mediators crystallised the difference between their roles as reps and mediators as 'changing the language' [CNI-3; UBI-3; UBI-12] from suggesting solutions to being impartial:

> It's how you put it across - the fact that we're impartial. But we're not impartial because I'm CWU and you're [the co-mediator] Royal Mail. We're impartial because we're mediators, and… I mean I'll never stop being CWU but when I go into a room I am a mediator [CNI-3].

Co-mediation was seen as helpful in curbing each other from acting on their biases:

> Some… mediations… whether it's a manager or a rep - because there's some good ones and bad ones on either side - you can't help but think, "It's him" whatever. So… because there's normally two of us, it's about recognising that and stepping in and trying to get away from those hooks and triggers [CNI-3].

It is not known to what extent co-mediators did step in to inhibit the other acting on their 'hooks and triggers'; or whether such interventions (where they occurred) were more frequently made by the union or management co-mediator. In relation to the radical critique of incorporation, it could be argued that mutual policing of each other's biases is in any event simply a device to maintain the parties' confidence in a managerial process. Certainly union-management co-mediation was seen by both CWU and Royal Mail as essential if representatives and managers were to use IR mediation.

For IR mediators, the potential dilemmas presented by mediation could be side-stepped (if not overlooked) as long as the formula they had been taught worked, that conflict was psychologically based and mediators should seek to uncover the underlying interests of the *individuals* in conflict. And, as mentioned, there was a genuine belief among those in Royal Mail and CWU closely associated with the in-house service at national level, that underlying many disputes or differences between unit reps and managers were interpersonal, relational difficulties. From a radical perspective, this is precisely what gives mediation its power to co-opt union

representatives - clashes of *collective* interests are 'reframed' as individual issues and disappear. From a critical pluralist perspective, in relation to incorporation and IR mediation, the adoption of the workplace mediation facilitative model was more innocent than Machiavellian. In this study, it appeared from union representatives' accounts, that in the minority of disputes where the issues were mainly distributive, IR mediation was not successful unless mediators shifted to more directive techniques. As a protection against parties doing deals in IR mediation that might compromise either side's *collective* interests, the nationally agreed ratification process allowed for joint oversight of mediation agreements. As will be argued in relation to the UNISON cases, the *absence* of a union presence in, and oversight of, workplace mediation was a greater threat to union interests.

CWU and UNISON representatives: Mediation experiences compared

Comparing the accounts given by UNISON representatives of their experience of workplace mediation with CWU participants' accounts, it is striking that on the face of it, in the CWU mediations, there was if not equivalent power, at least much less of an imbalance between the parties. The key difference between IR mediations and the UNISON workplace mediations was that in the former case, both parties were agents of their respective organisations, with the collective backing of those organisations.

Another important difference in mediation processes was that in IR mediations, confidentiality had been modified, by national agreement, in that while "who said what about who" was not revealed, the contents of mediated agreements could be checked by divisional representatives and heads of IR to ensure they were consistent with existing collective agreements (Royal Mail and CWU, 2015a; 2015b). In the UNISON cases, organisations followed the core tenet of unqualified confidentiality, in that any sharing of the outcome and what had been agreed had to be explicitly agreed by the parties. Whereas (UNISON) workplace mediation agreements were the property of the individual parties, IR mediation agreements were collective property. (The writer did not have access to CWU members who had participated in mediations of bullying complaints or individual grievances, or representatives who had had experience of advising CWU members who had participated in these types of

mediation, but it is assumed the standard *workplace* mediation confidentiality provisions applied.)

The impression gained from most of the CWU representatives' accounts of IR mediations was that they were not conscious of, or did not feel disadvantaged by, structural power imbalance in their IR mediations arising from the employment relationship. If there were other structurally based imbalances between the parties as individuals, they were not commented on. What stood out from these accounts was the 'levelling' effect (Walton and McKersie, 1965) of the uninterrupted time element of mediations. The mediation process was described as 'quite liberating for our people' [CNI-2] because the nature and pressures of postal work (particularly on the delivery and collections side) militated against the unit reps and managers communicating with each other:

> They're either in there [the workplace] shouting and saying "you will do this", or you've got the other one saying, "it's got to be done this way, I'm not listening to you" and they've never been listened to and I think the actual sitting down and being able (a) to have your say, and (b) to be listened to… is something that people at our level… don't have the opportunity to [do, to] actually sit down and say what these issues are [CNI-2].

Most of the CWU interviewees were longstanding representatives. Owing to their in-depth knowledge of postal work and collective agreements, some felt they were in a stronger negotiating position than their managers in mediation. Inexperienced representatives could be in a weaker position. For example, a unit rep recalled that the mediation agreement included a clause asking the area rep and delivery sector manager 'to take a backseat in our working relationship' as the manager wanted the rep 'to confide more in him rather than going around him to his boss… leaving him out of situations in the office'. The rep was 'not too happy' about aspects of this clause:

> I'd only been a rep for months then, I didn't know anything really. So if I had any problems or queries that come up in the office, obviously I would always run them past my area rep, to ensure I was doing the best for my members, but it… felt like that clause was put in there to stop me from doing it… which… made me a bit useless in some respects because the [manager] would tell me something and rather than being able to go somewhere and get advice, I had signed a clause if you like to say that I wouldn't do that [CLI-9].

This situation could be read as an attempt to improve communication between the rep and manager so that issues were not escalated, or alternatively, to isolate the unit rep. Overall, the rep had found the mediation to be very useful in helping both parties to

understand each other and the relationship improved albeit some IR problems resurfaced and eventually the rep did revert to seeking guidance from the area representative.

The majority of workplace mediations mentioned by UNISON representatives involved subordinates and managers but unlike Royal Mail IR mediations, in a significant proportion of the UNISON cases, the parties were co-workers. Also, unlike CWU, UNISON represents managers and two of the regional officials [URI-3; URI-4] mentioned mediation cases involving managers whom they had advised. As mentioned elsewhere, managers face particular challenges in mediation. For example, they may be criticised by subordinates and feel that the process undermines managerial prerogative (Saundry, Bennett, Wibberley, 2016). A less explored facet in the UK literature is whether, through the individualisation of 'interests' in mediation, managers feel aggrieved at being held personally responsible for systemic organisational failures or structural aspects of work organisation over which they may have little if any control. With co-workers, while the power imbalance inherent in the employment relationship may be absent, structural inequality may come into play in relation to other differences (such as class, gender, race, disability and sexuality), and in manager-subordinate mediations, structural inequality may compound the power dynamic inherent in the employment relationship.

Rarely in the published academic literature have the perspectives of UK union representatives who have accompanied parties in workplace mediation been captured. The next section outlines and discusses the findings of this study on this topic.

Accompaniment in mediation

As mentioned in the literature review, existing guidance to UK employers and trade unions on workplace mediation is that as a rule accompaniment in mediation is not desirable or necessary (ACAS/TUC, 2010; CIPD/ACAS, 2013). This advice stems from the ideology of mediation and its adaptation to the UK employment context. Most UK workplace mediation training reinforces the default position of non-accompaniment which may be interpreted positively as maintaining the distinctiveness and benefits of workplace mediation as an informal ADR process, and as empowering for participants; or negatively, as perpetuating an ideologically based practice which ignores the reality

of power imbalance in the employment relationship, diminishes workplace justice and, in unionised workplaces, undermines trade unionism.

The findings of this study confirm that the representatives who were mediators were taught during their mediator training that participants in mediation do not include representatives of the parties or companions (including union reps), and that, as a rule, representatives should not attend mediations. Consequently, generally workplace mediators were not taught how to mediate and manage the process when representatives or companions might be involved.

It was also found that in most workplace mediations, participants were not accompanied, and that in general, the case study unions' representatives concurred with the mainstream guidance on the subject. However, in practice, there was more divergence around accompaniment in workplace mediations than might have been expected in light of it being discouraged.

CWU national position on accompaniment

As CWU reps were actual participants in IR mediation, it might be assumed that they would not request to be accompanied, however such requests had occasionally been made. When IR mediation had been launched, the joint expectation was that parties would not be accompanied in sessions with the mediator and the other party [CNI-1]. This followed on from the standard practice in individual bullying and harassment mediations. Where a CWU rep wanted support, it was acceptable to be accompanied provided that the companion remained in a separate room reserved for the CWU participant. This remained the CWU position in 2017 [CNI-2]. IR mediation was seen as being an informal process – as a first stage in the IR Framework:

> Once you start bringing a rep in, you bring an amount of formality into it and therefore we believe that's not what's required and desired [CNI-1].

Initially, in relation to mediation of bullying complaints, there had been a concern that union reps who had not been 'educated' about workplace mediation would not fully appreciate the difference between accompaniment in mediation and representing a member in formal procedures, or not conform to (as it were) the rules:

> Our reps, I feel, wouldn't be able to help themselves but… get involved in it which is not what we're requiring; it's not what's required…. I don't think that's what we're trying to achieve [CNI-1].

The process model for IR mediation assumed the same default position of non-accompaniment.

National CWU support for non-accompaniment in joint mediation meetings had been 'a source of tension between us and our reps; they think they should be there and we have to explain to them why we don't think it's the best idea and that's difficult…'[CNI-1]. A precedent for not having union members represented at the informal stage of a company procedure had been set shortly before the launch of IR mediation:

> …we've just revamped the attendance procedure and we've introduced an informal level … and we don't have representation on that… for the same reason and that again was a source of difficulty with us and our reps [CNI-1].

Three years on, there had not been an IR mediation in which the union rep or manager had been accompanied as far as the CWU national mediation manager was aware. Views had not changed – accompaniment in mediation was generally not beneficial:

> The IR mediations are between those individuals… I think if you've got other people in there… it doesn't help the situation, because… people feel that they've got to sometimes put on a show for the person who's accompanied them; sometimes they've got to keep the barriers up because they don't want that person [the companion] to know certain things. [And] …it's very difficult for [companions] not to say anything and interfere, and I think that causes more problems than the person getting upset… they can have the support back in their own room [CNI-2].

Essentially, the objection is that accompaniment can interfere with the mediation process. It fits the ideology about the alchemy of the process but it is also pragmatic – the presence of companions can make the mediators' job more difficult.

<u>UNISON representatives' positions on accompaniment</u>

In this study, UNISON representatives reported that generally accompaniment was discouraged by user organisations. In most of the mediations mentioned by UNISON interviewees, union members were not accompanied by a representative. In total, eight UNISON representatives had experience of accompanying union members, seven of whom had accompanied UNISON members. In the UNISON sample, there were differing views as to the desirability of accompaniment. This sub-section examines the

experiences of representatives who had accompanied members, followed by the views of representatives who had not had that experience.

UNISON representatives who attended mediations accompanying members were aware that their role in workplace mediation differed from that performed in formal procedures. They were 'observers' [UBI-4], there 'to lend moral support…we're not there to take an active part' [UBI-8].

In Police Force A, union reps were permitted to accompany members in joint sessions. Interviewee UBI-5 was clear with members that 'we are not there to engage - we are there just as a 'they're there' type person…' All parties had to agree to the rep being present. However, 'where it's not felt appropriate for me to go in', for example, if the other party was unaccompanied, the rep did not wish to 'unbalance it' and 'I've actually sat outside [the mediation room] so they've got somebody in the breaks…and I'm quite happy to be there for them to…bounce stuff off…' [UBI-5]

Adhering to the observer/supporter role was 'really difficult' but the rep agreed with the principle of party self-determination:

> To get to that point [mediation] we've [the reps] quite frequently been involved anyway. So you know a lot about what's happened and… it is quite a difficult situation just to sit on your hands and say nothing, but I think it's got to be something that comes from... the people involved [UBI-5].

Members 'seem to be quite happy' with the rep being there solely in a support role:

> Quite often once you've started off with that and given them the confidence to go in, then you don't always have to continue being there. It's just that confidence factor to go for it [UBI-5].

It was not known why the employer permitted accompaniment. It may have been related to the fact that the Police Federation had also been involved in introducing workplace mediation in the force. Nor was Police Force A unique in this respect. An internet search of published equality impact assessments of organisations' mediation policies indicated that, for example, a police force in Wales permitted accompaniment.

In local authority A, rep UBI-4 had attended mediations where requested by a member. The representative explained:

> We're not negotiators in that meeting, we're actually observers… but…when there's [sic] issues come up I try and help with ways forward…. In a lot of occasions it's not what they've said, it's how they've said it that's caused the major upset. People are talked down to instead of… with dignity and respect [UBI-4].

Apparently, this had been acceptable to the mediators: 'the ones I've dealt with, there's been never any problems in that regard' [UBI-4]. In this respect, the role played by the union representative was an extension of their role in the workplace, acting in their union capacity as an *ad hoc* mediator to informally resolve disputes.

Interviewee UBI-4 was clear that a union representative attended joint mediation sessions as a *representative*, albeit not a negotiator:

> They'd [members] be asking me basically to be there, in the room on their side, because sometimes it can be intimidating the way they set up these things, because you have a mediator, HR and… the manager who's the problem [UBI-4].

In the rep's view, members were 'outnumbered' because the in-house mediators were not impartial (discussed earlier). (Among the interviewees, this was the only mention of a HR officer having attended a mediation. How frequently this occurred in Local Authority A was not known.)

In this study, it was unusual for representatives to accompany their union member at the initial separate meetings that, in most cases, mediators held with each party. This representative did attend, strictly as an observer:

> I wouldn't actually say anything at all… even to the member because that's her or his opportunity to put the whole thing on the table themselves, and I say that to the member… but I'm there, because sometimes people get upset [UBI-4].

Rep UBI-4 'always' advised the member to attend the joint meeting, reassuring the person 'we can always walk out' or 'you [the member] can always say "I want an adjournment" and then *we* get the adjournment and then *we* work from there' [writer's emphasis]. This was an example of the union helping a member to 'get a good result' [UBI-4] and a just outcome from mediation (Bleiman, 2008). In workplace mediation ideology, a representative's intervention interferes with party self-determination. In the absence of data from UK union members who have participated in workplace mediation, it remains an open question as to whether they would agree. In this regard, a glimpse into the process is offered by Roger Wornham, a former ACAS

conciliator and workplace mediator, who recalled a mediation where the subordinate employee and union member had been accompanied by a full-time union official:

> At one stage, he told off his member (in a caucus meeting) for "not making enough" of a situation where management had behaved badly. Another time, he came into a meeting the [mediator] was having with the member, to complain that the meeting was going on too long (Wornham, 2015, p. 243).

Whether the union member considered that the union official had interfered with their self-determination we do not know. Although it is an isolated example, it exhibits the frustration that some representatives in this study also felt at having a restricted role in the mediation process.

There is evidence from the USPS REDRESS programme that the presence of union companions – who did not attend in an official union capacity – marginally reduced participants' satisfaction with the process, although their presence boosted settlement rates (Bingham, Kim and Raines, 2002; Bingham *et al.* 2009). However, it is arguable that in relation to the examples given in this study (above and below), the presence of the union representative in joint meetings could have enhanced 'party self-determination'. Their assistance, even if restricted to conversations with the member during breaks, could, as Bingham, Kim and Raines (2002, p. 362) observe, 'aid[s] in the equalization of power between the disputants'. In this writer's experience, unaccompanied parties usually agree or defer to mediators' proposals as to how the process is conducted and often lack the confidence to call for 'tactical' breaks. Typically, mediators state in their opening remarks that either party is free to terminate the mediation at any time, but they manage the process in ways that discourage parties from doing it unilaterally, or at least (in the mediator's assessment) choosing to do so prematurely. Union representatives are likely to take a more dispassionate and tactical approach to these matters, assessing the member's best alternative to sticking with the mediation. Having said that, uppermost in the minds of the interviewees who had acted as companions in this study was the member's welfare.

Accompanying members enabled representatives to witness the process and what mediators did. As discussed, CWU representatives had attended as parties and made

few criticisms of mediators. As companions, UNISON representatives were in a different, possibly more dispassionate position.

In NHS C, where the mediators were 'generally HR… or [from the] manager family', we have reps going in with… members to support them, and we haven't had any real negative feedback' [UBI-8]. But this representative had had 'a bad experience' when accompanying a member:

> I hadn't met either of… [the mediators] before, but… I have high standards and I expect them to be… competent at what they're doing; and I just don't think they were very good. They certainly knew what the process should be in terms of allowing individuals to get it off their chest… and they said the right things, but they failed to manage it [UBI-8].

The representative was aware that 'when this process was agreed, it was made clear that the staff can have representatives in for some moral support but… we're not there to take an active part'. But in this particular mediation the rep 'did take an active part':

> I stopped the meeting, and it was absolutely right because I hate to think how that would've turned out if they'd have carried on [UBI-8].

In this case, the representative thought that the manager 'was using it [the mediation] as an opportunity to have a go' at [the member] and the mediators were not stopping this behaviour. The member was very upset, so the representative asked for an adjournment and spoke to the mediators privately:

> I took the member outside initially…[to] give [the member] a little bit of reassurance and then asked to speak to the mediators on their own; and [I] just told them what I felt was wrong, and they didn't argue with me…. The member was happy to go back in after [that] [UBI-8].

Rep UBI-8 appreciated that 'there's a difference between somebody getting emotional and raising their voice and somebody pointing and barracking'. However, some interviewees in this study who were also mediators commented that union representatives may not be accustomed to the open expression of strong emotion that often occurs in mediation. Rep UB(I)-17 observed, 'we [mediators] let people argue and get upset' - something that union reps would be inclined to discourage or not feel comfortable with given their experience of formal procedures. Some representatives commented on the difference between the mediator and representative role and their mediation training in this respect:

> You do have to totally work differently than what you would be if you're representing someone…. And then there were… certain tools… we were taught… when people start shouting and arguing and having a go at each other… let them do it because it kind of fizzles out within thirty-forty seconds and they start talking. Whereas without the training, I would have gone "oh hang on stop, don't do that" [UBI-12].

On the other hand, from their knowledge of the history of the complaint, and possibly the individuals involved, representatives may be more attuned than the mediators to (for example) subtle bullying behaviour continuing in the mediation or when the dynamic of the mediation is such that their member cannot participate fully and the process is therefore unfair. In the case referred to by rep UBI-8, subsequent confidential developments vindicated the representative's judgement call in intervening to speak privately to the mediators. Subsequently, he had also given 'constructive feedback' at a 'general discussion… under the bullying and harassment heading' between union reps and HR about the management of the in-house service. The representative regarded it as important to say 'I have no faith in the process… this… happened, that should never happen' [UBI-8]; and in this case, owing to partnership working practices, a mechanism was in place which enabled feedback to be given to senior management.

In NHS D, a representative recounted a mediation where he had accompanied a member: 'It just drove me bonkers, not being able to speak' [UBI-10]. He was permitted to ask for adjournments and did so, to advise the member not to accept the external mediator's 'implied' solution.

Rep UB(I)-1 (NHS A) recollected having behaved inappropriately in a mediation some years ago: 'I was naïve then [and] reverted to type… back to the more traditional role of [the] shop steward as opposed to a more supportive/facilitator type role', so that the mediation became 'just another meeting' His approach would now be different:

> Some might argue that both of these roles need not be dissimilar but I would generally start with a less heavy handed approach if taking part in a mediation setting than if in a formal grievance process [UB(I)-1].

As mentioned, having representatives in workplace mediation introduces another set of people and relationships which makes the management of the process more complicated, particularly if companions do not understand or accept their ascribed role in the process. Rep UBI-8 said that some managers had experienced union

representatives '[not UNISON] banging on the table, shouting and screaming at them' [UBI-8], and consequently they 'don't like' accompaniment. Experiences with aggressive union representatives could lead (management) mediators to have:

> …probably a perception that we wouldn't allow them to do the job if we're sat in there because... [it is] frustrating… it's very hard for a rep to keep their mouth shut when they want to take an active part or say something. So I think that's what it must be - they see us as a challenge to them doing what they want to do [UBI-8].

Rep UBI-8 also disputed the notion that union companions were unnecessary because mediators were impartial guardians of the process. In manager-subordinate mediations, mediators 'forget that that individual [member] is frightened' and there is a power imbalance with 'three managers in the room' - two (manager) mediators and the other (manager) party. In contrast, this representative had attended mediations where the parties were co-workers that had been very different – they concerned 'minor things' such as 'they just didn't get on' and there were 'easy resolutions' [UBI-8].

A common objection to accompaniment is that if one party is accompanied and the other is not, it creates an inequality of arms and the unaccompanied party may decide not to participate, or not unless they can also be accompanied. Rep UBI-8 thought that if individual members were to be accompanied, managers who were 'comfortable with us' (that is, UNISON reps) would not object but that would not apply to all managers.

In NHS H, where accompaniment was not disallowed but discouraged - mainly for the equality of arms reason - rep UB(I)-17, who was also a mediator, took the view that as a rule, accompaniment was not necessary – the (staff and manager) co-mediators were there to ensure that the process was fair. When other representatives queried 'non-accompaniment', rep UB(I)-17 countered that as 'fixers', they may not feel that they had played a useful role if they attended, given they would be observing not contributing to the discussion or advocating on behalf of the member.

In NHS G, as a rule, accompaniment was not permitted but the representative said the rule was 'circumvented if we argue hard enough our member needs support' [UBI-15]; for example, where there were access or equality issues, or deep mistrust of the party complained of and members would refuse to participate if they could not be

accompanied. In these circumstances, accompaniment assisted the member to participate fully:

> Trade union reps can sometimes help people to bring out something… people can get frustrated in particular situations, they can get quite depressed and… sometimes they might need someone just to… help boost their confidence, help to allow them to speak safely without feeling as if it's going to be taken out of the room [UBI-15].

In theory, this is the mediator's job but the mediator (external in this instance) may not inspire confidence in the member for a range of reasons. The representative added: 'In other cases it's just pure witnessing. They want somebody to have heard it' [UBI-15]. On the face of it, 'witnessing' could be said to play no role in mediation. It does not in a formal sense, but at a psychological level, the presence of someone who is officially "on the side" of a party, particularly a less powerful party, acts to validate that person's standing and contribution to the mediation. Serving as companions also had specific benefits for union representatives (discussed in the next chapter).

However, rep UBI-15 (NHS G) was not in favour of accompaniment being the norm:

> The minute that you start inviting other people into the room, I think that you're losing the value of it and… you could end up with those same parties back in that room over a formal process… I do think you should have enabled, independent mediators, but in terms of being accompanied… it starts to turn it into something totally different than the mediation that was set up [UBI-15].

There were justified exceptions and this interviewee had attended around half a dozen mediations as a companion/observer. But if the rep had 'a concern' about the member's interest, it would be raised:

> If we're there, we're meant to keep our member safe… so in some cases, where we feel that the mediator's gone beyond that [impartial] role, we will tell them.

For example, the representative intervened in one case where it was 'felt that the mediator was too challenging':

> So it would have been like: [The mediator] "Do you think this other person could have been thinking this? Could [they] have been thinking that?" I don't want to hear that… people walk away from it thinking "why was he answering on behalf of the other person? Why was he hypothesising?" ….I've said "don't make assumptions… get what we're getting and allow the story to lead us somewhere" [UBI-15].

In contrast, in a mediation between a manager and subordinate in another NHS organisation (C), the accompanying rep thought that the mediators needed to intervene more:

> I was trying to will the mediators to ask [the manager] "well, do you think you might've said something to upset [the member] without meaning it?" because sometimes they need that prompt. Nothing like that came out of them… and I think… that's where they failed because… there was nothing to help [the manager] understand how he may've been perceived, whether he intended [the behaviour] or not [UBI-8].

As mentioned earlier, representatives may decide to intervene to bring a mediation to an end or to encourage a member to remain. Although rep UBI-15 had raised the possibility of terminating the process, this had not actually happened to date. More often it seemed reps encouraged members to stay:

> Members have wanted to [leave], but we've kept them on board… in some cases we've relied on their trust in us in order to keep them in the room… a lot of our members trust us, and if we say "stay in the room, see it out", we do it. If we say "let's walk", they'll walk with us' [UBI-15].

UNISON regional rep URI-4 (who was a qualified mediator) was strongly in favour of union representatives attending mediations:

> The primary reason why I say to colleagues… "get yourself into the mediation, be there" is… to ensure that what is happening is an honest process; that the emotions of the member aren't being suppressed; that their behaviour is not being modified to comply with expectations that are put forward either by the mediator or by the other side [URI-4].

This view had been informed by conflicts that the interviewee had mediated some years ago. In both cases the parties were a manager and subordinate. The power imbalance was obvious to the mediator:

> On both occasions the managers overtly… felt that this was their domain and… they were in control [URI-4].

Although 'terms of engagement going forward' were agreed, the mediator [URI-4] did not feel that the outcomes were successful because 'my perception of the experience of the subordinate[s] [was] that they went away feeling as though they'd been hemmed into something' which was 'not… disadvantageous to them' but nevertheless the consequence of a power imbalance that the mediator, being impartial, could not

overcome. These experiences underscored the importance of union representatives accompanying members in mediation:

> We need to be in there to protect the member in situations where quite often, if not always, they are a subordinate, there is a power imbalance, there is a huge opportunity for them… to feel diminished or to be pushed into agreeing things that they don't really want to agree but they feel that they have to… because they're on their own [URI-4].

Where organisations had a policy or default practice of not permitting accompaniment in mediation, UNISON representatives largely accepted it but were prepared to press for accompaniment in exceptional cases if necessary. An exception was rep UBI-2 (Local Authority A) who had not been permitted to accompany a member in a mediation. In contrast, as mentioned above, in another directorate in this organisation, rep UBI-4 had attended mediations.

Turning to the representatives who agreed with *non*-accompaniment as a rule, in Local Authority C, rep UBI-6 considered that party-only participation contributed to the mediation process working:

> If it's going to work there needs to be some trust in the mediator to handle it and… if you turn up with your friends or your trade union colleague or your manager's manager that trust in the process is not there and… [if] somebody [is] going to sign up for mediation that's really them saying "well I want to do this and I'm prepared to do it on my own, because it's important" [UBI-6].

Rep UBI-18 (University C) referred to the organisation's policy on accompaniment and their mediation training:

> I don't think there's any formal rule. So my understanding of it was always it isn't something that the union would attend. The training that I did with… CMP [the CMO] backed that up [UBI-18].

Representatives had to explain the mediation process to members who anticipated being represented. Rep UBI-18 recalled:

> I've had… people say…"Will you come to this?" We've always said "no… it isn't appropriate. It's not something that UNISON will represent you in, because you don't need representation in this. This is about you and the person that you're with" and my experience has been that that hasn't deterred people. It's just a question, because generally when it comes up, there'll already have been some sort of conversation with HR that I will have attended as a steward, so that they're used to, 'if I go to a meeting about this issue, I've got somebody sat with me', but they ask this as a standard, but I've not seen it put anybody off [UBI-18].

Rep UBI-9 (Police Force B) gave similar advice to members:

> When people are offered mediation, they'll often ring us and ask for representation in the mediation, and we'll say "well actually no… have a think about this but it's best not to because otherwise the other side will then want representation and before you know it, it's like a bit of a kangaroo court [UBI-9].

Some representatives specifically mentioned that one party being accompanied created a potentially unfair imbalance. Rep UBI-11 (NHS E) said:

> On one hand… for our members… potentially it would probably be beneficial. They would feel happier I think sometimes if we were involved or at least there with them. But then I can equally see… where you've got two people in mediation, I'm there supporting my member and perhaps chipping in, and then the other person is on their own, in effect, they're just going to feel ganged up on, and I can't see that would be helpful to the mediation process really in getting a resolution [UBI-11].

Mediators would probably agree such scenarios add a level of complexity and risk to mediation. In general, 'the introduction of agents increases the complexity of the social apparatus of negotiation and… increases the chances of unwanted side effects' (Rubin and Sander, 2003, p. 260). Where union representatives do not "play by the rules", the situation has to be managed by the mediator.

Rep UBI-16 (Local Authority B), who was also a mediator, subscribed to ACAS/TUC (2010) advice on accompaniment – that it was warranted in exceptional circumstances:

> If I knew somebody was coming who needed reasonable adjustments - who was disabled - that's where I think we would make exceptions if they needed support. If we had somebody where English wasn't their first language and they needed translation etc. that is something that we would consider, but we haven't had that situation as yet. So it is not written into our policy that you can't have accompaniment; it is not part of the training that we did though that accompanying would be part of the process [UBI-16].

In University C, accompaniment was not ruled out by the employer if there were 'mitigating circumstances' but interviewee UBI-18 felt (as did rep UBI-16) that the union companion needed to take care not to inhibit the mediation process:

> If there were mitigating circumstances, I don't think there is a very firm, "no, you have to be in [there] on your own", but I would also be wary of representing… because I think it's a process that would work a lot better if the person involved is speaking for themselves and not relying on the union for the argument. Ultimately this isn't something that affects me - I can't be involved in solving a conflict that I'm not a part of [UBI-18].

Rep UBI-12, who was also a mediator (NHS F) was strongly opposed to accompaniment in mediation because it would a slippery slope to formalism:

> I wouldn't do it if they [parties] were accompanied and no one else would. Definitely, I wouldn't count that as mediation. Members have asked for representation… and I've gone through it with them and I've said "absolutely not"… because that gets you back into the formal procedures where you're making a case for the accused and defending… which I just don't think… works for mediation at all.... And even when people have asked me to do it, I've been able to talk them round. Because a lot of people going into mediation… think that they're going in to be blamed. And I try and tell people "no… it's totally not that".... I think I could talk people round to not needing a rep [UBI-12].

Interviewee (U)BI, who had experience of gate-keeping and mediating in NHS organisations, was also strongly against accompaniment:

> Would I allow anyone into the mediation? I can't envision even doing that. It might be wrong but… I can't think of anything worse than, not just a union rep, anybody… I think I'd have to dig my heels in and say no, unless someone can prove it that there's a benefit to it [(U)BI].

However, recalling past experience, interviewee (U)BI acknowledged that attending a one-to-one meeting with the mediator as the party's companion was an opportunity for the union representative to be educated about mediation. As a gatekeeper:

> I'll let them into the one-to-one but it's never raised its head… On the understanding I'm not bothered what they [the rep] have to say. This is not… representation, this is you listening [while the member is telling the mediator what the problem or issue is] [(U)BI].

In talking to prospective parties, the interviewee (in his gate-keeping role) stressed the confidentiality of mediation which meant 'you [the party] have more chance of getting honesty because there's no witnesses… no unions, no managers… no HR' [(U)BI].

A UNISON regional officer gave this overview of accompaniment in mediation which chimes with the accounts given by lay UNISON representatives in this study:

> When they [lay reps generally] go, they are most often… passive observers, not active participants. Occasionally you'll get more assertive lay officials who feel the need to make their presence felt. And from what they tell me… they make interventions. But that is the minority… If I had to put a figure on it, I'd say less than a quarter of mediations that I hear about have participation from lay officials…. And maybe, another less than a quarter of those actually have active participation; so a handful in the last three years [URI-4].

In summary, accompaniment was not favoured because of the risk of interference with the mediation process and the concern that its uniqueness as a dispute resolution

process would be lost. If one party was to be accompanied, the other party would want to be accompanied. The presence of union companions might interfere in the parties building a relationship of trust with the mediator and disrupt the free flow of communication between the principals, deterring parties from being open and honest. There was concern that the union representative might stray from the role of observer/companion and escalate the conflict between the parties. Mediators feared the process could be more difficult to manage and that it might degenerate into argument between rival parties' reps or the rep and the other party and/or the mediator. They had not been trained to manage these situations. For some interviewees, the absence of companions/representatives was what distinguished mediation from formal procedures. If accompaniment were to be the norm, mediation would be on a slippery slope to formalism.

<u>The operation of mediation from union representatives' perspectives – a thematic summary</u>

Reviewing the findings on union involvement in relation to gate-keeping, in the UNISON cases it was largely the domain of the employer, so the question of incorporation in this respect did not really arise. In Royal Mail, at the critical entry level to IR mediation, the evidence pointed strongly to independent engagement of CWU field representatives, as did CWU reps' participation as parties in IR mediation. The question of union displacement did not feature because IR mediation was jointly managed at national and divisional level, and the participants were CWU representatives.

In advising individual members on the options for resolving their complaints, UNISON representatives' attitudes to mediation ranged from sceptical to highly supportive. However, none of the interviewees believed that mediation was appropriate for all cases. Irrespective of their attitude to it, the majority did not perceive a role for the union in relation to mediation specifically, beyond supportively offering individual members advice on its pros and cons *vis-à-vis* other procedures. Most representatives accepted the mediation practices imparted by trainers and adopted by employers, including the conventional wisdom on accompaniment, or rather *non*-accompaniment, which was supported by guidance on workplace mediation from authoritative sources

(ACAS/TUC, 2010; CIPD/ACAS, 2011; 2013). The implications of these findings are discussed in the concluding chapter.

Overall, among the UNISON interviewees, there was little sense of union displacement in relation to the process of mediation, or that union members were leap-frogging the union en route to mediation and not seeking representatives' advice on whether to participate. The fact that the opportunity remained for members to pursue formal complaints if mediation failed appeared to assuage displacement fears. While in some organisations, the use of mediation had led to a reduction in formal grievances, the vast majority of disciplinary cases were not mediated, so there was no impact on union representatives' role in that regard.

It was striking that of the representatives in the UNISON sample, those who had attended mediations as companions tended to be the most critical of the process, and from their perspective, constructively critical. Clearly, attendance had given most of them insights into the process and mediator techniques. Where they were in the room, it gave them an opportunity which otherwise they would not have had to assess first-hand the competence of mediators, drawing on their negotiating and IR experience. Overall, a mixed picture emerged as to whether workplace/branch reps believed that their presence and interventions enhanced (or would enhance) voice and equity in the process. Based on companions' accounts, "being there" appeared to instil confidence and encourage the union member to participate. More active interventions had enhanced the fairness of the process in some cases. It was equally striking that many interviewees did not favour accompaniment. In some cases, representatives felt that accompaniment would not add value - indeed it might detract from the parties working through the issues with the mediator/s and attempting to rebuild the working relationship. In other cases, there were concerns that union companions might behave inappropriately – arguably issues which could be addressed by union training on mediation (which is scarce). These issues are discussed further in the concluding chapter.

From a radical perspective, the union co-mediator is most vulnerable to the charge of incorporation; and from any IR perspective, the question of independent engagement is inapplicable because the union co-mediator is not mediating as a union

representative. Nevertheless, the union is lending its resources and support to a dispute resolution process which has essentially managerial objectives and which is, in most cases, controlled by the employer. From a critical pluralist perspective, the key questions are whether the use of union co-mediators benefits or harms the interests of individual union members and the union's institutional interests. (The outcomes and impact of the use of mediation from the case study unions' perspectives are discussed in the next chapter.) As mentioned earlier, it was beyond the scope of this study to investigate the dynamics of co-mediation in union-management pairings. It has been suggested that a union mediator who is "forever union" could be reasonably assumed to have some unconscious bias which might influence their mediating, but this might be under-estimating the effect of mediation training and over-estimating the extent to which mediators (of any hue) can alter power imbalances in the employment relationship.

CHAPTER FIVE: OUTCOMES AND IMPACT OF WORKPLACE MEDIATION USE FOR TRADE UNIONS

Introduction

This chapter examines the outcomes and impact of the use of workplace mediation in user organisations in relation to the case study unions, UNISON and CWU. It discusses the findings in relation to the three themes and related research questions. On the incorporation or independent engagement theme, the chapter discusses the findings on outcomes and impact of IR mediation from the perspective of the CWU interviewees, followed by the findings in relation to the UNISON cases. The rest of the chapter discusses the findings from both case studies on wider aspects of impact, mainly in the context of the revitalisation theme. Did involvement with mediation at the workplace extend or diminish the unions' collective influence with employers; and what effect (if any) did their involvement with mediation have on recruitment of union members? In relation to retention of union members, the potential for union involvement with workplace mediation to enhance or damage union legitimacy in the eyes of employees in conflict situations is also briefly discussed. Turning to the interests of unions as institutions, the findings on the institutional effects and benefits arising from the unions' interaction with mediation are considered. Lastly, the chapter comments briefly on the frequency with which mediation was being used by employers in this study, and its fragility as a dispute resolution mechanism.

CWU: IR mediation outcomes – incorporation or independent engagement?

The vast majority of IR mediations resulted in a written agreement. The nature and effect of those agreements are analysed in this section, as a basis for the discussion on the question as to whether the outcomes of IR mediation were indicative of incorporation or independent engagement on the part of CWU representatives who were parties or directly associated with the process. Two caveats should be mentioned. Firstly, it cannot be claimed with certainty that the agreements discussed below were representative of all IR mediation agreements. Having said that, by 2016, of 96 cases in which IR mediators had been involved, just under two-thirds had involved two parties (61 mediations) and just over one-third (35 cases) had involved

'larger groups of individuals' (CWU, 2016a). In the CWU sample, of the 12 unit and field representatives, a third (four reps) had been involved in or associated with listening sessions (conducted by IR mediators) and/or mediations affecting more than one workplace or shift, some on more than one occasion; while two-thirds (eight reps) had been involved in two-party mediations only. These proportions roughly equated to the national figures on the two-party/'larger groups' split. The second caveat is that the analysis of the content of the agreements is based on the accounts of CWU interviewees, although, as is mentioned below, CWU and Royal Mail developed a template for mediation agreements so there was evident commonality in the heads of agreement.

The most striking feature of the IR mediation agreements was how few dealt solely or mainly with distributive issues. Joint publicity material and guidance on IR mediation (Royal Mail and CWU, 2015a; 2015b) indicated that the issues dealt with would be collective and that was how the mediated issues were described by the CWU co-manager of the national IR mediation team (see chapter three). However, based on field and unit representatives' accounts of the substantive contents of agreements reached in mediation, they did not fit the categories associated with sets of activities which characterise collective bargaining, that is, as products of distributive, integrative and mixed distributive/integrative bargaining (Walton and McKersie, 1965). This served to illustrate that while settlement of differences or disputes was important, arguably, an equally if not more important objective for Royal Mail - supported by the CWU nationally - was to begin a process of improving working relationships, particularly between unit/shift reps and line or office managers. It was believed by the national parties that if working relationships between unit reps and local managers could be improved then they would be better able to resolve conflict without it escalating to industrial action or the higher stages in the IR Framework. IR mediation was seen as providing a process to facilitate this objective.

It may have been that while the *presenting* or positional issues were distributive, the underlying issues were perceived by the mediators to be relational and the mediators honed in on them, as befitted their training. The IR mediators applied an interest-based approach to assisting the negotiations. But, replicating the *workplace* mediation

model, the interests explored were those of the *individuals* involved not the respective *collective* interests of the union and the employer. (The limitations of this approach are discussed later.) Importantly, the negotiating sub-process of attitudinal structuring (Walton and McKersie, 1965) was employed not as a means to an end but as an end in itself, with the mediators deploying attitudinal structuring tactics. This was evident both from the model of mediation taught to IR mediators (Liddle, 2017; Coombes, 2016) and CWU parties' accounts. It was also apparent from representatives' accounts that mediators assisted in drafting mediation agreements. The tenor of the agreements was that of balanced, mutual gains, in keeping with the ideology of mediation and also the principles of *AfG.*

Most agreements were statements of intent rather than actual deals. A common feature of agreements was the inclusion of clauses on process, that is, how the parties would communicate with each other in future. This could include agreeing when, where and how often they would have 'structured meetings' or liaise day to day; how agendas for regular meetings were to be agreed; arrangements for minute taking; how they would contact each other over urgent matters; how they would deal with potential conflict flashpoints between them (such as having short cooling off periods); and what they would do if any element of the mediation agreement was not adhered to. Agreements over relational or communication issues included: the manager agreeing to speak to the rep first before approaching the employee/s over an issue; reps agreeing to raise issues in the first instance with the manager rather than an area representative and/or more senior Royal Mail managers.

From the representatives' accounts, most disputes or differences could be attributed to authoritarian or poor people management. In some cases, the ensuing conflict centred on the individual representative; in others, it had escalated or impacted more widely on staff in the delivery office or on a particular shift. In the latter case, a mediation agreement could cover mixed integrative, distributive and relational issues. In one case, according to rep CLI-5, the agreement committed the parties to 'a joint plan of action… a structured list of things to improve our [unit] performance', to achieve 'a fairer office plus getting his [the manager's] goals in place' and 'easy wins' such as 'sorting out the bike shed'. The action plan was intended to bring about 'a better working relationship' and, from the rep's perspective, less 'favouritism' shown

towards certain staff. It was also agreed in principle to revise staffing levels in the office and to address process issues by holding strategic involvement meetings [CLI-5]. There seemed to be only one example of an agreement on purely or mainly distributive issues: compensation for outstanding leave for a group of employees. In another case, an agreement to revise office resourcing had been a spin-off from a mediation.

From a radical perspective, the core tenet of party self-determination runs counter to union interests in its treatment of union representatives (who are agents of the membership) as individuals with individual issues, or as "free agents" in respect of collective issues. For example, concern was expressed that management could seek to use IR mediation to 'water down' existing agreements [CFI-3] and that local representatives, by accident or (sometimes) design, could collude in agreeing "dodgy deals" which facilitative mediators had no authority to prevent. As mentioned below, the ratification process agreed between CWU and Royal Mail put a control mechanism in place to prevent that happening. In IR mediation, although mediators applied the workplace mediation model of individual party self-determination, because union reps were present formally as representatives and mostly saw themselves in that role, collective issues were not individualised – those that were pertained to interpersonal issues. As such, IR mediation did not threaten collective union interests.

Apart from confidential clauses dealing specifically with personal relationships and what was actually said in the mediation, recorded agreements could be and (in this sample) were seen by the divisional representative and head of IR (and area manager and area representative as appropriate). This important modification to the standard confidentiality 'rules' applied in workplace mediation had been instigated by CWU and Royal Mail nationally. Ratification of agreements involved the divisional representative and their Royal Mail counterpart checking them to ensure they did not contradict or breach the provisions of any existing collective agreements. Consequently, CWU gate-keepers [CFI-1 and CNI-2] were confident that IR mediation could not displace, dilute or undermine established agreements.

An advantage claimed for IR mediation was that if an agreement failed, there was a written record of it which could be taken into account at further stages in the IR

Framework, whereas direct negotiations between (for example) a unit rep and manager would not necessarily result in a written agreement which could be evidenced in the event of a subsequent dispute. Another modification to the original arrangements for IR mediation made by Royal Mail and the CWU was the addition of a standard 'dispute resolution clause' to the template used for recording mediation agreements. As a national mediator explained, prior to the addition of this standard clause, 'most of the agreements were confidential':

> If agreements fell by the wayside… they [the parties] could involve the divisional reps and heads of IR, but they wouldn't know what the agreement was…. Now if it's an IR mediation, they are shared with the referrers, so if… one of the parties decides not to adhere to the agreement we have… in the agreement… the dispute resolution clause [CNI-3].

Mediators followed up with parties at regular intervals but did not intervene where agreements had broken down, except to explore the possibility of having another mediation session. Under the dispute resolution clause, if the parties could not resolve an issue within a specified time period, the usual provision was that where the parties were a unit representative and office manager, the area representative and appropriate area manager would be brought in. If the parties were an area representative and area manager, the head of IR and divisional representative would be asked to meet the parties to assist in finding a resolution.

As mentioned in chapter three, it was said by a field representative that, three years after its introduction, 'the vast majority' of reps still regarded mediation with scepticism, particularly in relation to IR issues, and this 'was mirrored from the managers' point of view.' For example, this representative had 'six or eight disagreements… going on at various times and in none of those was mediation agreed as a way forward, even though some… have been running on for eight or nine months' [CFI-1]. (The issues related to claims for different types of payment, leave and office resourcing.)

From the perspective of representatives and, reportedly, managers whose job it was to settle disagreements, there was 'an element of common sense' in not referring collective disputes to mediation:

> If I can't reach an agreement with you, bringing in a third party… is not going to assist us in reaching that agreement and so we're more likely to escalate it to the next level [CFI-1].

Possibly negotiators' prowess was as much at work here as pragmatism. There are parallels in this response with research findings on use and non-use of ACAS collective conciliation in industrial disputes. The second most frequently cited reason for trade union negotiators' low/non-use of ACAS was that they 'didn't see what solutions ACAS could find that they couldn't have found for themselves' (Ruhemann, 2010, p. 28).

There were also tactical considerations to be taken into account in recommending disputes for mediation:

> The vast majority of disagreements that I see, the side that feels that it perhaps has the moral high ground is more likely to indicate that they're willing to go to mediation than the side that has a case but might not be quite so easily understood - they're less likely to want to… agree to mediation, although in truth it so rarely happens [CFI-1].

As IR mediation is not evaluative, it is understandable why the party with a more tactical bargaining position and complex arguments would prefer the IR Framework procedures to mediation. The findings of this study supported the field representative's experience: the majority of CWU reps in IR mediation had been willing parties who believed that the manager was "in the wrong". In mediations which focus on relationships, the party who believes they occupy the moral high ground can find satisfaction in mediation particularly where their narrative of the issues frames the discussion, and even where that is not the case, as CWU interviewees recounted, having the opportunity to be heard, in uninterrupted time, was personally beneficial. As for the outcomes of mediation, in this sample, working relationships did improve. But owing to various circumstances (discussed below), only in a minority of cases was the improvement sustained.

In regard to mediation of IR issues, a field representative observed that 'one of the failures of mediation is that the outcomes tend to be fairly bland' [CFI-1]. Mediations that resulted in an explicit agreement on industrial issues, such as a dispute over accrued annual leave, were unusual in the rep's experience, partly because 'in most of the cases… there hasn't been just a single issue' but relationship and industrial issues; and from interviewees' accounts, mediators focussed on the former. In the field

representative's experience, 'probably the best outcomes have been… where there are personal relationship issues' [CFI-1].

Another field representative's experience of mediation, as a party, was that it had been 'a bit of a waste of time' because the issue had been over the interpretation of the wording of an agreement - 'it wasn't about relationships' [CFI-3]. This echoed an earlier finding from Mustchin (2017, p. 301):

> Benefits from mediation processes in localised cases of bullying and harassment were acknowledged, but union officials at the regional level saw mediation as a distraction from more fundamental issues: 'they have no place in industrial relations because they don't make agreements… I don't have a relationship problem, I have an industrial problem' (CWU regional organiser: 2016).

Field rep CFI-2 also considered that the IR mediation process had been 'just a waste of time to be honest', for a reason which was also cited by unit reps:

> Managers… agree certain things… but they still do not follow what they've agreed as part of the mediation [CFI-2].

Unit rep CLI-8 said that mediation has been presented as the 'answer to everything' but in practice it was 'all glossy – no real substance'. The mediation in which this representative had been a party resulted in an agreement. However, the rep considered that the dispute, over which the rep and manager had reached an impasse, was about 'industrial issues' not relationship issues which rep CLI-8 thought the mediators 'tried to play… up'. Following the mediation, the industrial issues were not addressed. Changes flowing from the agreement had been 'planned' by the manager but not implemented. Other events overtook the situation and the agreement became a dead letter.

In the majority of IR mediations between unit reps and managers, shortly after the mediation there was a change of manager in the office. Representatives said managers were absent on leave for various reasons and were replaced or were 'moved on' by Royal Mail – it was not known to what extent this was to do with the mediation itself and/or its outcome. It was not uncommon in representatives' experience for Royal Mail to move managers from offices or shifts in mail centres where there were recurring IR issues or staff unrest. Managers could also move following 'listening sessions' conducted by the IR mediators. Listening sessions were a form of conflict

diagnosis. IR mediators could be deployed to sites, for example, delivery offices, which were 'hot-spots'. The mediators' role was to interview staff who wished to participate (that is, to "have their say") in order to prepare a report for designated Royal Mail managers and CWU representatives, identifying the issues raised. In keeping with their impartial stance, the report did not make recommendations. (Two CWU representatives in the sample had been involved in listening sessions.)

A field representative recounted that the transfer of a particular manager was a 'good experience' arising from IR mediation. This had not been brought about by the mediators but by the subsequent involvement of 'senior representatives' and 'senior HR managers':

> Whenever they [the mediators] would call me, I would say, "it was just a waste of time… it hasn't produced the results, we're not happy with it" …. And in that mediation, your senior representatives get involved... and they find out what the issues are. So they have influence, and then the senior HR managers… are involved in the process as well and sometimes they have off-the-record conversations... they can see… where mediations are being used, the highest [use by] which region… mail centre… office and what is the reason behind it, and then… sometimes off the record, they decide… "we need to move this person to another office" [CFI-2].

In one instance, the manager moved from the office shortly after the mediation but returned some time later. The mediation, which had focussed on relationship issues, had had a lasting effect. According to the representative, the manager 'was a changed man' and thereafter they had a good relationship [CLI-7].

A change of manager after mediation was not always applauded by representatives. For example, rep CLI-3 found it frustrating that having committed to the mediation process and achieved a result, the mediation agreement 'just disappeared into the ether' when the manager left. Importantly, in cases where the manager moved offices, with one exception, the incoming manager would not recognise the agreement, maintaining that it applied only to the previous manager. This was not said to be on grounds of confidentiality - rather it demonstrated that managers regarded IR mediation agreements as personal to the parties. On the face of it, this is surprising given these were industrial relations agreements. However, it is probable that (like CWU reps) managers also perceived IR mediations to be about interpersonal issues and the working relationship between individual reps and managers. Agreements fell

by the wayside for various others reasons, for example, if one of the participants went on long-term sick leave. In one case, the agreement was not acted on because the rep was out of the workplace for a lengthy period and then the manager left a few months after that.

Exceptionally, in this study, one incoming manager abided by an agreement in principle reached in IR mediation with the previous manager. The incoming manager also implemented a substantive agreement on increasing resourcing (staff hours) in the unit which had been brokered by the unit representative, CWU field representatives and Royal Mail regional management, following agreement in principle having been reached in the IR mediation with the previous manager. The unit rep [CLI-5] said that performance and industrial relations in the unit then improved dramatically. In due course this manager left and a new regional manager decided to reduce the unit's resource. The unit representative challenged the decision through the IR Framework procedures. The outcome was that the unit's resource was reduced but there remained a net gain in staff hours compared to the situation before the mediation. Importantly, the representative regarded IR mediation as an 'empowerment tool' for unit reps, in that the mediation and agreement in principle had triggered the involvement of senior Royal Mail managers and CWU representatives and led to the subsequent agreement to increase hours in the unit. Also, rep CLI-5 framed the mediation agreement as a 'national agreement' as it had been conducted under the auspices of *AfG* and the IR Framework.

The findings on CWU representatives' attitudes to IR mediation resonated with the work of Feuille and Kolb (1994) on the fragility of US grievance mediation. Feuille and Kolb (1994, p. 249) attributed the fragility of grievance mediation mainly to the fact that, as a final stage, arbitration was 'waiting in the wings'. In Royal Mail, further stages of the collective dispute resolution procedure (more familiar to the parties) are 'waiting in the wings' if IR mediation fails. There was another parallel in this study with Feuille and Kolb's fragility theory. Grievance mediation has been criticised on the grounds that it encouraged unions to pursue weak cases which they would not otherwise take to arbitration. Effectively, grievance mediation was used as 'peek-a-boo' arbitration - where the mediator indicates the likely outcome of arbitration. IR mediation is not grievance mediation, nevertheless, there were occasions when CWU

unit representatives who appeared to be in a position of relative weakness to their managers agreed to mediate. Rather than managers or higher ranking union officials using mediation to control or discipline unruly reps (which would be the incorporation thesis), unit reps agreed to mediation in the hope of reining in unruly managers - literally 'unruly' in cases concerning alleged breaches of collective agreements and company policy. The effect of challenging perceived management abuses of power or prerogative are examined later in the chapter.

CWU: The impact of IR mediation - incorporation or independent engagement?

National CWU agreement to IR mediation, as part of the *AfG* negotiations, was intended to demonstrate to Royal Mail that the union would cooperate in securing the long-term future of the business. In doing this, the union had not sacrificed its independence or been incorporated. *AfG* (including IR mediation) was not sold to the membership as a partnership agreement but as a good deal for postal workers in the privatised company. Importantly, IR mediation was optional. Safeguards were in place in IR mediation to prevent the dilution of national agreements and locally agreed arrangements. If disputes did not settle in IR mediation, procedurally, they reverted to the IR Framework. (This safeguard is the corollary of the individual employee retaining the option of pursuing a formal grievance if workplace mediation fails, except that individual grievance procedures are arbitral processes whereas a dispute under the IR Framework is brought to an end by negotiation which may involve the use of coercive power). The predominant view among CWU representatives in this study was that nothing was lost by attempting mediation – a similar argument was put to individual members by some UNISON representatives (mentioned in chapter four).

In relation to union displacement, initially there had been some concern among CWU representatives about "mediators doing their jobs" but this seemed to have abated once reps became more familiar with how IR mediation operated. Where mediation agreements were not sustained, management tended to be held responsible, not the mediators or CWU. Among sceptical reps, there may also have been a view that IR mediation was the latest fad that would fade as management initiatives on employee involvement had done before (Gall, 2003a), notwithstanding that the option of Voluntary Mediation was written into the *LBA*. Because participation was voluntary

and there seemed to be little pressure on CWU representatives to use it, IR mediation could quietly exist without attracting active opposition from reps and branches who were sceptical or hostile towards it. If anything, the numbers of IR mediations that had taken place since the launch of the service (see below) indicated that there was a swathe of CWU representatives who were disengaged from it as a dispute resolution process.

Importantly, the IR Framework preserved - and possibly enhanced - the lead roles of CWU area and especially divisional representatives and Royal Mail heads of IR in managing disputes at local/area level. However, as some interviewees in the writer's study commented, within the CWU membership and among activists, IR mediation could have suffered reputational damage by association as a result of Royal Mail gaining an injunction in October 2017 to halt planned national industrial action, enforce the *LBA* and 'force' the CWU into external mediation. National CWU leaders were quick to condemn the company for turning to the courts and away from the negotiating table. With the strength of the membership behind them (that is, a still 'live' strong ballot result for national industrial action), the CWU turned the situation to their advantage, welcoming external mediation on the basis that it would get the company back into 'serious negotiations'. The employer's resulting revised offer in response to the "Four Pillars" claim was accepted by the CWU membership. IR mediation survived unblemished. Arguably, it had faced an existential threat during the national "Four Pillars" dispute. Had the negotiations based on the external mediator's recommendations failed, IR mediation could have been irredeemably tainted by association.

Few CWU representatives in the sample thought the union was disadvantaged by agreeing to IR mediation or saw it as a threat. It could be used by a manager as a 'delaying tactic' [CFI-3] but there were no instances cited of this scuppering industrial action or undermining collective resistance at local level. If unsuccessful, mediation would add to the time it would take to resolve the disagreement through the IR Framework procedures – a process that usually took some time in any event.

IR mediation was not perceived by CWU interviewees as threatening union organisation or strength – agreements were monitored and mainly they concerned issues to do with working relationships between individual reps and managers.

Nor did it appear that the process of IR mediation, which aimed to create a more cooperative relationship, co-opted representatives. In any event, it was a brief intervention in a representative's career - in this sample, very few representatives had been repeat players (Galanter, 1974). Participation did make some representatives 'think more' about how they approached managers and encouraged them "to stand in each other's shoes". Examples were given where representatives had empathised with the pressures that individual managers were under but did not accept that being under stress justified or excused poor treatment of postal workers.

There was a firm belief on the CWU side of the national IR mediation service that IR mediation 'worked' [CNI-2; CNI-3] – it had led to improved working relationships in delivery offices and forestalled walk-outs. Neither the union nor Royal Mail expected the workplace conflict culture to change overnight. However, below national level, there seemed to be little enthusiasm for its use. Moreover, the findings of this study pointed to the fragility of IR 'successes'. With two exceptions in this sample, IR mediation had not been used by units which were said - by the interviewees concerned - to be 'hot-spots' or militant. In most cases, it had involved representatives in units where it seemed that displays of collective resistance (outside of national disputes) were infrequent occurrences.

The fact that as a dispute resolution process, IR mediation formed part of the *AfG* national agreement - as opposed to an employer's policy - and that it operated as a national joint initiative with union and management co-mediators lent it credibility with CWU participants in this sample. None of the interviewees appeared to subscribe to the "walk first, negotiate later" approach (Gall, 2003a, p. 151), 'an industrial perspective which regards striking, often unofficially, as the best response to management's actions which are seen as detrimental to postal workers' interests' (Gall, 2003a, p. 142). However, it cannot be assumed that being disposed to favour negotiated solutions, assisted by mediators, indicated *a priori* a propensity to be incorporated on the part of individual representatives. For example, representatives'

preparedness to mediate did not mean that they absolved Royal Mail senior management of its responsibility to equip operational managers to manage people competently, as this unit rep succinctly put it:

> Wouldn't it be easier if you [Royal Mail] could just manage properly and then you wouldn't need mediation? [CLI-3].

If the aim of the employer had been to incorporate workplace and field representatives, erode their trade union consciousness and undermine the ability of the union to mobilise workers in defence of their collective agreements and rights, it did not appear to be succeeding. Within the union, there was no evidence that IR mediation had been used to stifle the expression of collective dissent.

In pluralist IR writing, it is well established that enhancing the ability of individual reps and managers to communicate with each other can improve the working relationship and provide a basis for building trust. The evidence from this study suggested however that it was difficult for unit and shift managers to sustain more consensual ways of working on the basis of a single intervention, even with periodic 'checking-in' by mediators, given the organisational pressures, such as office performance targets, that managers were under.

UNISON: Workplace mediation outcomes – incorporation or independent engagement?

Unlike most of the CWU sample, the UNISON representatives had not been parties in mediation. Representatives who were mediators or had accompanied members drew on their direct experience of the process. Otherwise representatives were reliant for information on the mediation process and outcomes from union members who had been participants. They did not receive feedback from all such members; for example, rep UBI-7 thought the branch was more often contacted when mediation failed.

As discussed earlier, it is conceivable that having spoken to the service's gatekeeper, union members might not seek advice from their union about whether to participate. Management gatekeepers could suggest that potential participants consult their union [(U)BI] but to what extent this happened is unknown. In the UNISON sample, workplace representatives anticipated that members would approach the union for independent advice on mediation. (As previously mentioned, the findings of Saundry,

Bennett and Wibberley (2016) lend some support for this assumption.) Bearing in mind that organisations' mediation services were not used extensively, representatives appeared to be confident that they knew the extent to which union members used mediation. One representative [UBI-11, NHS E] suggested that more non-members than members would be likely to use it because mediation did not involve representation. In most cases, there appeared to be a presumption that members would come back to the union if the outcome was unsatisfactory. It was stressed by this workplace representative:

> I've always said… if it doesn't work or you don't feel that it achieves for you want you want [it] to… obviously you must come back to me or should it [the problem] resurrect itself some time further down the line and the behaviours return, then… you mustn't think "that's sorted, and I can't talk about it again" [UBI-7].

Descriptions of mediation experiences as reported by members who were parties or as witnessed by representatives ranged from 'a disaster' to highly successful. Broadly, reported outcomes fell into three categories: poor; mixed and positive. Poor outcomes for members and unsuccessful outcomes were mostly attributed to perceived failings of mediators, as reported by members, and in some cases, as observed by representatives. The main criticism was that the mediator/s failed to manage the process, for example, not stopping a manager from bullying a subordinate or preventing the mediation from becoming a 'slanging match'. Where union representatives advised members to participate in order to protect their access to formal procedures (as mentioned in chapter four), the success or otherwise of the mediation appeared to be less important than "going through the motions".

Bad experiences did not usually lead UNISON representatives to reject future use of mediation in principle, but such experiences - even a single bad experience - could reinforce a representative's scepticism so that in future they would advise against its use in certain cases [UBI-2] or be circumspect with members about the prospects for its success [UBI-11]. In a UK context, Latreille, (2010, p. 20) found that although 'the vast majority' of organisations responding to a CIPD survey (2008) 'reported their… previous experience of mediation as being positive… attitudes towards mediation are in many instances only as positive as the last experience'. From a union perspective, the writer's study indicates some support for Latreille's proposed variant of fragility theory (Feuille and Kolb, 1994) referred to above. Among sceptical interviewees who

had had limited and indirect experience of workplace mediation, members' "bad experiences" reinforced their scepticism. This also applied to agnostic interviewees whose attitude tended towards scepticism. In contrast, this was not the case for the majority of CWU workplace representatives, possibly because, as agents of the union, they were parties in IR mediations.

There were few reports from UNISON representatives of members being unduly pressured by managers or gatekeepers to participate, although mention was made of managers – who were also union members – 'choosing' mediation where the alternative could be facing a formal disciplinary charge. It was also rare for representatives to maintain that inappropriate cases were selected for mediation. In one case of racial discrimination, mediation had been proposed but not gone ahead [URI-3]. In two instances where members had agreed to mediation in cases involving potential or alleged discrimination, in one case, the accompanying representative had not agreed with the mediator's 'implied solution' [UBI-10]. In the other case, the member's account of the mediator failing to control the other party's bullying behaviour led the representative to consider mediation to be inappropriate for 'serious' complaints [UBI-2]. As mentioned earlier, the majority of mediations concerned dysfunctional working relationships or workplace conflict and bullying complaints that on the face of it did not involve overt discrimination or harassment. Where there were concerns based on bad experiences, these were to do with the management of the mediation process and, in some cases, mediation having been misused by employers 'to get rid of people'.

Turning to mixed experiences, in NHS A, the representative had 'heard of mediations going pear-shaped', nevertheless, 'we'd [the branch] always recommend taking it up' [UB(I)-1] to safeguard members' access to formal procedures. In NHS E, rep UBI-11 had had feedback that some members decided against mediation where they had felt 'pressurised' to accept it. In 'about ten' cases, feedback from members that had participated had been 'quite negative'. The representative could only recall one case where the member had said the mediation had been beneficial, although feedback from members in successful cases did not seem to be actively sought. Rep UBI-11 was 'not really convinced' by the success rate claimed for mediation:

> Because… we are the largest union, and the feedback that we've had from our members that have gone through the process, I would say on the whole has been quite negative…. I can only think of one that I'm aware of, where [party A] said that… they'd gone into it feeling quite hostile… not really expecting much from the process but had just sort of gone along with it to show willing. But because [party B] had opened up about other things that were going on in their life… that person [party B]… recognised that "well yeah, I can see how I might have come across". This member said "actually, I came away feeling sorry for [party B] and with a much better understanding"; so that had been, I think, beneficial for both parties moving on [UBI-11].

In Police Force A, the in-house service proved to be vulnerable to budget cuts and had withered away. Mediations conducted by externals were apparently 'few and far between' partly owing to funding constraints [UBI-5]. However, as mentioned earlier, the organisation was now proactive in attempting to shift to early, informal dispute resolution. Despite the branch leadership's reservations about mediation, the demise of the in-house service made the shift to informal dispute resolution 'more difficult', owing to the loss of trained, internal neutrals and 'that internal skill' [UBI-5]. This had important implications for the union – representatives were stepping into the breach as untrained, *ad hoc* mediators:

> We [reps] are having to do a lot of informal mediating which is I suppose what we do, not officially, not trained [or] anything like that but… as a go-between really, trying to influence the outcome to… help our members understand where other people are coming from and try to find that negotiated outcome which is not always very easy [UBI-5].

While *ad hoc* mediation was considered preferable to 'fire fighting' at a later stage in individual cases, undertaking this role was seen more as a difficulty than an opportunity for the union and pointed to training needs on the union side.

In NHS B, the service offered group mediations in departments. Whereas most individual mediations were successful, the results of group mediations were said to be mixed. In the representative's experience, one went 'very well' and one 'went very badly' [UBI-3]. In another NHS organisation (G), group or 'team-based' mediation occurred 'about twice a year' [UBI-15]. In one case of chronic conflict within a team, it had been suggested by the branch representatives where it was evident (to the union) that formal proceedings had not resolved the issues and senior management were not addressing the problem. In the view of the UNISON representative, without constructive intervention, the situation was heading for gridlock in formal procedures

– 'constant allegations were being flown [sic] at each other' [UBI-15], including allegations of discrimination and victimisation.

The group mediation, conducted by an external mediator, was successful:

> Staff were able to talk about how they've been feeling for years, the eggshells they'd been walking on because of particular members of staff. I found it really encouraging. The people were very appreciative of the fact that it had been done…. People were able to prepare and come with their points of view, their perceptions… how it made them feel, and it was really powerful. People did cry; people did realise that their behaviour isn't sustainable anymore… that's because the mediation… provided a safe space for people to say it without having to face… slander or libel allegations [UBI-15].

In contrast, the representative felt that individual mediations were more mechanical in that the outcome appeared to be 'agreement or no agreement'. This perception may have been a consequence of the restrictions placed on parties by confidentiality in workplace mediation. In dignity at work cases, the representative had doubts as to whether mediation elicited genuine apologies and contrition for misdeeds, and questioned whether 'resolutions' compromised the trust's values and policies, particularly zero tolerance of bullying and harassment (referred to in chapter six).

Procedural formalisation of mediation could result in a 'tick-box' approach which undermined its effectiveness. A regional organiser observed:

> [In] the health service, when any grievance is raised, collective… or an individual grievance or bullying or harassment, mediation is always the 'go-to' claim…. I don't think I've ever had anyone [lay member] saying, they've gone through mediation and all their issues are resolved. It's been more like a tick box exercise rather than a tool to really resolve issues [URI-3].

In this respect, regional official URI-4 observed that when mediation served the needs of the employer, the true aim of mediation – to resolve conflict through a deep and honest facilitated process of exploration and reflection – was sublimated to the objective of shutting down the conflict – a view supported by the findings of Saundry, Bennett and Wibberley (2016, p. 18):

> …control over commissioning mediation generally lay with senior managers whose main goal was simply to clear difficult issues and shift the locus of responsibility for any conflict to the participants.

Consequently, mediation agreements could and did unravel. In the NHS, this was the experience of interviewee URI-3:

> [The mediation process]… it's like a straight road. So once [it's] done they [the mediators] presume that everything is sorted out and then within a couple of months another grievance… or… complaint has gone in or the relationship has broken down or something like that [URI-3].

Of three cases regional organiser URI-3 had dealt with where mediation was an option, it did not happen. In one case, the member had had a previous negative experience of mediation and was not prepared to try it again; in the other cases, the members considered that mediation was not the appropriate route to resolution.

Turning to representatives' positive experiences, the main benefit of organisations using workplace mediation was that it had added another option for dealing with individual complaints which offered members a potentially better experience, in terms of the process, and a better outcome than formal investigations and hearings.

Rep UBI-18 (University C) saw it as 'very much… a positive thing' particularly as it provided an alternative to the formal procedures:

> It's made sure that there are cases that previously would have gone down a formal route with all the associated stress and upset that come with a formal complaint - it actually has sorted it. It's a nip in the bud solution to things… otherwise… the only recourse that the union had was "you're going to have to put in a formal complaint about this" [UBI-18].

A number of representatives made the point that until the arrival of mediation, members were stuck with going down the formal route, even when there was insufficient evidence to substantiate their complaint, as there was no alternative means of challenging perceived injustice. As mentioned previously, this could be because managers were said to be overly rigorous in sticking to procedure:

> Even when we did go to people [managers], and… say "we don't think this is a formal issue", there was no way to provide any other solace… you had to go formal… [with] a grievance. So, without mediation there was no way for us to turn around and say "let's have a conversation" [UBI-15].

Where members found the prospect of a formal hearing to be extremely daunting, mediation could be offered as an alternative:

> [Mediation is]… always going to be one of the first things we offer and try and then keep the formal procedure as an absolute last resort…. And I find… that the members… will come to us and say "I've read the grievance policy - I don't want to do that unless I have to. What other options have I got?" [UBI-18].

In NHS F, which had a well established service, the representative, who was commenting here as a mediator, had a positive view of its use:

> There's only one [mediation] that I… had to stop because one of the individuals just wouldn't engage whatsoever. So it has actually worked well in most cases I've done and worked to a fashion in others… it means people are basically putting things in place to enable them to get back to working together [UBI-12].

Most of the mediations in NHS F were said to be between co-workers which was a deviation from the predominant pattern of manager and subordinate. As a result of using mediation, rep UBI-12 thought there had 'probably been less disciplinary investigations… which can take weeks… months'. In general, the UK case study evidence indicates that mediation was not widely used in disciplinary cases (CIPD, 2011). But disciplinary issues could feature in mediations. For example, in their analysis of a sample of mediated cases, Saundry, Bennett and Wibberley (2016) found that:

> Most of the cases… involved an intricate blend of grievance and potentially disciplinary issues…. The largest group… was made up of complex disputes that appeared to have their roots in attempts by a manager to raise or address perceived performance issues with a member of their team (Saundry, Bennett and Wibberley, 2016, p. 10).

These were advanced disputes involving mainly managerial employees. The indications were that the mediated cases mentioned by UNISON representatives in the writer's study included cases that were in the early stages, and that overall, they involved a wider cross-section of employees. Nevertheless, in subordinate-manager mediations, managers were at liberty to raise performance issues. Thus Bleiman (2008b, p. 15) warns prospective participants that a line manager might 'say things in mediation he/she would not say in any other place' and that parties should 'expect… to hear things said which are uncomfortable and may be hurtful'. Of course, managers may also experience hurtful and unjust comments made about them; however, in raising performance issues, a manager is acting as the agent of the organisation, underscoring the implicit power imbalance in the employment relationship. In this study, it was not clear that UNISON representatives were aware of this dimension to mediation or always prepared members who would be unaccompanied for what might happen.

UNISON: The impact of workplace mediation - incorporation or independent engagement?

The attitudes of union representatives who had been exposed to workplace mediation provide a basis for assessing whether they had independently engaged with it or been incorporated through their involvement with it. Analysis of the UNISON representatives' attitudes to workplace mediation produced a spectrum which encompassed three broad groupings: 'advocates', 'agnostics' and 'sceptics'. (Similarly, Roche and Geary (2002, p. 672) had identified groups of 'proponents, sceptics and opponents' to represent 'shades of opinion' among union representatives towards partnership working at Aer Rianta.) The groupings indicated orientations which (particularly among the agnostics) were likely to be malleable, in response to decisions made by employers and feedback from union members who had used, or declined to use, their employer's mediation service.

For this analysis, data from a sub-set of the UNISON sample was used, comprising 22 UNISON participants - three regional officials and 19 workplace representatives. National officers, none of whom had direct experience of workplace mediation, were excluded, as were two interviewees – a regional officer and a branch representative - who had had no experience of workplace mediation and did not express a view on it.

'Advocates' included representatives who were largely positive about the use of workplace mediation; and representatives whose attitude could be described as 'towards (a position of) advocacy'. This grouping comprised just under a third of the UNISON data sub-set. The main reason why representatives were advocates for workplace mediation was instrumental: in their experience, used appropriately, it 'worked better' than other dispute resolution processes.

'Agnostics' were a more amorphous group, comprising representatives who were 'between agnosticism and advocacy' and those who were 'between agnosticism and scepticism'. None of these representatives were purely agnostic – they veered toward scepticism or advocacy and the same was true for the CWU representatives (see below). This group of UNISON representatives were generally reliant on the employer for their information about mediation. When advising individual members about their options for resolving a complaint, they tended to be neutral as to which option the

member should take. Agnostics were the largest group, approaching half of the UNISON sample.

'Sceptics' included representatives whose predominant attitude towards the use of mediation was scepticism based on negative feedback from members, negative experiences and/or distrust of the employer's approach to the use of workplace mediation. Exceptionally, as will be discussed, one sceptic believed strongly in the potential of mediation to resolve conflict, but in their experience, it was not realised in the majority of workplace mediations. Sceptics comprised just under a quarter of the UNISON sample. This grouping was more concerned with how the employer was using mediation than opposition to it in principle as a method to resolve conflict. A small number of the sceptics indicated a preference for resolutions based on collective action but noted ruefully that the unions were in a weakened state [UBI-4; UBI-2; URI-3] and they did not reject the use of mediation in appropriate cases. There were no implacable opponents of the use of mediation in the UNISON sample.

Allied to the importance placed by all groupings on the use of mediation in appropriate cases only, some representatives, mostly in the sceptic group, were specifically concerned about the inability of mediation to address systemic issues that could feature (often subliminally or subtly) in individual cases, such as organisational tolerance of bullying cultures and systematic failure to address poor people management. In this regard, rep UBI-11 summed up the response of union health and safety representatives at a conference where employer initiatives to improve staff 'resilience' had been discussed:

> A lot of employers [were offering]… talking therapies… and things like mediation. We [union representatives] are not going to… say we're not in support of mediation or… complementary therapies and… employers paying for cognitive behavioural therapy.... But the conclusion was that none of these things are a substitute for addressing the culture, and addressing the causes of things that make people stressed and ill, and cause relationship difficulties. So it's fine to have them but you have to address the underlying causes [UBI-11].

The fact that the option remained of pursuing the complaint using formal procedures if mediation was unsuccessful was critically important in enabling representatives to encourage members to 'give mediation a go' or, in the case of agnostics and most sceptics, not actively dissuade them.

The CWU representatives' experience of mediation was not directly comparable with that of the UNISON representatives in that the CWU workplace and field representatives had been parties in mediation. All 15 CWU interviewees had had direct experience of workplace mediation and had expressed a view about its use. Bearing these differences in mind, there were more CWU advocates proportionately than UNISON advocates, and more CWU agnostics than UNISON agnostics. A significantly smaller proportion of CWU representatives were sceptics, however some of the agnostics tended towards scepticism.

In this study, union interviewees who had trained and practised as workplace mediators had the most positive attitudes towards the process and outcomes. These representatives were the most knowledgeable about mediation – the core tenets, the process and the challenges of mediating. From a radical perspective, it might not be surprising that representatives who had the closest association with management instigators of mediation and trainers would be liable to be co-opted. However, the findings of this study indicated that representatives who became mediators had a pre-existing disposition in favour of early, informal dispute resolution whenever possible. They were not so much "converts" to mediation but recognised its potential advantages over formal procedures in appropriate cases.

The two representatives associated with UNISON who had the most extensive experience of workplace mediation, including gate-keeping, had very different outlooks on its purpose and practice. A former UNISON representative [(U)BI] maintained an unwavering belief in the value of mediation – it usually resulted in the parties reaching an agreement and it delivered outcomes in bullying cases that complainants wanted, which (in his experience) formal grievance procedures rarely did. From this perspective, applying the Budd and Colvin (2008) triad of efficiency, equity and voice; mediation was firstly efficient, equity was assumed in that outcomes were agreed and highly satisfactory, and the process enabled participants to have a greater voice than in formal procedures. In contrast, the critique of UNISON rep URI-4 echoed that of American writers such as James Coben (2004) who has vocalised objections to mediation being harnessed to the interests of institutions, endangering its potential to genuinely resolve conflict. Rep URI-4 believed that organisations were motivated to 'shut down dissent' rather than bring about genuine, collaborative

resolutions of workplace conflict. In this interviewee's experience, this was reflected in the practice of 'the majority' of in-house mediators in that they 'engage[d] in behavior that is clearly designed to cut to the chase… instead of exploring the conflict… [they] move to a settlement'. Consequently, mediations could result in superficial 'resolutions' and potentially unjust outcomes, particularly for subordinate employees.

In the writer's experience, mediators are trained to be future-focussed – to encourage parties to look forward – which can lead mediators to rush to explore the basis for an agreement before one or both parties are psychologically ready to "move on". In this context, shutting down the conflict may thwart or suppress the expression of 'employee voice', particularly that of less powerful disputants. In the UK literature, mediators regarded mediation as a success where the parties were able to resume a functioning working relationship. This was also the view of the union co-mediators in this study. From an IR perspective, it could be viewed as irrelevant that a deeper resolution to the conflict had not been achieved and that union co-mediators might share a settlement focus. However, "sticking plaster" resolutions are liable to be fragile and the efficiency of mediation is called into question when agreements unravel. In relation to equity, rep URI-4 was opposed to mediating 'justice issues' because it relocated the organisation's responsibilities onto individuals. In this representative's experience, after the conclusion of formal procedures, restorative mediation was under-used in organisations. The implications for unions in relation to equity - in regard to process and outcomes - are discussed in the concluding chapter.

The most critically engaged UNISON representatives were those who had accompanied union members in mediations. With two exceptions, those who had acted as companions had not attended mediation training. (One of these representative's experience of accompaniment pre-dated their mediator training.) It could be argued that therefore they might not have fully understood the process. It could equally be argued that not having been exposed to the ideology of workplace mediation, they were not primed to believe in it; and as mediation is a form of assisted negotiation, that their industrial relations experience provided a solid basis for evaluating what happened in mediation meetings. The accounts given by union companions indicated that they observed proceedings very closely. They were alert to possible unfairness in the process, such as mediator bias and failure to control intimidating behaviour by the

more powerful party. They monitored how the member was coping. Accompanying members also enhanced representatives' understanding of the mediation process and the techniques used by mediators.

Impact of the use of mediation: Extending unions' collective influence at the workplace?

This section considers the findings as to whether through their involvement with workplace mediation, unions extended their collective influence or legitimacy power with employers. It examines the impact of workplace mediation on industrial relations in organisations included in this study, as perceived by the interviewed union representatives.

The UNISON experience

The predominant view among interviewed representatives was that in organisations where UNISON was recognised, the impact of the use of workplace mediation on industrial relations was negligible. Rep UBI-3 (NHS B) thought there were 'definitely benefits' to using mediation and training managers in mediation skills (which had occurred in NHS B), so that conflicts could be defused and did not become grievances or need formal mediation. This representative, who was a longstanding employee and branch official, did not perceive that the involvement of the union in workplace mediation had had any impact on industrial relations overall.

In Local Authority C, the impact of the use of workplace mediation on industrial relations was said to be minimal owing to the fact that the number of mediations was not significant, 'added to the fact that we have very good relations with our employer' [UBI-6]. Rep URI-7 (Local Authority C) added '…with most managers and the HR departments'. There were no cases of representatives perceiving that its use had worsened industrial relations.

It was apparent that some public sector employers saw the introduction of workplace mediation, or wider use of an existing service, as providing a mechanism for constructively managing the upsurge in workplace conflict that was anticipated to break out after the global financial crash of 2008 in light of the cuts to services and jobs that were expected to follow, particularly (initially) in local government and the

civil service. In 2009, the Public Sector People Managers' Association urged councils to consider the business case for setting up in-house mediation services 'to address the "human casualties" and potential grievances which will result from next year's local authority budget cuts' (Baker, 2009). The director of HR and organisational development at a county council which had set up an in-house service in 2006, warned:

> Stress levels will go up, sickness levels will rise and union activity will shoot through the roof so [councils] need these support mechanisms in place (Baker, 2009).

The assistant director of personnel and training at another county council, which launched its mediation service in 2006 with union support, referred to savings of £50 million which the Council had been forced to make in the last five years:

> A huge amount of mediation has taken place around restructuring and it's been very beneficial for us. We can deal with conflict locally before it goes into a formal setting (Baker, 2009).

It did not prove possible to obtain interviewees with UNISON representatives in these authorities. Nearly a decade on, with continuing cuts and service restructuring, overall, in the UNISON sample, the use of mediation was not credited with playing a key role in managing the fallout or changing the industrial relations climate.

If workplace mediation were made mandatory, sceptical and agnostic representatives' attitude might shift to active opposition – even advocates might reconsider their support. However, it appeared that in some NHS organisations, staff sides had acquiesced with moves to a form of quasi-compulsion. In one case, the branch position was that the union turned it to their advantage – by attempting mediation the member had 'ticked the box' and could progress their claim [UBI-15]. In NHS organisation C, the industrial reality (according to the interviewee) was that quasi-compulsion could be overridden at the branch's insistence, if necessary.

In two cases, a change in the branch leadership led the employers to ask the respective branches to engage with its mediation service, for example, by inviting representatives to participate in training [UBI-16; UBI-18]. The implication was that relations between the employer and the former branch leaders were not conducive to such cooperation.

(Interviewees mentioned the previous branch leaderships being 'at war' with the employer.)

A reported outcome of the use of mediation in the UK literature was a decline in the number of formal grievances (Saundry, McArdle and Thomas, 2011; Latreille and Saundry, 2015). A sharp decline occurred in at least one of the user organisations in this study, in Local Authority B which had a long established service. Mediations were down to 'ten or twelve' a year but formal grievances had declined from 'very large numbers' to 'one or two a year' [UBI-16]. The representative did not attribute this solely to the use of mediation or the cooperative stance taken by the unions - downsizing was a significant factor. However, mediation had been particularly effective in dealing with 'those long entrenched relationship issues that were never resolved'. In the representative's view it also 'has helped managers to be able to see how to be more effective managers'; for example, learning how to reflect on conflict within a team and communicate with junior staff so they did not feel they were being bullied and understood 'managers are just asking them to do the job' [UBI-16]. Working with the unions, this authority had also adopted a conflict management training programme for managers. Overall, the representative considered that the impact of the use of workplace mediation on industrial relations had been 'very favourable' [UBI-16].

In University C, the representative did not have overall figures for its use, but in 2016/17, three UNISON members had used the service. (According to an undated university webpage, accessed in early 2018, the mediation service had 'helped over 70 staff… of all grades since it launched in 2011'.) The relationship between the branch and HR was said to be very positive. Consequently, the representative did not consider that currently the use of workplace mediation had any impact on industrial relations 'because… any effect it will have had will have been when they initiated it. In my tenure, it has just been one of those things… that [is] available' [UBI-18].

In Police Force B, the representative's view was that the impact of workplace mediation on industrial relations had been 'very good':

> I find it one of the most useful tools to resolve workplace issues…. The use of mediation can make things a lot easier for both the trade union and the employer's side because…

> it avoids them closing up and it avoids us closing up as well…. We can get to the situation where we're only communicating via… formally worded emails or letters and you never want to get to that situation [UBI-9].

However, the introduction of mediation had not been the catalyst for improving industrial relations. Rep UBI-9 identified the work done on the union side to build a 'good relationship with the senior HR officer who deals with grievances' (referred to in chapter three). As depicted by the representative, the relationship with management was not one of incorporation. The relationship between the branch officers and HR was 'not always rosy':

> We will sometimes say "I think you're wrong and we're going to try and prove you wrong". But that's business [UBI-9].

Likewise, two-thirds of UNISON survey respondents who had had involvement with mediation said that relationships between management in user organisations and the union were mostly good. Just under half of these respondents said that relationships were much the same as before the use of mediation; although a third said that the relationship had improved. A small proportion of UNISON survey respondents (just under a tenth) said that relationships were poor in user organisations, and that the use of mediation had made little difference.

In the UNISON sample, no concrete examples were given of ways in which union involvement with the use of workplace mediation had extended the union's influence formally. Mediation had been introduced where there was either already a good or reasonable relationship between the union and management. In University C and Local Authority B, a change in the branch leadership led the employer to seek more collaborative industrial relations and the branch had been receptive to the employer's invitation to become involved with workplace mediation. Overall, willingness to work in partnership – rather than support for the use of mediation - brought institutional gains for branches in some cases, such as increased facility time (NHS D) and arguably greater legitimacy power, with employers consulting representatives more regularly and over a wider range of issues, as in NHS D and Local Authority B.

The CWU experience

The *AfG* national agreement and *LBA* put in place mechanisms for dealing with industrial conflict at all stages and levels in Royal Mail. At the micro-level – in units and on mail centre shifts – IR mediation was intended to resolve conflict quickly but just as importantly to sow the seeds of cultural change – to model less adversarial ways for managers and union representatives to relate to each other and negotiate, lowering the risk of differences or disputes escalating to unballoted industrial action or moving into the higher stages of the IR Framework in future. Certainly CWU mediator CNI-3 believed that IR mediation was contributing to culture change – parties could see the benefits of resolving issues informally. It was quicker than going through the IR Framework stages. Unit rep CLI-6 considered mediation to be 'an educational tool' enabling parties 'to learn from each other, pool their understanding and then move on'.

Rep CFI-3 thought that IR mediation could be 'a way of progressing the old mentality', that is, of representatives who were resistant to change - albeit it required managers with intransigent attitudes to also engage with it. However, rep CFI-3 could not imagine 'obstinate reps softening their stance' in mediation.

There were indications that participating in IR mediation and observing mediator techniques had added to individual representatives' conflict management skills – skills which were also intrinsic to integrative or interest-based bargaining. IR mediation provided an opportunity for representatives to be heard and for both parties to gain a better understanding of each other. Agreements set out frameworks for future communication intended to assist the parties to avoid conflict and to handle disagreements that arose constructively. However, back at the workplace, improvements in personal relationships had to withstand external forces where the collective interests of the parties overrode the individualised interests explored in mediation. Unit representatives reported that mediation had improved their relationship with the line/office manager but that this was often short-lived – managers moved offices or (with some exceptions) were said to have reverted to previous patterns of behaviour under pressure of office performance targets set at higher levels in the organisation. In relation to industrial disputes or differences, CWU

field representatives, who had oversight of local disputes, saw the failure of IR mediation to resolve these issues as a weakness. Some interviewees saw IR mediation as 'toothless' because it lacked an overtly evaluative element.

At national level, it was said that IR mediation was valued by CWU and Royal Mail because the results have been 'positive' [CNI-2]. Successful outcomes, in terms of agreements being reached, were reported to have been achieved in over 90 per cent of cases [CNI-2; CNI-3]. The wider impact of the use of IR mediation was less clear but overall the evidence from the study suggested that it had been limited. While the findings do not claim to be representative, successful outcomes were often fragile, as shown above. Overall, take-up of IR mediation had been modest. By 2016, since the launch of the service, '533 people' had been 'involved in 96 cases' that the national IR mediation team had 'worked on' (CWU, 2016a). Of these cases, 61 had involved two people. The nature of the other 35 cases was unclear but as 'mediations can cover larger groups of individuals' (CWU, 2016a) it is assumed that these cases included listening sessions conducted by IR mediation team members. Moreover, there appeared to have been a dip in referrals for IR mediation in the 2016-17 year. At September 2017, the total number of cases that the national IR mediation team had worked on stood at 'ninety, probably now over 100' [CNI-2] which can be taken to mean around or just over 100. (Very few representatives in the CWU sample had participated in IR mediations in the year ending September 2017.) The data on take-up suggest that direct experience or exposure to IR mediation had not been widespread among unit representatives in particular. According to CWU sources, across the UK, the union has approximately 2,000 representatives (at divisional, area and unit level). On the basis of the above figures, it is estimated that around 200 representatives - 10 per cent - have had direct experience of IR mediation.

The low level of use would suggest that IR mediation was unlikely to have had a significant impact on reducing overall days lost owing to strike action, especially unballoted action. Data was not available to test this proposition but it was apparent from Royal Mail statistics for the period 2012 to 2018 (Royal Mail plc., 2014; 2015; 2016a; 2017a; 2018a), that the *national* industrial relations climate had a major influence on fluctuations in the total number of days lost per year owing to balloted and unballoted industrial action. This was corroborated by a national CWU interviewee

[CNI-2] who commented, in relation to the "Four Pillars" campaign, that the temperature in workplaces could rise to a point where IR mediation would not prevent walk-outs.

Below national level, CWU representatives in this sample had certainly not abandoned their use of the higher stages of the IR Framework, partly because IR mediation did not resolve many industrial issues. In one case, a unit rep had used IR mediation and the higher stages of IR Framework dispute resolution procedures in tandem in a dispute over a collective issue. As mentioned, this representative regarded IR mediation as an 'empowerment tool' for enforcing national agreements [CLI-5]. Rather than sapping the ability of unit members to resist management, the evidence suggested that some unit reps regarded IR mediation as strengthening their position as it involved 'national' intervention and (it was believed) would result in action being taken by those "higher up" in Royal Mail.

Union support for mediation – impact on recruitment

This section considers the findings on whether union involvement with workplace mediation had a discernible impact on the recruitment and retention of union members in the user organisations in this study. As mentioned earlier, in ELPCT, UNISON claimed that its membership had doubled in two years following the introduction of in-house mediation (Saundry, McArdle and Thomas, 2011, p. 28). It was not clear precisely why this had occurred; whether this outcome was contextually specific; or whether membership gains might be replicated in other user organisations.

Hypothetically, an employee who had been asked to consider mediation by a manager or scheme gate-keeper might join a union for protection, should it be needed, and/or for advice and support. With regard to protection, a line manager might fear that they would be penalised if they refused to agree to mediation where their superiors expected them to participate, or where mediation had been recommended following an investigation. The prospect of mediation failing could prompt non-members to join; for example, where disciplinary procedures might follow, or where a complainant wanted to pursue a formal grievance with union assistance. However, UNISON representatives in this sample were not aware of examples where these factors had prompted individuals to join. They knew of no cases where employees had been

prompted to join UNISON as a consequence of being approached by management or HR to consider mediation. Some representatives queried the premise that the union's support for, or involvement with, mediation would encourage people to join. Generally, the independent advice which the union could give on mediation was not seen as offering anything distinctive to what was regarded as "part of the normal service" of advising individuals on options for resolving their problem or complaint. Nor, as a rule, would the union be offering to accompany members in mediations. In this sense there was no added value in joining a union if mediation did not permit representation and accompaniment was considered unnecessary in most cases.

Beyond defensive reasons for joining, the question arose as to whether the unions' involvement with workplace mediation had enhanced employees' perceptions of their legitimacy and/or effectiveness. This may have been a factor in ELPCT, where there had been a relatively rapid and dramatic shift in industrial relations from adversarial to cooperative in which the introduction of mediation had been the catalyst. The underlying proposition is that at a collective level, in cooperative mode, the union might be seen to be more effective; and at an individual level, some employees may have been deterred from seeking union assistance over sensitive issues when the only avenue for addressing them appeared to be confrontational. However, in this study, in organisations where a strategic approach had been taken to change the conflict culture, such as NHS organisations B and D, interviewees did not consider that the introduction of mediation had aided recruitment of members or stewards. In NHS B, mediation was part of a broader approach to collaborative conflict management. In NHS D, its use was peripheral to the changes made by the management instigator to improve industrial relations. However, three representatives in other organisations commented that unions had to look beyond traditional ways of doing things, including in resolving disputes, and broaden their appeal. Rep UBI-16 (Local Authority B) observed:

> Younger people do not believe necessarily that collective bargaining is the way forward for them… unless they've got parents who were unionised they do not see the relevance for them and we have to find different ways of engaging people [UBI-16].

Rep UB(I)-1 (NHS A) thought that if the problem was resolved in mediation and others saw that, they might consider that the union is 'something effective to join' given that 'the old ways don't work anymore':

> We have great difficulty in persuading members to take industrial action these days. In addition many of our members work in areas where if they take industrial action, patient care suffers and so they are further reluctant to do this [UB(I)-1].

Rep UBI-18 (University C) said the use of mediation with 'good resolutions' led to a 'happier membership'. From a radical perspective, this might be considered somewhat inconsequential or even undermining of mobilisation but that would be to overlook the distress that workplace conflict causes to those involved and the importance that individual union members place on having help from the union if they have a problem at work. Where the problem involves conflict with a co-worker or manager, it might be best dealt with in mediation, with union support. Perceptions of the effectiveness of union representatives in helping individuals are transmitted to others in the workplace; and the reputation of the union at the workplace is an important factor in encouraging employees to join (Kerr and Waddington, 2015). As will be discussed in the next chapter, union assistance need not be restricted to traditional means such as formal representation.

A serious criticism of workplace mediation is that it leaves the systemic causes of workplace conflict untouched and possibly disguised. Realistically, these issues cannot be addressed in workplace mediation. The challenges posed by mediation to unions were firstly, whether they allowed cases involving systemic causes, such as discrimination, to be mediated (which interviewees in this study believed they did not); and secondly, whether unions used other strategies and mechanisms to effectively address the systemic causes of workplace conflict. These subjects are beyond the scope of the thesis but some observations arising from the findings are made in the concluding chapter.

Returning to the UNISON experience of increasing its membership at ELPCT, to gain insight into this seemingly unique phenomenon, a former leading UNISON representative [(U)BI] was interviewed for this study. Firstly, it was said that of 500 staff employed in the ELPCT service in question, 400 were UNISON members by the time the service was outsourced in 2011, and that '400 plus' had been recruited by

UNISON representatives. Across the Trust, in the period in which the workplace mediation scheme operated, 42 mediations had been carried out, all of which were two-party mediations [(U)BI]. If there was a relationship between union support for mediation and the increase in membership, this would have to be attributable to an associated factor (or factors).

As interviewee (U)BI recalled, employees joined UNISON as an 'insurance policy', should they be directly involved or implicated in workplace conflicts that could entail formal investigations and hearings. In their role as the mediation scheme co-coordinator, interviewee (U)BI had visited conflict hot-spots in the organisation. Speaking to groups of staff about mediation gave him 'a platform' to mention, at the end of his presentation, that people might consider joining a union if they were not already members. As alluded to earlier, there could also have been an associated effect arising from the use of workplace mediation and the ensuing transformation of the union-management relationship in ELPCT, whereby the unions were seen to be more effective by employees and hence they may have been more likely to join a union. As neither this study nor previous studies of ELPCT interviewed employees and/or union members, it was not possible to test this proposition. However, in situations where the employer is not hostile to trade unions, adversarial "anti-employer" trade unionism can be off-putting (Hurd, 1993) particularly to women [UNI-1], who in ELPCT comprised the majority of employees and mediation participants. In general, professional and managerial staff who wanted to avoid perceived negative consequences of pursuing - or being respondents to - formal complaints might also have been more likely to seek union support having "seen a new side" to UNISON locally. It is also relevant to mention that although UNISON was said to have mostly 'won' at grievance hearings, according to interviewee (U)BI, the union did not win for complainants in most formal bullying and harassment cases.

Two factors extraneous to mediation were likely to have had a significant impact on union recruitment. Firstly, in 2008, the Government announced its intention to abolish primary care trusts. ELPCT services that were not re-commissioned were outsourced in 2007-08 (Saundry, McArdle and Thomas, p. 11) and 2011. The Trust itself ceased to exist in 2013. Over this period, insecurity and uncertainty about future employment would be likely to encourage employees to join a union. Secondly, originally ELPCT

UNISON members had been allocated to a branch which also covered members in other NHS organisations in the area. Interviewee (U)BI had been instrumental in forming a break-away UNISON branch at ELPCT. According to interviewee (U)BI, to ensure its financial viability, the UNISON region set a recruitment target for the new branch to reach within its first year – the implication being that if the target was not met, the branch could not continue. Interviewee (U)BI had been confident that the target could be easily met and the branch continued to exist until services were outsourced and members transferred to other employers.

In the UNISON sample in this study, the introduction of mediation was not associated with an increase in UNISON membership in any of the user organisations.

In comparison with the workplaces where UNISON was recognised, where union density varied quite widely, overall CWU membership density in Royal Mail was very high - '75-80 per cent' [CNI-2] – and in some workplaces in the sample, it exceeded 90 per cent. Interviewee CNI-2 considered that the use of IR mediation would not act as an incentive to join. As it happened, at the time of this interview, the CWU was gearing up for a national strike ballot and was recruiting members on the back of the "Four Pillars" campaign [CNI-2].

Union involvement with mediation: Enhancing perceptions of union legitimacy among employees?

From an equity standpoint, potential injustice lay in cases being shuffled off or shoe-horned into mediation when they clearly involved potential breaches of employee rights. The findings of this study indicated that UNISON and CWU representatives were alert to this possibility, especially in relation to overt discrimination. From a radical perspective, an overarching danger lies in the use of mediation accelerating or deepening the individualisation of workplace conflict, for while 'appropriate' cases for mediation are generally not suited to formal dispute mechanisms they nevertheless concern the organisation of work – as a collective activity - and ultimately demand collective remedies. From a critical pluralist perspective, this aspect of workplace conflict and the inherent imbalance of power in the employment relationship are not recognised by the ideology of workplace mediation; and if there is any danger of "incorporation" it is in union representatives absorbing uncritically, in mediation

training, that the roots of workplace conflict are psychological. Of course, as union representatives appreciate, there are individuals who are very difficult to work with and manage, and managers who seem incapable of managing people, and mediation may be helpful in those cases. But even in cases where the parties are co-workers, systemic issues, such as discrimination, may underlie the conflict. Among some representatives in the sample, there was concern that mediation would mask a recurring, systemic problem:

> Mediation is limited to when you've got an individual that's unhappy and it's an act that isn't any wider. But our issue is… if something comes out in mediation that could keep the organisation safe. So, effectively, you can go to mediation twenty times about the same root cause without ever having addressed the root cause [UBI-15].

Arguably, employees experiencing an organisational culture of bullying and those belonging to groups who were likely to be disproportionately affected by systemic inequality or unfairness could become cynical about the failure of the employer to take action on root causes and perceive the union to be collusive where it cooperated with the use of mediation when corrective, collective measures needed to be taken.

On the face of it, owing to its individualised and confidential nature, workplace mediation of individual complaints has fewer potential 'radiating effects' than litigation of individual employment rights, that is, of 'positive outcomes' being 'diffused with a view to changing employer behaviour or mobilising broader groups of workers' (Colling, 2009, p. 3). From a radical perspective, by individualising issues and concerns that are collective - in that they are about the collective enterprise of work - mediation militates against mobilisation and serves to weaken union organisation. Union involvement in mediation could be criticised for perpetuating the servicing model and undermining the organising model. Even if it is not seen as harmful – owing partly to a relatively low level of use – workplace mediation was (and is) likely to be regarded as a low priority and, in UNISON, very little national resource had been expended on it. While the findings of this study indicate that the role mediation might play in union revitalisation remains tenuous, in relation to retaining or attracting members, the previously cited research findings on why employees join and remain union members would suggest that individual employees who want to consider mediation or who are asked or possibly pressured to participate may adopt a negative view of the union if

well-informed, competent support is not forthcoming. These issues are discussed further in chapter six.

Mediation in the workplace: Institutional benefits for unions

This section sets out the findings on organisational benefits to unions which flowed from their involvement in mediation in the workplace.

Some representatives who had trained as mediators said they had acquired new skills or developed existing ones which were transferable to their union work. These included: managing conversations with people who were very upset or angry so that they became calmer and were able to explain the problem and consider their options; 'reframing' (representing a situation as described by a party but using different language to reduce defensive or antagonistic responses); using open questions; empathetic listening; 'summarising back' to demonstrate that the speaker had heard and understood what has been said; and using 'uninterrupted time' to ensure each person feels treated with respect and has the floor to explain the issues from their perspective. Some of the representatives who had accompanied members also mentioned that they had picked up techniques from observing mediators and the CWU co-manager of the national IR mediation team [CNI-2] also considered that mediation training entailed transferable skills.

The institutional benefit to the union that was most frequently mentioned by UNISON representatives in the sample was time saved on individual casework [UBI-4; UBI-6; UBI-9; UBI-10; UBI-12; UBI-16; UB(I)-17; and UBI-18]. Savings came about as a result of fewer cases involving formal investigations, grievance hearings and, in some instances, disciplinary meetings. This finding echoed that of Latreille (2011). Particularly where there had been a marked decrease in cases going through the formal stages of individual grievance or dignity at work procedures, the use of mediation had eased the burden on overstretched stewards, especially where facility time was insufficient and stewards did union work in their own time [UBI-18]. Less time spent on such cases could help stave off burnout. In Local Authority B, where the branch had too few active stewards, the use of mediation had 'brought caseloads down to manageable levels' [UBI-16]. Rep UBI-18 (University C) estimated that a resolution achieved through mediation took 'about a third of the time' taken by formal proceedings. Reps UBI-16

and UBI-10 also mentioned the concomitant savings to the employer and taxpayer. In this sense, through its engagement with mediation the union demonstrated its worth to the employer. Time saved was spent on other representational activity, health and safety issues, and on 'more complex [individual] cases' [UB(I)-17] and disciplinaries.

Institutional effects: Sharing knowledge and experiences within the union?

Where there were informal or formal mechanisms that accompanying UNISON representatives could use to give feedback to management on their experience, they did so. In contrast, very few examples were mentioned of representatives giving feedback on their experience within union structures at branch, regional, sectoral or national level.

In regard to internal knowledge sharing, although a number of the workplace representatives in the UNISON sample held elected positions on the union's regional and/or national bodies, with a few exceptions, they could not recall any instances of workplace mediation being an agenda item or there being opportunities or invitations to share experiences within or across service groups, with UNISON's self-organised groups, or with other branches in the region. Representatives UBI-13 and UBI-18 sat on their respective regional higher education service group committees and one of these representatives had chaired their committee. Neither could recall committee members sharing experiences of mediation at their institutions (at least formally) or discussing the subject. Neither representative knew about mediation services in other higher education institutions:

> I assume all… universities will have a form of mediation available to them, but it is not something that I've particularly looked into. I've relied on what we've got, and it's good. That's what we need to worry about for now [UBI-18].

Rep UB(I)-17 (NHS H), who was also a member of a royal college, said that workplace mediation had been discussed by the stewards' panel of that body but that there had not been an opportunity to talk about their experience of its use within UNISON beyond the rep's branch. Rep UBI-11, who was an elected member of four regional bodies and a former member of the union's national women's committee, could not recall workplace mediation being discussed in any of these fora.

The CWU publicised the availability of IR mediation and showcased the in-house service at the annual conferences of the postal constituency. Beyond established internal mechanisms through which representatives might share knowledge and discuss IR mediation as part of union business, it was not known if there had been any specific opportunities for representatives who had been parties to discuss IR mediation collectively with field and national gatekeepers and CWU mediators.

The implications of the lack of knowledge sharing on workplace mediation particularly within UNISON are discussed in the next chapter.

The study found no evidence of significant inter-union differences over the use of mediation in the UNISON cases. (The issue did not arise in relation to IR mediation owing to the CWU having sole recognition rights for non-managerial Royal Mail employees.) In so far as they existed, internal union tensions over IR mediation had not surfaced in ways that had damaged relations between the CWU nationally and representatives at field and unit level in the postal constituency. The lack of national UNISON policy direction or oversight of branch activity in user organisations, replicated it seemed at regional level, meant that branches, or rather their lay leaders were able to respond as they decided. This *laissez-faire* approach obviously reduced the potential for internal union tension over the use of workplace mediation but it also had a downside, as is discussed in chapter six.

IR and workplace mediation: Frequency of use and fragility

Arguably, the potential for workplace mediation to be a mechanism for incorporation or revitalisation of unions would be limited if it was used infrequently and/or it did not become embedded within user organisations. A mixed picture emerged from the UNISON sample as to whether the use of mediation was declining or increasing. The following examples were from different regions. In relation to NHS organisations, regional organiser URI-3 observed that mediation use seemed to have passed its peak and the focus had shifted to new initiatives on whistle-blowing. Rep UBI-15 (NHS G) commented 'we don't have a big waiting list for mediation'. In contrast, use of mediation was said to be increasing in NHS E following the recent re-launch of the service [(U)BI]; and also in NHS H, where in-house mediation had been introduced in 2014. According to rep UB(I)-17 (NHS H), there were 'lots of cases'. Group mediations

were now offered and more mediators were being recruited to add to the current cohort of fifteen.

Rep UBI-18 (University C) indicated that branch support could play an important role in securing the service:

> The more that we… champion it as… something that we support and… think our members are utilising, we protect [it]; we make sure that the University can't turn around and say "actually this is quite an investment to us and it's not really being used so we're going to get rid of it"[UBI-18].

In Local Authority B, the use of mediation was said to be embedded – the employer had seen its value and intended to continue the service [UBI-16]. Overall, it was not possible to assess whether there was an upward or downward trend in the use of workplace mediation in the sectors included in the UNISON sample.

Views differed within the CWU sample as to the embeddedness of IR mediation. From a national perspective, it was embedded procedurally, as part of the legally binding IR Framework and *AfG*. It was said to be 'very robust' and not dependent for its continuation on individual champions. It would continue because 'so many positives have come out of it' [CNI-2]. Some unit reps and a field representative [CFI-2] regarded its longevity as an indication that it was embedded. In contrast, another field representative [CFI-1] considered that its impact had not been significant and there was no sign of unmet demand for IR mediation from CWU field and unit reps or Royal Mail managers. Particularly below divisional level, managers were said to be:

> …reluctant to engage in the IR Framework at all, let alone the mediation process because… they generally feel they have a right a manage [CFI-1].

If anything, 'in the industrial arena' - as opposed to 'relationship issues'- this representative's view was that its use would be 'tailing off even more' [CFI-1]. The representative tended to 'think almost that IR heads were quite happy to go along with it as an ancillary thing that we [they and their CWU counterparts] don't come into contact with that often' [CFI-1]. The overall assessment of rep CFI-1 was that IR mediation was not embedded. The extent of its penetration into dispute handling at local level appeared to be limited and, overall, disengagement on the part of representatives and local managers seemed to be a common phenomenon. Notwithstanding its current status as part of the collectively agreed dispute resolution

procedures, both the CWU and Royal Mail are likely to review the efficacy of IR mediation, and the service on offer to union representatives and managers may change in future.

CHAPTER SIX: DISCUSSION AND CONCLUSION

The first section of the chapter expands on the original contribution to knowledge made by this study, foreshadowed in the introduction to the thesis. The second section draws together the findings on union involvement with workplace and IR mediation, focussing the discussion on the analytic themes - incorporation, displacement and union revitalisation - and the associated research questions (set out in the methodology chapter). This is followed by a concluding summary. The penultimate section considers the implications arising from the findings for UK trade unions, particularly those that deal with employers using or intending to use workplace mediation. More broadly, it is argued that whatever the future for workplace mediation in UK organisations, the reform of individual and/or collective dispute resolution is bound to be on the agenda of employers and government. This calls for unions to develop strategic approaches that link dispute resolution to wider objectives on membership representation, organising and equality. Lastly, areas for further study are outlined.

Original contribution to knowledge

In this study, the empirically based findings on trade unions' attitudes towards, and experiences of, workplace mediation are analysed within Heery's (2016) unitary, pluralist and critical perspectives which update the classic IR frames of reference (Fox, 1966; 1974). Because it is a study of trade unions in the context of the use of workplace mediation by unionised employers, the focus is on pluralist and critical perspectives. A pluralist conflict management perspective predominates in the contemporary IR literature on UK individual dispute resolution. This largely empirical body of work acknowledges critiques of mediation (from mainly American sources) but generally they are not engaged with in any depth. However, writers on workplace mediation from the CLS perspective are conspicuous by their absence. The thesis contributes a *critical pluralist* perspective (Heery, 2016), which is not found in the existing IR literature on workplace mediation. It offers a critique of the ideology and practice of UK workplace mediation and critically examines the responses of UK unions, at national and workplace level. It considers the implications of the use of

workplace mediation for trade unions as voluntary membership organisations faced with the prospect of continuing decline.

The analysis of the findings has been built around the themes of union incorporation and displacement, associated with the CLS strand of IR study, and union revitalisation which is territory jointly occupied by pluralists and critical scholars. Owing to the absence of a radical IR or CLS critique of UK workplace mediation, the thesis constructed what might be described as CLS propositions which could be empirically investigated.

The study inquires more deeply than previous research into the nature and extent of unions' independent engagement with employers' use of workplace mediation. This is not only relevant in assessing the validity of the "incorporation thesis", but also in evaluating whether union involvement in workplace mediation showed signs of having challenged 'organisational primacy' in relation to dispute resolution (Colvin, 2016) through joint regulation. The thesis presents two contrasting cases – the use of IR mediation in Royal Mail which is jointly regulated; and the use of workplace mediation in user organisations which recognise UNISON, where the extent of union involvement and influence over its use varied, but in no case did it amount to 'joint regulation' (Saundry, McArdle and Thomas, 2013).

The literature on workplace mediation does not include any specific studies of UK trade union attitudes towards, and experiences of, workplace mediation. The fieldwork for the study included case studies of two dissimilar unions, CWU and UNISON. Unlike UNISON, the CWU has not featured in published research on workplace mediation specifically and there is no existent academic study of IR mediation in Royal Mail. Possibly uniquely in the UK, IR mediation provides an example of a union-management nationally led initiative in mediation in the workplace.

Previous UK studies of the use of workplace mediation in unionised organisations have largely confined their analyses of union responses to 'the union' (or unions) as discrete entities at the level of the workplace. While the thesis also concentrates on union experiences at workplace level, it locates CWU and UNISON workplace representatives in the wider nexus, cultures and organisational structures of their unions. Particular

attention is paid to the existence or absence of national union policies on workplace mediation, and the ensuing implications for workplace representatives in user organisations (discussed later in the chapter). The critical perspective lends itself to examining intra-union tensions over union involvement with employers' use of workplace mediation, and certain CLS strands might frame such tensions as rank and file resistance to national union incorporating tendencies. The two case study unions present very different pictures. In the CWU, where IR mediation was a nationally led initiative with Royal Mail, its use did not appear to have caused internal tensions within the union, perhaps surprisingly; or at least they had not proved problematic. In UNISON, the low level of interest in workplace mediation at national level and the absence of support for branches contributed to a *laissez-faire* situation at workplace level. Arguably, this inhibited the capacity of most branches to engage independently with employers over the introduction and use of workplace mediation. It could be conjectured that in light of the hostile tone of some national UNISON guidance towards mediation in the workplace, the *absence* of national policy direction was something of a blessing for branches that did support its use. However, if union 'head quarters' drew on the knowledge of lay representatives and full-time officials who had experience of workplace mediation, more consistent and better informed guidance might emerge.

Most of the literature on UK union workplace representatives' views and experiences in user organisations relates to the introductory stage - establishing the mediation service - and, from the 'efficiency' angle, the outcomes and impact of the use of workplace mediation. Little attention has been paid to the extent and nature of union involvement in the *operation* of workplace mediation, particularly at the 'pre-entry' (triage) stage, and in the process itself, that is, in mediation sessions or meetings.

The thesis casts light on the approaches taken by UNISON representatives in advising individual members who ask for assistance with a problem at work which involves conflict with a manager or co-worker. It explores the gate-keeper role undertaken by CWU field officials in relation to IR mediation. The writer's study makes an original contribution in that it adds union representatives' direct experiences of the process to knowledge about what happens inside the mediation room. Uniquely, in the case of Royal Mail, CWU representatives were participants in mediation. Where in the

minority of cases, UNISON representatives had acted as companions in workplace mediations, they contributed to voice and equity in the process. This is an important finding as it challenges the conventional wisdom that union representatives' presence is generally undesirable and adds 'little of value to the process or the union member's case' (Ridley-Duff and Bennett, 2011, p. 112).

The findings on union companions' perspectives of the process add to empirical work on mediation participants' assessments of voice and equity in mediation (Saundry, Bennett and Wibberley, 2013; 2016). Together, they underscore the reality that mediation operates within the power asymmetry of the employment relationship, notwithstanding that parties can experience the process as liberating because they have a direct voice and can determine the outcome.

The thesis considers the experiences of union representatives who served as co-mediators for user organisations' workplace mediation schemes or services. While their observations have featured in the literature, it has been as members of the mediator cadre. As co-mediators, they act in a capacity distinct from that of their union role but nonetheless they are associated with the union; and it is the examination of this inter-relationship that this study adds to the literature. The thesis rejects as simplistic the argument that union co-mediators are 'agents of the employer'; and on balance, from a union perspective, it is argued that their presence is beneficial. Nevertheless, it is recognised that "wearing two hats" can be problematic for unions, particularly where, as appeared to be the case in UNISON, branch leaders had done little to educate their members about workplace mediation.

Turning to mediation outcomes, an important finding was that UNISON representatives were largely dependent on individual members who had participated in mediations for information about the outcomes. According to union interviewees, most user organisations did not systematically report data on the use of workplace mediation to the unions. The strict confidentiality of mediation, combined with adherence to data protection requirements, appeared to militate against the union-management agreement of protocols on data sharing in relation to the use of mediation. Royal Mail was an exception in this regard in that co-management of the IR service entailed authorised CWU officials having access to data on its use. However,

owing to confidentiality provisions, it appeared that only limited information of the use of IR mediation was shared with field representatives and the membership.

On the face of it, in relation to workplace mediation specifically, unions appeared to have a limited role as 'mechanisms of representation', certainly in the direct sense of safeguarding the interests of individual union members. Workplace mediation was mostly seen by union representatives as unthreatening. The acceptance that workplace mediation was different from formal procedures owing to its core tenets, and that it offered a better alternative for individual members in certain cases – with the existence of a formal procedural safety net if it failed - contributed to this perception. In different circumstances, employers' use of mediation might be perceived differently; for example, if it became an obligatory gateway for access to a grievance hearing. However, with the exception of the CWU in relation to IR mediation, the findings of this study indicated that workplace unions had not 'engaged independently' (Edwards, 2013) with employers over the use of workplace mediation. Consequently, they had missed opportunities to enhance equity and employee voice in the mediation process.

Discussion of the findings

This section draws together the findings on union involvement with workplace mediation in user organisations, focussing the discussion on the three themes and the associated research questions. (It will be noted that research question 6 is discussed under more than one theme.) It is acknowledged that caution must attach to analytic generalisations made on the basis of these findings given that they derive from qualitative research involving small samples. In support of their validity, it will be noted that in many instances, the findings resonate with those of the existent UK research on workplace mediation. Secondary sources and archival material have also been drawn on, as referred to in the methodology chapter. In respect of trade union attitudes and experiences, the greater depth and range of this study has produced new, and in some cases, different insights and conclusions.

<u>Incorporation or independent engagement? (Research questions 1, 2, 4 and 6)</u>

In all cases in the study, the introduction of mediation was initiated by management. In UNISON, the question of national union collusion with employers or incorporation

did not arise as there were no national joint mediation initiatives. In the CWU, among interviewees, there were no intimations that national union officials had been incorporated. IR or Voluntary Mediation was the product of collective bargaining, and although provision for it was written into the legally binding dispute resolution procedures of the *Agenda for Growth* collective agreement, participation required the agreement of both parties. Thus the use of IR mediation could be legitimately side-stepped by CWU sceptics and opponents at unit, area and divisional level. There was little evidence of internal tensions having been generated over the use of IR mediation and in that sense it could be said that the joint union-management project of IR mediation had not proved divisive. In UNISON, there was no national direction or support over the use of mediation. Official guidance for workplace representatives was inconsistent in its stance on workplace mediation and sometimes unclear as to the distinction between 'mediation' and individual 'conciliation'.

Below national level, the findings did not support the "micro-corporatism thesis". IR mediation had not been extensively used, suggesting that, from a CLS perspective, if it had been intended by the employer to be a vehicle for micro-incorporation, it had been ineffective. Importantly, CWU and Royal Mail officials had joint control over gate-keeping, that is, which disputes were mediated, and they were entitled to review mediation agreements. CWU field representatives were well aware of the strengths and weaknesses of mediation and their involvement can be seen as independent engagement. From a critical pluralist perspective, while CWU representatives who were parties in mediations often empathised with the stresses on managers as individuals, this did not deflect them from seeking to resolve issues they considered to be industrial or collective, such as alleged management bullying of staff.

IR mediation was seen by Royal Mail and CWU at national level as a vehicle to change the ingrained conflictual culture in workplaces – an 'incorporation project' from a CLS perspective. Evaluative mediation or arbitration would not achieve this because it would not involve disputants directly in transforming their relationships. Hence the attraction of the facilitative practice model of workplace mediation. Unlike collective conciliation or dispute mediation (both of which feature at later stages in the IR Framework) which focus on the parties' *collective* interests, IR mediation focuses on disputants' psychologically based interests as *individuals*. From accounts given of

mediation agreements, it was apparent that they concentrated on addressing poor interpersonal communication. This could impinge on managerial prerogative, for example, where it was agreed that the manager and unit representative would hold weekly resource meetings – although CWU interviewees did not regard this as a concession but as a matter of the manager agreeing to comply with established agreements. In some cases, where the balance of power appeared to tilt in favour of management, unit representatives saw IR mediation as a way to signal to higher levels of management that there was a problem with a manager that needed their intervention. Improving communications could improve industrial relations in workplaces. However, improvements proved fragile and often short-lived. The findings also indicated that post-mediation, not infrequently, there was a change in the unit management personnel, often instigated by Royal Mail higher level management.

In organisations in which UNISON was recognised, representatives' involvement in workplace mediation depended in the first instance on the extent to which the employer chose to involve the unions. Union involvement was sought in the NHS where there were existing organisational structures for partnership working or statutory underpinning for it, as in Scotland. In local government and the HE sector, some employers had chosen not to involve unions. In some cases in these sectors, union representatives had declined invitations for union representatives to undertake mediator training. In one local authority, the branch withdrew its support for the use of workplace mediation, apparently to management's displeasure. As it was not known if this had impacted on the take-up of mediation by employees, it was not possible to assess whether the branch boycott was an example of an effective independent union response.

In some cases of non-engagement, according to union interviewees, employers had not involved UNISON in setting up or operating their mediation service. Why this was so was not known. In a couple of instances, branch officers did not know about the employer's mediation provision until prompted to make inquiries as a result of the invitation to participate in this study.

Overall, the findings suggest that in unionised organisations, it was not necessarily the case that management regarded union buy-in as essential for the successful adoption

of workplace mediation. Where management's primary goal was to use mediation as a vehicle to transform the conflict culture, as opposed to reduce the incidence of formal grievances or resolve more disputes informally, union cooperation was regarded as essential; particularly where the union had the power or ability to 'dispute the principle' (Edwards, 2013, p. 5) as in the context of collective bargaining between Royal Mail and the CWU; or potentially thwart its introduction or take-up by union members, as in ELPCT, for example.

The existing literature includes very few examples of sustained union 'resistance' to the introduction of workplace mediation. Although initial wariness and scepticism among pockets of activists was not unusual, it had mostly dissipated. In a local authority, what appeared to be passive disengagement by one of the recognised unions continued, although it was not clear why (Saundry, 2012). In the writer's study, instances of union non-cooperation or disengagement did not appear to be characterised by implacable hostility to mediation in principle. In the CWU, negative perceptions of IR mediation among activists were said to have largely abated as they became more familiar with it. In UNISON, some branches were cooperative but representatives chose not to accept employers' invitation to train as mediators owing to perceived conflict of interest. In one case, the branch also had concerns about the well-being of complainants facing bullies in mediation meetings and advised members 'to think very carefully' about participating. Perceived misuse of mediation by the employer led one branch to withdraw cooperation. The only known case of a national union recommending non-cooperation was RMT. This was in response to an employer's unilateral move to introduce it.

It could be argued that concerns over micro-incorporation underlay UNISON branch leaders' decisions to decline employers' invitations to train and serve as co-mediators. The national union's position was not referred to; rather, as one branch expressed it, co-mediating for the employer was not what workplace representatives were trained and supported by UNISON (at members' expense) to do. Another branch representative was concerned that members would questions why reps, especially those on full-time release, were not devoting all their time to union business. In another case, the response reflected institutional self-interest. Branch officers had not actively discouraged representatives from applying to be mediators but nor were they

encouraged to apply because stewards were in short supply and representative duties had to take priority.

From interviewees' accounts, it appeared that mediation training had communicated the ideology of workplace mediation very effectively. Union trainee mediators relied largely on their IR experience in assessing what they were being taught about conflict resolution and mediation and much of it made sense. It seemed that very few union trainees could not envisage themselves acting as an impartial third party or rejected what might be perceived as a unitarist discourse. As discussed earlier, the core tenets and practice models taught to trainee mediators were unthreatening because employers intended using mediation, with voluntary participation, mainly for individual employee complaints that did not warrant formal investigation. Also, the introduction of mediation left individual employees' option to pursue formal grievances intact, although some revised grievance/dignity at work policies included an expectation or presumption that mediation should be attempted wherever possible if informal means failed to resolve the problem.

Unlike the CWU, there were no cases in the study of joint gate-keeping by UNISON representatives and management. The UK IR tradition is that collective dispute resolution is jointly conducted, apart from provision for external conciliation, mediation and arbitration. Joint gate-keeping in Royal Mail IR mediation adheres to that tradition. (Arbitration no longer features in the Royal Mail national collective dispute resolution procedures.) In contrast, workplace mediation is essentially a managerial process and, in the UNISON cases, gate-keeping was controlled by management. Unions might make referrals and informally discuss possible mediation cases with HR or the mediation scheme coordinator but union representatives did not co-manage the triaging of cases or entry to mediation. Formal joint responsibility for gate-keeping could compromise the union's role as an independent source of advice and support for employees. However, it was not apparent that branches had asked employers to agree guidelines for the triage of cases or for joint oversight of gate-keeping.

In the CWU, there were very few instances or signs that unit representatives were pressured to participate in IR mediation by field officials. It was also recognised at

national level that when tensions ran very high, as they did during periods of the CWU "Four Pillars" campaign, walk-outs could occur whereas previously unit representatives might have agreed to mediate. This was a demonstration that IR mediation was not about "policing the membership" (a possible radical criticism) or at least it had not succeeded. In relation to UNISON, in some NHS organisations, revised grievance or dignity at work policies strongly discouraged formalised resolution and on a critical reading, some provisions bordered on quasi-compulsion. In one case, workplace representatives ensured that members' access to the formal grievance procedure was preserved by advising them to participate in mediation order to 'tick the box'. In another branch, it was said that if management attempted to enforce the policy on quasi-compulsion in inappropriate cases, the branch would resist and use its connections with senior management to negotiate a jointly acceptable way forward.

In regard to the mediation process itself, particularly from a CLS perspective, co-mediation invites scrutiny because it can be seen as a device or concession deployed by employers to increase the confidence of employees (subordinates and managers) in mediation, and to offer reassurance that the mediators are a balanced team - not from one side or the other. Together, the knowledge that the outcome would be in the hands of the disputants and that the co-mediators were from "both sides" was likely to deflect employee requests for representation or accompaniment in mediation. In the case of the CWU, representatives who had been parties in mediations confirmed that the presence of 'union' co-mediators enhanced their confidence that IR mediation was not another "Royal Mail thing". In Royal Mail, at least initially, co-mediation was probably the only viable option if CWU representatives were to agree to participate in IR mediations. Three years on, it was indicated at national level that using solo mediators might be feasible as the IR team of mediators had established their role as professional, non-partisan third parties. Solo mediation would also allow for more efficient use of the national mediation resource. By late 2017, individual bullying and harassment mediations in Royal Mail were being undertaken by solo mediators from the national IR mediation team. As the fieldwork concluded shortly thereafter, it is not known to what extent, if any, solo mediators were being used in IR mediations. The findings of this study suggested that the solo mediator model for IR mediations was

not without risk, although this would be mitigated by retaining co-mediation as a backstop.

Research is lacking on the dynamics of co-mediation (see areas for further study below), but there was some evidence from this study that union and management co-mediators could intervene to help each other avoid 'hooks and triggers', that is, acting on their biases and/or possibly displaying them to the disputants. CWU participants in IR mediation made few criticisms of co-mediators' performance. Likewise, overall, UNISON interviewees relayed few criticisms of co-mediators made by members who had been participants. In contrast, the majority of UNISON representatives who had acted as companions recounted instances of poor practice by mediators (including co-mediators). In some cases, they had perceived elements of managerial bias on the part of manager mediators or management-appointed mediators.

This study supports earlier findings that accompaniment in workplace mediation was not the norm, although it was not as uncommon as the UK literature indicated. Notwithstanding, TUC (ACAS/TUC, 2010) and representatives' acceptance of non-accompaniment in all but very exceptional cases can be seen as a lost opportunity to demonstrate how the union can practically support members to participate fully and with confidence (enhancing voice) and provide on-the-spot advice if they need it (enhancing equity). However, lack of independent engagement on the part of union representatives on this issue was not indicative of incorporation. Rather it is illustrative of the power of the ideology of workplace mediation to incorporate *both* the employer and union. Underpinning the case for non-accompaniment is the core tenet of party self-determination which, as discussed earlier in the thesis, was imported from community mediation to workplace mediation despite the wholly different nature of power relations in the two settings. The implications of the stances taken by workplace representatives are discussed later.

There is persuasive evidence from the literature and this study that in appropriate cases, mediation was often a more productive and satisfying experience for parties than formal hearings. Union co-mediators' experience was that mediation usually resulted in some form of agreement; and in the CWU and UNISON, they were among its strongest advocates. While success rates claimed for mediation of '90 per cent and

above' are likely to reflect agreements involving partial resolutions that patch over deeper elements of conflict, pragmatically union co-mediators observed that mediation could enable disputants to resume at least a civil working relationship. From a critical pluralist perspective, concern arises if in conflicts which have been framed as 'interpersonal' and partially resolved, mediation is masking causes of conflict that need to be addressed on other fronts.

In the case of UNISON representatives, none had received training from the union in mediation as a workplace dispute resolution process. (IR mediation was included in CWU workplace representatives' training.) At workplace level, the practical consequences of being ill-equipped to engage independently with employers in consultations or negotiations over the detailed implementation of mediation were that employers' proposals or intentions on, for example, non-accompaniment and data gathering and confidentiality appeared to be accepted in most cases without debate. Arguably this impeded the contribution that unions could make to supporting members in relation to equity and voice in mediation (discussed further in the section below on implications for unions).

Nevertheless, in the case of UNISON, it would be simplistic to conclude that lack of capacity to engage independently was tantamount to incorporation. This would be to overlook the fact that mediation has been a better alternative for some employees than living with the problem, exiting the workplace or taking a formal complaint through the grievance or dignity at work procedure. Also, working against the incorporation thesis were the results of the analysis of union representatives' attitudes to workplace mediation. Of the UNISON data set of participants who had had some experience of it, slightly over two-thirds were agnostics and sceptics.

In summary, the CWU had independently engaged with IR mediation. In the UNISON cases, although the incorporation thesis was not upheld, in only a minority of cases had workplace representatives independently engaged with the employer over the introduction, operation and outcomes of workplace mediation.

Union Displacement (Research question 3)

In this study, as in the existent literature, union displacement did not emerge as a key theme. According to CWU national and field interviewees, concerns about displacement at branch/unit level (of the "mediators are doing our jobs" variety) abated as IR mediation had become more familiar to activists. Although IR mediation was a national joint union-management initiative, the "displaced activist" thesis, associated with the CLS critique of partnership working (Geary and Roche, 2003) did not apply largely because decisions over participation in IR mediation did not lie with regional CWU officials but with elected lay divisional and area representatives in Royal Mail and unit representatives. Nor did the study detect a strong current of concern about displacement among the UNISON interviewees at workplace level. Rather than fearing displacement, UNISON workplace representatives welcomed the option of mediation where it resulted in fewer formal grievances as this reduced the caseloads of overstretched stewards and branch officers.

In relation to the operation stage of mediation, non-accompaniment was not regarded as displacement. Most mediated cases were considered to be conflicts involving dysfunctional working relationships, 'personality clashes' and non-justiciable issues. Allied to this, union representatives in user organisations understood that mediation was not an arbitral process but one in which parties spoke for themselves and decided the outcome. Consequently, the majority of the UNISON representatives believed that their presence was neither necessary nor necessarily helpful. If mediation failed, members were advised to come back to the union to consider their options.

Union revitalisation (Research questions 4, 5 and 6)

In the public sector, membership losses and declining density had produced an intense focus on recruiting members and activists. In this study, low density was mentioned by UNISON interviewees as an inhibiting factor in pursuing collective grievances. It was said that some public sector organisations no longer had standalone collective grievance procedures. If this has happened on any scale, it was not reflected in TUC guidance (2018), for example, which assumes that functioning collective dispute resolution procedures exist in organisations where unions are recognised.

In UNISON, workplace representatives are urged to look for the collective potential in issues that individuals bring to the union. In effect, this approach accommodates servicing within an organising model. However, many complaints will not have any obvious or immediate collectivising potential. Workplace mediation offered a route to resolve issues that representatives knew from experience would not be dealt with to members' satisfaction in formal grievance or dignity at work procedures. While individual representatives' approaches to advising members ranged from neutral to directive, these discussions had common facets: firstly, the member's expectations - what did the member want to achieve by pursuing a complaint, in other words, what outcome was being sought? What process might best achieve the desired end? This would entail discussion (of varying depths) of the pros and cons of the options. If there was *prima facie* evidence that the complaint involved a serious breach of the employer's rules or the employee's rights, representatives erred toward the use of formal procedures. Allied to this, they might offer their assessment of the likely outcome of a grievance or disciplinary process. Representatives also considered well-being issues, such as individuals' likely resilience to stress and the emotional toll exacted by protracted, adversarial proceedings.

Few UNISON interviewees thought that offering advice on mediation added value to the existing service provided to members and on offer to potential joiners. If anything, union support in relation to mediation was likely to be perceived as being of a lesser order compared with the representation provided in formal grievance and disciplinary cases. Nor was there any evidence that union involvement with mediation had attracted new activists or acted as 'an escalator to wider union activity' (Saundry, Antcliff and Hollinrake, 2017, p. 268, citing Moore, 2011, p. 77). Generally, union representatives who had trained as mediators came from within the cadre of *existing* workplace representatives.

On the face of it, the CLS case is arguably strongest in relation to union revitalisation where the evidence that union cooperation with the use of workplace mediation contributed to the recruitment and retention union members was negligible. The sole example in the literature of a union claiming to have increased its membership as a consequence of its association with workplace mediation was not replicated in any of the writer's case studies. Nor, on closer examination, did UNISON's support for

mediation *per se* explain its success in doubling the membership at ELPCT. However, arguably unions are missing opportunities in connection with employers' use of workplace mediation which could demonstrate the value of union support to members and non-members alike. Supporting this view, Bleiman (2008) argued that unions needed to add something more than support for the use of mediation and basic advice if individuals were to perceive any added value in what unions offered in this regard (discussed below).

The potential for union involvement in IR mediation to increase the membership and recruit or develop activists in workplaces was not seen as relevant by CWU interviewees, as it did not involve assisting individual members, and while it could result in collective gains, such as increasing staff resources in delivery offices, in this sample at least, it rarely did. However, at national level, support for IR mediation and the other provisions to resolve disputes under the revised IR Framework/*Legally Binding Agreement* had signalled to Royal Mail that CWU was serious in its commitment to secure the prosperity and long-term future of the business by supporting initiatives to change the conflict culture of the organisation, particularly at workplace level. It could be perceived that CWU was enhancing its legitimacy power ostensibly at the expense of its coercive power. In this respect however, the resulting agreement in which CWU had secured legally binding protection of jobs and conditions, reflected a compromise which recognised that if both sides' exerted coercive power over the other, the result was likely to be mutually damaging in a commercialised environment.

In concert with the findings of earlier UK research, interviewees from both case study unions reported that their involvement with workplace/IR mediation had had institutional benefits, notably saving workplace representatives' time and branch resources. For CWU representatives, mediation achieved speedier outcomes and time was saved where, as a consequence of being settled in IR mediation, disputes did not proceed to subsequent stages of the IR Framework which, they observed, could be slow and prolonged. For UNISON workplace representatives, the use of mediation reduced the casework associated with progressing individual cases through formal procedures. Although savings were not quantified, UNISON representatives considered that they were significant given that the majority of branches in the sample had an

insufficient number of active stewards and some were multi-employer branches with a geographically dispersed membership.

Importantly, through their mediation training and co-mediation experience, union representatives considered that they had acquired valuable transferable knowledge and skills which they applied in their union work. Other union participants (parties and companions) said that they had picked up conflict resolution and related techniques from observing mediators.

This study found little evidence to support the argument that potentially active union involvement with workplace mediation could 're-establish processes of joint regulation and resolution which have been eroded in recent years' (Saundry, McArdle and Thomas, 2013, p. 228). This proposition reflected the ELPCT experience which was not replicated in any user organisation in this study. Based on the findings of this study, it could not be claimed that overall, union involvement in workplace/IR mediation had enhanced the collective influence of workplace representatives. In most of the UNISON cases, industrial relations were reasonably good when mediation had been introduced by the employer so there was no transformative effect on the conflict culture as had occurred in ELPCT (Saundry, McArdle and Thomas, 2011; 2013). In two cases, a change in the leadership of the branch prompted the employer to seek to engage UNISON over its use of mediation. More joint working ensued in one case, but it appeared that the impetus was not union involvement with mediation *per se* but the general willingness of the branch leaders to work cooperatively with the employer. In Royal Mail, it could be said that the union's collective influence in those workplaces was potentially restored or enhanced where IR mediation had empowered individual representatives who had been unable to secure managers' compliance with collective agreements through other means. However, in this sample at least, such mediated agreements often proved fragile and there were few examples of distributive gains having being made by union representatives in mediations. Among field representatives, whose role enabled them to assess the impact of IR mediation across their patches, the perception was that IR mediation was not a useful mechanism for resolving collective disputes where the barrier to resolution was not the interpersonal relationship between the disputants. Overall, there was no evidence that IR mediation had undermined the collective influence or position of the CWU at any level.

Concluding summary

The dichotomous question posed by the thesis title, "workplace mediation and trade unions: friends or foes" cannot be answered in absolute terms. Although workplace mediation has anti-authoritarian roots, its ideology, as reflected in the core tenets, is individualistic. In the facilitative model practised in UK workplaces, the focus is on the individuals involved in the conflict, not the collective entities to which they belong. However, accustomed as UK trade union representatives are to the individualisation of dispute resolution, in certain cases, mediation might be perceived as a preferable alternative to formal grievance or dignity at work investigations and hearings, even though union representatives might play little or no role in the actual process. Essentially, whether workplace mediation and unions are friends or foes depends on a range of contextual factors. Bearing in mind that, with the exception of IR mediation in Royal Mail, workplace mediation is an 'employer practice' (Colvin, 2016), in this study, the role played by unions and the influence they exerted over its use depended on employers' objectives in adopting mediation and the extent to which they regarded the recognised unions as partners or stakeholders, or bystanders in achieving those objectives; and unions' willingness and capacity to independently engage with employers over its introduction and use.

Applying Edwards' (2013) criteria of independent engagement, of the case study unions, most of the UNISON branches in the study had limited capacity to engage independently with employers. However, this did not support the conclusion that their cooperation was indicative of incorporation. In general, the incorporation thesis was not upheld by the findings of this study. In relation to its association with IR mediation in Royal Mail – a collective dispute resolution process which applies the facilitative workplace mediation practice model - the CWU was found to have independently engaged with an employer's initiative that was developed jointly and which operates within the framework of a national collective agreement.

Turning to the other overarching analytical themes, union displacement did not emerge as a significant concern of union representatives, mainly because the addition of mediation to user organisations' individual dispute resolution processes did not fundamentally alter the status quo in relation to formal grievance procedures. On

union revitalisation, few union representatives perceived that their association or involvement with mediation aided the recruitment or retention of union members. Advice on mediation was seen to be part of their existing offer to members and joiners.

From a critical pluralist perspective, if the core tenets of mediator impartiality and party self-determination are considered to be flawed and voluntary participation is an ideal but not always the reality, in the context of asymmetric power in the employment relationship, mediation has the potential to be oppressive. On the other hand, for certain 'interest-based' grievances, mediation offers a more satisfying process and outcome for disputants. To reap the benefits and avoid the pitfalls of workplace mediation for their members, and potential members, and unions as organisations, the thesis concludes that unions should engage with employers over its use wherever possible. Not all employers will be open to meaningful engagement with recognised unions, and challenging aspects of the conventional wisdom of mediation will require union representatives to have a greater critical appreciation of the ideology and practice of workplace mediation. Importantly, this study highlighted missed opportunities for unions to influence employers' practices, to enhance equity and voice in mediation. For employers, this could contribute to greater take-up of workplace mediation and better outcomes. Finally, workplace mediation is a small cog in the dispute resolution machine. As the spotlight shifts to integrated conflict management in organisations, it highlights the need for UK trade unions to develop strategic approaches to dispute resolution – individual and collective. This applies whatever the political hue of governments in the foreseeable future.

Implications of the findings for UK trade unions

Drawing on the findings of the study, this section discusses how unions might engage independently and critically with employers over the adoption and use of workplace mediation. Some observations might also be of interest to employers, mediation providers and practitioners, and policy makers.

Internal union knowledge and policy formation

The ACAS/TUC (2010) guide remains the main source of detailed advice on workplace mediation for union representatives. It has not been revised, nor has the TUC published its own guidance. The national unions have not stepped into the breach mainly because the subject had not surfaced as an issue in many branches and head offices had little knowledge about what was happening in branches in regard to individual dispute resolution. In UNISON, branches deal with individual members' grievances. Regional officials were not usually involved and this may contribute to the paucity of knowledge about workplace mediation beyond branches. In regard to the CWU membership in Royal Mail and IR mediation, the position was different; nevertheless, judging from publicly accessible sources, it seemed that much of the core material about IR mediation was jointly produced with the employer. This is understandable – IR mediation is a joint venture.

Since the flurry of activity generated by the Gibbons Review (2007) has subsided, within the UK union movement - apart from in Scotland, (Working Together Review, 2014; STUC, 2018) - there has been a policy vacuum on the subject of reform of organisational dispute resolution. Recently, many unions and the Labour Party have endorsed proposals for reform set out in the *Manifesto for Labour Law* produced by the Institute of Employment Rights (2016). A key proposal is the introduction of statutory sectoral collective bargaining, under which 'dispute resolution procedures (including oversight of them)' and 'grievance, disciplinary and dismissal procedures…' and 'policies and procedures for advancing equality, diversity dignity and respect…' would be mandatory matters for negotiation (Ewing, Hendy and Jones, 2018, pp. 22-23). Detailed responses from the union movement are awaited. The findings of this study indicate that Unite and UNISON national responses to government consultations adopt legalistic positions on interest-based individual dispute resolution which did not appear to have been informed by the experiences of their workplace union representatives in user organisations, in relation to workplace mediation specifically.

In the case of UNISON, the national service groups in this study were isolated from the branch representatives' experiences of workplace mediation. Individual UNISON branches dealt with workplace mediation in isolation from other branches, regions (at

least in structured ways) and certainly the national service groups and national networks. Workplace representatives had little in the way of policy guidance or expert advice from national or regional level; they were marooned and therefore not in a strong position to independently engage with employers. The ideology conveyed by CMOs and ACAS leads cooperative representatives to assume that the practices based on the core tenets of workplace mediation were set in tablets of stone. A significant finding of this study was that there did not appear to be formal opportunities for sharing experiences of mediation within unions, at least beyond the branch, and no forum for debate between representatives with different roles in mediation. For example, UNISON interviewees who sat on service sector committees at regional and national level could not recall workplace mediation being on the agenda or speaking about their experience. National service groups had not sought information on workplace mediation use from branches. The national stance of opposition to the use of in-house staff mediators (UNISON, 2011) bore no relation to what happened in practice. Cases where UNISON representatives were also in-house mediators could be seen as unintended examples of 'wild-cat cooperation' with employers (Rogers and Streeck, 1995, p. 12), as there was little indication that workplace representatives were aware of the national union's position. Later national guidance for representatives (UNISON, 2016a; 2016b) is unclear as to what precisely is meant by 'mediation' and some guidance was inconsistent.

Opening up the discussion at national level in UNISON might encourage wider discussion of dispute resolution reform within the membership; including the UNISON self-organised groups which provide a voice for members shown statistically to be most affected by workplace bullying, harassment, and discrimination (see areas for further study below). At branch level, workplace mediation tended to be viewed more as a procedural than substantive matter and it seemed that decisions about engaging with it (or not) were often made by branch officers and stewards.

Unions such as Unite and UCU, as well as UNISON, have an untapped reservoir of experience and knowledge among their representatives who have been involved directly with workplace mediation. CWU representatives' experience of IR mediation is unique but it raises issues of wider relevance to the union movement. A centrally

organised union network would provide a platform to share, discuss and debate different experiences and practices; and also to engage interested members.

A crucial question facing workplace representatives is the appropriateness of individual cases for mediation. Assessing appropriateness is a complex issue (Deakin, 2014). For example, in user organisations, conflicts involving so-called personality clashes are likely to be deemed suitable for mediation. Often they involve accusations of bullying or harassment which might not engage any rights; nevertheless, union representatives may or not perceive them as 'interest-based'. Arguably, this is a problematic designation where the behaviour underlying the bullying has a systemic cause. Mediation scheme gatekeepers could have a propensity to reframe these difficult conflicts as 'interpersonal'. As Fisher and Kinsey (2018, p. 5) note:

> HR practitioners were reluctant to analyse sexual harassment in terms of the gendered nature of organisational power and culture. They preferred discussing it with regard to different personality types or individual aberrations.

This stresses the importance of union representatives being able to provide independent advice; and that they are well informed about *all* dispute resolution options. In this study, the findings indicated that workplace representatives could be better equipped to offer guidance on mediation, and support - including accompaniment in some cases (see below).

Questions about the appropriateness of mediation also arise from recent research findings which distinguish sexual harassment in the workplace from generalised bullying and harassment and show its disparate impact on, for example, women (TUC, 2016; Brown, Gouseti and Fife-Schaw, 2017) and LGBT people (TUC 2019). As referred to earlier, the TUC concludes that dependence on individualised responses will not address the problem. Employers are advised to review workplace policies 'with the relevant unions' involvement to ensure that workers'… complaints… of sexual harassment are taken seriously and resolved to the workers' satisfaction' (TUC, 2019. p. 33). Employers are also urged to adopt 'a zero tolerance approach to all forms of discrimination and harassment' (TUC, 2019, p. 33). However, as a UNISON interviewee observed, it is difficult to reconcile the use of mediation with a zero tolerance approach. This highlights the need for a wider debate within unions on the relationship between preventative strategies in regard to discrimination and bullying and

organisational dispute resolution processes. While few would dispute that individualised responses will not address these issues, the review of employers' policies is also an opportunity to put forward union proposals for the reform individual and collective dispute resolution procedures.

At workplace level, union representatives also have a role to play in supporting members who are under pressure to participate in mediation, many of whom are likely to be managers. Voluntary participation is a core tenet that should be upheld. Mandatory participation is a way to boost take-up but at the expense of the genuine resolution of conflict. Many mediators, including the writer, argue that ultimately compulsion is self-defeating. Reluctant participants can passively resist by "going through the motions" and agreements are likely to unravel. Beyond workplaces, voices within the UK mediation movement, frustrated at the slow growth in its take-up in the workplace and other spheres, periodically call for various forms of compulsion, sparking intense debate over public policy (Genn, 2010; Civil Justice Council ADR Working Group, 2018). In the employment field, in 2014, quasi-compulsion was given official sanction with the introduction of statutory early conciliation (EC). Forms of administrative compulsion (as in EC) had been adopted by some NHS organisations in this study. Unreasonable refusal to mediate could jeopardise an employee's access to a formal grievance hearing. In these cases, UNISON branches' responses varied depending on their capacity to engage independently with the employer.

Trade union training and guidance

Bleiman (2008) emphasised the importance of union representatives having mediation awareness training. In most cases, where this occurred, it was provided by employers. Specific union provision appeared to be limited. The CWU included sessions on IR mediation as part of its representatives' training packages. At the time of the fieldwork, UNISON Learning and Organising Services (responsible for the provision of representatives' training nationally) did not offer a bespoke course on workplace mediation although, according to UNISON [UNI-3], skills associated with mediation were covered on some courses. National provision was driven by demand from the national service groups and for the reasons outlined above there was no demand for mediation-related training. Periodically, some TUC regions and the General Federation

of Trade Unions have run courses on ADR and mediation. Some union officials have undertaken mediation training with (for example) ACAS, the ADR Group and the Centre for Effective Dispute Resolution (CEDR) and are qualified mediators.

UNISON representatives who expressed a view on the subject were strongly in favour of having union training on mediation. As a branch representative put it, with employer-sponsored training, 'you get propaganda; it's too appreciative – you don't understand the underbelly of it' [UBI-15]. While mediation skills can form part of negotiation skills training - assuming interest-based or integrative and mixed bargaining models and tactics are taught as well as positional bargaining – at some stage, training should be offered on workplace mediation as a dispute resolution process, to equip representatives to give well-informed guidance and support to individual members, and to negotiate with employers over its introduction and use. This suggests course content which enables representatives to critically appraise the core tenets and to debate when mediation may be appropriate and inappropriate.

Agreeing a protocol on the use of workplace mediation with the employer

Lack of knowledge about workplace mediation may have been a factor in dissuading union representatives from taking the initiative and proposing to employers that they agree a joint protocol on the use of workplace mediation use in the organisation. (In the few cases where this had occurred, it was mostly at the behest of the employer.) Not all employers would welcome this proposal but unions could point to the benefits for individual employees and the organisation including the likelihood of increased referrals for mediation, owing to union representatives having greater confidence in the process and recommending it in appropriate cases. As in Royal Mail, there is a strong case for organisations to have a joint steering group overseeing the introduction and operation of workplace mediation, with union representation linking to formal consultative or negotiating bodies in the organisation. Ideally, protocols should cover the use of mediation from end to end, including joint arrangements for the appointment of consultants and trainers, oversight of gate-keeping and monitoring of mediation outcomes. There are specific issues which would need to be debated where union proposals could diverge from standard CMO and ACAS guidance, on confidentiality and accompaniment.

Accompaniment

Most mediation practice models allow for each party to have a separate initial meeting with the mediator/s. In the writer's view, it should be standard practice for union representatives to offer to accompany a member to their one-to-one meeting with the mediator/s and for employers and mediators to permit parties to be accompanied at these meetings. This would be reassuring for the member and better enable the representative to help the person decide if they wished to proceed with a joint meeting; and if so, to prepare for it. This is not technocratic servicing; it is about building a relationship of trust with the member who could be feeling vulnerable (if being bullied, for example) and supporting that person emotionally and practically. Arguably, this approach is more likely to sow the seeds of commitment to the union (Hickey, Kuruvilla and Lakhani, 2010; Johnson and Jarley, 2004) than explaining that representation is only available at the formal stages of the procedures; and "if you choose mediation, you are on your own". Of course, representatives should ask if co-workers or others are experiencing the same problems (albeit interviewees indicated that they knew where the bullying hot-spots were in organisations), but bullying may be also directed at individuals owing to their sexuality (TUC, 2019) or disability or gender for example (Fevre *et al.* 2012, p. 112), and these individual members are not likely to have the wherewithal or motivation to join in or spearhead the collectivisation of their conflict. In the long run, a more relational approach to individual members with so-called 'interpersonal' issues may be more effective in collectivising issues than the classic prescription for mobilisation (based on grievances over transactional issues) of turning anger into blame and collective action against the employer.

In many instances, members will feel confident that they can proceed to a joint meeting without accompaniment (CIPD/ACAS, 2013). But in certain cases, they may ask to be accompanied in the joint meeting. In this regard, those who argue for accompaniment in joint mediation sessions run up against mediation ideology and the ingrained preferences of many workplace mediators and gate-keepers. It must be appreciated firstly by union representatives that while co-mediation is to be preferred to solo management mediators, staff or union co-mediators are not a substitute for union accompaniment. From a union perspective, the fairness of the process must rank highly. On the equality of arms argument, both parties should be able to be

accompanied if they wish. Clearly, chosen companions should not have close connections with the mediators. No dispute resolution procedure always runs smoothly but in the writer's experience, it assists greatly if companions understand their role in the process. This study demonstrates that from a union perspective, representatives who had attended joint mediation sessions found it educational. They contributed to the justice of the process by witnessing it, and occasionally, by appropriately challenging mediator ineptness in managing power imbalance. They provided support for vulnerable parties. In short, they contributed to equity and participant voice in the process.

Confidentiality

Confidentiality is an essential precondition for mediation and this was not questioned in principle by UNISON representatives although it could be problematic. A form of agreed, qualified confidentiality applies to IR mediation and arguably something akin to that could be sought by unions in relation to workplace mediations. The aim would be to bring union representatives formally within the "circle of confidentiality", just as companions are if they attend mediation meetings. As part of a protocol on mediation use, this could make clear that union members were entitled to discuss the referral of their complaint to mediation, mediation arrangements and to seek advice from their union should mediation not resolve the problem. Union members should be advised that if they wish to share the outcome of the mediation with their union representative (in confidence), beyond the fact that it succeeded or failed, they should raise this in the mediation, as parties must agree what is disclosed and to whom. It would assuage concerns of parties, mediators and mediation coordinators if the protocol made clear that union representatives and management would respect the confidentiality of mediation in regard to any other proceedings.

A key finding of the study was that UNISON branch representatives, some of whom sat on workplace partnership and other consultative fora, had little knowledge about the overall use of workplace mediation by their employer. There were no instances mentioned by interviewees of union representatives having received comprehensive reports which included information on the demographic and job-related characteristics of parties, the types of issues being mediated, parties' feedback on their experience of

the process and mediators' performance, and outcomes. It may have been that extensive data were not collected. As an aside, the variable quality of employers' approaches to data gathering was indicated by a web-based search of public sector bodies' equality impact assessments of their workplace mediation policies. They ranged from tick-box approaches to rare examples of comprehensive assessment.

In this study, in some user organisations, initial data sharing by the mediation service or HR with unions had dwindled over time but this had gone largely unnoticed or unchallenged by union representatives. It was not known why this tailing off had occurred. In general, union co-mediators were perhaps in a better position than most other workplace representatives to know about the overall use of the service and 'success rates'. The key implication arising from the findings on confidentiality is that unions' capacity to engage independently and constructively with employers over mediation is obviously hampered if an overly protective approach is taken to sharing data (limited although it may be) with union representatives. However, as workplace mediation was not a priority issue for branches, union representatives were not pro-active in following up these issues with employers.

Reform of individual dispute resolution procedures

Over the last 25 years, in the field of individual dispute resolution, the defence of individual employment rights and access to justice in response to a series of government initiatives has been the focus of trade union activity. In parallel with the defence of employment rights, since the mid-1990s, many UK unions (including UNISON and CWU) have adopted renewal strategies based on organising. Generally, dealing with individual members' problems at work has been regarded as servicing, with the implication that it is a second-order activity for union representatives, unless it contributes to building union organisation. Workplace mediation can be seen as the apogee of servicing. The combined effect of these developments has been that at a policy level, relatively little attention has been paid by unions to individual dispute resolution in employers' organisations.

The Gibbons Review (2007) revived interest in early informal dispute resolution in organisations (CIPD, 2015a) and in academic and HR circles. In the writer's view, some of the UK literature is tinged with romanticism about mediation; however the union

movement has made little response to valid criticisms of formal procedures and has not been pro-active in suggesting reforms. Arguably, it is in their interests to do so, as much of their legitimacy depends on their representative role in these procedures. (This need not be undermined by, for instance, organisations adopting less adversarial and more inquisitorial arbitral or 'med-arb' procedures.)

From a pluralist perspective, a guiding principle for reform should be 'process pluralism' (Menkel-Meadow, 2000, p. 30; 2005, p. 18; 2011, p. 250) which is underpinned by the notion that each dispute resolution process has a discrete function and its own procedural integrity (Fuller, 1962). In pluralist IR writing on Integrated Conflict Management Systems (ICMS), dispute resolution procedures are seen as multi-faceted and complementary (Roche and Teague, 2014; Latreille and Saundry, 2015; 2016a; 2016b; Roche *et al.* 2019). The shift to encouraging ICMS is an opportunity to re-balance the UK discourse on dispute resolution reform. It enables policy debates to extend beyond 'a preoccupation with efficiency' and the 'simplistic characterization of… grievance and disciplinary procedures as formal and adversarial' (Saundry, 2016, p. 29). Union engagement will be essential if ICMS, or its less developed form, dispute system design, is to reinvigorate mechanisms for dealing with collective as well as individual conflict, and 'efficiency' does not displace 'equity' and 'voice'. Of course, this may be a utopian vision, but interest in ICMS, even if limited, highlights the need for unions to develop strategic approaches to dispute resolution that link with their equality strategies and organising objectives.

Areas for future study

Although the views of public sector employers on union representatives' responses to the use of workplace and IR mediation are represented in the existent literature, this is not the case for Royal Mail. Nor have the attitudes and experiences of the American postal unions been studied in relation to REDRESS, suggesting possible scope for a comparative study of the use of mediation in Royal Mail and the USPS. In general, in the UK private and third sectors, unionised and non-unionised, little is known about the use of workplace mediation. It might be hypothesised that unitarist employers would be unlikely to make use of formalised in-house mediation although they might use *ad hoc* managerially led mediation. Similarly, soft unitarist employers might have

mediation schemes but possibly not a staff/union-management co-mediation model. However, there is an example of an Irish company using staff and external mediators, where, in response to declining reliance on union representation on the part of employees, HR 'is seeking to individualise the management of the employment relationship' and 'mediation is held up as emblematic of the new policies that the HR team want to diffuse' (Roche *et al.* 2019, p. 16).

There have been no ethnographic studies of UK workplace mediation, although Debbie de Girolamo (2009) includes an employment case in her ethnographic study of CEDR mediators; and in his study of workplace mediation, Roger Wornham (2015) used participant observation for some of his fieldwork. Generally, scholars are reliant on mediators' accounts of what they do and after-the-event participant accounts. Little is known about the effect of different mediator formations and styles on parties' perceptions of voice and equity in workplace mediation and outcomes. A comparative study of mediations conducted by union/staff and manager co-mediators and solo mediators drawn from the ranks of management or externals with management backgrounds could yield further insights that have a bearing on the "friends or foes" debate.

There are no detailed accounts in the UK literature or this study from union members of their experiences in seeking advice and support from their union on work-related problems, or their assessments of that support, particularly in relation to workplace mediation. In UK user organisations, the majority of complaints that were mediated were not seen as issues that involved possible breaches of individuals' contractual or individual statutory rights. They were often bullying complaints that union representatives considered to be below the threshold that would engage those rights or 'less serious' cases. The study did not explore in depth how those judgements were made; whether structurally-based conflict was re-framed as 'personality clash' or 'interpersonal relationship issues'; and which groups of union members were affected. This is an area, along with dispute resolution reform, which would benefit from studies that brought together IR and socio-legal perspectives.

UK research shows that the following groups of employees were more likely to report bullying and harassment at work: women; disabled; gay, lesbian, bisexual; and BAME

employees (Fevre *et al.* 2011; Carter *et al*. 2013; Brown *et al.* 2014; Hoel, Lewis and Einarsdóttir, 2014; Brown, Gouseti and Fife-Schaw, 2017; Kline *et al*. 2017; TUC, 2019). There is some contemporary research on, for example, BAME employees' perceptions of union assistance (Ashe and Nazroo, 2016) but not specifically relating to mediation. In relation to sexual harassment of LGBT people in the workplace, TUC research showed that around a third (32 per cent) of union members were more likely to report their most recent experience to their employer, compared to 22 per cent of workers who were not union members (TUC, 2019, p. 29). Union membership strengthened the position of employees who reported experiencing harassment. However, the results of this and related research raise questions about affected employees' views of dispute resolution procedures and their perceptions of union effectiveness. Also under-researched are the perspectives of self-organised groups, as in UNISON, and equivalent interest groups in other unions. Intersectional studies on the subject might also yield deeper insights into the complexities of these issues and the implications for union revitalisation.

Finally, it became evident during this study that there is a dearth of IR research on the operation of contemporary formal grievance and dignity at work procedures in UK organisations. Moreover, collective dispute resolution procedures were functioning in Royal Mail but they appeared to be moribund in some public sector organisations featured in the UNISON case studies. This suggested that the current state of collective dispute resolution in unionised organisations could be a worthwhile topic for further IR research. Clearly it is a vitally important issue for UK trade unions, not least because in line with the organising model advocated by the TUC, for example, workplace representatives are urged to collectivise individual members' issues wherever possible. The vital connection between individual and collective dispute resolution is brought home by the reality that aside from conflict which is wholly interpersonal, workplace mediation cannot address its underlying causes.

REFERENCES

ACAS. (2000) *ACAS Code of practice 1. Disciplinary and grievance procedures.* London: The Stationery Office.

ACAS. (2005) *ACAS annual report and accounts 2004/05.* HC 87. London: The Stationery Office.

ACAS. (2006) *ACAS annual report and accounts 2005/06.* HC 1239.London: The Stationery Office.

ACAS. (2009a) *ACAS Code of practice 1. Disciplinary and grievance procedures.* London: The Stationery Office.

ACAS. (2009b) *ACAS Guide: Discipline and grievances at work.* London: The Stationery Office.

ACAS. (2009c) *Advisory, Conciliation and Arbitration Service (Acas) annual report and accounts 2008/09.* HC 589. London: The Stationery Office.

ACAS. (2011a) *ACAS mediation 2010/11: Responses from participants and commissioners. 1 April 2010 - 31 March 2011.* ACAS Research Paper, 12/11. London: ACAS.

ACAS. (2011b) *Using mediation at Incommunities Housing Trust.* Available at: http://m.acas.org.uk/media/pdf/r/t/Acas_Case_Study_-_IncommunitiesHousingTrust-accessible-version-July-2011.pdf (Accessed: 12 January 2015).

ACAS. (2012) *ACAS individual mediation 2011/12: Responses from participants and commissioners. 1 April 2011 - 31 March 2012.* ACAS Research Paper, 16/12. London: ACAS.

ACAS. (2013) *ACAS individual mediation: Feedback from participants and commissioners. 1 April 2012 - 31 March 2013.* ACAS Research Paper, 07/13. London: ACAS.

ACAS. (2015a) *ACAS Code of Practice 1. Code of practice on disciplinary and grievance procedures.* Norwich: The Stationery Office.

ACAS. (2015b) *Advisory, Conciliation and Arbitration Service (Acas) annual report and accounts 2014/15*. HC 282. Available at: http://www.acas.org.uk/index.aspx?articleid=5784 (Accessed: 31 March 2016).

ACAS. (2018) *Advisory, Conciliation and Arbitration Service (Acas) annual report and accounts 2017/18.* HC 1405. Available at: www.gov.uk/government/publications (Accessed: 29 September 2018).

ACAS. (2019) *Discipline and grievances at work. The Acas guide.* Norwich: The Stationery Office.

ACAS and NHS Social Partnership Forum. (2009) *Using partnership to introduce mediation to resolve workplace disputes. A Social Partnership Forum project.* Available at: www.socialpartnershipforum.org (Accessed: 25 October 2010).

ACAS and Trades Union Congress. (2010) *Mediation: A guide for trade union representatives.* Available at: http://www.acas.org.uk/index.aspx?articleid=1680 (Accessed: 13 April 2013).

Ackers, P. (2014) 'Rethinking the employment relationship: A neo-pluralist critique of British industrial relations orthodoxy', *The International Journal of Human Resource Management*, 25(18), pp. 2608-2625. Doi: 10.1080/09585192.2012.667429.

Ackers, P. (2017) 'Waving not drowning: British industrial relations in the twenty-first century'. Review of Framing work: unitary, pluralist, and critical perspectives in the twenty-first century, by Edmund Heery', *British Journal of Industrial Relations*, 55(3), pp. 672-675. Doi: 10/1111/bjir.12256.

Ackers, P., Smith C. and Smith P. (1996) 'Against all odds? British trade unions in the new workplace', in Ackers, P., Smith C. and Smith P (eds.) (1996) *The new workplace and trade unionism.* London: Routledge, pp. 1-40.

Allen, V. (1971) *The sociology of industrial relations.* London: Longman.

Alvesson, M. (2003) 'Beyond neopositivists, romantics, and localists: A reflexive approach to interviews in organizational research', *Academy of Management Review,* 28(1), pp. 13-33.

Amsler, L. B. (2014) 'Using mediation to manage conflict at the United States Postal Service', in Roche, W.K., Teague, P. and Colvin, A.J.S. (eds.) *The Oxford handbook of conflict management in organizations.* Oxford: Oxford University Press, pp. 279-296.

Ashe, S.D. and Nazroo, J. (2016) *Equality, diversity and racism in the workplace: A qualitative analysis of the 2016 race at work survey.* Business in the Community. Available at: https://race.bitc.org.uk/all-resources/research-articles/equality-diversity-and-racism-workplace (Accessed: 8 May 2017).

Astor, H. (2007) 'Mediator neutrality: Making sense of theory and practice', *Social & Legal Studies*, 16(2), pp. 221-239.

Bach, S. (2016) 'Deprivileging the public sector workforce: Austerity, fragmentation and service withdrawal in Britain', *The Economic and Labour Relations Review,* 27(1), pp. 11-28.

Bach, S. and Givan, R. (2011) 'Varieties of new public management? The reform of public service employment relations in the UK and USA', *The International Journal of Human Resource Management,* 22(11), pp. 2349-2366.

Bach, S. and Winchester, D. (2003) 'Industrial relations in the public sector', in Edwards. P. (ed.) *Industrial relations theory and practice in Britain.* 2nd rev. edn. Oxford: Blackwell Publishers Ltd., pp. 285-312.

Bacon, N. and Samuel, P. (2009) 'Partnership adoption and survival in the British private and public sectors', *Work, employment and society,* 23(2), pp. 231-248.

Badigannavar, V. and Kelly, J. (2004) 'Labour-management partnership in the UK public sector', in Kelly, J. and Willman, P. (eds.) *Union organization and activity*. London: Routledge, pp. 110-128.

Bailey, K. and Efthymiades, A. (2009) *Case Study. In-house mediation scheme: NHS East Lancashire.* London: Consensio Partners Resolution Ltd.

Baker, K. (2009) 'Councils warned to create mediation services ahead of budget cuts', *Personnel Today,* 19 November. Available at:

http://www.personneltoday.com/her/councils-warned-to-create-mediation-services (Accessed: 28 May 2015).

Banks, L. and Saundry, R. (2008) *Mediation – a panacea for the ills of workplace dispute resolution? A comprehensive review of the literature examining workplace mediation,* iROWE research paper No. 1, University of Central Lancashire. Available at: http://www.uclan.ac.uk/research/environment/groups/assets/irowe_mediation_research_paper.docx (Accessed: 1 August 2013).

Barmes, L. (2016) *Bullying and behavioural conflict at work: The duality of individual rights*. Oxford: Oxford University Press.

Batstone, E., Boraston, I. and Frenkel, S. (1977) *Shop stewards in action: the organization of workplace conflict and accommodation*. Oxford: Basil Blackwell.

Bazerman, M.H. and Neale, M.A. (1983). 'Heuristics in negotiation: Limitations to effective dispute resolution', in Bazerman, M. and Lewicki, R. (eds.) *Negotiating in organizations.* Beverly Hills, Calif.: Sage, pp. 51-67.

Beer, J.E. with Stief, E. (1997) *The mediator's handbook*. 3rd rev. edn. Gabriola Island, BC: New Society Publishers.

Behfar, K., Mannix, E. and Peterson, R. (2011) 'Conflict in small groups: The meaning and consequences of process conflict', *Small Group Research*, 42(2), pp. 127-176.

Beirne, M. (2013) 'Interpretations of management and modernisation at the UK Royal Mail: Shifting boundaries and patterns of resistance?', *New Technology, Work and Employment*, 28(2), pp. 116-129.

Benjamin, R.D. (1995) 'The constructive uses of deception: Skills, strategies, and techniques of the folkloric trickster figure and their application by mediators', *Mediation Quarterly,* 13(1), pp. 3-18.

Bennett, T. (2013) 'Workplace mediation and the empowerment of disputants: Rhetoric or reality?', *Industrial Relations Journal*, 44(2), pp. 189-209.

Bennett, T. (2014) 'The role of workplace mediation: A critical assessment', *Personnel Review,* 43(5), pp. 764-779.

Bennett, A. (2016) 'Experiencing mediation from the disputants' perspective', in Saundry, R., Latreille, P. and Ashman, I. (eds.) *Reframing resolution: Innovation and change in the management of workplace conflict*. London: Palgrave Macmillan, pp. 171-190.

Beynon, H. (1984) *Working for Ford*. Harmondsworth: Penguin.

Bhaskar, R. (1978) *A realist theory of science*. London: Harvester Wheatsheaf.

Bickerstaffe, R. (2000) *UNISON's response to the Lord Chancellor's Department discussion document on alternative dispute resolution.* London: UNISON.

Bingham, L.B., Kim, K. and Raines, S.S. (2002) 'Exploring the role of representation in employment mediation at the USPS', *Ohio State Journal on Dispute Resolution,* 17(2), pp. 340-377.

Bingham, L.B. *et al.* (2009) 'Dispute system design and justice in employment dispute resolution: Mediation at the workplace', *Harvard Negotiation Law Review,* 14 (Winter), pp. 1-50.

Bleiman, D. (2008a) 'Introducing mediation in a unionised environment'. *Mediation in higher education: UK and USA perspectives.* Seminar hosted by HR Department, University of Edinburgh, 11 March 2008. Available at: www.staffs.ac.uk/idr/projectpurpose.html#b (Accessed: 31 May 2015).

Bleiman, D. (2008b) 'Should I try mediation? A discussion paper for trade union members', *Georgia State University Digital Archive @ GSU* Paper 16:1, pp. 1-23 *CNCR-Hewlett Foundation Seed Grant White Papers.* Available at: http://digitalarchive.gsu.edu/colpub_seedgrant/16 (Accessed: 27 February 2012).

Blyton, P. and Turnbull, P. (2004) *The dynamics of employee relations.* 3rd edn. Basingstoke: Palgrave Macmillan.

Boulle, L. and Nesic, M. (2009) *Mediation: Principles process practice*. Haywards Heath: Tottel Publishing.

Branney, V. (2016) 'Workplace mediation and UK trade unions: The missing link?', in Saundry, R., Latreille P. and Ashman, I. (eds.) *Reframing resolution. Innovation and change in the management of workplace conflict.* London: Palgrave Macmillan, pp. 191-214.

Brett, J.M. and Goldberg, S.B. (1983) 'Grievance mediation in the coal industry: A field experiment', *Industrial and Labor Relations Review,* 37(1), pp. 49-69.

Brightpurpose Consulting. (2009) *Review of mediation services/approaches in NHS Scotland. Report for NHS Dumfries and Galloway.* Available at: www.staffgovernance.scot.nhs.uk/.../dg0104-00-review-of-mediation-final-report.doc (Accessed: 4 October 2017).

Brown, J., Gouseti, I. and Fife-Schaw, C. (2017) *Sexual harassment experienced by police staff serving in England, Wales and Scotland: A descriptive exploration of incidence, antecedents and harm.* Available at: http://eprints.lse.ac.uk (Accessed: 1 November 2018).

Bryman, A. (2012) *Social research methods.* Oxford: Oxford University Press.

Bryson, A. (2007) 'New Labour, new unions?', in Park A. *et al.* (eds.) *British social attitudes: The 23rd report.* London: Sage.

BT Group plc. (2012) *Better future together report 2012.* Available at: https://www.btplc.com/Purposefulbusiness/betterfuturereport/pdf/2012/Better_Future_Report_2012_Full_report.pdf (Accessed: 28 December 2018).

Budd, J.W. (2004) *Employment with a human face: Balancing efficiency, equity and voice.* Ithaca: Cornell University Press.

Budd, J.W. and Colvin, A.J.S. (2008) 'Improved metrics for workplace dispute resolution procedures: Efficiency, equity and voice', *Industrial Relations,* 47(3), pp. 460-479.

Budd, J.W. and Colvin, A.J.S. (2014) 'The goals and assumptions of conflict management in organizations', in Roche, W.K., Teague, P. and Colvin, A.J.S. (eds.) *The Oxford handbook of conflict management in organizations.* Oxford: Oxford University Press, pp. 12-29.

Bush, R.A.B. and Folger, J.P. (2005) *The promise of mediation: the transformative approach to conflict*. Rev. edn. San Francisco: Jossey-Bass.

Califano, J.A. *et al*. (2000) *Report of the Unites States Postal Service Commission on a safe and secure workplace.* The National Center on Addiction and Substance Abuse, Columbia University. Available at: https://permanent.access.gpo.gov/lps12068/33994.pdf (Accessed 23 October 2013).

Callaghan, J. (1953) *Whitleyism*. *A study of joint consultation in the civil service.* Fabian Research Series No. 159. London: Fabian Publications Ltd.

Cardozo School of Law Symposium. (1999) 'Addressing the "Redress": A discussion of the status of the United States Postal Service's Transformative Mediation Program', *Cardozo Journal of Conflict Resolution,* pp. 1-30. Available at: http://cardozojcr.com/symposia/addressing-the-redress/ (Accessed: 11 November 2016).

Carter, B. and Fairbrother, P. (1998) 'Coherence or contradiction? The TUC's "new unionism" project'. Paper presented at *Work, Employment and Society conference,* 14 - 16 September 1998, University of Cambridge.

Carter, M. *et al.* (2013) 'Workplace bullying in the UK NHS: A questionnaire and interview study on prevalence, impact and barriers to reporting', *BMJ Open,* 3, pp. 1-12. Doi: 10.1136/bmjopen-2013-002628 (Accessed: 6 July 2017).

Cassell, C. and Symon, G. (eds.) (2004) *Essential guide to qualitative methods in organizational research.* London: Sage Publications.

Cassell, C. *et al.* (2009) 'Learning to be a qualitative management researcher', *Management Learning,* 40(5), pp. 513-533.

Charlwood, A. and Angrave, D. (2014). *Worker representation in Great Britain 2004-2011: An analysis based on the Workplace Employment Relations Study.* ACAS Research Paper, 03/14. London: ACAS.

Charlwood, A. and Forth, J. (2009) 'Employee representation', in Brown, W. *et al.* (eds.) *The evolution of the modern workplace*. Cambridge: Cambridge University Press, pp. 74-96.

Charlwood, A. and Metcalf, D. (2005), 'Appendix: trade union numbers, membership and density', in Fernie, S. and Metcalf, D. (eds.) *Trade unions: Resurgence or demise?* London: Routledge, pp. 231-239.

CIPD. (2007) *Managing conflict at work. Survey report.* London: Chartered Institute of Personnel and Development.

CIPD. (2008). *Workplace mediation: How employers do it. Survey report.* London: Chartered Institute of Personnel and Development.

CIPD. (2011) *Conflict management. Survey report March 2011.* London: Chartered Institute of Personnel and Development.

CIPD. (2014) *Case studies - East Sussex County Council. Taking an alternative approach to resolving conflict.* Available at: http://www.cipd.co.uk/hr-inform/hr-in-practice/case-studies/dispute-resolution/mediation (Accessed: 25 February 2015).

CIPD. (2015a) *Conflict management: A shift in direction? Research report March 2015.* London: Chartered Institute of Personnel and Development.

CIPD. (2015b) *Getting under the skin of workplace conflict: Tracing the experiences of employees. Survey report April 2015.* London: Chartered Institute of Personnel and Development.

CIPD/ACAS. (2008) *Mediation. An employer's guide.* London: Chartered Institute of Personnel and Development.

CIPD/ACAS. (2013) *A guide. February 2013. Mediation: An approach to resolving workplace issues.* London: Chartered Institute of Personnel and Development.

Civil Justice Council ADR Working Group. (2018) *ADR and civil justice. Final report November 2018.* Available at: https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADRWG-Report-FINAL-Dec-2018.pdf (Accessed: 22 July 2019).

Cobb, S. and Riskin, J. (1991) 'Practice and paradox: Deconstructing neutrality in mediation,' *Law and Social Inquiry*, 16, pp. 35-62.

Coben, J.R. (2000) 'Mediation's dirty little secret: Straight talk about mediator manipulation and deception,' *Journal of Alternative Dispute Resolution in Employment*¸ 2 (4), pp. 4-7.

Coben, J.R. (2004) 'Gollum, meet Sméagol: A schizophrenic rumination on mediator values beyond self-determination and neutrality', *Cardozo Journal of Conflict Resolution,* 5(2), pp. 65-86.

Cohen, D.J. and Crabtree, B.F. (2008) 'Evaluative criteria for qualitative research in health care: Controversies and recommendations', *Annals of Family Medicine,* 6(4), pp. 331-339. Doi: 10.1177/1350507609340811.

Colling, T. (2004) 'No claim, no pain? The privatization of dispute resolution in Britain', *Economic and Industrial Democracy*, 25(4), pp. 555-579.

Colling, T. (2009) 'Court in a trap? Legal mobilisation by trade unions in the United Kingdom', *Warwick papers in industrial relations, number 91, June 2009.* Industrial Relations Research Unit, University of Warwick. Available at: https://warwick.ac.uk/fac/soc/wbs/research/irru/wpir/ (Accessed: 26 October 2014).

Colling, T. (2012) 'Trade union roles in making employment rights effective', in Dickens, L. (ed.) *Making employment rights effective: Issues of enforcement and compliance.* Oxford: Hart Publishing, pp. 183-204.

Colvin, A.J.S. (2016) 'Conflict and employment relations in the individual rights era', *Managing and resolving workplace conflict. Advances in labor and industrial relations,* 22(1), pp. 1-30. Doi: 10.1108/S0742-61820160000022002.

Communication Workers Union. (2015) *Letter to branches: Mediation December 11, 2015, LTB790/15.* Available at: http://cwunorthwestcentral.org/mediation (Accessed: 26 May 2016).

Communication Workers Union. (2016a) *2016 conference closing round up.* Available at: https://www.cwu.org/news/conference-closing-round-up/ (Accessed: 11 January 2018).

Communication Workers Union. (2016b) *Rules revision conference agenda.* Available at: http://www.lancscumbria.co.uk/doc/Conf16AgendaRules.pdf (Accessed: 26 May 2016).

Communication Workers Union. (2018) *Organising for the future. Opportunities for CWU growth in a digital age.* London: The Communication Workers Union. Available at: https://www.cwu.org/wp-content/uploads/2018/06/cwu-838-organising-for-the-future-v7.pdf (Accessed: 28 November 2018).

Coombes, M. (2016) *Mediation, mental health and me.* Available at: http://www.professionalmediator.org/National-Mediation-Awards-2016 (Accessed: 30 December 2018).

Costantino, C. and Sickles Merchant, C. (1996) *Designing conflict management systems. A guide to creating productive and healthy organizations.* San Francisco: Jossey-Bass.

Crawley, J. and Graham, K. (2002) *Mediation for managers. Resolving conflict and rebuilding relationships at work.* London: Nicholas Brealey Publishing.

Danford, A. *et al*. (2005) *Partnership and the high performance workplace: Work and employment relations in the aerospace industry.* Basingstoke: Palgrave, Macmillan.

Darlington, R. (1994) *The dynamics of workplace trade unionism: Shop stewards' organization in three Merseyside plants.* London: Mansell.

Davies, P. and Freedland, M. (eds.) (1993) *Labour legislation and public policy*. Oxford: Oxford University Press.

Deakin, R.N.E. (2014) *A theoretical framework for exploring the feasibility and fairness of using mediation to address bullying and harassment in UK workplaces.* PhD thesis. University of Manchester. Available at: https://www.escholar.manchester.ac.uk/uk-ac-man-scw:244020 (Accessed: 27 August 2016).

De Girolamo, D. (2009) *The fugitive identity of mediation: Negotiations, shift changes and allusionary action.* PhD thesis. London School of Economics and Political Science. Available at: https://ethos.bl.uk/OrderDetails.do?did=2&uin=uk.bl.ethos.566267 (Accessed: 28 August 2016).

Department for Business Energy & Industrial Strategy (BEIS). (2017) *Trade union membership 2016. Statistical bulletin May 2017.* Available at: www.gov.uk/beis (Accessed: 6 May 2019).

Department for Business Energy & Industrial Strategy (BEIS). (2018) *Trade union membership 2017. Statistical bulletin May 2018.* Available at: www.gov.uk/beis (Accessed: 5 September 2018).

Department for Business Innovation & Skills (BIS) and Her Majesty's Courts & Tribunals Service. (2011a) *Resolving workplace disputes. A consultation. January 2011.* Available at: www.bis.gov.uk (Accessed: 8 February 2011).

Department for Business Innovation & Skills (BIS) and Her Majesty's Courts & Tribunals Service. (2011b) *Resolving workplace disputes: Government response to the consultation.* Available at: www.bis.gov.uk (Accessed: 24 November 2011).

Department of Employment. (1972) *Industrial relations code of practice.* London: HMSO.

Department of Trade and Industry. (2001) *Routes to resolution: Improving dispute resolution in Britain.* London: DTI.

De Turberville, S.R. (2004) 'Does the "organizing model" represent a credible union renewal strategy?', *Work, employment and society,* 18(4), pp. 775-794. Doi: 10.1177/095001174047963.

Dickens, L. (2000) 'Doing more with less: ACAS and individual conciliation', in Towers, B. and Brown, W (eds.), *25 years of the Advisory, Conciliation and Arbitration Service.* Oxford: Blackwell Publishers Ltd., pp. 67-91.

Dickens, L. and Hall, M. (1995) 'The State: Labour law and industrial relations', in Edwards. P. (ed.) *Industrial relations theory and practice in Britain.* Oxford: Blackwell Publishers Ltd., pp. 255-303.

Dickens, L. and Hall, M. (2003) 'Labour law and industrial relations: A new settlement?', in Edwards. P. (ed.) *Industrial relations theory and practice in Britain.* 2nd rev. edn. Oxford: Blackwell Publishers Ltd., pp. 124-156.

Dietz, G. (2004) 'Partnership and the development of trust in British workplaces', *Human Resource Management Journal*, 14(1), pp. 5-24.

Dingwall, R. and Greatbatch, D. (1993) 'Who is in charge? Rhetoric and evidence in the study of family mediation', *Journal of Social Welfare and Family Law*, 15(6), pp. 387-385.

Dix, G. (2000) 'Operating with style: The work of the ACAS conciliator in individual employment rights cases', in Towers, B. and Brown, W. (eds.) *Employment relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service.* Oxford: Blackwell Publishers Ltd., pp. 93-122.

Dix, G., Sisson, K. and Forth, J. (2009) 'Conflict at work: The changing pattern of disputes', in Brown, W. *et al.* (eds.) *The evolution of the modern workplace.* Cambridge: Cambridge University Press, pp. 176-200.

Doherty, L. and Teague, P. (2016) 'HRM, organisational citizenship behaviour and conflict management: The case of non-union MNC subsidiaries in Ireland', in Saundry, R., Latreille, P. and Ashman, I. (eds.) *Reframing resolution: Innovation and change in the management of workplace conflict*. London: Palgrave Macmillan, pp. 339-362.

Dolder, C. (2004) 'The contribution of mediation to workplace justice', *Industrial Law Journal*, 33(4), pp. 320-342.

Donovan, Lord. (1968) (Cmnd. 3623). *Royal Commission on trade unions and employers' associations 1965-1968.* London: Her Majesty's Stationery Office.

Doyle, B. (2018) 'ADR in the Employment Tribunal', *Tribunals, Edition 2 2018*, pp. 11-14. Available at: https://www.judiciary.uk/wp-content/uploads/2018/03/tribunals-journal-edition2-2018.pdf (Accessed: 13 September 2018).

Edwards, P. K. (1986) *Conflict at work: a materialist analysis of workplace relations*. Oxford: Basil Blackwell.

Edwards, P. (2005) 'The challenging but promising future of industrial relations: developing theory and method in context-sensitive research', *Industrial Relations Journal,* 36(4), pp. 264-282.

Edwards, P. (2013) 'Unions and the fairness at work agenda: Reflections on the workplace issues'. Paper for *Unions 21 Organizing for Fair Work Event*, 2 July 2013, Jersey. Available at: http://unions21.org.uk/files1/Unions-and-the-Fairness-at-Work-Agenda.docx (Accessed: 12 November 2014).

Edwards, P.K., O'Mahoney, J. and Vincent, S. (2014) *Studying organizations using critical realism: A practical guide*. Oxford: Oxford University Press.

Edwards, R. (1979) *Contested terrain.* London: Heinemann.

Einarsen, S. *et al.* (eds.) (2011) *Bullying and harassment in the workplace. Developments in theory, research and practice.* 2nd edn. Boca Raton, Fla.: CRC Press.

Eisenhardt, K.M. (1989) 'Building theories from case study research', *Academy of Management Review,* 14(4), pp. 532-550.

Equality and Human Rights Commission. (2011) *Code of practice on employment.* Norwich: The Stationery Office.

Ewing, K.D., Hendy J. and Jones, C. (2018) *Rolling out the manifesto for labour law.* Liverpool: Institute of Employment Rights.

Fairbrother, P. (1996) 'Workplace trade unionism in the state sector', in Ackers, P., Smith C. and Smith P. (eds.) (1996) *The new workplace and trade unionism.* London: Routledge, pp. 110-148.

Fernie, S. and Metcalf, D. (eds.) (2005) *Trade unions: Resurgence or demise?* London: Routledge.

Feuille, P. and Kolb, D.M. (1994) 'Waiting in the wings: Mediation's role in grievance resolution', *Negotiation Journal,* 10(3), pp. 249-264.

Fevre, R. *et al.* (2011) *Insight into ill treatment in the workplace: Patterns, causes and solutions.* Available at: http://tinyurl.com/socsi-insight (Accessed: 9 September 2013).

Fevre, R. *et al.* (2012) *Trouble at work.* Available at: http://www.bloomsburycollections.com/book/troulbe-at-work/ (Accessed: 10 September 2013).

Fisher, V. and Kinsey, S. (2018) *Lifting the lid on sexual harassment and power in the workplace.* CIPD Applied Research Conference 2018. Available at: https://www.cipd.co.uk/Images/sexual-harassment-workplace_tcm18-59085.pdf (Accessed: 24 July 2019).

Flanders, A. (1970) *Management and unions: the theory and reform of industrial relations*. London: Faber and Faber.

Folger, R., and Cropanzano, R. (2001) 'Fairness theory: Justice as accountability', in Greenberg, J. and Cropanzano, R (eds.), *Advances in organizational behavior.* Palo Alto, Calif.: Stanford University Press, pp. 1-55.

Forth, J. and Dix, G. (2016) 'Exploring the nature and extent of workplace conflict', in Saundry, R., Latreille, P. and Ashman, I. (eds.) *Reframing resolution: Innovation and change in the management of workplace conflict*. London: Palgrave Macmillan, pp. 35-56.

Fox, A. (1966) *Industrial sociology and industrial relations*. Research paper no.3. Royal Commission on Trade Unions and Employers' Associations. London: HMSO.

Fox, A. (1974) *Beyond contract: Work, power and trust relations*. London: Faber and Faber.

Fox, M. (2005) *Evaluation of the ACAS pilot of mediation and employment law visits to small companies.* ACAS Research Paper, 05/05. London: ACAS.

Fredman, S. (2002) *Discrimination law.* Oxford: Oxford University Press.

French, J.R.P. and Raven, B. (1968) 'The bases of social power', in Cartwright, D. and Zander, A. (eds.) *Group dynamics.* New York: Harper and Row, pp. 259-269.

Fuller, L. L. (1962) 'Collective bargaining and the arbitrator', in Kahn, M.L. (ed.) *Collective bargaining and the arbitrator's role: Proceedings of the 15th annual meeting of the National Academy of Arbitrators.* Washington D.C.: BNA Inc., pp. 29-30.

Galanter, M. (1974) 'Why the haves come out ahead: Speculations on the limits of legal change', *Law and Society Review,* 9(1), pp. 95-160.

Gall, G. (2003a) *The meaning of militancy? Postal workers and industrial relations*. Aldershot: Ashgate Publishing.

Gall, G. (ed.) (2003b) *Union organizing. Campaigning for trade union recognition.* London: Routledge.

Gaymer, J. (2006) 'The Employment Tribunal Taskforce' in Dickens, L. and Neal, A.C. (eds.) *The changing institutional face of British employment relations.* Alphen aan den Rijn: Kluwer Law International, pp. 115-127.

Geary, J.F. and Roche, W.K. (2003) 'Workplace partnership and the displaced activist thesis', *Industrial Relations Journal*, 34(1), pp. 32-51.

Genn, H. (1999) *Paths to justice: What people do and think about going to law.* Oxford: Hart Publishing.

Genn, H. (2010) 'Civil mediation: A measured approach?' *Journal of Social Welfare & Family Law*, 32(2), pp. 195-205.

Gershon, P. (2004) *Releasing resources to the front line: Independent review of public sector efficiency.* London: The Stationery Office.

Gibbert, M., and Ruigrok, W. (2010) 'The "what" and "how" of case study rigor: Three strategies based on published work', *Organizational Research Methods,* 13(4), pp. 710-737.

Gill, J. and Johnson, P. (2010) *Research methods for managers.* London: Sage Publications.

Gibbons, M. (2007) *Better dispute resolution. A review of employment dispute resolution in Great Britain.* London: Department of Trade and Industry.

Gibbs, G.R. (2014) *Template analysis: An interview with Prof. Nigel King.* Available at: https://www.youtube.com/playlist?list=PL2EF5188800C558D0 (Accessed: 29 August 2016).

Godard, J. (2000) *Industrial relations, the economy and society.* 2nd rev. edn. New York, Ontario: Captus Press.

Goldberg, S.B. (2015) 'Mediation in the workplace: An alternate route to attitudinal restructuring of the union-management relationship', *Negotiation Journal,* October, pp. 415-417.

Goodman, J.F.B. and Whittingham, T.G. (1969) *Shop stewards in British industry*. London: McGraw-Hill.

Graham, K. (2015) *3 reasons why workplace mediation should be mandatory.* CMP Resolution blog, Mediate.com. Available at: http://www.mediate.com/articles/GrahamKbl20150321.cfm (Accessed: 3 February 2017).

Greatbatch, D. and Dingwall, R. (1989) 'Selective facilitation: Some preliminary observations on a strategy used by divorce lawyers', *Law and Society Review,* 23(4), pp. 613-641.

Grillo, T. (1991) 'The mediation alternative: Process dangers for women', *Yale Law Journal*, 100(6), pp. 1545-1611.

Gumbrell-McCormick, R. and Hyman, R. (2013) *Trade unions in Western Europe. Hard times, hard choices.* Oxford: Oxford University Press.

Gwartney-Gibbs, P. (1994) *Gender differences in clerical workers' disputes over tasks, interpersonal treatment and emotion*. Available at: http://www.bethroy.org/uploads/Gwartney.pdf (Accessed: 9 August 2015).

Hall, M. and Purcell, J. (2012) *Consultation at work.* Oxford: Oxford University Press.

Hallberlin, C. J. (2001) 'Transforming workplace culture through mediation: Lessons learned from swimming upstream', *Hofstra Labor & Employment Law Journal*, (18), pp. 375-383.

Hammersley, M. (2008) *Questioning qualitative inquiry – critical essays.* London: Sage.

Hammersley, M. (2009) 'Why critical realism fails to justify critical social research', *Methodological Innovations Online,* 4(2), pp. 1-11. Available at: https://oro.open.ac.uk/20394/1/1._Hammersley_final_August_9_09.pdf (Accessed: 31 May 2019).

Hammersley, M. with Gomm, R. (2000) 'Bias in social research', in Hammersley, M. *Taking sides in social research. Essays on partisanship and bias.* London: Routledge, pp. 151-166.

Hann, D., Nash, D. and Heery, E. (2016) 'Workplace conflict resolution in Wales: The unexpected prevalence of alternative dispute resolution', *Economic and Industrial Democracy*, 37 (1), pp.1-27. Doi: 10.1177/0143831X16663013.

Hartley, J. (2004) 'Case study research', in Cassell, C. and Symon, G. (eds.) *Essential guide to qualitative methods in organizational research.* Thousand Oaks, Calif.: Sage Publications, pp. 323-333.

Healy, G., Kirton G. and Noon, M. (2011) 'Inequalities, intersectionality and equality and diversity initiatives. The conundrums and challenges of researching equality,

inequalities and diversity', in Healy, G., Kirton, G. and Noon, M. (eds.) *Equality, inequalities and diversity.* Basingstoke: Palgrave Macmillan, pp. 1-17.

Heery, E. (1998) 'The relaunch of the Trades Union Congress', *British Journal of Industrial Relations,* 36(3), pp. 339-360.

Heery, E. (2016) *Framing work: unitary, pluralist, and critical perspectives in the twenty-first century.* Oxford: Oxford University Press.

Herrman, M.S., Hollett, N. and Gale, J. (2006) 'Mediation from beginning to end: A testable model' in Herrman, M. S. (ed.) (2006) *The Blackwell handbook of mediation: bridging theory, research, and practice*. Oxford: Blackwell Publishing, pp. 19-78.

Hickey, R., Kuruvilla, S. and Lakhani, T. (2010) 'No panacea for success: Member activism, organizing and renewal', *British Journal of Industrial Relations*, 48(1), pp. 53-83.

Higher Education Equality Challenge Unit. (2009) *Dignity at work. A good practice guide for higher education institutions on dealing with bullying and harassment in the workplace.* Available at: https://www.ecu.ac.uk/publications/ (Accessed: 24 June 2014).

Hodges, A.C. (2004) 'Mediation and the transformation of American labor unions', *Missouri Law Review,* 69 (2), pp. 365-439.

Hoel, H. and Beale, D. (2006). 'Workplace bullying, psychological perspectives and industrial relations: Towards a contextualized and interdisciplinary approach', *British Journal of Industrial Relations,* 44(2), pp. 239-262.

Hoel, H., Lewis, D, and Einarsdóttir, A. (2014) *The ups and downs of LGBs' workplace experiences. Discrimination, bullying and harassment of lesbian, gay and bisexual employees in Britain.* Manchester: Manchester Business School. Available at: lgbatwork.portals.mbs.ac.uk (Accessed: 5 June 2017).

Holgate, J., Hebson G. and McBride, A. (2006) 'Why gender and 'difference' matters: A critical appraisal of industrial relations research', *Industrial Relations Journal*, 37(4), pp. 310-328.

Hoque, K. and Bacon, N. (2015) 'Workplace union representation in the British public sector: Evidence from the 2011 Workplace Employment Relations Survey'. *Warwick papers in industrial relations*, number 101. Industrial relations research unit, University of Warwick. Available at: https://warwick.ac.uk/fac/soc/wbs/research/irru/wpir/wpir101.pdf (Accessed: 30 May 2019).

Huddy, L. *et al.* (1997) 'The effect of interviewer gender on the survey response', *Political Behavior,* 19(3) pp. 197-220.

Hurd, R.W. (1993) 'Organizing and representing clerical workers: The Harvard model', in Cobble, D.S. (ed.) *Women and unions: Forging a partnership.* Ithaca, NY: ILR Press, pp. 316-336. Available at: http://digitalcommons.ilr.cornell.edu/articles/319 (Accessed: 2 March 2018).

Hyman, R. (1975) *Marxism and the sociology of trade unionism*. London: Pluto Press.

Hyman, R. (1987) 'Strategy or structure? Capital, labour and control', *Work employment and society*, (1)1, pp. 25-55.

Hyman, R. (1999) *An emerging agenda for trade unions?* Labour and Society Programme. Discussion paper series. DP/98/1999. Geneva: International Institute for Labour Studies.

Hyman, R. (2005) 'Whose (social) partnership?', in Stuart, M. and Martínez Lucio, M. (eds.), *Partnership and modernisation*. Abingdon: Routledge, pp. 251-265.

IDS. (2009) 'Case studies: East Sussex County Council introduces mediation', *IDS HR Studies*, *Discipline, grievance and mediation*, 906. London: Incomes Data Services, pp. 32-37.

Improving Dispute Resolution Project. (2009) *Alternative handling of disputes. Strand B report.* Improving dispute resolution: A HEFCE Leadership Governance and Management Fund Project. Available at: www.staffs.ac.uk/idr (Accessed: 31 May 2015).

Ironside, M. and Seifert, M. (2000) *Facing up to Thatcherism: The history of NALGO 1979-93*. Oxford: Oxford University Press.

Ironside, M. and Seifert, R. (2003) 'Tackling bullying in the workplace: the collective dimension', in Einarsen, S. *et al.* (eds.) *Bullying and emotional abuse in the workplace: International perspectives in research and practice*. London: Taylor and Francis, pp. 383-98.

Jehn, K. and Mannix, E. (2001) 'The dynamic nature of conflict: A longitudinal study of intragroup conflict and group performance,' *Academy of Management Journal*, 44(2), pp. 238-251.

Johnson, N.B. and Jarley, P. (2004) 'Justice and union participation: An extension and test of mobilization theory', *British Journal of Industrial Relations,* 42(3), pp. 543-562.

Jones, C. and Saundry, R. (2012) 'The practice of discipline: Evaluating the roles and relationship between managers and HR professionals', *Human Resource Management Journal*, 22(3), pp. 252-266.

Jones, C. and Saundry, R. (2016) 'A crisis of confidence? Front-line managers and the complexities of conflict', in Saundry, R., Latreille, P. and Ashman, I. (eds.) (2016) *Reframing resolution: Innovation and change in the management of workplace conflict*. London: Palgrave Macmillan, pp. 105-125.

Jordan, E. *et al.* (2013) *Employment regulation Part A: Employer perceptions and the impact of employment regulation.* Employment Relations Research Series 123. London: Department for Business Innovation & Skills.

Kandola, R. and Fullerton, J. (2000) *Diversity in action: managing the mosaic*. London: Chartered Institute of Personnel and Development.

Kelly, J. (1996) 'Union militancy and social partnership', in Ackers, P., Smith C. and Smith P. (eds.) (1996) *The new workplace and trade unionism.* London: Routledge, pp. 77-109.

Kelly, J. (1998) *Rethinking industrial relations: Mobilization, collectivism and long waves*. London: Routledge.

Kelly, J. (1999) 'Social partnership in Britain: Good for profits, bad for jobs and unions', *Communist Review*, 30 (Autumn), pp. 3-10.

Kelly, J. (2004) 'Social partnership agreements in Britain: Labor cooperation and compliance', *Industrial Relations,* 43(1), pp. 267-292.

Kersley, B. *et al.* (2006) *Inside the workplace: Findings from the 2004 Workplace Employment Relations Survey.* London: Routledge.

King, N. (1995) 'The qualitative research interview', in Cassell, C. and Symon, G. (eds.) *Qualitative methods in organizational research.* London: Sage Publications, pp. 14-36.

King, N. (2004) 'Using interviews in qualitative research', in Cassell, C. and Symon, G. (eds.) *Essential guide to qualitative methods in organizational research*. London: Sage Publications, pp. 11-22.

Klaas, B. S. (1989) 'Determinants of grievance activity and the grievance system's impact on employee behavior: An integrative perspective', *Academy of Management Review***,** 14(3), pp. 445–458.

Kline, R. *et al.* (2017) *NHS workforce race equality standard 2016 data analysis report for NHS trusts.* Available at: https://www.england.nhs.uk/about/equality/equality-hub/equality-standard/ (Accessed: 23 August 2018).

Kolb, D.M. (1985) *The mediators*. Cambridge, Mass.: MIT Press.

Kolb, D.M. (2001) 'William Hobgood: "Conditioning" parties in labor grievances', in Kolb, D.M. and Associates (eds.) *When talk works: Profiles of mediators*. San Francisco: Jossey-Bass Publishers, pp. 149-189.

Kolb, D.M. and Kressel, K. (2001) 'The realities of making talk work', in Kolb, D.M. and Associates (eds.) *When talk works: Profiles of mediators*. San Francisco: Jossey-Bass Publishers, pp. 459-493.

Kvale, S. (1996) *InterViews: An introduction to qualitative research interviewing.* Thousand Oaks, Calif.: Sage.

Laclau, E. and Mouffe, C. (1985) *Hegemony and socialist strategy.* London: Verso.

Lane, T. (1974) *The union makes us strong: The British working class: its politics and trade unionism*. London: Arrow Books.

Latreille, P.L. (2010) *Mediation at work: of success, failure and fragility.* ACAS Research Paper, 06/10. Available at: www.acas.org.uk/researchpapers (Accessed: 9 March 2011).

Latreille, P.L. (2011) *Mediation: A thematic review of the Acas/CIPD evidence.* ACAS Research Paper, 13/11. Available at: www.acas.org.uk/researchpapers (Accessed: 21 January 2012).

Latreille, P., Buscha, F. and Conte, A. (2010) *SME attitudes towards workplace mediation: The role of experience.* ACAS Research Paper, 05/10. Available at: www.acas.org.uk/researchpapers (Accessed: 9 March 2011).

Latreille, P., Buscha, F. and Conte, A. (2012) 'Are you experienced? SME use of and attitudes towards workplace mediation, *The International Journal of Human Resource Management,* 23(3), pp. 590-606.

Latreille, P.L. and Saundry, R. (2014) 'Workplace mediation' in Roche, W.K., Teague, P. and Colvin, A.J.S. (eds.) *The Oxford handbook of conflict management in organizations.* Oxford: Oxford University Press, pp. 190-209.

Latreille P.L. and Saundry, R. (2015). *Towards a system of conflict management? An evaluation of the impact of workplace mediation at Northumbria Healthcare NHS Foundation Trust.* ACAS Research Paper, 02/15. . Available at: www.acas.org.uk/researchpapers (Accessed: 3 June 2016).

Latreille, P.L. and Saundry, R. (2016a) 'Towards a system of conflict management? Cultural change and resistance in a healthcare organization', in *Managing and Resolving Workplace Conflict*, pp. 189-209. Doi: 10.1108/S0742-61862016000002208.

Latreille, P.L. and Saundry, R. (2016b) 'Transforming the culture of conflict management: Lessons from in-house mediation', in Saundry, R., Latreille, P. and Ashman, I. (eds.) (2016) *Reframing resolution: Innovation and change in the management of workplace conflict*. London: Palgrave Macmillan, pp. 315-338.

Liddle, D. (2007) *Royal Mail mediation scheme announced*. Available at: http://www.thetcmgroup.com/news/142-royal-mail-mediation-scheme-announced (Accessed: 9 February 2014).

Liddle, D. (2017) *Managing conflict: A practical guide to resolution in the workplace*. London: Kogan Page.

Liebmann, M. (ed.) (2009) *Mediation in context*. London: Jessica Kingsley Publishers.

Lipsky, D. B. and Seeber, R. L. (2000) 'Resolving workplace disputes in the United States: The growth of alternative dispute resolution in employment relations', *Journal of Alternative Dispute Resolution,* 2(3), pp. 37-49.

Looker, G.A. (2015) *Trade union organisers in trade union strategies: Building workplace unionism or reinforcing bureaucracy.* PhD thesis. De Monfort University. Available at: https://www.dora.dmu.ac.uk/handle/2086/12104 (Accessed: 30 August 2016).

Lord Chancellor's Department. (1999) *Alternative dispute resolution: A discussion paper.* LCD: London.

Lowry, P. (1990) *Employment disputes and the third party.* Basingstoke: Macmillan Press.

Lynch, J.F. (2001) 'Beyond ADR: A systems approach to conflict management', *Negotiation Journal,* 17(3), pp. 207-216.

Marginson, P. (2015) 'The changing nature of collective employment relations', *Employee Relations,* 37(6), pp. 645-657.

Marsh, A.I. (1963) *Managers and shop stewards*. London: Institute of Personnel Management.

Martin, D. (2013) *The politics of research: Keeping your distance or making a difference?* iROWE academic seminar 14 May 2013. University of Central Lancashire. Unpublished.

McArdle, L. and Thomas, P. (2016) 'Workplace mediation schemes: Antagonism and articulation in the discursive process of organizational conflict and disputes', in Saundry, R., Latreille, P. and Ashman, I. (eds.) (2016) *Reframing resolution: Innovation and change in the management of workplace conflict*. London: Palgrave Macmillan, pp. 265-287.

McCarthy, W.E.J. (1967) *The role of shop stewards in British industrial relations.* Royal Commission on Trade Unions and Employers' Associations Research Paper 1. London: HMSO.

McCarthy. W.E.J. and Parker, S.R. (1968) *Shop stewards and workshop relations*. Royal Commission on Trade Unions and Employers' Associations Research Paper 10. London: HMSO.

Menkel-Meadow, C. (1995) 'The many ways of mediation: The transformation of traditions, ideologies, paradigms, and practices', *Negotiation Journal,* 11(3) pp. 217-242.

Menkel-Meadow, C. (2000) 'Mothers and fathers of invention: The intellectual founders of ADR', *Ohio State Journal of Dispute* Resolution, 16(1), pp. 1-37.

Menkel-Meadow, C. (2005) 'Roots and inspirations: A brief history of the foundations of dispute resolution', in Moffitt, M.L. and Bordone, R.C. (eds.) *The handbook of dispute resolution.* San Francisco: Jossey-Bass, pp. 13-31.

Menkel-Meadow, C. (2011) 'The NLRA's legacy: Collective or individual dispute resolution or not?' *ABA Journal of Labor and Employment Law,* 26(2), pp. 249-266.

Mitchell, M., Coutinho, S. and Morrell, G. (2012) *The value of trade union facility time. Insights, challenges and solutions.* NatCen Social Research report prepared for UNISON. Available at: https://www.unison.org.uk/content/uploads/2013/06/Briefings-

and-CircularsBG-Value-of-Union-Facility-Time-FULL-REPORT-_FINAL_2.pdf (Accessed 5 October 2014).

Moore, S. (2011) *New trade union activism. Class consciousness or social identity?* Basingstoke: Palgrave Macmillan.

Mustchin, S. (2017) 'Public sector restructuring and the re-regulation of industrial relations: The three decade project of privatisation, liberalisation and marketisation in Royal Mail', *Industrial Relations Journal,* 48(4), pp. 294-309.

Nabatchi, T. and Bingham, L.B. (2010) 'From postal to peaceful: Dispute systems design in the USPS REDRESS™ program', *Review of Public Personnel Administration,* 30(2), pp. 211-234.

Neathey, F., Regan, J. and Newton, L. (2005) *Working in partnership in higher education: Final report. A report for JNCHES.* London: Universities and Colleges Employers Association. Available at: https://www.employment-studies.co.uk/resource/working-partnership-higher-education (Accessed: 11 September 2014).

Network Rail. (2017) *A guide to workplace mediation (V1.2).* Available at: https://www.rmt.org.uk/news/publications/nr-guide-to-workplace-mediation/ (Accessed: 18 March 2017).

Novick, G. (2008) 'Is there bias against telephone interviews in qualitative research?' *Research in Nursing and Health*, 31(4), pp. 391-398. Doi: 10.1002/nur.20259.

OECD. (2019) *OECD.Stat. Collective bargaining coverage, 2019.* Available at: https://stats.oecd.org/Index.aspx?DataSetCode=CBC# (Accessed: 22 May 2019).

Olson-Buchanan, J.B. and Boswell, W.R. (2008) 'An integrative model of experiencing and responding to mistreatment at work', *Academy of Management Review*, 33(1), pp. 76-96.

Oppenheim, A.N. (1992) *Questionnaire design: Interviewing and attitude measurement.* London: Pinter Publishers.

Parker Follett, M. (1941) *Dynamic management.* London: Management Publications Trust.

Pérez-Días, V. (1987) 'Unions' uncertainties and ambivalences', *International Journal of Political Economy,* 17(3) pp. 108-138.

Podro, S. and Suff, R. (2005) *Making more of alternative dispute resolution*. ACAS policy discussion papers, No.1. Available at http://www.acas.org.uk/index.aspx?articleid=2988 (Accessed: 7 July 2015).

Poole, M. (1981) *Theories of trade unionism: A sociology of industrial relations.* London: Routledge and Kegan Paul.

Rahim, N., Brown, A. and Graham, J. (2011) *Evaluation of the ACAS code of practice on disciplinary and grievance procedures.* ACAS Research Paper, 06/11. London: ACAS.

Rawls, J. (2001) *Justice as fairness: A restatement.* 2nd edn. Harvard: Belknap Press.

Reason, P. and Rowan, J. (1981) *Human inquiry: A sourcebook of new paradigm research.* Chichester: Wiley.

Regini, M. (1995) *Uncertain boundaries.* Cambridge: Cambridge University Press.

Reynolds, C. (2000) 'Workplace mediation', in Liebmann, M. (ed.) *Mediation in context*. London: Jessica Kingsley Publishers, pp. 166-176.

Ridley-Duff, R., and Bennett, A. (2011) 'Towards mediation: Developing a theoretical framework to understand alternative dispute resolution', *Industrial Relations Journal,* (42)2, pp. 106-123.

Robinson P., Pearlstein, A. and Mayer, B. (2005) 'DyADS: Encouraging "Dynamic Adaptive Dispute Systems" in the organized workplace', *Harvard Negotiation Law Review,* 10 (Spring), pp. 339-382.

Roche, W. *et al.* (2019) 'Improvisers, incrementalists and strategists: How and why organisations adopt ADR innovations', *British Journal of Industrial Relations*, 57(1), pp. 3-32. Doi: 10.1111/bjir.12413.

Roche, W.K. and Geary, J.F. (2002) 'Advocates, critics and union involvement in workplace partnership: Irish Airports', *British Journal of Industrial Relations,* 40(4), pp. 659-688.

Roche. W. and Geary, J. (2006) *Partnership at work: The quest for radical organizational change.* London: Routledge.

Roche, W.K. and Teague, P. (2012) 'Do Conflict Management Systems Matter?' *Human Resource Management*, 51(2), pp. 231-258.

Roche, W.K. and Teague, P. (2014) 'Conflict management systems', in Roche, W.K., Teague, P. and Colvin, A.J.S. (eds.) *The Oxford handbook of conflict management in organizations.* Oxford: Oxford University Press, pp. 250-272.

Roche, W.K., Teague, P. and Colvin, A.J.S. (2014) 'Introduction to part 1', in Roche, W.K., Teague, P. and Colvin, A.J.S. (eds.) *The Oxford handbook of conflict management in organizations.* Oxford: Oxford University Press, pp. 250-272.

Rogers, J. and Streeck, W. (1995) 'The study of works councils: Concepts and problems', in Rogers, J. and Streeck, W. (eds.) *Works councils: Consultation, representation and cooperation in industrial relations.* Chicago: University of Chicago Press, pp. 3-26.

Roulston, K. (2010) 'Considering quality in qualitative interviewing', *Qualitative Research*, 10(2), pp. 199-228. Doi: 10.1177/1468794109356739.

Royal Mail and Communication Workers Union. (2015a) *A short guide to voluntary mediation within the Royal Mail Group.* Available at: https://www.cwu.org/assets/cwu/legacy-assets/documents/sep_15/cwu__1441625393_Short_guide_to_Voluntary_Media.pdf (Accessed: 3 August 2016).

Royal Mail and Communication Workers Union. (2015b) *Delivering mediation.* Available at: https://www.cwu.org/assets/cwu/legacy-assets/documents/sep_15/cwu__1441704775_Mediation_leaflet.pdf (Accessed: 26 May 2017).

Royal Mail Group, CWU and Unite. (2018) *Grievance policy booklet. An update for managers and union reps on the revised approach.* Available at: https://www.cwu.org/wp-content/uploads/2018/01/Grievance-Policy-Booklet-An-Update-for-Managers.pdf (Accessed: 30 October 2018).

Royal Mail Group Ltd. (2018) *Grievance policy. Version 22 January 2018.* Available at: https://www.cwu.org/wp-content/uploads/2018/01/Grievance-Policy.pdf (Accessed: 30 October 2018).

Royal Mail plc. (2014) *Corporate responsibility report, 2013-14.* Available at: https://www.royalmailgroup.com/en/responsibility/policies-and-reports/ (Accessed: 3 December 2016).

Royal Mail plc. (2015) *Corporate responsibility report, 2014-15.* Available at: https://www.royalmailgroup.com/en/responsibility/policies-and-reports/ (Accessed: 3 December 2016).

Royal Mail plc. (2016a) *Corporate responsibility report, 2015-16.* Available at: https://www.royalmailgroup.com/en/responsibility/policies-and-reports/ (Accessed: 5 December 2016).

Royal Mail plc. (2016b) *Annual report and financial statements, 2015-16.* Available at: https://ar2015-16.royalmailgroup.com/pdf/Royal_Mail_Annual_Report_2015-16.pdf (Accessed: 4 December 2016).

Royal Mail plc. (2017a) *Corporate responsibility report, 2016-17.* Available at: https://www.royalmailgroup.com/en/responsibility/policies-and-reports/ (Accessed: 25 March 2018).

Royal Mail plc. (2017b) *Annual report and financial statements, 2016-17.* Available at: https://www.annualreports.co.uk/Company/Royal-Mail-plccc (Accessed: 29 March 2018).

Royal Mail plc. (2018a) *Corporate responsibility report, 2017-18.* Available at: https://www.royalmailgroup.com/en/responsibility/policies-and-reports/ (Accessed: 11 December 2018).

Royal Mail plc. (2018b) *2017-18 Corporate responsibility performance and GRI data.* Available at: https://www.royalmailgroup.com/media/10206/royal-mail-group-plc-corporate-responsibility-performance-data-and-gri-appendix.pdf (Accessed: 11 December 2018).

Rubin, J.Z. and Sander, F.E.A. (2003) 'When should we use agents? Direct versus representative negotiation', in Lewicki, R.J. *et al.* (eds.) *Negotiation readings, exercises and cases.* 4th edn. New York: McGraw-Hill Irwin, pp. 256-263.

Ruhemann, C. (2010) *Trade union negotiating officials' use and non-use of Acas conciliation in collective disputes.* ACAS Research Paper, 07/10. London: ACAS.

Saundry, R. (2012) *Conflict resolution and mediation at Bradford MDC. A case study.* ACAS Research Paper, 08/12. London: ACAS.

Saundry, R. (2016) 'Conceptualizing workplace conflict and conflict management', in Saundry, R., Latreille P. and Ashman, I. (eds.) *Reframing resolution. Innovation and change in the management of workplace conflict.* London: Palgrave Macmillan, pp. 13-33.

Saundry, R., Antcliff, V. and Hollinrake, A. (2017) 'Union learning representatives in the UK: Activity, impact and organization', *Work, employment and society.* Doi: 10.1177/0950017016630247.

Saundry, R., Antcliff, V. and Jones, C. (2008) *Accompaniment and representation in workplace discipline and grievance.* ACAS Research Paper, 06/08. London: ACAS.

Saundry, R., Bennett, T. and Wibberley, G. (2013) *Workplace mediation: The participant experience.* ACAS Research Paper, 02/13. London: ACAS.

Saundry, R., Bennett, T. and Wibberley, G. (2016) 'Inside the mediation room – efficiency, voice and equity in workplace mediation', *The International Journal of Human Resource Management*. Doi: 10.1080/09585192.2016.1180314.

Saundry, R. and Dix, G. (2014) 'Conflict resolution in the United Kingdom' in Roche, W.K., Teague, P. and Colvin, A.J.S. (eds.) (2014) *The Oxford handbook of conflict management in organizations.* Oxford: Oxford University Press, pp. 475-493.

Saundry, R. *et al*. (2014) *Reframing resolution – managing conflict and resolving individual employment disputes in the contemporary workplace*. ACAS Policy Discussion Paper, March 2014. Available at: https://m.acas.org.uk/media/3961/Reframing-Resolution---Managing-Conflict-and-Resolving-Individual-Employment-Disputes-in-the-Contemporary-Workplace/pdf/reframing_policy_paper_FINAL.pdf (Accessed: 29 April 2019).

Saundry, R. *et al.* (2016) *Managing individual conflict in the contemporary British workplace.* ACAS Research Paper, 02/16. London: ACAS.

Saundry, R., Fisher, V. and Kinsey, S. (2017) 'HR structures and the management of conflict: ghettoising employment relations?', *CIPD Applied Research Conference* University of Strathclyde, Glasgow, December 2017, pp. 1-7.

Saundry, R., Jones, C. and Antcliff, V. (2011) 'Discipline, representation and dispute resolution – exploring the role of companions in workplace discipline', *Industrial Relations Journal*, 42(5), pp. 195-211.

Saundry, R., McArdle, L., and Thomas, P. (2011) *Transforming conflict management in the public sector? Mediation, trade unions and partnerships in a primary care trust*. iROWE, University of Central Lancashire. ACAS Research Paper, 01/11. London: ACAS.

Saundry, R., McArdle, L. and Thomas, P. (2013) 'Reframing workplace relations? Conflict resolution and mediation in a primary care trust', *Work, employment and society*. Doi: 10.1177/0950017012472236.

Saundry, R., and Wibberley, G. (2012a). *Managing individual conflict in the private sector*. *A case study.* ACAS Research Paper, 05/12. London: ACAS.

Saundry, R., and Wibberley, G. (2012b) *Mediation and early resolution. A case study in conflict management*. ACAS Research Paper, 12/12. London: ACAS.

Saundry, R., and Wibberley, G. (2014) *Workplace dispute resolution and the management of individual conflict – a thematic analysis of five case studies*. ACAS Research Paper, 06/14. London: ACAS.

Scottish Trades Union Congress (2009) *Annual Congress 2009 decisions booklet.* Available at: http://www.stuc.org.uk/files/Congress%202009/DECISIONS%20ANNUAL%20CONGRESS%202009.pdf (Accessed: 8 August 2015).

Scottish Trades Union Congress. (2018) *STUC briefing: Trade unions, collective bargaining and inclusive growth.* Available at: http://www.stuc.org.uk/files/STUC%20Briefings%2017/18/STUCBriefing_collective%20bargaining.pdf (Accessed 27 July 2018).

Seaman, R.J. (2010) *Locating the mediator within workplace discourse: Supporter of the status quo or humble "midwife" of dialogue? Developing an alternative workplace mediation practice.* PhD thesis. Bournemouth University. Available at: https://ethos.bl.uk/OrderDetails.do?did=1&uin=uk.bl.ethos.525487 (Accessed: 27 August 2016).

Seargeant, J. (2005) *The Acas small firms mediation pilot. Research to explore parties' experiences and views on the value of mediation.* ACAS Research Paper, 04/05. London: ACAS.

Seifert, R. (2017) 'Framing work: unitary, pluralist and critical perspectives in the twenty-first century'. Review of *Framing work: unitary, pluralist, and critical perspectives in the twenty-first century*, by Edmund Heery. *Industrial Relations Journal*, 48(1), pp. 94-95.

Sherman, M. (2003) 'Mediation hype and hyperbole: How much should we believe?', *Dispute Resolution Journal*, (58)3, pp. 43-51.

Shonholtz, R. (1984) 'Neighborhood justice systems: Work, structure, and guiding principles', *Mediation Quarterly*, 5, pp. 3-30.

Silbey, S. and Merry, S. (1986) 'Mediator settlement strategies', *Law and Policy,* 8(7), pp. 12-34.

Simms, M. and Charlwood, A. (2010) 'Trade unions: Power and influence in a changed context', in Colling, T. and Terry, M (eds.) *Industrial relations: theory and practice.* 3rd edn. Chichester, West Sussex: John Wiley & Sons, pp. 125-148.

Simms, M., Holgate, J. and Heery, E. (2013) *Union voices: Tactics and tensions in UK organizing.* Ithaca: Cornell University Press.

Simms, M., Holgate, J. and Roper, C. (2019) 'The Trades Union Congress 150 years on: A review of the organising challenges and responses to the changing nature of work', *Employee Relations*, 41(2). Doi: https://doi.org/10.1108/ER-09-2018-0242 (Accessed: 31 May 2019), pp. 331-343.

Stuart, M. and Martínez Lucio, M (eds.) (2005) *Partnership and modernisation*. Abingdon: Routledge.

Taskforce. (2002) *Report of the Employment Tribunal Taskforce, moving forward.* London: The Stationery Office.

Teague, P. *et al.* (2015) *Managing workplace conflict: ADR in Ireland.* Dublin: Institute of Public Administration.

Teague, P., Roche, B. and Hann, D. (2011) 'The diffusion of alternative dispute resolution practices in Ireland', *Economic and Industrial Democracy*, 33(4), pp. 581-604.

Terry, M. (1995) 'Trade Unions: Shop stewards and the workplace', in Edwards, P. (ed.) *Industrial relations: Theory and practice in Britain*. Oxford: Blackwell Publishers, pp. 203-228.

Terry, M. and Smith, J. (2003) *Evaluation of the partnership at work fund.* Department of Trade and Industry Employment Relations Research Series No.17. London: DTI.

The United States Postal Service and the American Union of Postal Workers AFL-CIO. (2017) *JCIM 2017. Joint contract interpretation manual. May 2017.* Available at:

https://postalnews.com/blog/2017/06/29/apwu-joint-contract-interpretation-manual-jcim-is-available-online/ (Accessed: 13 August 2018).

Thomson, A.W.J. and Murray, V.V. (1976) *Grievance procedures.* Farnborough*:* Saxon House.

Towers, B. (1997) *The representation gap: Change and reform in the British and American workplace*. Oxford: Oxford University Press.

Trades Union Congress. (2001) *TUC response to government consultation - Routes to resolution: Improving dispute resolution in Britain.* London: TUC.

Trades Union Congress. (2008a) *Congress report 2007.* Available at: https://www.tuc.org.uk/research-analysis/reports/congress-report-2007 (Accessed: 6 February 2017).

Trades Union Congress. (2008b) *General Council report to Congress 2008.* Available at: https://www.tuc.org.uk/research-analysis/reports/general-council-report-congress-2008 (Accessed: 6 February 2017).

Trades Union Congress. (2009) *General Council report to Congress 2009*. Available at: https://www.tuc.org.uk/research-analysis/reports/general-council-report-congress-2009 (Accessed 6 February 2017).

Trades Union Congress. (2011) *Resolving workplace disputes. TUC response to Government consultation.* London: TUC.

Trades Union Congress. (2015) *TUC directory 2015.* Available at: https://www.tuc.org.uk/sites/default/files/TUC_Directory_2015_Digital_Version.pdf (Accessed: 4 June 2015).

Trades Union Congress. (2016) *Still just a bit of banter? Sexual harassment in the workplace in 2016.* London: TUC. Available at: https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf (Accessed: 23 September 2018).

Trades Union Congress. (2017) *TUC directory 2017.* Available at: https://www.tuc.org.uk/sites/default/files/TUC_Directory_2017_Digital_Version_PDF_AW.pdf (Accessed: 4 August 2017).

Trades Union Congress. (2018) *Bullying and harassment – practical guide for reps. Pages from the TUC workplace manual.* Issue date: 11 July 2018. Available at: https://www.tuc.org.uk/resource/bullying-and-harassment-practical-guide-reps (Accessed: 23 September 2018).

Trades Union Congress. (2019) *Sexual harassment of LGBT people in the workplace.* Available at: https://www.tuc.org.uk/research-analysis/reports/sexual-harassment-lgbt-people-workplace (Accessed: 4 July 2019).

Transport and General Workers' Union. (1979) *TGWU at the place of work.* Your Union at Work 2: A TGWU Education and Training pamphlet. London: The College Hill Press.

UNISON. (2000) *The 1999 UNISON membership survey.* London: UNISON.

UNISON. (2001) *The 2000 UNISON membership survey.* London: UNISON.

UNISON. (2009) *An investigation into the methods of recruitment of UNISON members.* London: UNISON.

UNISON. (2011) *Department for Business Innovation and Skills – Consultation April 2011 "Resolving workplace disputes" UNISON – response.* London: UNISON.

UNISON. (2014) *Organising for equality. UNISON guidelines on self-organisation.* London: UNISON. Available at: https://www.unison.org.uk/content/uploads/2014/05/On-line-Catalogue222252.pdf (Accessed: 7 June 2017).

UNISON. (2016a) *Member representation. A UNISON guide (January 2016).* London: UNISON. Available at: https://www.unison.org.uk/content/uploads/2016/02/23332.pdf (Accessed: 12 May 2017).

UNISON. (2016b) *Harassment at work: A UNISON guide (Updated December 2016).* London: UNISON. Available at: https://www.unison.org.uk/content/uploads/2016/12/24159.pdf (Accessed: 15 May 2017).

UNISON. (2016c) *Annual report 2015/16.* London: UNISON. Available at: https://www.unison.org.uk/content/uploads/2016/04/23784.pdf (Accessed: 9 March 2018).

UNISON. (2018a) *Equality survey 2018 summary report.* Available at: https://www.unison.org.uk/content/uploads/2018/11/Equality-Survey-2018-Summary-report.pdf (Accessed: 22 April 2019).

UNISON. (2018b) *Celebrating 25 years in UNISON. National delegate conference 2018. NEC annual report.* London: UNISON Communications. Available at: https://www.unison.org.uk/content/uploads/2018/05/24995.pdf (Accessed: 6 April 2019).

UNISON. (2019a) *Part-time working.* Available at: https://www.unison.org.uk/get-help/knowledge/working-patterns/part-time-working (Accessed: 14 April 2019).

UNISON. (2019b) *Branches.* Available at: https://www.unison.org.uk/about/our-organisation/structure/branches (Accessed: 14 April 2019).

Unite. (2011) *Unite response to Resolving Workplace Disputes consultation 2011.* Available at: http://centrallobby.politicshome.com/fileadmin/epolitix/stakeholders/Unite_response_to_Resolving_Workplace_Disputes.pdf (Accessed: 12 November 2012).

Unite. (2014) *Community, youth workers and not for profit sector representatives' handbook.* Available at: www.uniteforoursociety.org/assets/documents/JN6347-A4-Reps-Handbook-final11-19984 (Accessed: 1 January 2017).

University and College Union. (2018) *Precarious education: How much university teaching is being delivered by hourly-paid academics?* Available at: https://www.ucu.org.uk/media/9258/Precarious-education-how-much-university-

teaching-is-being-delivered-by-hourly-paid-academics-Feb-18/pdf/HP_uni_teaching_March_2018.pdf (Accessed: 5 September 2018).

University of Dundee. (2009) *Early dispute resolution booklet.* Available at: https://www.dundee.ac.uk/edr/edrmodel/ (Accessed: 16 June 2017).

Upchurch, M. (2009) 'Partnership: New Labour's third way?' in Daniels, G. and McIlroy, J. (eds.) *Trade unions in a neoliberal world. British unions under New Labour.* Abingdon: Routledge, pp. 230-253.

Upchurch, M., Croucher, R. and Flynn, M. (2012) 'Political congruence and trade union renewal', *Work, Employment and Society*, 26(5), pp. 857-868.

Ury, W.L., Brett, J.M. and Goldberg, S.B. (1993) *Getting disputes resolved: Designing systems to cut the costs of conflict.* Cambridge, Mass.: The Program on Negotiation at Harvard Law School.

van Wanrooy, B. *et al.* (2013) *The 2011 Workplace Employment Relations Study: First Findings*. Available at: https://www.gov.uk/government/publications/the-2011-workplace-employment-relations-study-wers (Accessed 1 August 2014).

Waddington, J. (2006) 'Why do members leave? The importance of retention to trade union growth', *Labor Studies Journal,* 31(3), pp. 15-38.

Waddington, J. (2015) 'Trade union membership retention in Europe: The challenge of difficult times', *European Journal of Industrial Relations*, 21(3), pp. 205-221.

Waddington, J. and Kerr, A. (1999) 'Trying to stem the flow: Union membership turnover in the public sector', *Industrial Relations Journal,* 30(3), pp. 184-196.

Waddington, J. and Kerr, A. (2009) 'Transforming a trade union? An assessment of the introduction of an organizing initiative', *British Journal of Industrial Relations,* 47(1), pp. 27-54. Doi: 10.1111/j.1467-8543.2008.00707.x.

Waddington, J. and Kerr, A. (2015) 'Joining UNISON: Does the reform of a union organising strategy change how members perceive their recruitment?' *Industrial Relations Journal,* 46(3), pp. 187-207.

Waddington, J. and Whitston, C. (1997) 'Why do people join unions in a period of membership decline? *British Journal of Industrial Relations,* 35(4), pp. 515-546.

Walton, R.E. and McKersie, R.B. (1965) *A behavioral theory of labor negotiations: An analysis of a social interaction system*. New York: McGraw-Hill Book Co.

Ward, M. (2016) 'The importance of gender reflexivity in the research process', in Ward, M. (ed.) *Gender identity and research relationships.* Published online 11 May 2016, ix-xvi. Doi.org/10.1108/S1042-319220160000014023.

Wedderburn, K.W. and Davies, P.L. (1969). *Employment grievances and disputes procedures in Britain.* Berkeley and Los Angeles: University of California Press.

Wibberley, G. and Saundry, R. (2016) 'From representation gap to resolution gap: Exploring the role of employee voice in conflict management' in Saundry, R., Latreille, P. and Ashman, I. (eds.) (2016) *Reframing resolution: Innovation and change in the management of workplace conflict*. London: Palgrave Macmillan, pp. 127-148.

Winslade, J. and Monk, G. (2000) *Narrative mediation.* San Francisco: Jossey-Bass.

Wiseman, V., and Poitras, J. (2002). 'Mediation within a hierarchical structure: How can it be done successfully?' *Conflict Resolution Quarterly,* 20(1), pp. 51-65.

Wood, S., Saundry, R. and Latreille, P. (2014) *Analysis of the nature, extent and impact of grievance and disciplinary procedures and workplace mediation using WERS 2011.* ACAS Research Paper, 10/14. London: ACAS.

Wood, S., Saundry, R. and Latreille, P. (2017) 'The management of discipline and grievances in British workplaces: The evidence from WERS 2011'. *Industrial Relations Journal,* 48(1), pp. 2-21.

Woolf, Lord. (1995) *Access to justice: Interim report.* London: HMSO.

Woolf, Lord. (1996) *Access to justice: Final report.* London: HMSO.

Working Together Review. (2014) *Working together review: Progressive workplace policies in Scotland.* Edinburgh*:* The Scottish Government. Available at: www.gov.scot/Publications/2014/08/4647 (Accessed: 27 July 2018).

Wornham, R.A. (2015) *Workplace mediation: Success in the second-oldest profession.* PhD thesis. The University of Greenwich. Available at: https://ethos.bl.uk/OrderDetails.do?did=1&uin=uk.bl.ethos.732835 (Accessed 31 May 2019).

Wornham, R. and Corby, S. (2015) *Workplace mediation: Success in the second oldest profession.* Working paper, WERU 11, University of Greenwich, The Business School. Available at: http://www.gre.ac.uk/id/eprint/14279/1/WERU11.pdf (Accessed: 27 February 2018).

Yin, R. (2009) *Case study research design and methods.* Thousand Oaks, Calif: Sage.