

Workplace Mediation and Trade Unions: Friends or Foes?

A study of UK trade unions' attitudes and experiences.

by

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Volume 2

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APPENDIX I: Dealing with individual union members' disputes at the workplace

Page 1: Welcome

This survey asks about trade union representatives' (paid and lay officials) experience of dealing with individual union members' disputes at the workplace. Specifically, it asks about your attitudes towards, and experiences of, employee complaints/grievance procedures and workplace mediation.

The survey applies to union representatives at workplace/branch, regional and national level. If you don't deal day-to-day with individual members' problems at work, some sections of the survey will still apply to you.

The survey results will contribute to a PhD study 'Workplace Mediation and Trade Unions: Friends or Foes?' It's intended that this research will offer some valuable insights and practical outcomes for trade unions.

The survey is completed anonymously. It should take around 10 minutes to complete.

The survey has four pages: this welcome page, the data protection statement, the questions, and the exit page.

The questions page has four sections: you and your union role; dealing with members' complaints at work; use of employee complaints/grievance procedures – your views; and workplace mediation.

Please note that once you have clicked on the CONTINUE button at the end of each page you cannot return to review or amend that page.

You can pause and resume completing the survey by clicking on the 'Finish Later' button.

Page 2: Data Protection Statement

All data in this survey is collected anonymously and securely. The survey is encrypted and the questions do not ask you to identify yourself or any employer you deal with.

The survey responses will only be used for this research study and the data gathered will be disposed of safely at the end of the study. Cookies and personal data stored by your Web browser are not used in this survey.

If you want to 'finish later' i.e. to pause and resume the survey, you will be asked for an email or web address. This allows bookmarking of an incomplete survey or for an email to be sent to you with details on how to resume a survey. (If you choose to receive an email reminder, your email address is used only at the time the email is sent to you and it is then discarded.)

Please note: By clicking on the CONTINUE button at the end of the questions page, you will be taking part in the survey and consenting to the collection and processing of the data supplied.

The survey author is a PhD student at the University of Central Lancashire. Contact details are provided at the end of the survey.

Page 3: Dealing with Individual Union Members' Disputes at the Workplace

The survey has four sections. The first section asks about you and your role.

1. You and Your Union Role

This section asks some questions about you and your role in the union.

Q1 What is your role in the union?

In this survey, 'the union' refers to the union for which you are a representative. (In cases where you are a paid official of 'union X' but a member of 'union Y', the questions are asking about 'union X'.)

- 1 Steward / worker representative / convenor
- 2 Learning representative
- 3 Equality representative
- 4 Branch official
- 5 Regional official employed by the union
- 6 National official employed by the union
- 7 Other

Q1_a If you selected Other, please specify:

Q2 Where are you based?

- 1 England
- 2 Northern Ireland
- 3 Scotland
- 4 Wales

Q3 For which union (or union organisation) are you currently an official/ representative?

- 1 Accord
- 2 Advance
- 3 Aegis
- 4 Association of Educational Psychologists
- 5 AFA-CWA Association of Flight Attendants
- 6 ASLEF
- 7 ATL
- 8 BACM-TEAM
- 9 BALPA
- 10 British Dietetic Association
- 11 BECTU
- 12 BFAWU
- 13 British Orthoptic Society TU
- 14 Britannia Staff Union
- 15 Community
- 16 Chartered Society of Physiotherapy
- 17 CWU
- 18 Confederation of Shipbuilding & Engineering
- 19 EIS
- 20 Equity
- 21 FBU
- 22 FDA
- 23 MiP
- 24 General Federation of Trade Unions
- 25 GMB
- 26 Hospital Consultants' & Specialists' Association

27	Musicians' Union
28	NACO
29	NACODS
30	napo
31	National Association of Stable Staff
32	NASUWT
33	Nautilus International
34	Nationwide Group Staff Union
35	NUJ
36	NUM
37	NUT
38	PCS
39	Professional Footballers' Association
40	POA
41	Prospect
42	RMT
43	Scottish TUC
44	Society of Chiropodists & Podiatrists
45	Society of Radiographers
46	Staff Union West Bromwich Building Society
47	SURGE
48	TSSA
49	TUC
50	Undeb Cenedlaethol Athrewon Cymru
51	UCATT
52	UCU

- 53 UNISON
- 54 UNITE
- 55 Unity
- 56 URTU
- 57 USDAW
- 58 Wales TUC Cymru
- 59 Writers' Guild of Great Britain
- 60 Yorkshire Independent Staff Association
- 61 Other

Q3_a If you selected Other, please specify:

Q4 How long in total have you been a union official / representative (including other unions if applicable)?

- 1 Less than 5 years
- 2 5 to 10 years
- 3 11 to 20 years
- 4 More than 20 years

Q5 Are you?

- 1 Female
- 2 Male

Q6 Regarding **individual** union members' problems at work, has your union role ever involved any of the following?

- 1 Resolving the issue by talking to a manager/employer informally
- 2 Assisting members with harassment/discrimination complaints
- 3 Assisting members involved in investigations
- 4 Representing members during the grievance procedure
- 5 Representing members during the disciplinary procedure

- 6 Representing members in discussions with an ACAS conciliator (in cases involving an employment tribunal claim or possible claim)
- 7 Representing members at the employment tribunal
- 8 Drafting national union guidance or policy on resolving individuals' disputes at work
- 9 Giving formal legal advice on members' employment rights
- 10 Training union representatives in resolving individuals' disputes at work
- 11 Taking part in mediation at the workplace
- 12 Other

Q6_a If you selected Other, please specify:

2. Dealing with Members' Complaints at Work

This section asks about dealing with **individual** members' complaints regarding their treatment by management (or an/other employee/s).

'Complaints' include issues or problems raised with you (as a union representative) that you would talk to a manager/supervisor about and/or issues dealt with using formal procedures, such as a grievance procedure or dignity at work procedure (in bullying and harassment cases).

Q7 In your **current** role, do you deal with individual members' complaints at all?

- 1 Yes
- 2 No

Q8 How many complaints have you dealt with in the last 12 months?

Here 'complaints' would cover **all** complaints by individual members you have dealt with, including those dealt with informally (i.e. without going into a formal stage/s of a procedure), those dealt with using formal procedures for resolving employee complaints, and those dealt with using both informal and formal means.

('Complaints' does **not** include complaints that a member may make about their union.)

- 1 None

- 2 1 to 5
- 3 6 to 10
- 4 11 to 15
- 5 16 to 25
- 6 26 to 49
- 7 50 or more
- 8 Don't know
- 9 Not applicable

Q9 How were most of these complaints dealt with?

- 1 Informally (talking with management - not in formal procedures)
- 2 Formally (using formal procedures / in formal meetings)
- 3 In both informal and formal ways
- 4 Not applicable

Q10 In the last 12 months, thinking of the complaints you've dealt with **informally**, what did they concern?

'Informally' means without using a formal procedure e.g. resolving an issue by talking to a manager / supervisor.

'Bullying' is often also called 'harassment'. If relevant, select 'bullying' to include harassment EXCEPT FOR complaints of harassment relating to a protected characteristic (under the Equality Act 2010), such as sexual or racial harassment. For these complaints, please select 'Discrimination'.

'An individual's pay and/or grading' would include an equal pay complaint.

- 1 Unreasonable or unfair treatment by someone in authority over the member (excluding discrimination complaints)
- 2 Complaints about disciplinary sanctions
- 3 Breach of a policy or procedure by a manager/employer
- 4 Bullying

- 5 Personality clash
- 6 Disrespectful or unreasonable behaviour by a co-worker or colleague
- 7 Discrimination
- 8 An individual employee's working time arrangements / hours / time off
- 9 An individual's pay and/or grading
- 10 Sickness absence
- 11 Redundancy/dismissal
- 12 Appraisal or performance management standards
- 13 Not applicable
- 14 Other

Q10_a If you selected Other, please specify:

Q11 Did you include 'discrimination' in your selected responses to the previous question?

- 1 Yes
- 2 No
- 3 Not applicable

Q11_a If YES, what type of discrimination complaints were these?

If the informal complaint concerned harassment on the basis of a protected characteristic (under the Equality Act 2010), please select the relevant category, for example, 'Sex' if the complaint was about sexual harassment.

- 1 Age
- 2 Disability
- 3 Pregnancy/maternity
- 4 Race
- 5 Religion or belief
- 6 Sex
- 7 Sexual orientation

8 More than one protected characteristic

9 Other

Q11_a_i If you selected Other, please specify:

Q12 Turning to complaints that you've dealt with **formally** over the last 12 months, what did they concern?

'Formally' refers to cases dealt with using written/formal procedures for handling employee complaints, for example, the grievance or dignity at work procedure.

'Bullying' is often also called 'harassment'. If relevant, select 'bullying' to include harassment EXCEPT FOR formal complaints of harassment relating to a protected characteristic (under the Equality Act 2010), such as sexual or racial harassment. For these complaints, please select 'Discrimination'.

'An individual's pay and/or grading' would include an equal pay complaint.

- 1 Unreasonable or unfair treatment by someone in authority over the complainant (excluding complaints)
- 2 Disciplinary sanctions
- 3 Breach of a procedure or policy by a manager/employer
- 4 Bullying
- 5 Personality clash
- 6 Disrespectful or unreasonable behaviour by a co-worker or colleague
- 7 Discrimination
- 8 An individual employee's working time arrangements / hours / time off
- 9 An individual employee's pay and/or grading
- 10 Sickness absence
- 11 Redundancy/dismissal
- 12 Appraisal or performance management standards
- 13 Not applicable
- 14 Other

Q12_a If you selected Other, please specify:

Q13 Did you include 'discrimination' in your selected responses to the previous question?

- 1 Yes
- 2 No
- 3 Not applicable

Q13_a If YES, what type of discrimination complaints were these?

These categories include protected characteristics under the Equality Act 2010. If a formal complaint/grievance concerned harassment on the basis of a protected characteristic, please select the relevant category, for example, 'Sex' if the complaint was about sexual harassment.

- 1 Age
- 2 Disability
- 3 Pregnancy/maternity
- 4 Race
- 5 Religion or belief
- 6 Sex
- 7 Sexual orientation
- 8 More than one protected characteristic
- 9 Other

Q13_a_i If you selected Other, please specify:

Q14 In your experience, in the last 5 years, what changes have been made to employers' procedures for dealing with individual employee's complaints/grievances?

Note: 'Workplace mediation' refers to using a third party (the mediator) to assist the parties to resolve the issues themselves. The mediator may be 'in-house' or an external person/s. It does NOT include ACAS conciliation of a tribunal claim (or potential claim).

- 1 Reducing the number of stages in the procedure
- 2 Including the option of workplace mediation (running alongside or as part of the procedure)
- 3 Making workplace mediation compulsory at any stage
- 4 No changes
- 5 Not applicable
- 6 Other

Q14_a If you selected Other, please specify:

Q15 With the employer/s you mainly deal with, if management want to make changes to complaints/grievance procedures, what is the union's role?

- 1 Consultation only
- 2 Consultation and negotiation
- 3 Joint agreement
- 4 A mix - varies from employer to employer
- 5 None of the above
- 6 Not applicable

3. Use of Employee Complaints / Grievance Procedures – Your Views

This section asks for your responses to statements on the importance, effectiveness and value of using employee complaint/grievance procedures for **individuals'** complaints, from a union perspective

'Grievance' is used here as a shorthand for all types of employee complaints

Note: The questions seek your views whether or not you deal with individual members' complaints in your current union role.

Q16 Complaints to do with everyday problems in working relationships are best dealt with informally.

- 1 Strongly agree
- 2 Agree
- 3 Neither agree or disagree
- 4 Disagree
- 5 Strongly disagree
- 6 Not sure / don't know

Q17 Using grievance procedures is an important way in which the union demonstrates its worth to employees in the workplace.

- 1 Strongly agree
- 2 Agree
- 3 Neither agree or disagree
- 4 Disagree
- 5 Strongly disagree
- 6 Not sure / don't know

Q18 Using grievance procedures (for individual complaints) does nothing to address the underlying causes of problems experienced by members in the workplace.

- 1 Strongly agree
- 2 Agree
- 3 Neither agree or disagree
- 4 Disagree
- 5 Strongly disagree
- 6 Not sure / don't know

Q19 Taking cases through grievance procedures is an effective way for the union to challenge management's authority.

- 1 Strongly agree
- 2 Agree
- 3 Neither agree or disagree

- 4 Disagree
- 5 Strongly disagree
- 6 Not sure / don't know

Q20 The union's role in grievance procedures is an important way in which the union demonstrates its worth to employers.

- 1 Strongly agree
- 2 Agree
- 3 Neither agree or disagree
- 4 Disagree
- 5 Strongly disagree
- 6 Not sure / don't know

Q21 Taking grievances through formal procedures escalates or worsens the conflict between the disputants.

'Conflict' is used here as a catch-all word for the expression of all kinds of differences, disagreements and disputes between individuals in the workplace.

'Disputants' refers to the person with the grievance and the other person involved (e.g. the supervisor or line-manager).

- 1 Strongly agree
- 2 Agree
- 3 Neither agree or disagree
- 4 Disagree
- 5 Strongly disagree
- 6 Not sure / don't know

Q22 Representing members with grievances takes up too much of union representatives' time.

- 1 Strongly agree
- 2 Agree

3 Neither agree or disagree

4 Disagree

5 Strongly disagree

6 Not sure / don't know

Q23 Grievance procedures are an important mechanism for obtaining workplace justice for members.

1 Strongly agree

2 Agree

3 Neither agree or disagree

4 Disagree

5 Strongly disagree

6 Not sure / don't know

Q24 Union representation for members with grievances is stressed as an advantage of membership by the union.

1 Strongly agree

2 Agree

3 Neither agree or disagree

4 Disagree

5 Strongly disagree

6 Not sure / don't know

Q25 Union successes in grievance cases are highlighted in the union's recruitment/ organising campaigns.

1 Strongly agree

2 Agree

3 Neither agree or disagree

4 Disagree

5 Strongly disagree

6 Not sure / don't know

Q26 Is there anything you would like to add about dealing with individual members' grievances/ complaints?

4. Workplace Mediation

This last section asks about **workplace mediation** i.e. a way of dealing with conflict between individuals in the workplace using a third party (a mediator) to assist them to resolve their differences themselves.

The mediator/s may be 'in-house' (someone in the employer's organisation) or external (from a consultancy or ACAS, for example).

Note: This definition of 'workplace mediation' **excludes ACAS conciliation** of employment tribunal claims (including 'early conciliation') and ACAS services to resolve industrial disputes between unions and employers (i.e. 'ACAS collective conciliation' and 'collective mediation'.)

It also **excludes** occasions when, as part of your everyday activity as a union representative, you might 'mediate' to resolve issues (for example, acting as a go-between).

Q27 Does your union have formal policy on workplace mediation?

1 Yes

2 No

3 Not sure / don't know

Q28 What would you say is/ has been your **main** source of information about workplace mediation?

'CIPD' is the Chartered Institute of Personnel & Development.

'Someone who is a mediator' would include mediators in any field (e.g. commercial, family, employment).

1 An employer (including HR)

2 ACAS

- 3 Your union
- 4 Other union sources or contacts
- 5 A professional body, such as CIPD
- 6 An HR consultancy or similar business
- 7 A legal representative/solicitor
- 8 University academics/researchers
- 9 Someone who is a mediator
- 10 Not relevant / know very little about it
- 11 Other

Q28_a If you selected Other, please specify:

Q29 In dealing with individual members'/employees' problems at work, have you ever had any involvement with workplace mediation? (For examples of 'involvement' see the answer options for Question 30.)

Attempts to resolve workplace conflicts 'with your union hat on' as part of your everyday activity is not 'involvement with workplace mediation' for the purposes of this survey. (But if, for example, you are part of a team of mediators selected from union and management representatives, this would count as 'involvement'.)

'Involvement' would not include giving general policy or legal advice about workplace mediation but it would include giving advice (legal or otherwise) in relation to a specific mediation.

Your involvement (if any) with **ACAS conciliation** of ET (or potential ET) claims is **not** 'involvement with workplace mediation'.

For more examples of 'involvement', see the answer options for Question 30.

If you answered '**YES**', please **go to the NEXT question** (Question 30).

If you answered '**NO**' or '**NOT APPLICABLE**', please **SKIP** the remaining questions in this section and scroll down to the CONTINUE button. Clicking on the CONTINUE button will take you to the final (exit) page of the survey.

Note: once you have clicked on the CONTINUE button, your answers are submitted and you cannot return to review or amend this page.

The remaining questions ask about your involvement with, and views on, workplace mediation.

Q30 To date, what has been your involvement in workplace mediation?

- 1 Attending a briefing/s on mediation (organised by the employer)
- 2 Being consulted by the employer about using it in the organisation
- 3 Negotiating with the employer about introducing or using it in the organisation
- 4 Being trained in workplace mediation skills
- 5 Being part of an in-house team or pool of workplace mediators drawn from representatives of management and the union/s
- 6 Being part of an in-house team or pool of workplace mediators selected from employees who volunteered
- 7 Being on a management-union group overseeing the introduction/use of workplace mediation
- 8 Advising a union member (or members) about whether to take part in a mediation
- 9 Going with a member to a meeting with a mediator (where the other party was not present)
- 10 Attending a meeting with the mediator/s where your member and the other party were present
- 11 Other

Q30_a If you selected Other, please specify:

Q31 As a result of your experience of workplace mediation, have you done any of the following?

'Suggesting' or 'proposing' changes to procedures or practices could be done informally or formally.

'That organisation' should also be interpreted as applying to more than one, if applicable.

'Other union representatives' would include workplace/branch and other lay reps, and/or full-time officers at regional or national level.

- 1 Given feedback of your experience of workplace mediation in that organisation to the employer (e.g. to HR)
- 2 Suggested changes to the way workplace mediation operates in that organisation
- 3 Suggested changes to that organisation's employment/HR policies or practices
- 4 Proposed changes to procedures for dealing with grievances or employee complaints in that organisation
- 5 Suggested changes to management or staff training in that organisation
- 6 Shared your experiences of workplace mediation with employers who do not use it
- 7 Given feedback on your experiences of workplace mediation to other union representatives
- 8 Other

Q31_a If you selected Other, please specify:

Q32 In the last 2 years, how many workplace mediations have you been involved in or associated with in some way?

- 1 None
- 2 1 to 5
- 3 6 to 10
- 4 11 to 15
- 5 16 to 25
- 6 Over 25

Q33 In your experience, what complaints has workplace mediation been used for?

- 1 Unreasonable or unfair treatment by someone in authority over an employee (excluding discrimination)
- 2 Bullying
- 3 Disrespectful or unreasonable behaviour by a co-worker or colleague
- 4 Personality clash

- 5 Breakdown in the working relationship
- 6 Facilitating a return to work after lengthy absence
- 7 Working time/hours
- 8 Flexible working requests
- 9 Sickness absence
- 10 Employee performance issues
- 11 Disciplinary issues
- 12 Redundancy
- 13 Dismissal / exiting the organisation
- 14 Pay and/or grading
- 15 Equal pay
- 16 Discrimination
- 17 Other

Q33_a If you selected Other, please specify:

Q34 Did you include 'discrimination' in your selected responses to the previous question?

- 1 Yes
- 2 No
- 3 Not applicable

Q34_a If YES, what type of discrimination complaints were these?

- 1 Age
- 2 Disability
- 3 Pregnancy/maternity
- 4 Race
- 5 Religion or belief
- 6 Sex

- 7 Sexual orientation
- 8 More than one protected characteristic
- 9 Other

Q34_a_i If you selected Other, please specify:

Q35 In your experience, in organisations using workplace mediation, how do the mediations come about?

'A union representative suggests its use' would include cases where you suggest it.

- 1 Under the organisation's procedures, it's compulsory to attempt mediation at a certain stage (or stages)
- 2 The organisation's complaint/grievance procedure mentions workplace mediation as a possible option
- 3 A member who is involved in a workplace conflict suggests its use
- 4 A line manager/supervisor of the employees who are involved in the conflict suggests its use
- 5 HR suggests its use
- 6 A union representative suggests its use
- 7 Other

Q35_a If you selected Other, please specify:

Q36 In what sector/ industry have you been involved with workplace mediation (as a union representative)?

- 1 Central government and/or its agencies
- 2 Local government excluding education
- 3 Education
- 4 Health
- 5 Voluntary sector
- 6 Retail and distribution
- 7 Finance and business services
- 8 Manufacturing

- 9 Construction
- 10 Passenger transport
- 11 Communications
- 12 Energy and water
- 13 Media and entertainment
- 14 Other

Q36_a If you selected Other, please specify:

Q37 Thinking about the employer who uses workplace mediation the most, how would you describe the relationship between the union and management?

- 1 Extremely good
- 2 Very good
- 3 Moderately good
- 4 Fair
- 5 Moderately poor
- 6 Very poor
- 7 Extremely poor

Q38 Thinking of the **same** employer (from the previous question), what difference has the use of workplace mediation made to relations between the union and management?

- 1 Relations are much better
- 2 Relations are slightly better
- 3 Relations are the same as before the use of workplace mediation
- 4 Relations are slightly worse
- 5 Relations are much worse
- 6 Don't know / not sure

Q39 Overall, based on your experience, how likely would you be to recommend the wider use of workplace mediation?

- 1 Very likely
- 2 Likely
- 3 Neither likely or unlikely
- 4 Unlikely
- 5 Not at all likely

Q40 Lastly, is there anything you would like to add about workplace mediation?

If you want to check or change any of your responses, please do so **BEFORE** clicking the CONTINUE button.

Once you have clicked on the CONTINUE button at the bottom of the page you cannot return to review or amend this page.

Page 4: Final Page

Thank you for taking the time to complete the survey.

Your participation is much appreciated.

Respondents can now leave the survey.

Please follow this link to return to the:

[Bristol Online Surveys Homepage](#)

APPENDIX II: Interview schedule – Phase 1

Research project title: Workplace Mediation and Trade Unions: Friends or Foes?

A study of trade unions' attitudes and experiences

PARTICIPANTS: UK TRADE UNION NATIONAL OFFICERS

A. Researcher introduction

- Thank you for agreeing to participate
- Introduce myself – part-time PhD student at the University of Central Lancashire; employment relations consultant, mediator and arbitrator; former national officer (mainly NUPE and UNISON).
- Outline what the research project is about: an exploration of UK unions' attitudes to, and experiences of, workplace mediation.
- Why participate? This is an under-researched subject which it's anticipated will yield valuable insights for UK unions.
- Clarify what I mean when asking about 'workplace mediation': For the purposes of this research, it is defined as a method of resolving individuals' disputes or conflicts in the workplace using a third party (the mediator) to assist the parties to resolve their differences themselves. The mediator/s may be 'in-house' (someone in the employer's organisation) or external (from a consultancy or ACAS, for example). This definition excludes ACAS conciliation of ET claims (including potential claims) and industrial disputes (ACAS 'collective conciliation'). It also excludes occasions when a union representative might 'mediate' to resolve issues (e.g. acting as a go-between). It excludes arbitration.
- Briefly outline what the research project will involve: In the first phase, interviews with (12) union national officers and an online survey of UK union representatives re dealing with individual disputes at the workplace; and, in the second phase, case studies of individual unions whose full-time officers and/or lay representatives have used workplace mediation.
- The interview will last no longer than an hour. I'd like to cover these topics:
 - Your role and responsibilities in the organisation (some starter questions)
 - The union's policy position (or stance) on individual dispute resolution and workplace mediation in particular
 - The union's involvement with workplace mediation in sectors/industry where your union is recognised
 - Your views on the effectiveness of procedures for resolving individuals' disputes in the workplace – touching on grievances and more particularly workplace mediation – including 'pro's and cons' from your union's perspective.
- It may be that you will feel able to comment more on some topics than others, depending on your role. That's fine – feel free to say so – in these interviews, I'm

seeking more of an overview / sense of the union's stance on these issues than detail about what may be happening in workplaces. If you'd prefer not to answer any particular question, again, please feel free to say so.

- As explained in my written request to interview you, what you say is confidential and will not be attributed to you. After you've checked the transcript of your interview, the data you've provided is anonymised and every effort will be made to ensure that you cannot be identified from the way the research is written up.
- If, at a later stage, you want to withdraw your data from my study that can be done – up until the point at which the research is written up for submission (end Jan. 2015 *for MPhil transfer*)
- As mentioned previously, with your permission, I'd like to record the interview (to capture everything that's said and to enable me to give my full attention to what you are saying.) All interview data will be stored and processed in accordance with the Data Protection Act. Your interview notes will only be seen by me and the person transcribing the recording. The recording will be destroyed when the research is finished.
- Do you have any questions before we start?
- Could I ask you please to read and sign this form to confirm your consent to participate? [Thanks]

B. Participant's role in the union & national union position on workplace mediation

- Your job title?
- Your role and responsibilities in the union?
- Does your remit include any responsibility for issues to do with the resolution of workplace disputes concerning individuals (as opposed to collective disputes)? [Prompt: e.g. responding to government consultations; training reps; drafting/ giving advice etc.] [If yes, probe.]
- Does the union have a formal policy on workplace mediation?
- If 'yes', probe. (In response to what? When? How was it formulated?)
- If 'no', how would you characterise the national union's position on the use of workplace mediation? [Probe.]
- What would you say is the level of awareness of workplace mediation in the union? [Prompt: Regional full-time officers? Lay reps? National committees/officers?]

C. Union involvement with workplace mediation

- Has the union (at national level) been involved at all with initiatives to promote the use of workplace mediation? (If 'yes', probe.)
- To your knowledge, do any of the employers which recognise the union use workplace mediation?
- If 'yes', can you give me some examples? (Sector/industry, size of employer, name of employer/s, union region, full-time and/or lay rep involvement? Could you suggest who I might contact in the union for more information?)

- If 'yes', can you tell me more about the ways in which the union has been involved? [Prompt: reps being trained as mediators, attending mediation meetings, opposing its introduction?]
- Has there been feedback to the union nationally from branches/regions in which workplace mediation has occurred/is occurring? [If 'yes', probe: Positive? Negative? Mixed?]
- Has the union's involvement at regional/local level or employer initiatives on workplace mediation thrown up any issues for the union nationally? [If 'yes', probe.]

D. Views on procedures for resolving individuals' disputes at the workplace – effectiveness and 'pro's and cons'

- Turning to procedures for dealing with individual members' complaints in the workplace, overall, do you think grievance procedures are 'fit for purpose'? [Prompts: Strengths? Weaknesses?]
- What types of cases (if any) would be appropriate for workplace mediation?
- What types of cases (if any) would not be appropriate for workplace mediation?
- Have any concerns been raised by union reps (full-time or lay) about employers' use of workplace mediation? [If 'yes', probe.]
- Have any concerns been raised in relation to equality issues specifically?
- Do you have any concerns about the use of workplace mediation? [If 'yes', probe.]
- Do you think union support for and involvement in workplace mediation has or could have any benefits for the union? [Prompt: saving reps' time if grievances resolved faster? Recruiting new members? Reps learning new skills?]
- Do you think recent changes to the employment tribunal system (notably, introduction of fees and early conciliation) might affect the take-up of workplace mediation? [If 'yes', probe.]
- Lastly, is there anything you'd like to comment on further, or mention, that we haven't talked about?

END – turn off recorder

- Confirm contact details (use separate sheet to record name, address, email and phone numbers).
- Reassure about confidentiality.
- Explain what happens next – a transcript of your interview will be sent to you [indicate timescale] by post/encrypted email for checking and approval. You may amend/delete/add. Return to me, using SAE or by encrypted email.

THANK YOU FOR YOUR TIME

APPENDIX III: Interview schedule – Phase 2

Research project title: Workplace Mediation and Trade Unions: Friends or Foes?

A study of trade unions' attitudes and experiences

PARTICIPANTS: UK TRADE UNION REPRESENTATIVES

(REGIONAL PAID OFFICIALS AND REGIONAL/BRANCH LAY REPRESENTATIVES)

Researcher's introduction

- Thank you for agreeing to participate
 - Introduce myself – part-time PhD student at the University of Central Lancashire; employment relations consultant, mediator and arbitrator; former national officer (mainly NUPE and UNISON).
 - Outline what the research project is about: an exploration of UK unions' attitudes to, and experiences of, workplace mediation.
 - Why participate? This is an under-researched subject which it's anticipated will yield valuable insights for UK unions.
 - Clarify what I mean when asking about 'workplace mediation': For the purposes of this research, it is defined as a method of resolving individuals' disputes or conflicts in the workplace using a third party (the mediator) to assist the parties to resolve their differences themselves. The mediator/s may be 'in-house' (someone in the employer's organisation) or external (from a consultancy or ACAS, for example). This definition excludes ACAS conciliation of ET claims (including potential claims) and industrial disputes (ACAS 'collective conciliation'). It also excludes occasions when a union representative might 'mediate' to resolve issues (e.g. acting as a go-between). It excludes arbitration.
 - Briefly outline what the research project involves: The first phase comprised interviews with union national officers and an online survey of UK union representatives re dealing with individual disputes at the workplace. This phase involves case studies of a number of unions whose full-time officers and/or lay representatives have used workplace mediation.
-
- The interview will last no longer than an hour and a half. I'd like to cover these topics:
 - 1) Your union role and responsibilities (some starter questions)
 - 2) How workplace mediation got started here (in this company/organisation)
 - 3) Your involvement and experiences (as a union rep) in workplace mediation
 - 4) Your views on the impact of workplace mediation on the union and its members (locally and beyond)
 - 5) Your views on the impact of workplace mediation (and related changes to ways of dealing with workplace conflict) on industrial relations in this company/organisation/sector

- It may be that you will feel able to comment more on some topics than others, depending on your role. That's fine – feel free to say so. If you'd prefer not to answer any particular question, again, please feel free to say so.
- As explained in my written request to interview you, what you say is confidential and will not be attributed to you. After you've checked the transcript of your interview, the data you've provided is anonymised and every effort will be made to ensure that you cannot be identified from the way the research is written up. Your permission will be sought to identify and name your union (but not the branch or the name of the employer).
- If, at a later stage, you want to withdraw your data from my study that can be done – up until the point at which the research is written up for submission (end of December 2017).
- As mentioned previously, with your permission, I'd like to record the interview (to capture everything that's said, and to enable me to give my full attention to what you are saying.) All interview data will be stored and processed in accordance with the Data Protection Act. Your interview notes will only be seen by me and the person transcribing the recording. The recording will be destroyed when the research is finished.
- Do you have any questions before we start?
- Could I ask you please to read, sign and date this form to confirm your consent to participate? [Thanks]

1. About you – your region/branch

- Your union position/s [name of union/ country/region]?
- Your role and responsibilities in the union?
- How long have you been a union rep (in this branch/region/patch)?
- Name of employer you/ your branch deal/s with (and sector/industry)?
- Nature of the membership/workforce (types of jobs, grades)

2. Introduction of workplace mediation

- When did you first hear about workplace mediation? [From whom? How?]
- Could you tell me how workplace mediation came about in this organisation/company? [When, Impetus? Management or joint initiative?]
- In what ways was the union involved in introducing workplace mediation? [Prompt: attending briefings/ training? Consultation? Negotiation? Involved in scheme design/oversight/gate-keeping/ monitoring?]
- How does a complaint/case get to mediation i.e. who suggests mediation and how are cases selected? [Prompt: Suggested by whom (HR, union rep, member, line manager, etc)? Gate-keeping/case selection arrangements?]
- Where do the mediators come from? (In-house [union/HR/volunteers/grades etc]? External? A mix?

3. Your involvement in workplace mediations (what happens/ the process)

- Firstly, (if not already mentioned) have you had any training or briefing about workplace mediation? [Employer-provided/union/ ACAS / conflict management organisation? Extent?]

- Can you tell me (more) about your own involvement with workplace mediation? [Advising members on options/whether to participate? Accompanying to mediations? Acting as an internal mediator? Other?]
- In this organisation, are union reps allowed to accompany a member at mediations? [If no, probe reasons/ union view; if yes, in what circumstances?]
- In general, do you think union reps should accompany members in mediation, i.e. attend mediation sessions? [Any problems with this in your experience or foreseen? If not in general, are there any exceptions?]
- In your experience, what support do members ask for in relation to mediation (before, during, after)?
- Thinking about mediations you've attended (either with the mediator and member or a joint meeting with both/all parties and the mediator), what typically did you do? [Prompt: In particular, what did you do that was different from what you'd do in a grievance hearing?]
- Did you feel comfortable about your role/participation in the mediation process? [Prompt: did you feel constrained at all by the process/ ground rules/ the mediator/s?]
- Do you think the member/s concerned were happy with the support you provided/offered? [Any feedback?]
- Have any issues arisen about mediator diversity (or lack of it)?
- What types of cases/complaints go to mediation in this organisation?
- In general, do you think there are any types of cases which are inappropriate for mediation? [Invite to expand. Any particular issues re harassment and discrimination cases?]
- In your experience, in this organisation have (on the face of it) inappropriate cases gone to mediation at all? [If so, why do you think this happened? Can you give me a couple of examples?]
- To your knowledge, are employees who are not union members attending mediations? [If so, do you have any concerns about this, say, compared with the position of non-members going through a grievance procedure?]
- Do you think mediation is suitable for resolving conflicts irrespective of the participants' employment status and grade/occupation?
- Could you give an example of a mediation that you felt worked (and why)?
- Could you give me an example of a mediation that you felt did not work (and why)?
- In this organisation, for employees (including managers), is participation in mediation voluntary or compulsory? [Probe: If compulsory, is this written down? If voluntary, how voluntary in practice?]
- Roughly, to your knowledge, how many mediations have taken place since its introduction in this organisation?
- Has the number gone up or down? [Why you do think this has happened/ is happening?]
- Based on your experience, would you say mediation is successful i.e. that conflicts between participants are resolved? [Prompt: in most cases or a minority of cases? Successful for all parties? Fully or partly resolved?]
- Has the confidential nature of mediation posed any difficulties for the union? [If yes, are these difficulties different from those raised by confidentiality in grievance/ disciplinary cases?]

- Overall, thinking about those members who've experienced mediation, would you say they have been satisfied with (a) the process and (b) the outcome? [Probe: reasons. examples?]
- Has your attitude towards workplace mediation changed in any way as a result of your experience of it here?
- Turning briefly to grievance procedures, in your experience, what would you say are their strengths and weaknesses?
- Has your attitude towards the use of grievance (and other complaint) procedures changed at all as a result of your experience of workplace mediation?

4. Workplace Mediation: Impact on the Union

- Overall, what would you say is the view of the (branch/regional) membership towards workplace mediation at present; and has it changed at all since the use workplace mediation was first mooted in this organisation? [Is this the same for branch/regional activists/self-organised groups?]
- Has the informal or formal position of the branch on workplace mediation changed as a result of the union's experience of its use in this organisation? [Regional position?]
- In your view, how widespread is knowledge about workplace mediation within the union? [Sector/region/national level? Lay reps? Full-time officials?]
- Does your union have national policy on workplace mediation? Regional/sector/self-organised group policy? [Probe: If yes, does it reflect the branch position?]
- Has your branch/region fed back to the region and/or national level about your experience of workplace mediation? [If yes, what was the response/outcome?]
- If not, what would be your key message to the union nationally (and possibly the TUC/STUC) about workplace mediation? [Prompt: Policy-wise? Re training, guidance for union reps/others?]
- Has the introduction of workplace mediation had any effect on membership recruitment or retention? And on activist recruitment/development?
- Has its use reduced the amount of time union reps spend on grievances and other employee complaints?
- Do you think workplace mediation undermines the union in any way? [Prompt: Union strength/organisation at the workplace? Ability to collectivise issues? Has it led to management bypassing the union at all/ shunting issues into mediation that should be dealt with in other ways?]
- Overall, would you say that the introduction and use of workplace mediation has (a) strengthened the union (b) weakened the union (c) made no discernible difference to the union's standing with (i) the employer and (ii) the workforce (members and non-members)?
- Given widespread union concerns over access to employment tribunals and resourcing individual members' demands for representation, what scope do you think there is to collectivise individual grievances? [Follow up: would mediation help or hinder in this regard?]

5. Impact on Industrial/ Employment Relations

- How would you describe the industrial relations climate in this company/organisation (i.e. the state of the relationship between the union and employer? [Prompt: Good/bad, different at different organisational levels/sections/departments? Heavy reliance on/resort to formal procedures or not?]
- In your experience, has the introduction and use of workplace mediation affected the industrial relations climate in any way? [Prompt: better/worse/no change? Changes in way conflict is handled? Changes in collective bargaining structures/issues dealt with?]
- Has the introduction of workplace mediation resulted in any changes to the written (formalised) procedures handling employee complaints (grievances, performance appraisal, dignity at work etc) or disciplinary matters?
- Is workplace mediation written into any of the organisation's procedures? [Probe: as an option/adjunct/required stage] *Request copies*
- Would you say that workplace mediation is now embedded in this organisation? [Has it become 'part of the way we do things round here'? If yes, why? If not, why? Is its future uncertain? [Probe: If yes, lack of use/cases/support? Dependent on union/management champions? Under threat from austerity cuts/ reorganisations/change of business ownership etc.]
- Have recent changes to the employment tribunal system (introduction of fees and early conciliation) affected the way in which disputes (concerning individual employees) are handled in the organisation? By the employer? By the union?
- Have the ET changes had any effect on the use and take-up of workplace mediation specifically?
- My final question - overall, from a union perspective, would you say workplace mediation is a 'friend or foe'?
- Lastly, is there anything you'd like to comment on further, or mention, that we haven't talked about?

END – turn off recorder

- Ask if the interviewee would complete a short equalities monitoring form (*attached*). Explain they are free to decline. Explain why this information is being sought/ its relevance to the study and outline how monitoring information will be processed. Answer any questions.
- Confirm contact details (use separate sheet to record name, address, email and phone numbers if not already known).
- Check the consent form is completed and signed. Check that complaints procedure has been explained and handed over. Reassure about confidentiality – check if there are any questions.
- Explain what happens next – a transcript of your interview will be sent to you [indicate timescale] by post/encrypted email for checking and approval. You may amend/delete/add. Return to me, using SAE or by email to your preferred (secure/confidential) address.
- Explain how the results of the study will be available to participants and their union.

THANK YOU FOR YOUR TIME

APPENDIX IV: Workplace mediation and UK trade unions - the missing link?

This appendix reproduces a chapter, 'Workplace mediation and trade unions: The missing link?' written by the author of the thesis and published by Palgrave Macmillan 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. 191-214.

It summarises the results of the writer's survey of UK trade union representatives, *Dealing with Individual Union Members' Disputes at the Workplace*, conducted as part of the first phase of the research for the thesis.

Introduction

Dealing with individual union members' problems at work is one of British trade union representatives' core activities (van Wanrooy *et al.* 2013; Charlwood and Angrave, 2014). This important but unglamorous work has commanded less attention from scholars in the field of UK employment relations than the collective activities of union officials. Of course, no dispute involving an individual worker can be completely divorced from the context of the employment relationship, and employers' processes to manage individuals' disputes (such as grievance procedures and mediation) can be seen as devices to individualise conflict and 'de-fang' its potential to invoke collective resistance. In practice, union representatives appreciate that most people join unions for support and help if they have a problem at work and new recruits bring added demands for one-to-one assistance. From this perspective, it can be mutually beneficial to cooperate with employers' moves to manage workplace conflict more effectively or at least improve the efficiency of their dispute resolution procedures. This chapter discusses the response of UK unions to the adoption of workplace mediation by employers. It draws on the results of a survey of UK trade union representatives, *Dealing with Individual Union Members' Disputes at the Workplace*, undertaken by the author in 2014. The findings cast light on UK union representatives'

experiences of, and attitudes towards, workplace mediation – a subject that has not been previously explored in depth.ⁱ

The chapter begins by explaining how workplace mediation was defined for the purposes of the survey and comments on its incidence in the UK. It then outlines TUC and Scottish TUC policy on workplace mediation as a precursor to the main discussion of the survey findings on union involvement and representatives' attitudes towards workplace mediation. The role of workplace mediation in relation to organisational justice is briefly considered. The penultimate section draws on the survey responses to make some observations about union involvement in workplace mediation from a conflict management perspective. It then debates to what extent involvement with workplace mediation might be a 'missing link' in terms of union renewal. It is recognised that the subject neglects workers who fall through the cracks of employment protection legislation and particularly those working in non-union workplaces.

What is workplace mediation – where is it found?

Applying a dictionary definition, 'mediation' is what union representatives do whenever they act as a 'go-between' to facilitate the resolution of work-related conflict or disputes. However, for the purposes of this study, survey respondents were asked to discount their own role as mediators and also their experiences of ACAS conciliation,ⁱⁱ given the focus of the study on mediation as a management process for dealing with individual (as opposed to collective) disputes in the workplace where the employment relationship has not ended. 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'. (This was supplemented with information for respondents on what *not* to include as workplace mediation.) The aim was to capture union representatives' experiences of employers' internal mediation provision and their use of external mediators. Internal provision could include arrangements where a manager (or management representative) not directly involved in the dispute acts as the mediator; or formal procedures where the employer has an in-house mediation scheme with a team or pool of mediators

selected from its own staff who may be volunteers, managers, HR personnel or staff in specialist roles (such as occupational health), or in-house schemes where the pool of mediators comprises union and management representatives. External provision refers to situations where the employer brings in external mediators from (for example) employment consultancies, mediation suppliers and ACAS (CIPD, 2011, p. 12) - ACAS provides a chargeable service for individual workplace mediation unrelated to its conciliation function.

How widespread is the use of workplace mediation by UK employers? The indications from the first findings of the 2011 Workplace Employment Relations Survey (WERS) were that 'just seven per cent of all workplaces recorded having used it in the last 12 months... However in workplaces that had experienced workplace grievances (i.e. issues potentially amenable to mediation) 17 per cent had turned to mediation while 14 per cent of workplaces that had dealt with disciplinary cases had used mediation' (Wood *et al.* 2014, p. 21).

More recently, a Chartered Institute of Personnel and Development (CIPD) survey found that 24 per cent of organisations 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 and 'across the board, public sector organisations...report making more use of every method of managing conflict than those in ... the private or voluntary sectors...in some cases, such as mediation, the difference is substantial' (CIPD, 2015, p. 11). The use of externally provided mediation was 'significantly higher in the public sector (at 17 %) and in public administration (21 %)' (CIPD, 2015, pp. 2-3). In contrast, Wood *et al.* (2014, pp. 22-23) reported that 'no difference was found between the proportions of workplaces that used mediation between the public and private sector' (eight per cent and seven per cent respectively in the last 12 months). A plausible explanation for the divergent findings on the use of workplace mediation is that WERS respondents are more likely to have understood 'mediation' to include ACAS conciliation. While it is not possible to be definitive about the extent of its use, particularly by sector, it is apparent that workplace mediation has established a niche in the UK.

What motivates employers to take up workplace mediation? Latreille and Saundry (2014, p. 195) conclude that 'increased interest in the use of mediation... has largely been driven by employing organisations searching for more efficient and effective ways to resolve workplace disputes'. Mediation is claimed to be quicker, cheaper and less adversarial than formal investigative and multi-stage grievance procedures and to be less damaging to working relationships.

TUC and Scottish TUC policy

The TUC has stated its position on workplace mediation in responses to government consultations and most fully in a guide for trade union representatives published in conjunction with ACAS (ACAS/TUC, 2010). In 2009, the Scottish TUC congress carried a resolution on 'individual employment disputes and mediation' moved by the University and College Union (Scotland) stating that 'collective action ...will generally be the best way to resolve problems arising in the workplace. However, 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...'

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 (STUC, 2009, pp. 48-49).

The safeguards set out in the resolution were reflected in joint TUC and ACAS guidance for trade union representatives published the following year. The foreword 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.

In its response to the government consultation, *Resolving workplace disputes* (BIS and HM Courts & Tribunals Service, 2011), the TUC recognised that some employers had already or would be likely to set up in-house schemes:

...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 (TUC, 2011, p. 12).

The two largest UK unions took a different view. In its response, Unite stated:

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:

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).

By the time of the *Resolving workplace disputes* consultation, at local, regional or sector level, union branches and officials had encountered workplace mediation in one form or another in a number of NHS trusts, local authorities, universities and colleges, police services, civil service departments and agencies, third sector organisations and (to a lesser extent) private sector companies. Against that backdrop, the next section considers the survey responses from union representatives.

Workplace mediation and UK union involvement

Workplace mediation in unionised organisations

Workplace mediation is a ‘management process’ (Banks and Saundry, 2011, p. 10) however as a relatively new dispute resolution method, in organised workplaces unions can be in a powerful position to scupper it, by advising their members not to participate. On the other hand, union representatives can encourage take-up by

assisting members to choose the best 'forum to fit the fuss' (Sander and Goldberg, 1994) which, for example, in disputes about relationships rather than rights may be mediation. Clearly employers have an incentive to gain union cooperation. Aside from that, unionised UK organisations have traditionally involved unions in matters to do with dispute resolution to varying degrees. In some cases, joint initiatives and partnership agreements have spawned workplace mediation schemes, as in the NHS (ACAS and NHS Social Partnership Forum, 2009). In the Royal Mail, the 2014 *Agenda for Growth* national agreement provides for in-house and external mediation of collective disputes; also in 2014, the employer and unions (Communication Workers' Union and Unite) appointed external mediators to offer an informal resolution process for bullying and harassment issues (Royal Mail, 2014). In 2012, a cross-government Civil Service Mediation Service was set up to link with existing departmental mediation teams and to extend workplace mediation to all departments. In local government and higher education, while the national employers have praised and promoted workplace mediation, it is left to individual employers to take it up (as a significant number have done). The initiative usually comes from the employer however individual union officials have acted as powerful advocates for, and champions of, workplace mediation either pro-actively (Bleiman, 2008) or as converts (Saundry, McArdle and Thomas, 2011).

No UK union appears to have a national policy of outright opposition to workplace mediation as a matter of principle, although workplace representatives in particular may reject it if they suspect the employer's motives. But even where there is a relationship of trust between the union and employer, obviously union representatives will have concerns about safeguarding the interests of individual members and the collective standing of the union, as was reflected in the responses to the author's survey. Before turning to the findings, the next section outlines the survey methodology.

Survey methodology

Aimed at UK trade union representatives, the survey, *Dealing with Individual Union Members' Disputes at the Workplace*, was available online for anonymous completion,

via a link from the TUC employment rights web page between August and October 2014. The survey instrument (a questionnaire) comprised 38 closed questions and two free text questions where respondents could add comments on workplace mediation and using grievance procedures. Eighty-three respondents commented on workplace mediation (discounting eight unusable responses). Although the comments comprise a small sub-set of the total sample, the additional data provide insights into union representatives' experiences and views - the quotes cited in this chapter are drawn from these anonymous comments.

On workplace mediation, respondents were asked whether their union had formal policy on it; their sources of information about it; sectors and industries where workplace mediation is being used; types of complaints being mediated; the nature and extent of their involvement with workplace mediation; in what ways they transmitted their experience of workplace mediation to other union representatives and to employers; and their views on the impact of its use on relations between the union and management. The survey also sought union representatives' views about grievance procedures. The survey instrument (an online questionnaire) did not include questions about how union representatives experienced the process of workplace mediation – this will be explored through case studies.

As the respondents comprised a non-representative sample, the findings cannot be generalised to the population of UK union representatives. Of 528 responses, 89 per cent were from workplace representatives (mainly stewards, convenors and branch officials). Eight per cent of the respondents were regional officials and three per cent were national officials employed by unions. Responses were received from representatives of 39 unions, all but four being affiliated to the Trades Union Congress (TUC). Around 230 respondents had had some form of involvement with workplace mediation at some time. This was not extensive - the majority (181 respondents) had been involved in or associated with one to five mediations in the last two years. In this sample, representatives had encountered workplace mediation mainly in local government, health and (mostly tertiary) education, finance and business services and central government and / or its agencies.

Introducing workplace mediation – union involvement

In regard to workplace mediation, 97 respondents said their involvement to date had been 'being consulted by the employer about using it in the organisation'. Sixty-one respondents said 'negotiating with the employer about introducing or using it in the organisation'. Only 22 respondents said 'being on a management-union group overseeing the introduction / use of workplace mediation'. As mediation forms part of employers' dispute resolution procedures, it is not surprising that unions are not co-owners (and would not necessarily want to be) however these responses suggest that particularly at workplace level, unions are not as involved in employers' decisions to adopt workplace mediation and scheme design as recommended by the TUC and STUC. (There are exceptions, for example in Royal Mail, where at national level, the unions and management have co-designed mediation provision.) Latreille (2011, p. 38) also found that 'a number of... organisations with formal schemes... had made a point of consulting or otherwise involving them [recognised unions] in the design of the scheme'.

It seems that very few union representatives act alongside management (typically HR) as coordinators of in-house schemes or gatekeepers deciding which cases are suitable (or not) for mediation. The process of deciding which dispute resolution procedure is appropriate is a pivotal point in the trajectory of an individual dispute. It might be expected that employers would not want to relinquish power in this respect, although there can be mutual benefits when they do (Saundry, McArdle and Thomas, 2011). Anecdotally, it seems that joint appointment of external mediators is a rarity – the Royal Mail being an exception.

Workplace mediation – voluntary or compulsory?

Voluntary participation is a core tenet of the facilitative model of mediation which is the most commonly practised by UK workplace mediators. However, there can be compulsion to *attempt* mediation either formally (procedural compulsion) or informally (pressure to participate). In answer to the question 'in your experience, in organisations using workplace mediation, how do the mediations come about', 41

respondents said 'under the organisation's procedures, it's compulsory to attempt mediation at a certain stage (or stages)' while 125 respondents said 'the organisation's complaint/grievance procedure mentions workplace mediation as a possible option', indicating (in this sample) that procedural compulsion is not exceptional. However, some of the comments suggested the picture is not always clear-cut: 'Some employers try to enforce mediation which does not work' (Royal College of Nursing full-time official). It may not always be clear to employees and representatives when and under what circumstances a grievance or bullying complaint (for example) is to be dealt with in the formal machinery or be put forward for mediation (by managers especially) as this comment indicated: 'Clearer guidance on the voluntary aspect of mediation [needed] and not a pre-requisite to resolution' (UNISON branch official). Compulsion was seen as being counter-productive: 'Mediation is a good process but only if all parties agree to it; if it is a forced process, then any benefits will be lost' (Public Commercial Services (PCS) steward).

Another source of data about 'negative pressure' is provided by ACAS. Responses from participants in mediations commissioned from ACAS who gave feedback (based on averaged figures for 2010-13) show that five per cent felt they had no choice; 18 per cent felt pressure such that it would have been difficult to say no; and a third said they had been encouraged but could have declined if they wanted to. Less than half (44 per cent) felt fully able to make their own decision. The data do not distinguish feedback from managers and subordinates however negative pressure to participate came overwhelmingly from the employer (ACAS, 2011; 2012; 2013).

These findings and the survey respondents' comments highlight the need for unions to have an effective voice in the 'reform' of grievance and related procedures and the design of mediation processes. Union representatives also have an important role in assisting members to make informed decisions about whether to try mediation and to resist negative pressure to participate.

Workplace mediation - the role of union representatives

The most prevalent form of involvement with workplace mediation reported by survey respondents was 'advising a union member (or members) about whether to take part in a mediation' (184 responses). 'Going with a member to a meeting with the mediator (where the other party was not present)' was selected by 101 respondents; and 103 respondents selected 'attending a meeting with the mediator/s where your member and the other party were present'. Since documentary evidence (for example, Saundry Bennett and Wibberley, 2013) indicates that UK in-house mediation schemes disallow or discourage representatives from attending joint sessions (that is, when both (or all) disputants meet with the mediator), on the face of it, this is a surprising result and is likely to include situations where a manager not directly involved in the dispute or (for example) an HR officer acts as an 'honest broker' – a process which may not or may not be labelled as 'mediation' but is understood as such by all parties.

It is part of the ideology of non-evaluative models of workplace mediation that resolution lies in the hands of the disputants and there appears to be a consensus in the HR profession and mediation industry – shared by the TUC – that (with some exceptions) representation in *joint* sessions is unnecessary and possibly unhelpful. The CIPD advises that 'Restricting mediation meetings to the parties themselves can allow more open and honest discussion' (CIPD & ACAS, 2013, p. 28) while the TUC goes further:

Mediation is most successful where no representatives are present. Experience has shown that it is the individuals involved who are best able to explain how they feel. An open and frank discussion of the issues, which is controlled by the mediator to ensure fairness and appropriate behaviour, can be the key to sorting out the conflict (ACAS/TUC, 2010, p. 11).

Apparently, as a rule, an employee should only need the support of (for example) a union representative at the initial one-to-one meeting with the mediator: '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); and in a similar vein, 'The initial one to one meetings can be an opportunity for the individual to build up a rapport with the

mediator, with their representative present, and feel more secure about continuing with the mediation on their own' (ACAS/TUC, 2010, p. 12).

The CIPD warns that 'one of the pitfalls involved in using representatives is that it may lead to the formalisation of the process' (CIPD/ACAS, 2013, p. 28). 'Moreover, there can be a tendency for representatives to shift the emphasis from joint problem-solving to negotiating for the best deal for their candidate to the detriment of the other party, instead of parties finding their own solution that will benefit both sides. Having said this, the mediator is there to ensure that this does not happen.' (CIPD/ACAS, 2013, p. 29). The TUC guide states: 'Where a party wishes to have the support of their trade union representative this must be agreed by all the parties in the mediation. This can result in the other side also deciding to bring a representative. Where it is agreed, the role of the representative is as an advisor and supporter and not as a formal representative...' (ACAS/TUC, 2010, p. 11).

As to the views of participants, based on feedback to ACAS in regard to workplace mediations conducted by its officers in 2012-13, it was noted that:

Almost all participants (97 per cent) indicated that they had not been accompanied during the mediation process and of these the majority (63 per cent) were content with this arrangement... 21 per cent indicated they would have preferred to have been accompanied with 16 per cent reporting that they 'don't know' (ACAS, 2013, p. 6).

There were very few specific comments on accompaniment in mediation from survey respondents. To give an example: '...Formal mediation in my workplace is confidential and union reps do not attend. Informal mediation can involve union reps' (UNISON steward). The practice of not permitting disputants to be accompanied in joint sessions does not seem to be a contentious issue. This may be because mediation is largely a voluntary process and if it fails, the employee retains their right to pursue a grievance. Also, union representatives are nevertheless involved in advising members about whether to participate or possibly as in-house mediators. But it may be that there are more employees being accompanied in joint mediation sessions than has been supposed, even allowing for survey respondents including informal discussions with both disputants present where a manager and/or union representative facilitates a resolution. (In the author's experience, disputants are sometimes accompanied in

entrenched, 'high stake' disputes that are externally mediated.) If, in fact, accompaniment in joint sessions is rare, the ACAS data suggest that a significant proportion of participants would have valued being accompanied.

A small number of respondents have been involved in workplace mediation as in-house scheme mediators. Sixteen reported 'being part of an in-house team or pool of workplace mediators drawn from representatives of management and the unions' and 7 respondents were 'part of an in-house team or pool...selected from employees who volunteered'. Judging by the comments, this did not seem to have caused issues for them about conflict of interest although one respondent commented 'many members are suspicious of management's motives and if it [mediation] does not go well trade unionists themselves can come under suspicion...You need to tread carefully' (UNISON steward). On the other hand, knowing that mediators include employees who are also union representatives can help allay members' fears that mediation could be a management stitch-up (Saundry, McArdle and Thomas, 2011; ACAS/TUC, 2010). These comments echo the 'divergent views' found by Latreille (2011, p. 41) among mediation managers and union representatives as to whether employee/union representatives should act as mediators.

Workplace mediation – criticisms and praise

The majority of comments from survey respondents on workplace mediation were reflections on the conditions necessary for its appropriate and effective use including careful selection of cases for mediation, right timing (early on in the dispute), voluntary participation, the need for parties' commitment to the process, the importance of mediator competence and impartiality, joint management-union training on mediation, the need for formal procedures as back-up if there is no resolution, and recognition that mediation is not a panacea and is unlikely to be appropriate for discrimination and serious harassment cases which call for formal action by management. A couple of comments highlighted the suitability of mediation in conflicts between co-workers (particularly where both disputants are union members) and between managerial staff. Some respondents felt that mediation worked best between peers or co-workers; others doubted its suitability for disputes between

managers and subordinates. There were a related set of comments about implementation issues including lack of guidance for managers, poor administration, selection of inappropriate cases for mediation in lieu of using the disciplinary procedure, and reluctance or resistance on the part of managers to participate.

Adverse comments concerned the way in which mediation had been implemented by employers (poor guidance for managers, poor administration, and inappropriate case referrals – especially disciplinary cases), and the quality and impartiality of the mediator. Most of the latter appeared to be directed at in-house mediators who were said to lack experience and skills, and whose close links with management called into question their impartiality. The most trenchant criticisms (made by a small number of respondents) were that the ‘employer tries to use mediation as another control level, to keep the union out, and keep their grievance statistics down’ (UNISON branch official); and it was used ‘as a tool to dissuade staff from progressing bullying complaints’ (University and College Union full-time official). In a similar vein, ‘HR attempt to force or harass the aggrieved into mediation, rather than take the manager to task or discipline them for glaringly obvious abuses of power or position...’ (Unite steward). A roughly equivalent number of comments praised the process - it encouraged open communication, provided a safe environment and helped repair relationships.

A broader picture of respondents’ views can be obtained from the responses to the question ‘overall, based on your experience, how likely would you be to recommend the wider use of workplace mediation’, 44.4 per cent said they would be ‘likely’ to recommend its wider use and 23.3 per cent said they would be ‘very likely’ to. Just under a quarter said they would be ‘neither likely or unlikely’ to recommend its wider use. A much smaller proportion gave a negative response - 6.1 per cent said they would be ‘unlikely’ to recommend its wider use and 2.5 per cent said they were ‘not at all likely’ to. While the data is not representative, it suggests that most union representatives are likely to be open to the use of workplace mediation; whether that translates into positive support depends largely on representatives’ experiences of how management seek to use it.

Enhancing workplace justice?

What role might workplace mediation play in relation to organisational justice? When mediation is used by employers to divert complaints against managers and shelter them from formal sanctions (as was mentioned by some respondents), workplace justice is obviously diminished. Lack of impartiality on the part of the mediator and failure to enforce ground rules in mediation meetings offend both procedural and interpersonal justice. However, positive comments from the survey respondents illustrate aspects of interactional justice in mediation. Applying the 'six-factor model' of organisational justice (Nabatchi, Bingham and Good, 2007) interactional justice encompasses interaction between the mediator and disputants and the interpersonal interaction between the disputants themselves. In contrast with formal dispute resolution procedures, disputants (especially subordinates) are more likely to be able to speak for themselves in a supposedly confidential and safe environment. In seeking to explore disputants' interests rather than rights and wrongs, mediation has the potential to get to the (emotional) heart of the matter in a way that highly formalised procedures usually cannot. Distributive justice in mediation is a vexed question but it is arguable that a fraught employment relationship stands a better chance of being preserved through mediation than drawn out formal complaints procedures which are stressful and leave the disputants' dysfunctional relationship in limbo if not in tatters.

Interestingly, respondents' opinions were mixed on whether taking grievances through formal procedures escalates or worsens conflict between the disputants. 32.4 per cent of respondents disagreed and ten per cent strongly disagreed. 19.1 per cent of respondents agreed and 2.7 per cent strongly agreed. One third of respondents neither agreed or disagreed (possibly because it might depend on the circumstances of the case). Of course, union representatives are once removed from the conflict and their experience of it is different from that of the disputants. Nevertheless, a number of respondents said that mediation was not appropriate in all cases, it was not a panacea, and the formal route must remain an option for the employee where mediation fails to resolve the problem. Crucially, grievance and related procedures were seen as giving voice to employees – when managers would not listen or chose to ignore complaints or not take them seriously, the grievance procedure was needed.

(Sometimes the threat of 'going formal' was enough to prompt a response.) 84.1 per cent of respondents were in agreement that grievances procedures are an important mechanism for obtaining workplace justice for members (35.2 per cent strongly agreed and 48.9 per cent agreed). Four per cent disagreed and 1.7 per cent disagreed strongly. (9.9 per cent of respondents neither agreed nor disagreed and 1.1 per cent did not know or were not sure.) These findings suggest that mediation may enhance organisational justice in some respects but, from a union perspective, it is not a substitute for established dispute resolution processes. Workplace mediation would be seen as undermining organisational justice (and very likely meet union resistance) if employees did not have access to a grievance procedure where mediation was inappropriate or unsuccessful.

Workplace mediation and unions - missing links?

Mediation, unions and conflict management

Although not representative, the survey responses suggest that UK unions are likely to be more supportive of (albeit conditionally) and less hostile towards workplace mediation than some employers and mediation advocates might assume. From a conflict management perspective, respondents preferred to deal with disputes informally and the drawbacks of taking complaints through grievance procedures were mentioned. It was observed that some disputes concerning individuals are more suited to workplace mediation than formal grievance or other complaint procedures. The main exceptions mentioned were discrimination complaints, serious cases of bullying and disciplinary cases. Union support for workplace mediation is more likely to be forthcoming when representatives are involved from the outset, and at least fully consulted over its introduction and how it will operate in the organisation. Unions will want mediators to be properly trained, qualified and as impartial as is possible. Joint training of management and union representatives has been shown to be particularly important in demystifying mediation and overcoming suspicion of management motives (Saundry, McArdle and Thomas, 2011); and equipping union representatives for what appears to be their primary role - assisting members to decide whether mediation is in their best interests.

The survey responses are consistent with other findings that workplace mediation tends to be used (with some exceptions) in UK workplaces where industrial relations are good even though there may be high levels of individual conflict in the form of formal grievances and other employee complaints. When asked to think about the employer who uses workplace mediation the most, the majority of respondents (67.7 per cent) said the relationship between the union and management was good overall – moderately good (34.6 per cent); very good (24.6 per cent); extremely good (8.5 per cent). Just under a third of respondents said the relationship between the union and management was either fair (17.3 per cent) or poor (14.9 per cent), broken down as follows: moderately poor (9.2 per cent); very poor (3.8 per cent); extremely poor (1.9 per cent). However, in this sample of respondents, thinking of the same employer, the use of workplace mediation had not made a dramatic difference to relations between the union and management (bearing in mind most respondents thought they were good to begin with). 46.4 per cent said ‘relations are much the same as before the use of workplace mediation’. Just over a third said they were better - slightly better (26 per cent); much better (9.4 per cent). Far fewer respondents (3.4 per cent) said relations were slightly worse; 1.5 per cent said much worse; and 13.2 per cent answered ‘don’t know / not sure’. Mediation is unlikely to be adopted where relationships are highly adversarial unless management wants the situation to change; and while workplace mediation can have quite a dramatic impact on employment relations in an organisation, on its own, its use has limited capacity to transform the culture of conflict management in organisations (Saundry and Wibberley, 2014). Workplace mediation schemes and training are also vulnerable to cuts and restructuring in public sector organisations, and the loss of influential supporters among management and union representatives.

Workplace mediation and union renewal

Workplace mediation can be seen as antithetic to union renewal. Put simply, it diverts scarce union resources to servicing individual members to no collective purpose. It individualises workplace conflict and encourages collusion on the part of unions, weakening the prospects for building collective resistance against exploitative labour processes in the workplace. Arguably, workplace mediation is a worse alternative for

union members than established dispute resolution procedures: there is an inbuilt power imbalance where the disputants are a manager and subordinate that cannot be eliminated or substantially mitigated by an impartial mediator; the so-called empowerment of subordinates in mediation is ephemeral; and there is no right of accompaniment. Strict confidentiality prevents failure and success from being aired widely, so poor management practices and systemic problems remain hidden and unaddressed and the union does not benefit from any 'inspirational' or 'radiating effects' (Colling, 2009) of successes that may be achieved by employees in mediation. Reframing conflict at work between individuals as (for example) 'personality clashes' inhibits its potential to be seen as oppressive and stifles the employee's sense of injustice – the crucial building block for union mobilisation (Kelly, 1998).

On the other hand, in general mediated cases take up fewer resources than formal grievances, giving over-stretched workplace representatives more time for organising activities. Interestingly, just under two-thirds of the survey respondents did not agree that representing members with grievances took up too much time, although there was extensive comment on the downside of formal grievances for representatives and members. Burnout and stress were mentioned, and it was recognised that the grievance process and outcomes were often unsatisfactory where deeply conflictual interpersonal relationships lay at the heart of complaints. Given the pressures on union resources, Colling (2012, p. 199) observes that 'there is clear potential for grievances to go undetected and for representation through to formal litigation to be rationed by scarce resources'. Even in organised workplaces, members may not report issues to a union representative (for various reasons) and, across UK workplaces, the profile of employees who go on to register employment tribunal claims differs from those who report problems at work (Lucy & Broughton, 2011). Analysis of the 2008 Fair Treatment at Work Survey by Fevre *et al.* (2009, p. 119) found that one of the most frequent single reasons for 'resolution' of the most serious problem experienced by (employee) respondents was 'nothing happened or went on as before' (14 per cent).

Space precludes discussion of gaps in UK evidence and the complexities of (for example) a gender-based or intersectional analysis of employees' experience of

dispute resolution procedures so it remains an open question as to under what circumstances workplace mediation might be seen as an alternative or better option; and what part union representation might play in that. There may also be cases that have a rights-based element but individuals might prefer to attempt to resolve them in mediation where relational issues, confidentiality and privacy are important to the complainant (in discussing the impact of a disability or ill health on an individual, or issues relating to sexuality or gender identity, for example). Clearly there is a need for union advice and support in such cases to safeguard mediation being used by the employer to evade legal obligations or short-circuit disciplinary / dismissal procedures. With discrimination-related complaints (for example), this presupposes that union representatives are knowledgeable about the relevant law and that (like mediators) they can relate to the worldview of complainants with backgrounds different from their own. Unions representing managers and professionals in senior roles also recognise that their members may value the privacy and confidentiality of mediation. Resorting to formal procedures could be perceived (by them and the employer) as being unprofessional or potentially damaging to their careers. A survey respondent observed that (in regard to less senior staff) depending on 'the culture of the organisation' – taking grievances could be a 'career killer [or]...seen as legitimate channels for discovering disparities of treatment' (University and College Union branch official).

The evidence is that UK workplace mediation is used largely in cases framed as relationship breakdown, dysfunctional working relationships, and bullying and unreasonable treatment, as opposed to rights-based cases (Latreille, 2011; CIPD, 2008). This was supported by the responses to the author's survey. However, taking 'personality clashes' as an example, Gwartney-Gibbs (1994, p. 9) argues that 'personality conflicts are a constellation of disputable issues, interpersonal treatment and feelings'. She observes that 'how tasks should be done... and interpersonal treatment ... [are] domains [that] frequently intertwine and become emotional' (Gwartney-Gibbs, 1994, p. 6). So does the use of mediation undermine the mobilisation potential of these disputes? A pragmatic answer is that in contrast to disputes over individuals' terms and conditions, it is very difficult to collectivise these

types of grievances when a systemic issue is not obvious and where complainants feel justice will be done if (for example) they get a personal apology and a promise that the offending behaviour will stop. But union involvement in mediation (including, ideally, gate keeping and accompaniment) could help representatives to detect patterns or repeated occurrences of poor management, discriminatory practice and systemic failures – issues which can be taken up collectively. Admittedly, on its own mediation (akin to legal action relating to single claims) has precious little inspirational effect in terms of mobilisation. It could be argued to have limited ‘radiating effects [which] extend from the specific case to change behaviour among employers or membership constituencies’ (Colling, 2012, p. 198).

The confidentiality of mediation (which can also apply to formal grievance outcomes) inhibits but does not preclude the sharing of anonymised feedback and commissioners’ monitoring data provided that there are sufficient numbers of cases for this to be feasible. Of course, union representatives who attend mediation sessions will have first-hand knowledge of what has transpired. At the least this is a learning experience and being no strangers to keeping confidences, union representatives are likely to be adept at absorbing and applying lessons learnt. In this respect, of the mediation users, 124 survey respondents reported giving feedback of their experiences of workplace mediation to other union representatives. 80 said they had given feedback of their experience in that organisation to the employer (for example to HR). Bearing in mind that respondents could select all options that applied, 59 respondents had suggested changes to that organisation’s employment / HR policies or practices; 63 said they suggested changes to management or staff training; 50 respondents had proposed changes to procedures for dealing with grievances of complaints in that organisation; and 65 respondents had suggested changes to the way workplace mediation operated in that organisation. Confidentiality does not seem to be a barrier to these UK union representatives acting on their experiences of workplace mediation in more diverse and proactive ways than has been previously documented.

Conclusion

The survey responses indicate that, in the main, the position taken by union representatives (at least in this sample) who have encountered workplace mediation is one of qualified support. Their experience of it has not been overwhelmingly positive and the potential for its misuse is clearly recognised. On the other hand, used for appropriate cases (with competent and impartial mediators), mediation could be a better option than going through formal grievance procedures, enhancing workplace justice. However, if mediation was not freely chosen by disputants or it failed, the right to pursue a formal grievance was seen as essential. Although this was not articulated, employees have rights in relation to grievance procedures (to be accompanied, to appeal decisions) that they do not in mediation and in that sense it offered an inferior form of justice. Importantly, lodging grievances was seen as registering the member's (and union's) concern so that it could not be ignored.

Judging from this sample of respondents, it appears that most employers have sought union cooperation (to varying degrees) in introducing workplace mediation although the extent of union involvement falls short of the gold standard represented by TUC and STUC policy. Old habits die hard, so it is probably still quite revolutionary for an employer to offer, and for the union to accept, a role as joint scheme coordinator and gate keeper, though this could bring benefits for both parties (Saundry, McArdle and Thomas, 2011). Given its importance in relation to workplace justice, the question of accompaniment/representation also deserves more attention – and revisiting – by unions as well as employers, professional HR bodies and workplace mediation providers.

It remains to be seen if the use of workplace mediation will explode in the UK – it has been a slow burn so far – and positive support from the State for its take-up is now in short supply. If anything, recent moves by government (such as the introduction of tribunal fees) and planned legislation (the *Trade Union Bill 2015*) are disincentives for employers to reform workplace dispute resolution procedures. In the struggle for renewal, whatever the extent of their 'coercive power', unions have to be seen to be relevant to employees (members and non-members) and to enhance their 'legitimacy

power’ – the power that derives from employers’ acceptance of the legitimacy of unions’ representation and bargaining roles (Simms and Charlwood, 2010). Union involvement in improving workplace dispute resolution procedures can boost the legitimacy power of unions (Saundry, McArdle and Thomas, 2011). Individuals will always have problems at work that do not have ready collective solutions. For some complaints, employees will prefer mediation over impersonal, adversarial dispute resolution mechanisms and often want support from the union. Issues raised in mediation which have collective implications can migrate to the collective bargaining arena. Servicing members in regard to mediation need not undermine the collective strength of the union – it could provide a ‘missing link’.

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ⁱ In addition to the survey, the author's study comprises interviews with national officials from a range of unions that have representation in sectors where workplace mediation is used and case studies of a small number of 'high user' unions.

ⁱⁱ ACAS (the Advisory, Conciliation and Arbitration Service) is a non-departmental public body of the UK government. It provides dispute resolution services in Great Britain including conciliation of individual employment rights disputes, most commonly in cases involving a potential employment tribunal claim. The Labour Relations Agency is the equivalent body in Northern Ireland.