External Mediation:
A Study of a Conflict Resolution Mechanism
in the Irish Workplace

by
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ABSTRACT

While there is growing recognition of mediation as an effective mechanism for managing workplace conflict, there is a lack of empirical research to support this contention.

This study sought to examine the efficacy of external mediation and the quality of its outcomes from the perspectives of the parties to mediation and the contracting organisation.

An inductive, multiple-method approach was used, comprising an anonymous questionnaire to gather statistical information and narrative comment from individuals who have directly participated in an external mediation, and a series of structured/semi-structured interviews with HR/case managers and external mediators to develop a deeper understanding of external mediation in practice.

Due to the nature of external mediation, a multi-layered approach was taken in issuing the questionnaires. Of the 32 completed questionnaires returned, the data indicates a high settlement rate and high level of satisfaction on the part of the individuals with the process and its outcomes.

Analysis of the interviews suggests that external mediation is effective in resolving complex workplace disputes and that the enabling nature of the process allows for outcomes that far exceed the simple resolution of substantive issues.

The identified outcomes in relation to improved work relationships, enhanced cohesion and new learning suggest that mediation is particularly suited to the demands of the modern work environment.
# TABLE OF CONTENTS

Abstract ii

List of Tables v

List of Figures vi

List of Definitions vii

List of Appendices x

Acknowledgements xi

## 1. Introduction 1

1.1 Organisational context 1
1.2 Status of mediation 2
1.3 Background to task 3
1.4 A framework for enquiry 6
1.5 Structure of the dissertation 8

## 2. Literature Review 9

2.1 The modern work environment 9
   2.1.1 The changing work paradigm 9
   2.1.2 Managing for innovation and change 10
   2.1.3 A strategic approach to conflict management 12
   2.1.4 Conflict management and the new social contract 13
2.2 The move towards interest-based Alternative Dispute Resolution (ADR) in Ireland 15
2.3 Conclusion 17

## 3. Research Methodology 18

3.1 The positivistic and constructivist divide 18
3.2 A critical theory approach 20
3.3 Design of study 21
   3.3.1 Methods of data collection 22
3.4 Chosen design 24
   3.4.1 Question 1: Chosen method and sample 25
   3.4.2 Question 2: Chosen method and sample 27
   3.4.3 Difficulties encountered 27
3.5 Ethical considerations 29

## 4. Data Analysis and Results 32

4.1 Analysis of the anonymous questionnaires 32
   4.1.1 Statistical results from the anonymous questionnaires 32
4.1.2 Analysis of the narrative comments from the questionnaires

4.2 Analysis of the structured interviews
4.2.1 Initial analysis of the interview transcripts
4.2.2 Interview analysis: Stage 2
4.2.3 Interview analysis: Stage 3
4.2.4 Settlement rate cited by HR/case managers

4.3 Analysis of mediator sample participation
4.3.1 Overall response from mediator sample
4.3.2 Mediator sample decline response analysis
4.3.3 Mediator sample ‘Yes’ response analysis

5. Findings and Discussion
5.1 Research Question 1: Findings and discussion
5.2 Research Question 2: Findings and discussion
  5.2.1 Outcomes in relation to productivity
  5.2.2 Outcomes in relation to cohesion/commitment
  5.2.3 Outcomes in relation to innovation

6. Conclusions and Recommendations

Bibliography and References

Appendices
LIST OF TABLES

Table 1: Comparison of the positivist and the constructionist approach 19
Table 2: Categorised list of narrative comments: Question 4 36
Table 3: Categorised list of narrative comments: Question 5 38
Table 4: Categorised list of narrative comments: Question 6 40
Table 5: List of benefits for organisation identified by HRM/case managers 43
Table 6: Categorisation of ‘benefit items’ identified by the HR/case managers by key thematic areas 45
Table 7: Categorisation of ‘benefit items’ identified by the external mediators by key thematic areas 47
Table 8: Settlement rate cited by the HR/case managers 50
Table 9: Mediator sample response by type 51
Table 10: Mediator sample decline response by type 52
Table 11: Mediator sample ‘Yes’ replies by type 53
LIST OF FIGURES

Page:

Figure 1: Length of time individuals experienced difficulties before mediation was suggested 32

Figure 2: Did mediation improve the situation? 33

Figure 3: Was a mediated agreement reached? 33

Figure 4: Was the mediation helpful? 34

Figure 5: Mediator sample response by type 51

Figure 6: Mediator sample decline response by type 53

Figure 7: ‘Yes’ replies subsequently declined 54
LIST OF DEFINITIONS

**Adversarial collective bargaining:** The traditional ‘them and us’ type of bargaining or negotiation associated with low-trust industrial relations.
(Barrett and O’Dowd, 2005)

**Alternative Dispute Resolution (ADR):** ... a broad spectrum of structured processes, including mediation and conciliation, which does not include litigation though it may be linked to or integrated with litigation, and which involves the assistance of a neutral third party, and which empowers parties to resolve their own disputes. (Law Reform Commission, 2010, p.13)

**Critical theory:** A view of reality in which knowledge, and definitions of knowledge, is/are informed by reflective practice that is underlined by an emancipation and freedom cognitive interest.

**Empirical research:** Based on, concerned with or verifiable by observation or experience rather than theory or pure logic. (Oxford English dictionary)

**Epistemology:** The theory of knowledge, especially with regard to its methods, validity, and scope, and the distinction between justified belief and opinion. (Oxford English dictionary)

**Flexible research design:** The researcher develops their research design through their interaction with what they are studying, and data collection and analysis is intertwined. (Robson, 2002)

**Fixed research design:** The researcher knows exactly what they are doing before collecting the data that they are going to analyse; and they collect all of the data before they start to analyse it. (Robson, 2002)

**Hermeneutic: (adj)** Concerning interpretation, especially of the Bible or literary texts. (Oxford English dictionary)

**Integrative process:** A process involving a combination of facilitative and alternative dispute resolution strategies brought together in a planned approach to build capacity and skills within teams and organisations to harness conflict productively. (Author’s own)

**Interest-based bargaining:** An approach to collective bargaining that is based on assumptions of mutual gains, focussed on understanding and building on interests and using problem-solving tools as a way of achieving
high-quality solutions for all stakeholders. (Barrett and O’Dowd, 2005, p.27-p.32)

**Interest-based processes**: Facilitative and ADR processes that focus on generating understanding and building on interests to achieve mutually acceptable outcomes for the different parties/stakeholders. (Author’s own)

**Qualitative inquiry**: An approach entailing the study of things ‘on their own terms, at their own levels, as wholes’ (Nikolau-Walker, 2008, p.572)

**Mediation**: A facilitative and confidential structured process in which the parties attempt by themselves, on a voluntary basis, to reach a mutually acceptable agreement to resolve their dispute with the assistance of an independent third party, called a mediator. (Law Reform Commission, 2010, p.22)

**Mediative intervention**: A process combining some of the key characteristics of mediation and with a particular structure and/or framework to suit the specifics of the situation.

**Mixed-method research**: Research involving both quantitative and qualitative methods. (Robson, 2002, p.43)

**Negotiation**: Negotiations occur for one or two reasons: (1) to create something new that neither party could do on his or her own, or (2) to resolve a problem or dispute between the parties. (Lipsky et al., 2003)

**Ontology**: the branch of metaphysics dealing with the nature of being. (Oxford English Dictionary)

**Partnership**: A loose term used to describe different forms of cooperation (information exchange, consultation, joint problem-solving, joint decision-making) between managers, union representatives and employees. (Barrett and O’Dowd, 2005)

**Paradigm**: A worldview underlying the theories and methodology of a particular scientific subject. (Oxford English Dictionary)

**Personal reflexivity**: Involves the researcher giving consideration to the ways in which our beliefs, interests and experiences might have impacted upon the research. (King and Horrocks, 2010)

**Phenomenology**: The science of phenomena as distinct from that of the nature of being. (Oxford English Dictionary)
**Real world research:** ‘Human’ research carried out by a researcher with a direct research interest in, and concern for, the particular situation or phenomena under investigation, and in which the experience and understanding of the researcher are recognised as an important ingredient of the research. (Robson, 2002)

**Reflexivity:** Epistemological reflexivity involves the researcher revealing and considering how their theoretical assumptions about the world may have informed or impacted on their research. In terms of theoretical understandings and the practicalities of qualitative research requires the researcher to look ‘inwards’ and ‘outwards’, exploring the intersecting relationships between existing knowledge, our experience, research roles and the world around us. (King and Horrocks, 2010)

**Social capital:** An asset that inheres or resides in social relations and networks. (Avgar, p.237)

**Social contract:** Term used to describe the nature of the overall relationship between managers, union representatives and employees. (Barrett and O’Dowd, 2005)

**Systemic empirical inquiry:** Planned, ordered and public (systemic) exploration dependent upon the world of experience in some fundamental way (empirical). (Nikolou-Walker, 2008)
LIST OF APPENDICES

Appendix 1: Anonymous questionnaire documentation

Appendix 1A: Research Information Sheet 77
Appendix 1B: Cover letter for party to mediation 79
Appendix 1C: Consent Form and questionnaire 80
Appendix 1D: Cover letter for HR/case manager (re. structured interview) 82
Appendix 1E: Consent Form for research interview 83
Appendix 1F: Interview questions – HR/case manager interviews 84
Appendix 1G: Interviews questions – Mediator interviews 85
Appendix 1H: Questionnaire Documentation: Letter to HR/case manager (re. Questionnaire to staff) 86

Appendix 2: Raw list of narrative comments from questionnaires 87

Appendix 3: Summary data: HRM and case manager interviews:
          Benefits and outcomes for the organisation 90

Appendix 4: Summary data: External Mediator Interviews:
          Benefits and outcomes for the organisation 95

Appendix 5: Structured interviews with identifying information redacted and/or removed 100

Appendix 5A: Interview #1: HR/case manager #1 100
Appendix 5B: Interview #2: HR/case manager #2 104
Appendix 5C: Interview #3: HR/case manager #3 116
Appendix 5D: Interview #4: HR/case manager #4 131
Appendix 5E: Interview #5: External mediator #1 142
Appendix 5F: Interview #6: External mediator #2 151
Appendix 5G: Interview #7: External mediator #3 155
Appendix 5H: Interview #8: External mediator #4 160
Appendix 5I: Interview #9: External mediator #5 173
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1. INTRODUCTION

Mediation is a process whereby an independent, neutral mediator(s) assists the parties to come to agreement through collaborative engagement. The mediator’s role is non-judgmental and non-directive. The mediator is neither judge nor arbitrator and does not adjudicate or give decisions on the rights or wrongs of the actions of the parties. The mediator supports the parties in identifying their issues and needs, in exploring how those needs can be addressed and facilitates them to reach agreement.

The Mediators’ Institute of Ireland

Mediation, by its nature, is about change. As mediators, we are change agents, enabling parties in conflict to reassess their situations, to engage in new thinking, in new ways of seeing themselves and understanding the ‘other’, so that through collaborative engagement they can find appropriate outcomes to their disputes.

1.1 Organisational Context

Since 2004, I have worked in private practice as an independent, conflict specialist, delivering discrete interventions to workplace conflicts, and integrative strategies to promote collaborative workplace development and conflict-positive work environments.

My client organisations include government departments, semi-state bodies, academic institutions, health-care providers, private sector businesses and voluntary organisations.

While I provide investigation, facilitation and training services, mediation is my passion. The reason for this is the quality of outcome that I see, first-hand, for both the individuals and their organisation, from mediation.

Most of my mediation and investigative casework arises on foot of formal complaints brought under organisational grievance and anti-bullying and harassment procedures. These cases have generally already reached crisis point: the disputes tend to be protracted, often ranging from two to five years, the parties entrenched and the disputes politicised, with colleagues and teams taking ‘sides’.
While mediation and investigation are both recognised processes for addressing workplace conflict, they are fundamentally different in practice.

Mediation is an enabling process that allows individuals in conflict an opportunity to engage directly with their counterpart(s), with the support of a neutral specialist, trained in negotiation and conflict resolution, in an effort to address and resolve their issues. The voluntary and confidential nature of mediation is fundamental to the process, allowing for ‘better results: higher satisfaction with process and outcomes, higher rates of settlement and greater adherence to settlement terms’ (Law Reform Commission, 2010, p.32). Following preliminary meetings with the principal parties, which take one to two hours each, the mediation can generally be completed in a single day.

Investigations, on the other hand, entail a process of search and analysis to establish the ‘facts’ of the case. Investigations tend to be protracted – a complex cases generally taking eight to ten months to complete – and carry a high level of cost for both the individuals, in terms of stress and damage to reputations, and for the contracting organisation in terms of management time, financial costs and relationship/reputational damage.

Mediation delivers outcomes specifically constructed by the individuals in dispute to address their respective needs and interests. Investigation delivers a finding in relation to the credibility or otherwise of the complaint: it does not address underlying issues nor seek to resolve the situation.

1.2 Status of Mediation
There has been a growing awareness and acceptance of mediation in the Republic of Ireland (ROI) in recent years, particularly in relation to civil, commercial and family disputes.

The current Irish Government has made an explicit commitment to encourage and facilitate the use of mediation in commercial, civil and family disputes in order to ‘speed up resolution of disputes, reduce legal costs and ameliorate the stress of
contested court proceedings’ (Programme for Government, 2011, p.21). The EU Directive 2008/52 on the use of mediation in civil and commercial matters, while specifically addressing cross-border disputes between member states, actively encourages the adoption of the provisions of the Directive for internal mediation processes, observing:

Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements…

New Court rules introduced in November 2010 provide for the adjournment of any civil case, where requested by the parties or the court, to allow for the use of mediation or conciliation to resolve the dispute. And significantly, a Mediation Bill, which will bring a level of statutory regulation and recognition to mediation, is expected to come into effect in early 2014.

As to the workplace context, mediation is now recognised as an integral part of our statutory mechanisms for resolving workplace disputes. Both the Equality Tribunal, established under the ‘Employment Equality Act 1998’ and the Labour Relations Commission, established in 1991 under the ‘Industrial Relations Act 1990’, provide mediation services to support individuals and organisations in the resolution of their disputes.

Furthermore, in line with codes of practice issued by the Irish Health and Safety Authority and Equality Authority, most Irish workplaces now incorporate the option of mediation in their policies and procedures for addressing workplace disputes.

1.3 Background to Task
However, despite the growing, official recognition of mediation as an appropriate and viable mechanism for resolving workplace disputes, there appears to be a disconnect in how mediation is perceived, both by organisations, and the individuals who find
themselves in conflict in the workplace. It is this *disconnect* that motivated me to
engage in post-graduate study in relation to mediation.

A particular concern for me, and for many of my colleagues, is the seeming propensity
of individuals and organisations to pursue rights-based interventions such as
investigation, over mediation, to address workplace conflict.

I am in agreement with Schutte’s (2007, p.10) contention that many of the cases that go
to investigation would seem better suited to mediation which, in my experience,
provides more satisfying outcomes for both the individuals and their organisation, and
which incurs a fraction of the cost of an investigation.

Like Schutte (2007, p.10), I too would like to clarify that my interest in raising
awareness of mediation is not driven by self-interest: due to their lengthy duration,
investigations are more lucrative than mediations, generally eliciting fees ranging from
ten times that of a mediation.

My commitment to mediation is founded on a strong conviction that mediation is a
more appropriate process for resolving workplace conflict, which takes account of the
needs of the individuals and their organisation, and which can deliver sustainable and
appropriate outcomes.

Recent studies into the use of mediation and the diffusion of alternative dispute
resolution (ADR) policies and procedures in the Irish work context shed some light on
the apparent resistance to mediation.

Schutte (2007, p.60-p.62), in a study into the factors that inhibit the choice of mediation
by individuals in workplace disputes, identifies three determining factors:

*Informational:* A lack of appropriate information for the individuals in dispute
to make an informed decision;

*Intentional:* The *fight* response, where revenge or counter-attack informs the
choice of dispute resolution method; and
**Institutional:** The culture and policy of the organisation in dealing with conflict.

The role of organisational culture as an inhibiting factor is echoed by Doherty and Teague (2013). In their study of non-unionised organisations in Ireland, Doherty and Teague identify a move by HR managers to ‘de-legitimise’ organisational conflict in an effort to create ‘organizational citizenship behaviour’ that does not recognise the inevitability of conflict, or the need for ‘formal, easily accessible, procedures to manage conflict’ (Doherty and Teague, 2013).

It seems reasonable to assume a link between the cultural bias towards fight – preference for rights-based approaches – or flight – conflict avoidance and denial – and access to appropriate information. (Other factors such as practice standards, accreditation etc. have an obvious role, but are not part of this discussion.)

Working in a voluntary capacity as registrar, communications director, council member and executive member with the Mediators’ Institute of Ireland from 2005 to 2012, the need for reliable information, particularly in relation to the quality of outcomes from mediation was a recurring issue. As a relatively young profession, there is a lack of research in relation to the use of external mediation, and no published research in relation to its use in the Irish context.

Work-based learning (WBL) is about ‘learning in, from, through, to and at work’, (Garnett and Nikolou-Walker, cited in Adams and Hills, 2007, p.2) and it is this ‘situatedness’ of learning that attracted me to this WBL masters. My motivation in doing this WBL masters is to conduct a piece of research that might contribute to the discussion on external mediation.

Empirical research of itself will not change attitudes to external mediation, but as a growing profession, evidence-based knowledge is required to ground and inform the discussion.
1.4 A Framework for Enquiry

Just as Mitchell (2005, p.76) suggests that an enquiry about the general nature of the relationship between change and conflict ‘seems doomed to irrelevance from the beginning’ unless brought into focus, so too, an examination of external mediation would likely suffer a similar fate, unless the discussion is defined and appropriate parameters set.

Starting with a working hypothesis that mediation is an effective mechanism for managing workplace conflict, I considered Elmore’s (2012) contention that a research question should contain ‘an explicit, hypothetical causal relationship’.

This led me to the following research question: ‘Does the use of external mediation in workplace conflict result in satisfactory outcomes for the parties to mediation and the contracting organisation?’.

This presents an exciting template for this research, in that it allows for the consideration of comparative perspectives of the different ‘clients’ to external mediation, namely the individuals who take part in external mediation and the contracting organisations. However, the breadth of the question presents daunting challenges.

1. **Resource issues:** This research is wholly independent. I will be conducting and funding the research independently, and with limited resources. Also, I have a busy practice and so will need to balance my time and input into this research with my ongoing casework.

2. **Access considerations:** Confidentiality is a fundamental principle of mediation: the discussions that take place in mediation are protected and privileged. Other than the status of the outcome, information may only be fed back to the organisation with the express permission of the individuals.

It is preferable that the individuals would be asked to engage in this research before
they partake in a mediation, however, the lack of certainty as to the number of 
external mediation that will take place in the coming months will not allow for that.

If the information is to be of value, it should ideally be representative of a broad 
base of mediators. However, mediators, and their contracting organisations, may 
reasonably be reluctant to engage individuals who have already taken part in 
mediation without this having been agreed with them at the time of the mediation.

3. **Ethical issues:** Seeking information from individuals in relation to a confidential 
process that they engaged in when they may have been in personal crisis poses 
considerable ethical considerations. The research approach must respect the 
potential sensitivity of individuals and ensure that the voluntary and confidential 
nature of their mediated engagements is upheld.

However, if these obstacles can be managed, an examination of the outcomes and 
benefits of external mediation would undoubtedly provide useful information.

To establish, at least to some degree, the ‘success’ rate and quality of satisfaction from 
the perspectives of the individuals who have taken part in external mediation would be 
helpful in addressing individual reluctance to mediation. This knowledge, however, 
would be greatly enhanced if combined with a deeper exploration of the value and 
benefits of external mediation from the perspective of the contracting organisation.

With this in mind I identified two specific questions:
1. Does external mediation result in satisfactory outcomes for the parties to mediation?
2. What is the value and benefit of external mediation to the contracting organisation?

As a mediator I am naturally curious and so, while I have an understanding of the 
quality of outcomes for individuals and organisations from my own experience as a 
mediator, I am entering this project with an open mind and in the hope of generating 
new learning and greater understanding.
1.5 Structure of the Dissertation

This thesis is structured as follows:

Chapter 2, Literature Review, presents a critical review of the extant literature in relation to the key drivers of the modern work environment and their impact on emerging conflict management practice in Ireland.

Chapter 3, Research Methodologies, considers the different methodologies and their underlying philosophies, and discusses the chosen mixed-methods approach employed to conduct this study and particular challenges encountered.

Chapter 4, Data Analysis and Findings, presents the summary data, the analysis of this data and the results of the research.

Chapter 5, Findings and Discussion, outlines the key findings from the research results and discusses the significance of these findings to the research questions in light of the Literature Review.

Chapter 6, Conclusions and Recommendations, draws conclusions from the findings in relation to the research questions and makes recommendations for new lines of enquiry arising from this research.

References and appendices are included after Chapter 6.
2. LITERATURE REVIEW

According to Elmore, a literature review is ‘an assessment of a body of research that bears on a particular question’.

However, as noted, there is no published research in relation to external mediation in workplace disputes, and so this literature review will consider current thinking around modern work practice and the emerging role of ADR processes in the modern work environment.

This literature review is based on a thorough review of my own reference materials and text books, and articles, papers and books sourced through Queen’s MSSc work-based learning faculty, colleagues and the internet.

2.1 The Modern Work Environment

When we take on the task of an inquiry into meaning we seek to develop ‘a more complex picture of the phenomenon or situation’ in our search for deeper understanding (Nikolou-Walker, 2008, p.567).

An appreciation of context is critical to an exploratory study of external mediation, and I propose to address this through a review of the extant literature pertaining to the changing work environment and, in particular, the implications of this change for emerging conflict management systems within the Irish workplace.

2.1.1 The changing work paradigm

The unprecedented scale and pace of change in the economy and world of work presents an urgent and critical need to ensure the ways we work, our workforce and workplace cultures are fit for today and drive performance and growth for the future.

Chartered Institute of Professional Development (CIPD), 2013

The ‘world of work’ is dynamic. How we work, how authority is held, how responsibilities are understood and how decisions are made, are subject to a myriad of influencing factors, both external and internal to the work environment.
As with most modern, industrialised economies, the Irish workplace has changed dramatically in recent years, moving from an adversarial, collective bargaining model as the dominant form of engagement between management and trade unions on behalf of employees, to a more collaborative approach characterised by cooperation, joint problem-solving and interest-based negotiation (Barrett and O’Dowd, 2005).

Before examining the implications of this paradigm shift in how we view and manage conflict in the workplace, I will first consider the antecedents to this change.

2.1.2 Managing for innovation and change

Innovation and change are becoming increasingly central parts of business life as organizations struggle to keep up with changing tastes, global competition and faster life cycles… While some aspects of managing innovation are perennial, new technology, the global marketplace and deregulation are forcing new organizational forms and ways of working upon businesses which aspire to be innovative.

Henry and Mayle (2002, p1)

The trends that shape our economies, societies and the ‘world of work’ have a direct bearing on how we work (CIPD, 2013, p.2). Globalisation, new technology, changing demographics and increased educational participation have dramatically reshaped the modern, industrialised labour market (CIPD, 2013, p.2-p.8).

The United States of America (US) has long been recognised as a key driver of innovation and change in the workplace. Due to its pioneering role in the adoption of ADR work practice (Manzor, 2010, p.i), and the fact that research in emerging conflict management practices comes primarily from the US (Roche and Teague, 2011, p.437), recent developments and trends in the US will be given particular consideration.

Quinn et al. (2002, p.5) contend that the ‘economic and producing power’ of the modern corporation in the US lies more in ‘its intellectual and systems capabilities’ than its hard assets.

In the UK and Wales, the services industry – defined by The Economist (cited in Quinn et al., 2002, p.7) as ‘anything sold in trade that could not be dropped on your foot’ –
now employs over four-fifths of the working population, while manufacturing, once the hallmark of industrialisation, constitutes less than a tenth. While manufacturing is still an important aspect of UK employment, the type of manufacturing conducted in the UK has changed from traditional, low-skill, low-value manufacturing work to what is termed ‘advanced manufacturing’, which entails highly-skill, knowledge-intensive activity (CIPD, 2013, p.3).

This dramatic change is echoed by Quinn et al. (2002, p.7), who contend that intellectually based services now dominate the value chains of product producers in ‘advanced economies’.

Quinn et al. (2002, p.11) argue that to compete successfully, modern enterprises must engender a greater depth in intellectual resources and ensure the capacity to integrate these resources for rapidly changing customer needs.

Pfeffer (2002, p.62-p.65) similarly argues that the sources of organisational success have changed in recent years. Citing Porter’s (1985) (cited in Pfeffer, J., 2002, p.61) five fundamental competitive forces for determining the ability of firms to earn ‘above-normal’ returns – the entry of new competitors; the threat of substitutes; the bargaining power of buyers; the bargaining power of suppliers; and the rivalry among existing competitors – Pfeffer suggests that this would indicate that the successful investor should seek industries with ‘barriers to entry, low supplier and buyer bargaining power, few ready substitutes, and a limited threat of new entrants to compete away economic returns’.

However, according to Pfeffer (2002, p.62-p.63), the five top-performing firms in the US from 1972 to 1992 are from industries (respectively airline, retail, food manufacturing, retail and publishing) characterised by ‘massive competition, horrendous losses, widespread bankruptcy, virtually no barriers to entry (for airlines after 1978), little unique or proprietary technology and many substitute products or services’.
Pfeffer (2002, p.62-p.66) contends that globalisation and modern work practice has eroded the more traditional sources of competitive success and that the common factor for the sustained advantage of these five, top-performing firms is not their reliance on ‘technology, patents, or strategic position’, but rather how they manage their workforce.

Pfeffer (2002, p.62) suggests that recognising that the basis for competitive advantage has changed is essential to developing a different frame of reference for considering issues of management and strategy. According to Pfeffer (2002, p.63) a workforce that ‘delivers superior performance’ is central to the delivery of continuous innovation and rapid response to market and technological changes:

> Achieving competitive success through people involves fundamentally altering how we think about the workforce and the employment relationship. It means achieving success by working with people, not by replacing them or limiting the scope of their activities. It entails seeing the workforce as a source of strategic advantage, not just as a cost to be minimized or avoided. Firms that take this different perspective are often able to successfully outmanoeuvre and outperform their rivals. [Emphasis applied]

Pfeffer (2002, p.67)

### 2.1.3 A strategic approach to conflict management

The reorganisation of the workplace… had pronounced implications for conflict management in that a workplace conflict management system is the logical handmaiden of a high-performance work system.

Lipsky et al. (2003, p.68)

The move to high-performance, team-based work towards the latter stages of the 20th Century necessitated a fundamental change in employment relationships (Barrett and O’Dowd, 2005; Lipsky et al., 2003; Pfeffer, 2002; Quinn et al., 2002). Also, increased employment legislation and the corresponding ‘legalisation’ of workplace conflict, particularly in the US, UK and Ireland, spurred organisations to establish more appropriate mechanisms for resolving workplace disputes (Barrett and O’Dowd, 2005; Lipsky, 2007; Lipsky and Seeber, 1998; Lipsky et al., 2003; Manzor, 2010; Roche and Teague, 2011; Roche et al., 2013).

An emerging view of conflict in the workplace as a natural and healthy phenomenon that requires effective management, rather than avoidance, precipitated a move towards
interest-based processes and the use of ADR mechanisms (Avgar, 2010; Balek, 2007; Barrett and O’Dowd, 2005; Lipsky, 2007; Lipsky and Seeber, 1998; Lipsky et al., 2003; Manzor, 2010; Roche et al., 2013).

Significantly, Lipsky et al. (2003, p.68) observe that their survey of Fortune 1000 companies shows that the companies that adopted advanced workplace practices ‘such as team-based production’ were more likely to have a conflict management system.

Likewise Colvin (2004) (cited in Roche and Teague, 2011, p.440) observes that organisations that adopt human resources management practices ‘focussed on generating commitment, and high performance may also seek to develop mechanisms for solving workplace problems expeditiously and fairly to avoid problems escalating or relations becoming embittered’.

Throughout the literature, this shift in recognition of the management of conflict as a key corporate function is attributed as signalling a fundamental change in how management and workers perceive their roles and relationships, and how conflict in the workplace is understood and managed.

2.1.4 Conflict management and the new social contract

We are all players in the game of life, with divergent aims and aspirations that make conflict inevitable. In a healthy society, a balance between these differing aims and aspirations is achieved so that the benefits of cooperation are not entirely lost in internecine strife. Game theorists call such a balance an *equilibrium*. Sustaining such equilibria requires the existence of commonly understood conventions about how behaviour is to be coordinated. It is such a system of coordinating conventions that I shall identify with a social contract. [Emphasis in original]


According to Lipsky et al. (2003, p.32), classical philosophy understood a social contract as ‘a compact between rulers and their people that defines their respective rights and duties’.
Lipsky et al. (2003, p.34-p.35) suggest that while the concept of social contract between the citizen and their sovereign, or the individual and the state, has evolved over the years, it is only in discussions in relation to the ‘new’ social contract that explicit consideration of alternative means of conflict resolution has emerged.

Drawing a distinction between conflict management and the more narrow definition of dispute management, Lipsky et al. (2003, p.8-p.9) differentiate ‘conflicts’ and ‘disputes’ as respectively, ‘organizational friction that produces a mismatch in expectations of the proper course of action for an employee or group of employee’ that may or may not, lead to disputes and ‘a subset of the conflicts that require resolution, activated by the filing of a grievance, a lawsuit against the organization, or even a simple written complaint’ which represents ‘only the tip of the iceberg of complaint’.

To manage disputes successfully, ‘the organisation need only maneuver the dispute into a forum most to its advantage to attain lower costs (transactional and outcome), a quicker speed of resolution, or simply a higher probability of a better outcome’ (Lipsky et al., 2003, p.8-p.9). Conflict management however requires a broader and more systemic approach based on the shared management and prevention of conflict across the organisation (Avgar, 2010; Kenny, 2005; Lipsky et al., 2003).

This approach to conflict management, which takes a deeper and more strategic view of conflict, is a recurring theme throughout the literature (Avgar, 2010; Barrett and O’Dowd, 2005; Doherty and Teague, 2013; Kenny, 2005; Lipsky, 2007; Lipsky and Seeber, 1998; Lipsky et al., 2003; Roche and Teague, 2011; Roche et al., 2013).


Avgar (2010, p.239) contends that, at its core, social capital is ‘a negotiated or conflict resolution based resource… supported by the very definition of negotiation’. In contrast to other forms of capital, social capital ‘can only be generated by interactions between
two or more parties’ and in the process of developing any new resource such as social capital ‘conflicts and disputes will naturally arise and will involve some form of negotiation if collaboration over the maintenance and use of this resource is to be sustained’ (Avgar, 2010, p.239). [Emphasis applied]

As observed by Avgar (2010, p.239), this proposition of social capital as a negotiated capital, applies ‘a conflict management lens to the conceptualization of social capital’.

Avgar (2010, p.240) contends that the notion that social capital is ‘jointly owned’ and ‘entails an inherent interdependence between the owners of this capital’ suggests that ‘providing the parties with appropriate mechanisms for working out their differences and for assisting in the resolution of conflict is central to sustaining the social capital developing process’. [Emphasis applied]

Doherty and Teague (2013, p.5) observe, however, that while there is an increasing move in HRM towards policies that seek to ‘create a symbiosis between employee behaviour and organizational performance’ there are competing views about the extent to which HR policies might engender positive employee behaviour.

2.2 The Move Towards Interest-Based ADR in Ireland

The emergence of new work practice in the Irish context largely reflects the US experience.

The National Centre for Partnership and Performance (NCPP, 2004(b)) (cited in Barrett and O’Dowd, 2005, p.20-p.22) identifies the need for product innovation and marketing as a key driver of change in the Irish private sector, and regulatory requirements, both national and European, accountability and the need for increased efficiency as key drivers in the public sector. Also, European developments in industrial relations and the increased presence of US multinationals in Ireland are cited as effecting a shift from the traditional, adversarial model of Irish industrial relations towards a more collaborative, interest-based approach (Barrett and O’Dowd, 2005, p.2).
Roche and Teague (2011), in their discussion on emerging practices for managing conflict involving groups of employees, identify the following key drivers:

1. Labour market changes
2. The changing workforce demographic
   …and particular to the Irish context:
3. Social partnership, and
4. Employment legislation

Roche and Teague (2011, p.436-p.439) contend that increased levels of employment legislation, and in particular legislation relating to individual employment rights, have significantly impacted on workplace conflict management procedures as organisations seek to foster good practice in conflict management and ‘stay on the right side of the law’. They further suggest that the management of workplace conflict is now accepted as a core element of the industrial relations discipline in Ireland and suggest a move towards a greater use of ADR practices.

The Irish Law Reform Commission’s (LRC) (2010, p.99) in-depth and considered report ‘Alternative Dispute Resolution: Mediation and Conciliation’ argues the benefits of integrated, internal, ADR processes for managing workplace disputes. In particular it notes: greater flexibility within the workplace; procedural flexibility; efficiency; and ‘confidentiality which provides privacy for the parties and protection for the organisation’s reputation’. Significantly, the LRC notes that an agreement reached through mediation may include ‘a wide range of novel outcomes’ that would not normally arise through a court engagement and which ‘may provide solutions that better suit each parties’ needs’.

However, despite the compelling arguments for a more holistic, interest-based approach to conflict management in the workplace, there is a level of resistance.

Doherty and Teague (2013, p.2, p.21-p.22) in their recent study into the extent to which subsidiaries of non-union multinationals in Ireland are diffusing ADR practices, observe a dichotomy between the wish of HR managers in these organisations to create a form
of ‘organizational citizenship behaviour’ amongst their employees that fosters a sense of belonging to the organisation and a feeling of duty to other employees, but which ‘seeks to push conflict to the margins, framing it almost as dissident and deviant behaviour’. Doherty and Teague (2013, p.22) observe that this approach is innovative, insofar as it ‘puts at a premium employee compliance with the core goals of the organization’, but not in the way suggested by the dominant themes in the literature. They suggest that this antipathy to the ‘conflict management’ paradigm is a ‘throwback to the old days of personnel management, strong unions and widespread industrial action’ (Doherty and Teague, 2013, p.21).

2.3 Conclusion

The literature clearly suggests that the modern work environment is in a state of flux, reflecting and responding to a complex mix of external and internal factors. The move towards interest-based work systems is generally viewed as being directly in response to market needs. However, the literature recognises that while important changes are taking place in relation to interest-based conflict management systems, there is little empirical evidence outside of the US to assess the extent to which these new practices are being adopted.

The extant literature presents a compelling argument for innovation, improved productivity and enhanced cohesion as central to the adjustment of organisations to market conditions, and suggests a growing, though not uncontested, recognition of the role of mediation and ADR practice in this new work model.

Through this study I propose to examine whether the experience of the individuals who engage in external mediation and the contracting organisations might shed some light on this contention.

In the next chapter, Research Methodology, the different methodologies are considered and the chosen methodology for this research task discussed.
3. RESEARCH METHODOLOGY

Methodology relates to the design and choice of particular research methods and their justification in relation to the research project. King and Horrocks (2010, p.8) suggest that *epistemology*, the philosophical theory of knowledge, is vital to any methodological approach, and requires an explicit understanding of the philosophical and theoretical positions informing the research process.

In this chapter the two, fundamental philosophical perspectives of *positivism* and *constructivism* are discussed and the different methodological approaches considered.

A selection of research strategies and their appropriateness to the chosen research topic are examined, and the rational for the chosen research approach discussed.

The methods of data collection and the procedures followed are also outlined in detail.

The approach to data analysis and presentation of the actual data and findings is discussed in Chapter 4, Data Analysis and Results.

3.1 The Positivistic and Constructivist Divide

According to King and Horrocks (2010, p.11-p.12), *scientific* approaches are grounded in an ontological framework that is based on the development and application of general laws, or principles, to explain a given phenomenon. This *positivist* approach is *nomothetic*, i.e. ‘situated within the epistemological tradition of *objectivism*’ where objects in the world have meaning or *truth*, ‘that exists independently from any subjective consciousness of them’.

By its nature, *positivist* research relies on *quantitative* methods of research that deliver precise and definite measurements that can be compared with group norms and applied to accepted principles: provided the examination is conducted within the same parameters and to the same specifications, it will repeatedly yield the same results.
Robson (2002, p.20-21) describes positivism as the search for ‘the existence of a constant relationship… between two variables’ that can be explained in terms of a general law.

The constructionist approach is grounded in an ontological framework that views society, not as a pre-existent ‘real’ entity, but rather as the product of social practices and engagement (King and Horrocks, 2010, p.9/p.20-p.21).

King and Horrocks (2010, p.20-p.22) suggest that the constructivist/constructionist approach relies on qualitative methods, such as open interviews and observations, that allow for the joint construction of meaning by the researcher and the participants.

If we consider positivism and constructionism as the extremes of a continuum, their contrasting features might be set out as in Table 1 below.

<table>
<thead>
<tr>
<th>Table 1: Comparison of the positivist and the constructionist approach (Abridged from: King and Horrocks, 2010; Kenny, 2005; Robson, 2002)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Epistemological basis</strong></td>
</tr>
<tr>
<td>One version of reality: Objects have meaning that exist independent from any subjective consciousness</td>
</tr>
<tr>
<td><strong>Ontological framework</strong></td>
</tr>
<tr>
<td><strong>Knowledge sought</strong></td>
</tr>
<tr>
<td><strong>System type</strong></td>
</tr>
<tr>
<td><strong>Causation</strong></td>
</tr>
<tr>
<td><strong>Type of data</strong></td>
</tr>
<tr>
<td><strong>Type of question</strong></td>
</tr>
</tbody>
</table>
phenomenon relates to a general law or sets of laws | people hold and the meanings they attach to action.

<table>
<thead>
<tr>
<th>Research type</th>
<th>Quantitative (surveys, questionnaires etc)</th>
<th>Qualitative (interviews, observation, focus groups etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design approach</td>
<td>Pre-determined research design</td>
<td>Emergent research design</td>
</tr>
<tr>
<td>Role of researcher</td>
<td>Objective and ‘bias free’* - the researcher has no demonstrable impact on the outcome of the research</td>
<td>Researcher is co-producer and central to the interpretation of meaning – <em>reflexivity</em> of the researcher critically relevant to the construction of meaning</td>
</tr>
<tr>
<td>Role of participants</td>
<td>Research objects (including participants) seen as scientific objects and informants or producers of data</td>
<td>Participants as partners and ‘experts’ whose views are sought</td>
</tr>
<tr>
<td>Scale of study</td>
<td>Large-scale studies</td>
<td>Small-scale studies</td>
</tr>
<tr>
<td>Findings</td>
<td>Independent of context and researcher bias</td>
<td>Context dependent</td>
</tr>
</tbody>
</table>

* That a researcher can be bias-free is a contested notion. Sarantakos (1998, p.43-p.45) (cited in Robson, 2002, p.25) contends that standardisation of process and distance from the research topic do not guarantee objectivity as the perceptions and meanings of the researcher inform the research process.

### 3.2 A Critical Theory Approach

While neither a pure *positivist* nor pure *constructionist* position is suitable for this proposed research, a position between the two, which might draw on aspects and features of each, seems an appropriate approach.

This is in line with Garnett and Nikolou-Walker’s (2011, p.1) argument for a *critical theory* approach, which incorporates both the scientific (*positivist*) paradigm and the interpretive (*constructionist*) paradigm, but which is concerned with praxis – ‘action that is informed by reflection with the aim to emancipate’.

King and Horrocks’ (2010, p.19-p.21) similarly positioned *contextual* approach articulates the balance required in the exploration of meaning in context:
The context of a historical, cultural and social milieu is integral to how we live, understand and experience our lives. The realist, scientific linear process of cause and effect, where directly observable facts are the arbiter of what counts as knowledge, becomes just one of many explanations set within its own historical context (Freyerabend, 1993). This means that all knowledge produced is dependent upon the context, including the perspectives or standpoint taken when formulating the research.

Robson (2002, p.370-p.371) suggests particular advantages in taking a multiple method approach in ‘real world’ research suggesting that studies which combine methods that produce quantitative data with methods that yield qualitative data can both reduce ‘inappropriate certainty’ and allow the researcher to address complementary questions within a study.

3.3 Design of Study
Armed with this methodological framework, which allows for a level of pre-determined specification, while maintaining the flexibility to adapt or respond to emerging learning, and to combine different methods to better address the complementary questions I seek to address, I will reconsider the purpose of my study before outlining my choice of methods.

There are two distinct aspects that I wish to pursue through my choice of methods:
1. To examine the efficacy of external mediation from the perspective of the individuals who have taken part in an external mediation.
2. To explore the outputs and value of external mediation from the perspective of the contracting organisation.

In relation to the first task above, the method should allow for the gathering of statistical data in relation to settlement rates in external mediation. However, as settlement rates, i.e. the number of cases that reach agreement, is a narrow definition of ‘success’ in mediation, this method should incorporate some mechanism to examine the level and quality of satisfaction, or otherwise, on the part of the individuals.
In relation to Question 2 above, the method should allow an exploration that might enhance our understanding of the value of external mediation from an organisational perspective.

3.3.1 Methods of data collection

Kane (1985, p51) refers to choice of research techniques as akin to choosing fishing flies: ‘you choose the right one for the fish you want to catch’. In considering different techniques of observation, interviews, questionnaires, and written and documentary sources, Kane notes that each technique is designed to get certain types of information. In other words, the research technique must be fit for the particular purpose – if you use rag-worm to catch salmon, you are likely to be disappointed!

In considering qualitative research, Patton (1987, p15) asserts the importance of exploration and discovery:

> Qualitative methods are particularly oriented toward exploration, discovery, and inductive logic. An evaluation approach is inductive to the extent that the evaluator attempts to make sense of the situation without imposing pre-existing expectations on the program setting. [Emphasis added]

Patton (1987, p.9) further suggests that research design is ‘necessarily an interplay of resources, practicalities, methodological choices, creativity, and personal judgements’.

In approaching this task, I considered a number of methodologies including: case studies; focus groups; participant observation; surveys and questionnaires; and interviews.

I will briefly consider the suitability of each of these in light of the particular task.

3.2.1.1 Case studies

As suggested by Patton (1987, p.19), case studies are particularly useful where one needs to understand a particular problem or situation in great depth, and where the evaluation aims to capture individual differences or unique variations from one programme setting to another, or from one programme experience to another. Case studies would be useful in examining the experience of the contracting organisation in
using external mediation, providing a great depth of information and understanding. However, the aim of this study is to examine the efficacy of external mediation in light of identified key factors, and a method that looks at development and trends across cases rather than an in-depth, individual case would be more appropriate.

**3.2.1.2 Focus groups**

The use of focus groups is an efficient and well-established method for gathering qualitative data. As this method entails a group interview on a specific topic, it allows the researcher to gather data from several people at the same time. The quality of data from focus groups may be enhanced as group dynamics tend to focus on the most important topics, and levels of consistency and divergence are easily identified (Robson, 2002, p.284).

However, in this particular study it would be ethically inappropriate to bring the parties to mediation together for a group interview. Also, the HR/case managers may be less inclined to openly discuss conflict within their organisations in a group setting with their peers.

**3.2.1.3 Participant observation**

Participant observation is generally understood as the direct observation of the people in a group, unit, organisation etc., with a view to better understanding the particular focus of the enquiry. While participant observation is useful where, for example, a particular event or process that takes a short time is the focus of the enquiry, the purpose of this study is to develop a better understanding of the experiences and perspectives of individuals and organisations, and so this method would be ineffective for this task (Kane, 1985, p.53-54; Robson, 2002, p.314-p.320).

**3.2.1.4 Use of survey or questionnaire**

The use of a survey or questionnaire generally involves a set of questions being presented to a representative sample, or an entire group, to gather data. Robson (2002, p.232) suggests that surveys and questionnaires may be carried out to gather data for a range of research purposes including exploratory, descriptive, explanatory or
‘emancipatory’. However, he suggests that this method is ineffective in exploratory studies and most suited where the researcher knows what kind of information they wish to collect.

Particular disadvantages associated with surveys include low response rates and limitations in relation to the type and depth of data that may be collected. Advantages, however, include potential access to a broad sample, and the anonymity that can be designed into the survey or questionnaire (Kane, 1985, p.72-74; Patton, 2002, p234).

3.2.1.5 Research interviews
Kane (1985, p.62-p.63) suggests that research interviews may take several different forms, ranging from informal exchanges to structured, or semi-structured, engagements. As noted by Kane, unstructured interviews, where there is no set order or wording of questions, are most suited to where the interviewer is not seeking the same information from each person, and where the type of information may not be known in advance of the interview.

Structured interviews tend to have a highly structured format in which the questions are decided in advance and presented in a pre-decided order, with the responses generally selected from a small list of alternatives. Semi-structured interviews have pre-determined questions but a greater flexibility in relation to the order and wording of the questions, with questions being omitted or new questions added as appropriate (Robson, 2002, p.269-270).

As noted by Robson (2002, p.271), qualitative research interviews are most appropriate in studies that focus on the meaning of particular phenomena to participants and where individual perceptions of processes are to be studied.

3.4 Chosen Design
Considering the topic of my research and the particular information sought, an inductive, multiple-method approach seemed most appropriate.
3.4.1 Question 1: Chosen method and sample

**Question 1:** Does external mediation result in satisfactory outcomes for the parties to mediation?

In approaching Question 1, the use of an anonymous questionnaire (see Appendix 1C) seemed most appropriate, as this could address a number of requirements:

1. The provision of statistical data
2. The provision of qualifying information
3. Protect the anonymity of the individuals who participate
4. Support the voluntary nature of individual engagement

The questionnaire was a single page questionnaire, with yes/no answers to allow statistical information to be gathered, and areas for comment to enable a better understanding of the experience from the perspective of the individual.

To address the particular challenges outlined in Chapter 1 a three-step process was devised:

**Step 1:**
Direct engagement with a sample of mediators to ascertain their willingness to act as contact points for organisations that they have provided external mediation services to.

**Step 2:**
Participating mediators approach their contracting HR manager/case manager to ascertain their willingness to forward the questionnaire documentation (see Appendix 1A-1C) to staff members who have directly engaged in external mediation with the participating mediator.

**Step 3:**
Consenting HR manager/case managers provide a set of questionnaire documentation (see Appendix 1A-1C) to staff members who have directly engaged in external mediation with the participating mediator. Those individuals willing to participate complete the questionnaire and return it directly to this researcher, in the provided, stamped addressed envelope.
At each stage of this process, the voluntary and confidential nature of participation was stressed in both the cover correspondences – initial email to the mediators; cover letter to the HR/case manager (see Appendix 1H); cover letter to the individuals (see Appendix 1B) – and in the Research Information Sheet (see Appendix 1A) and Consent Form and Anonymous Questionnaire (see Appendix 1C) which were provided for information at each stage.

The voluntary and confidential nature of participation was emphasised in the cover letters, in the Research Information Sheet and Consent Form. As a multi-layered approach the likelihood of people electing not to participate was multiplied, but this seemed an appropriate approach considering the nature of mediation and the need to respect the relational integrity between the mediators and contracting organisation and between the contracting organisation and the individuals who had engaged in an external mediation.

**The sample**

Mediation is currently unregulated in Ireland – anyone may call themselves a mediator and seek mediation work. However, the Mediators’ Institute of Ireland (the MII), a member organisation with, in the region of, 700 accredited mediator members, is an accrediting body for mediators. The MII requires MII-approved mediators to have completed a recognised mediation training programme, to have successfully completed an approved, skills-based assessment, to engage in annual continual professional development in mediation and to hold appropriate professional indemnity insurance for their type and size of practice. Also, MII-approved mediators are bound by the MII Code of and Ethics and Practice ([www.themii.ie/code-of-ethics.jsp](http://www.themii.ie/code-of-ethics.jsp)) and subject to independent regulation. The MII provides a public database on its website ([www.themii.ie/find-a-mediator.jsp](http://www.themii.ie/find-a-mediator.jsp)) which lists MII-approved mediators who are available for private work.
The sample chosen in relation to the anonymous questionnaire were those 173 approved mediators listed on the MII public database in May 2013 as available for work in workplace disputes.

3.4.2 Question 2: Chosen method and sample

**Question 2:** What is the value and benefit of external mediation to the contracting organisation?

In addressing Question 2, an approach combining aspects of both structured and semi-structured interviews seemed appropriate. Pre-determined questions were identified (see Appendix 1F and 1G); however, to allow for an in-depth exploration of the perspectives of the interviewees, the order of question was not deemed important and the approach was one of enquiry, using different types of question to gain a better understanding of the perspectives of the interviewee (see Appendix 5: Structured Interviews – Redacted).

The interviewees were provided, in advance, with a copy of the Research Information Sheet (see Appendix 1A) and a copy of the Consent Form and interview questions (see Appendix 1F and Appendix 1G). All interviews were conducted on a one-to-one basis, and with the permission of the interviewee, the interviews were digitally recorded.

**Sample:**
The interviewees consisted of four HR/case managers from organisations of varying sizes in the health, education and the public sector and five experienced, external mediators who specialise in workplace conflict.

The HR/case managers interviewed comprised of two female HR/case managers and two male HR/case managers. The external mediators are well known to me and so, in light of limited time resources, these interviews were conducted by phone. Of this sample of mediators, two were male and three female.

3.4.3 Difficulties encountered

A number of difficulties were encountered in conducting this research.
1. **Decline rate:**

   A sample group of 173 mediators were contacted in relation to the anonymous questionnaire. Of this sample, 60% (104) responded, 42.20% (73) with a ‘no’ response and 17.92% (31) with a ‘yes’ response. Of the 31 mediators who initially agreed to participate, 19 subsequently declined (see Figure 7: ‘Yes’ replies – subsequently declined).

   In light of the particular challenges in conducting this research a high decline rate had been anticipated, however, the final number of mediators who agreed to participate was significantly less than had been expected. As the need for research is generally accepted by mediators, this researcher felt that a better understanding of the reasons for mediators not participating might provide valuable information for future research.

   In light of this, it seemed appropriate to contact those mediators who declined to participate with a view to eliciting information as to the specific issues and reasons for non-participation. However, as a voluntary process, recourse to the mediators could only be done in such a way that would not compromise the voluntary nature of participation or in anyway be a cause of embarrassment or pressure for these mediators. An explanatory email was issued to a total of 92 mediators who had declined to participate including the initial 73 ‘No’ responses and the 19 who initially responded ‘Yes’ but subsequently declined. This communication stressed that no response was required but that if there was a particular reason why the mediator had declined that they were open to sharing, that their feedback would be appreciated.

   This communication resulted in a response rate of 88%. An analysis of this information is included in Chapter 4, Section 4.3, Analysis of Mediator Sample Participation.
2. **Resource issues:**
   The time commitment required to conduct this research was significant and posed particular challenges in relation to time resources. During the latter stages of this project this was managed by me declining new work.

3. **Project limitations:**
   The word limit of this dissertation was a particular challenge in light of the richness of the data collected, which, in the view of this researcher, deserved a more in-depth examination.

3.5 **Ethical considerations**
   The exploration of meaning through context-dependent learning places a particular onus on the researcher to ensure appropriate ethical standards.

   King and Horrocks (2010, p.22) suggest that *reflexivity* is particularly relevant ‘to a social constructionist epistemology’ in light of the role of the researcher in ‘the construction of meaning’.

   Gough (2003, p.25) (cited in King and Horrocks, 2010, p.67) suggests that ‘as a general rule, reflexivity focuses on revealing “hidden agenda” as these will have a direct impact not only on how the research is undertaken but also on the whole research process from start to finish’.

   King and Horrocks (2010, p.127) look beyond Gough’s assertion, arguing that if the audience is to understand why a researcher ‘offers particular interpretations of events and people’s lives, then there is a necessity to critically appreciate the theoretical lens through which they [the events and lives] are being viewed’. [Emphasis applied]

   Potential conflicts of interest were identified, in particular in relation to my role as a practitioner researcher with an interest in the outcomes from this research, and this was addressed by ensuring clarity and transparently both throughout the project and in the
presentation of analysis and findings. Ethical concerns and potential ethical dilemmas informed the design of this research and how the research was conducted.

The responsibility of the mediator to the parties in mediation presented a helpful reference point in my approach to this study. The role of reflexivity is central to mediation, as is the fundamental principle of actively and knowingly ensuring, as far as possible, the wellbeing of the parties in mediation.

The very nature of WBL – learning within one’s work about one’s work – must require a similar level of responsibility on the part of the researcher, to the participants and stakeholders associated with the work practice or environment, and to my colleagues, current and future. The potential loss of new insights and relevant learning at the ‘lower’ end of the continuum and the possible undermining of the profession at the other end call for a conscious reflexivity that is ethically sensitive and openly transparent.

Ensuring a safe environment that upholds the integrity, self-determination and well-being of the individuals is a central tenet of mediation: the requirement for clarity, self-determination, confidentiality and the safeguarding of participants in research required a similar level of responsibility and awareness in my role as researcher. At each step of this research I sought to anticipate potential ethical dilemmas and adjusted the design and procedures as required.

Throughout this project, I was particularly mindful of:

1. An overriding responsibility for the wellbeing of the participants in this study, including mediators, HR/case managers, individuals and their organisations, and their right to privacy, dignity, self-determination and respect.
2. The need to ensure the rights of all participants, including their right to privacy, confidentiality and anonymity, and to cause no harm or distress to any participant.
3. The need to ensure that all participation was based on informed consent and that those participants who engaged did so willingly and knowingly.
4. A responsibility to both academic and civil society to conduct and present this research in accordance with the stated ethical requirements of Queens University Belfast and the Mediators’ Institute of Ireland, and in line with the spirit of these requirements.

5. My responsibility to the mediation fraternity to uphold the standards inherent in our profession.
4. DATA ANALYSIS AND RESULTS

The analysis and results of this research are laid out as follows:

1. Analysis of the anonymous questionnaires including summary results and emerging themes
2. Analysis of the structured interviews including emerging and predominant themes
3. Analysis of mediator sample participation and summary results

The key findings derived from these results and the relevance of these findings to the specific research questions are then considered in Chapter 5: Findings and Discussion.

4.1 Analysis of the Anonymous Questionnaires

A total of 140 sets of questionnaire documentation (see Appendix 1) were issued to mediators who agreed to participate as contact points in this study. Of the 140 sets of documentation issued, 32 completed questionnaires were returned by post directly to this researcher. The statistical results and narrative results from these questionnaires are presented below.

4.1.1 Statistical results from the anonymous questionnaires

Figure 1: Length of time individuals experienced difficulties before mediation suggested

![Figure 1: Length of time individuals experienced difficulties before mediation suggested](chart.png)
The length of time that the individuals had been experiencing difficulties with their counterpart in the dispute ranged from three to four months to seven years, with a mean of two years and two months (see Figure 1 above).

**Figure 2: Did mediation improve the situation?**

Of the total 32 respondents, 78.12% (25) stated that the mediation improved the situation, 18.75% (6) stated that the mediation did not improve the situation and 3.13 (1) did not specify (see Figure 2 above).

**Figure 3: Was a mediated agreement reached?**
Of the 32 respondents, 87.5% (28) stated that they had reached a meditated agreement, 9.37% (3) stated that they had not reached agreement and 3.12% (1) did not specify (see Figure 3 above).

Of the total 32 respondents, 75% (24) confirmed that the mediated agreement was still standing.

**Figure 4: Was the mediation helpful?**

![Pie chart showing percentages of responses to the question: Was the mediation helpful?]

In response to whether the mediation was helpful or not, 78.13% (25) answered affirmatively, 15.62% (5) answered negatively and 6.25% (2) did not specify (see Figure 4 above).

**4.1.2 Analysis of the narrative comments from the questionnaires**

As noted above in the Methodologies chapter, analysis of the structured interviews was conducted prior to the analysis of the narrative comments from the questionnaires. Full details of the analysis and coding of the interviews are included below (see below section 4.2: Analysis of Structured Interviews).

Initial analysis of the narrative comments from the anonymous questionnaires comprised of the comment items being listed according to question, and in relation to
Question 4, further categorised into ‘yes’ answers and ‘no’ answers (see Appendix 2: Raw list of narrative comments from questionnaires).

Subsequently, the comment items in relation to each question were separately analysed, as detailed below.

4.1.2.1 Analysis of narrative comments to Question 4: ‘In your view, was the mediation helpful?’

An initial review of the raw list of comments (Appendix 2) from the respondents who had circled ‘yes’ in answer to Question 4 identified items of similarity, which were colour coded. These items were then cross-referenced to the benefit categories identified below in the analysis of the structured interviews (Table 5: List of Benefits for Organisations Identified by HRM/Case Managers), and then grouped under the relevant categories of ‘new insights/individual learning’; ‘procedural confidence/process strengths’; and ‘improved working relationship’. Where appropriate, items of relevance to more than one category were included in each relevant category: for example, ‘It allowed us to work out a long series of difficulties’ (4n) was deemed relevant to both ‘procedural clarity/process strengths’ and also ‘improved working relationship’ as the process of mediation is particularly suited to complex, multiple-issue conflicts, and the positive resolution of multiple difficulties between colleagues will improve the working relationship.

The categorised list is set out below in Table 2. (The full raw list of narrative comments to Questions 4, 5 and 6 of the anonymous questionnaires are available in Appendix 2: Raw List of Narrative Comments from Questionnaires.)

Of the 78.12% (25) respondents who circled ‘yes’ to Question 4, a total of 15 included comments on how the mediation was helpful. Of these 15, 40% (6) referred to new learning and insights gained through the mediation; 33.3% (5) referred to the particular process strengths of mediation, e.g. ‘Helpful to put all on record in neutral and impartial fashion’ (1h); and 13.3% (2) commented on the mediation leading to an improved working relationship.
| Table 2: Categorised list of narrative comments: Question 4 (answered affirmatively) |
|----------------------------------|---------------------------------------------------------------------------------------------------|
| **Question 4:** Was the mediation helpful?                                                                                     |

**New insights/individual learning**

4b: It helped me [in] thinking about the larger picture and the hurt that was caused.

4d: Understand we were both part of the problem and we had the power to fix it.

4f: To talk about the issues and to understand their side.

4i: We got to talk through the issues and to understand the other side.

4j: Yes, mediation gave both of us the opportunity to raise issues that heretofore we found difficult to discuss or address. Having a trained and experienced mediator facilitate the process made a huge difference. It gave comfort that each was being heard and in our case this case resulted in better understanding of the other person’s perspective and allowed us to come to an accommodation that was workable.

4m: Both parties left with a better understanding of each other and appreciation of roles and responsibilities in the workplace.

**Procedural confidence/process strengths**

4a: Initially I found it very adversarial as I was perceived as the ‘guilty party’. Issues were on the table so it pre-empted the mood of the mediation. I found it a difficult but eventually worthwhile process.

4c: It brought matters to a level and provided a pathway to resolution.

4h: Helpful to put all on record in neutral and impartial fashion. Showed commitment by me to resolve situation.

4j: Yes, mediation gave both of us the opportunity to raise issues that heretofore we found difficult to discuss or address. Having a trained and experienced mediator facilitate the process made a huge difference. It gave comfort that each was being heard and in our case this case resulted in better understanding of the other person’s perspective and allowed us to come to an accommodation that was workable.

4n: It allowed us to work out a long series of difficulties.

4o: It created a safe place for the underlying issues to be brought out into the open and to be looked at.

**Improved working relationship**

4e: Yes, we have a much ‘easier’ working relationship now.

4l: It cleared the air between me and my work colleague.

4n: It allowed us to work out a long series of difficulties.

Three of the five respondents who answered ‘no’ to Question 4, ‘Was the mediation helpful?’ included clarifying comments:
Success or other of mediation is entirely dependent on the relative strength of any potential legal claim. (4p)

Mediation promised much but didn’t deliver. In the end weariness with the process meant just signing anything to finish it. (4q)

My complaint was about being bullied by a co-worker. Mediation encouraged him to become stronger and more directed in his behaviour towards me. After mediation things slowly slipped back to normal. (4r)

Item ‘4p’ was noted by a respondent who also noted that the mediation had improved the situation, that an agreement had been reached, and in response to Question 5, ‘Is there any one thing that stands out as being particularly helpful to you?’ answered: ‘The ability to air problems quickly and without prejudice’.

Items ‘4q’ and ‘4r’ are of greater concern: ‘4q’ indicates a lack of awareness and judgement on the part of the mediator in that they finalised an agreement where at least one of the parties signed the agreement out of weariness with the process; and ‘4r’ indicates a possible abuse of process and an unacceptable outcome for the party in that their situation was worsened by mediation.

4.1.2.2 Analysis of narrative comments to Question 5: ‘Is there any one thing that stands out as being particularly helpful to you?’

A similar approach was taken in the analysis of the raw comments to Question 5.

Having reviewed and grouped the items according to category, it was noted that, while there was a level of similarity between ‘new insights/individual understanding’ comment items for Question 4 and Question 5, Question 5 elicited more specific answers, particularly in relation to the process strengths of mediation.

The provision of a ‘safe’ space, protected by confidentiality was repeatedly cited as the thing that stood out as being most helpful (5b; 5f; 5h; 5l; 5n; 5q; 5v), allowing the participants to safely discuss matters that otherwise might not be discussed:

- The ability to air problems quickly and without prejudice. (5f)
- Airing of views that otherwise could not be aired. (5l)
- Being able to talk honestly and openly about what had happened. (5n)
An additional category ‘mediator skills’ was included in light of the 19.3% of respondents who explicitly identified particular skills of the mediator as being the most helpful thing in the mediation:

The support of the mediator and lack of judgement. (5j)

The professional and effective manner and processes of the mediator to move participants along the journey. (5m)

The mediator was so good in helping us to deal with very delicate issues. (5u)

Where a data item was deemed to be relevant to more than one category, it was included in each of the relevant categories: for example, ‘Mediator facilitating reflection and opening up for better understanding’ (5x) was included under both ‘new insights/individual learning’ and ‘mediator skills’ as the comment explicitly acknowledges the mediator’s role in facilitating understanding. The re-categorised list for Question 5 is set out below in Table 3.

<table>
<thead>
<tr>
<th>Table 3: Categorised list of narrative comments: Question 5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Question 5: Is there any one thing that stands out as being particularly helpful to you?</strong></td>
</tr>
<tr>
<td><strong>New insights/individual learning</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>Procedural confidence/process strengths</strong></td>
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</table>
4.1.2.3 Analysis of narrative comments to Question 6: ‘Is there any one thing that you found unhelpful, or that you would have liked to have been done differently, to either improve your experience and/or the outcome of the mediation?’

An initial analysis of the raw comment items in relation to Question 6 sought mention of common factors and/or broad similarities, and these were initially colour-coded in two broad groups of ‘timings/duration’ and ‘difficulties experienced’. Further examination of the ‘timings/duration’ group resulted in additional refinement of these items into three sub-groups of ‘earlier intervention required’, ‘process too slow/too long in duration’, and ‘process too short’. This categorised list is set out below in Table 4.
The ‘difficulties experienced’ items were primarily in relation to the personal challenges encountered by the individuals in engaging in mediation, including stress and concerns around being cast in the role of perpetrator:

Issues on the table pre-empted the [undecipherable] of mediation. I believed initially I was on trial despite reassurances to the contrary. (6a)

I’d prefer if she hadn’t brought a big file. We didn’t view her file but at the time it made me think she had stuff on me. Parties should be discounted from bringing in files. (6e)

Some respondents felt the mediation process was too long (5), and some felt it was too short (3). Two respondents cited a need for earlier access to mediation.

<table>
<thead>
<tr>
<th>Table 4: Categorised list of narrative comments: Question 6</th>
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</thead>
<tbody>
<tr>
<td><strong>Question 6:</strong> Is there any one thing that you found unhelpful, or that you would have liked to have been done differently, to either improve your experience and/or the outcome of the mediation?</td>
</tr>
<tr>
<td><strong>Difficulties experienced</strong></td>
</tr>
<tr>
<td>6a: Issues on the table pre-empted the [undecipherable] of mediation. I believed initially I was on trial despite reassurances to the contrary.</td>
</tr>
<tr>
<td>6e: I’d prefer if she hadn’t brought a big file. We didn’t view her file but at the time it made me think she had stuff on me. Parties should be discounted from bringing in files.</td>
</tr>
<tr>
<td>6h: Would have preferred to have a better understanding of the mediation process before I started out on it.</td>
</tr>
<tr>
<td>6k: The whole thing was very stressful.</td>
</tr>
<tr>
<td>6m: Not really, it was always going to be hard.</td>
</tr>
<tr>
<td>6n: Counterpart’s reluctance to engage, though handled very well, was still a challenge.</td>
</tr>
<tr>
<td>6o: Some participants did not wish to complete the work.</td>
</tr>
<tr>
<td><strong>Earlier intervention required</strong></td>
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<tr>
<td>6b: For the company to go forward to mediation earlier.</td>
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<tr>
<td>6p: It took so long for mediation to take place.</td>
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<tr>
<td><strong>Process too slow/too long in duration</strong></td>
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<tr>
<td>6c: The long period of time the mediation took.</td>
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<td>6f: Felt that the process was very dragged out and expensive.</td>
</tr>
<tr>
<td>6i: It’s difficult to pinpoint any particular aspect that was “unhelpful”. However, personally I felt the process can be too accommodating and thus the process appears to drag on and on. Fully appreciate that folk do operate at different speeds and are coming from different “understanding of reality” but nevertheless it did seem to drag and kept going over old ground. That said the ‘prize’ to be gained from a successful mediation is well worth the effort.</td>
</tr>
<tr>
<td>Process too slow/too long in duration (cont.)</td>
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<td>-----------------------------------------------</td>
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<tr>
<td>6l: Made quicker</td>
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<tr>
<td>6q: No don’t think so – I found it a bit slow at times but I think that was necessary for the other person and it paid off.</td>
</tr>
<tr>
<td>Process too short</td>
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<tr>
<td>6d: By putting a budget on the process although necessary I found we rushed the agreement in the end. Things that although agreed in mediation were loose and ultimately reversed (I predicted they would). Because of this one year on I have proposed re-examining some of the problems and meeting again to further resolve them in the mediation.</td>
</tr>
<tr>
<td>6g: More time in mediation.</td>
</tr>
<tr>
<td>6j: More time especially in relation to our current work practice. Our two hour conversation on this was really helpful - would have liked longer.</td>
</tr>
</tbody>
</table>

The significance of these findings in relation to the perspectives of the individuals who took part in an external mediation is further discussed in the Chapter 5, Findings and Discussion.

4.2 Analysis of the Structured Interviews

4.2.1 Initial analysis of the interview transcripts

Initial analysis of the interview transcripts sought mention of benefits of external mediation to the organisation. These items were identified in the transcripts and colour-coded to differentiate between benefits for: the organisation (blue); the HR function (red); and the individual (black). While working through the transcripts mention of success rates were also identified and colour-coded (green). Details of the ‘success’ rate of external mediation as cited by the HR/case mangers were identified and underlined.

The ‘benefit’ items identified as being of benefit to the individuals and/or the HR function were then further reviewed to identify those items that had a secondary benefit to the organisation. For example, the following item was initially identified as a primary benefit for the individual as it refers to the individuals determining the outcome of the situation rather than a third party. However, on further review, having a fair and equitable process of conflict resolution was also deemed to be of benefit to the organisation as appropriate resolution of issues by those directly involved in conflict is likely to positively affect staff performance and morale:
Em, and I think allied to that then is that when the matter is settled, when it gets settled, it's settled in a way that is beyond what an investigation can settle, or you know any kind of process where somebody else determines an outcome. I think the quality that the two parties have arrived at, at a position that they feel is fair and equitable and that they can stand by and they can commit to themselves and to the other party, I think the quality of that kind of an outcome way exceeds anything that's imposed. (4e)

This broader group of ‘benefit to the organisation’ items were then extracted from the transcripts and listed in their raw state, using a numerical number from ‘1’ to ‘9’ to denote the interviewee – HR/case managers numbered ‘1’ to ‘4’, and the external mediator interviewees numbered ‘5’ to ‘9’ – and assigned a letter ‘a, b, c, etc.’ to denote the item. To allow comparison between the understandings and experience of the HR/case managers and those of practising, external mediators, this summary data was further categorised into two groups: one set of data representing the perspective of the HR/case managers (see Appendix 3: Summary data: HRM and Case Manager Interviews – Benefits and Outcomes for the organisation) and another representing the perspectives of the external mediators (see Appendix 4: Summary data: External Mediator Interviews – Benefits and Outcomes for the Organisation). See Appendix 5: Structured Interviews (Redacted) for copy of interviews with identifying information removed or redacted, and data items identified by shading and underline.

Some of these initial ‘benefit’ items were presented as simple, singular items – for example, 1e: ‘… total resolution of the matter…’ and others, where it was deemed that the meaning might better be understood within the context of a multiple-benefit item, were presented in multiple form: for example, 4c:

‘Em, I think in an odd way that [confidentiality] also is good for the organisation because you know the only things that would come to the organisation out of the process would be things that are beyond the control of the two individuals so if there needs to be some change beyond that that would support their positive outcome. But in, in general, em, the parties would tend to work through it and all we would know is that they either stayed with the process or they've reached a conclusion point and an agreement’. [Emphasis applied]

The items in the raw list ‘HRM and Case Manager Interviews – Benefits and Outcomes for the Organisation’ were then reviewed, and items of similarity were re-grouped under headings that reflected the meaning of the items within that group.
It should be noted that some items were included under more than one heading, for example:

1p: ‘…there has been appropriate feedback in relation to opportunities for improving communication’ was included in Group E, ‘Organisational learning’ and also Group I, ‘Improved communication’; and,

2c: ‘…the parties have to construct that outcome which reflects the reality of their working relationship and hopefully interdependence on each other’ was included in Group F, ‘Improved employee relations’ and also Group M, ‘Improved work practice’.

This initial set of data is set out below in Table 5:

<table>
<thead>
<tr>
<th>Table 5: List of benefits for organisation identified by HRM/case managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
</tr>
<tr>
<td>B</td>
</tr>
<tr>
<td>C</td>
</tr>
<tr>
<td>D</td>
</tr>
<tr>
<td>E</td>
</tr>
<tr>
<td>F</td>
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<tr>
<td>G</td>
</tr>
<tr>
<td>H</td>
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<tr>
<td>I</td>
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<tr>
<td>J</td>
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<tr>
<td>K</td>
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<tr>
<td>L</td>
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<tr>
<td>M</td>
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<tr>
<td>N</td>
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<tr>
<td>O</td>
</tr>
<tr>
<td>P</td>
</tr>
<tr>
<td>Q</td>
</tr>
</tbody>
</table>
An examination of the grouped benefits in Table 5 above shows that all of the HR/case managers interviewed found mediation to be effective in resolving the issues in dispute (Table 5: Rows C and D above). The level and quality of resolution however is significant, and this is discussed further in Chapter 5: Findings and Discussions.

4.2.2 Interview analysis: Stage 2

The initial list of benefits as outlined in Table 5 above was then considered against the key factors identified through the Literature Review as particularly significant to the effective functioning of organisations in the current Irish work environment, namely:

1. Improved productivity
2. Enhanced cohesion
3. Innovation

The benefit items in Table 5 above were re-categorised under these three themes and laid out in table form below (Table 6: Categorisation of ‘benefit items’ identified by the HR/case managers by key thematic areas).

It should be noted that benefit items deemed relevant to more than one thematic area were included in each of the relevant themed categories: for example, ‘improved communication’ was included under both ‘improved productivity’ and also ‘enhanced cohesion/commitment’ thematic areas as the role of communication is recognised as a key factor in improving productivity and enhancing cohesion/commitment (Avgar, 2010; Kaufman, 2003; Roche and Teague, 2013).
Table 6: Categorisation of ‘benefit items’ identified by the HR/case managers by key thematic areas

<table>
<thead>
<tr>
<th>Benefits by key thematic area</th>
<th>Improved productivity</th>
<th>Enhanced cohesion/commitment</th>
<th>Innovation</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Enhanced capacity</td>
<td>1a; 1b; 1c; 1h; 4a; 4q</td>
<td>B. Recognition of organisational commitment to staff</td>
<td>1g; 1h; 1k; 1m; 1o; 1p; 1q; 1r;</td>
</tr>
<tr>
<td>C. Resolution of the situation/file closed</td>
<td>1e; 1s; 2g; 2k; 3a; 3c; 3f; 3g; 3h; 4e; 4f; 4g; 4i; 4j; 4m</td>
<td>G. Improved organisation/employee relations</td>
<td>1m; 1q; 2m; 3b</td>
</tr>
<tr>
<td>D. Partial resolution of the situation</td>
<td>1f; 2i; 3e; 4c; 4s; 4t</td>
<td>H. Enhanced engagement/commitment</td>
<td>1n; 2i; 2l; 4c; 4d; 4e; 4i; 4o</td>
</tr>
<tr>
<td>F. Improved employee relations/working relationship</td>
<td>1i; 2c; 2g; 2i; 2k; 2n; 3a; 3b; 3e; 4e; 4i; 4j; 4k</td>
<td>I. Improved communication</td>
<td>1p; 2k; 2m; 2n; 2o; 4h; 4r; 4t;</td>
</tr>
<tr>
<td>I. Improved communication</td>
<td>1p; 2k; 2m; 2n; 2o; 4h; 4r; 4t;</td>
<td>J. Identifying/addressing causal issues</td>
<td>1q; 1r; 2n; 3b</td>
</tr>
<tr>
<td>J. Identifying/addressing causal issues</td>
<td>1q; 1r; 2n; 3b</td>
<td>K. Benchmarking/reality checking</td>
<td>2a; 2g; 2f; 2h</td>
</tr>
<tr>
<td>M. Improved work practice</td>
<td>2c; 3b</td>
<td>L. Procedural confidence/process strengths</td>
<td>2b; 2j; 4b; 4c; 4d; 4s</td>
</tr>
<tr>
<td>N. Cost savings (management time; reputational damage; legal costs; stress; absenteeism; loss of skilled staff)</td>
<td>2e; 3c; 3e; 4f; 4g; 4i; 4m; 4n; 4r; 4t</td>
<td>Q. Holistic approach/holistic resolution</td>
<td>3h; 4d; 4j; 4q</td>
</tr>
<tr>
<td>E. Organisational learning</td>
<td>1g; 1h; 1k; 1m; 1o; 1p; 1q; 1r;</td>
<td>O. Innovation/change</td>
<td>1m; 1q; 2m; 3b</td>
</tr>
<tr>
<td>O. Innovation/change</td>
<td>1m; 1q; 2m; 3b</td>
<td>P. New insights/individual learning</td>
<td>1r; 2f; 2h; 2i; 2m; 2o; 3d; 3e; 4h; 4i; 4j; 4s;</td>
</tr>
</tbody>
</table>
An initial examination of the benefit items by thematic area as outlined in Table 6 above shows that all of the HR/case managers interviewed cited the resolution of the situation and/or the closing of the file (C) as a result of the external mediation as of significant benefit to the organisation.

However, as with the findings from the anonymous questionnaire above, it is the quality of outcome identified by the HR/case managers beyond the simple resolution of issues, which is most striking. All of the HR/case managers interviewed cited beneficial outcomes for the organisation from the use of external mediation relating to the three thematic themes of improved productivity, enhanced cohesion/commitment and innovation.

In relation to specific benefit items, all of the HR/case managers cited ‘improved employee relationships/working relationships’ (F), ‘recognition of organisational commitment to staff’ (B) and ‘new insights/individual learning’ (P) as outcomes benefitting their organisation from external mediation.

The reasons for what had improved employee relationships were mostly attributed to specific aspects of the mediation process, including:

Collaborative engagement:

…the parties have to construct that outcome which reflects the reality of their working relationship and hopefully interdependence on each other. (2c)

Em, and I think allied to that then is that when the matter is settled, when it gets settled, it's settled in a way that is beyond what an investigation can settle, or you know any kind of process where somebody else determines an outcome. I think the quality that the two parties have arrived at, at a position that they feel is fair and equitable and that they can stand by and they can commit to themselves and to the other party, I think the quality of that kind of an outcome way exceeds anything that's imposed. (4E)

Interest-based outcomes:

… they might expect loads but actually what is settled for is more real and I think too that if it is focused and if it is a solution that whatever the burdens they have been carrying they are lifted off their shoulders, or are apart I suppose because they have to work together. (2G)
The quality of the working relationship where a mediation succeeds are likely to be far more functioning than following on from other processes… (4i)

…that sense of a more holistic resolution maybe would be the word, you know where it’s everything from the feelings to the actions to the facts. That it kind of allows a far more in-depth exploration. (4j)

There was also a significant level of consensus in relation to the following beneficial outcomes for the organisations from external mediation: ‘improved communication’ (I); ‘identifying/addressing causal issues’ (J); ‘cost savings’ (management time; reputational damage; legal costs; stress; absenteeism; loss of skilled staff) (N); ‘enhanced engagement/commitment’ (H); and ‘innovation/change’ (O).

The findings in relation to the structured interview with the HR/case managers are discussed in more detail in the Chapter 5, Findings and Discussion.

4.2.3 Interview analysis: Stage 3

To allow for a comparative examination of the perspectives of HR/case managers and the external mediators, the summary data benefit items for the organisations, as identified in the external mediator interviews, were then reviewed and categorised under the three thematic areas (see Table 7 below). The full summary list is available in Appendix 4: External Mediator Interviews – Benefits and Outcomes for the Organisation.

<table>
<thead>
<tr>
<th>Key thematic areas</th>
<th>Improved productivity</th>
<th>C. Resolution of the situation/file closed</th>
<th>D. Partial resolution of the situation</th>
<th>F. Improved employee relations/working relationship</th>
<th>I. Improved communication</th>
<th>J. Identifying/addressing causal issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Enhanced capacity</td>
<td>5j; 6e; 7a; 8a; 8f; 8j; 8k; 9i</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Resolution of the situation/file closed</td>
<td>5c; 5d; 5e; 5h; 6a; 6c; 6f; 6i; 7c; 8b; 8m; 9f; 9h</td>
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<tr>
<td>D. Partial resolution of the situation</td>
<td>9d</td>
<td></td>
<td></td>
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<tr>
<td>F. Improved employee relations/working relationship</td>
<td>5a; 5b; 6d; 6h; 8g; 8m; 8p; 9i</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>I. Improved communication</td>
<td>5a; 5p; 8d</td>
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<tr>
<td>J. Identifying/addressing causal issues</td>
<td>5k</td>
<td></td>
<td></td>
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<tr>
<td>Improved productivity (cont.)</td>
<td>K. Benchmarking/reality checking</td>
<td>5a; 7b</td>
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<td>-------------------------------</td>
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<tr>
<td>M. Improved work practice</td>
<td></td>
<td>5a; 5f</td>
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<tr>
<td>J. Identifying/addressing causal issues</td>
<td></td>
<td>5k; 6j; 9e</td>
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<td></td>
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<tr>
<td>N. Cost savings (management time; reputational damage; legal costs; stress; absenteeism; loss of skilled staff)</td>
<td>5j; 6g; 8l; 8n; 8o; 9g; 9l; 9m</td>
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<tr>
<td>Enhanced cohesion/commitment</td>
<td>B. Recognition of organisational commitment to staff</td>
<td>5e; 6; 9g</td>
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<tr>
<td></td>
<td>G. Improved organisation/employee relations</td>
<td>5n; 5p</td>
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<td></td>
<td>H. Enhanced engagement / commitment</td>
<td>5f; 5o</td>
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<tr>
<td></td>
<td>I. Improved communication</td>
<td>5a; 5p; 8d</td>
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<tr>
<td></td>
<td>L. Procedural confidence/process strengths</td>
<td>5d; 5g; 5h; 5i; 6b; 6i; 7a; 7b; 8h; 8i; 9b; 9c</td>
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<td></td>
<td>Q. Holistic approach/holistic resolution</td>
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<tr>
<td>Innovation</td>
<td>E. Organisational learning</td>
<td>5l; 5m; 5n; 5o; 5q; 6l; 8j; 8k; 9k</td>
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<tr>
<td></td>
<td>O. Innovation/change</td>
<td>8c; 8d; 8e</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>P. New insights/individual learning</td>
<td>6d; 6e; 6k; 6l; 7d; 8b; 8e; 8g; 9e</td>
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</tbody>
</table>

An initial analysis of Table 7 above shows that, as with the HR managers/case managers, all of the external mediators interviewed identified the resolution of the situation and/or the closing of the file (C) as an outcome of significant benefit to the organisation.

Also, as was the case in the findings of the HR/case managers interviews, all of the external mediators identified benefit items in relation to the key thematic areas of: improved productivity; enhanced cohesion/commitment; and innovation.

However, there was a different emphasis in terms of consensus around specific benefit items.
Whereas all of the HR/case managers cited outcomes in relation to ‘improved employee relationships/working relationships’ (F), ‘recognition of organisational commitment to staff’ (B) and ‘new insights/individual learning’ (P), the benefit items identified by all of the external mediators included ‘enhanced capacity’ (A) and ‘procedural confidence/process strengths’ (L).

While identified benefits in relation to ‘enhanced capacity’ (A) were generally in relation to enhancing the organisation’s capacity through external expertise, an interesting aspect of this item is the direct link made by some of the external mediators between understanding and capacity:

…one of the outcomes is that it is no worse than at the time when mediation began, if you know what I mean? And may even be better from the point of view of the people at least may have some better understanding and may be slightly less polarized going into other processes than they might have been… (5j)

…but maybe a better understanding, I haven’t asked now so this would just be my sense you know, maybe a better understanding of themselves. Maybe a better confidence within themselves about being more proactive to deal with the issues. (6e)

…they were learning how to deal with things in future so that they didn't have to go to anybody else. So that they could sort it themselves… (8f)

As to ‘procedural confidence/process strengths’ (L), that mediation can effectively close the file on a case, was noted as significant:

You know if it is something that has been raised under a particular policy or procedure that the organisation has a confidence that this has now been closed to the satisfaction of the parties. (5d)

…invariably the organisation gets a written report of the outcome of the mediation. And most organisation that I would mediate with, or be asked to mediate with, require that so that the file can be complete. (6i)

And in having one document [Mediated Agreement] was an important one, rather than them having several, several different documents. And that for the HR manager, the outcome on that consolidated the unique piece that mediation is that you can get in no other process, within the policies and procedures of an organisation. (8i)

And procedural benefits were identified where resolution is not achieved:

…where it doesn't reach agreement, em, for the organisation again there is a clarity that that has been tried and they now need to do something else. So you know I think that that is a very tangible outcome. Because there is a, you know, a very specific kind of clarity that the parties themselves have now not been in a
position to find a way forward on this, or a resolution to the issue. So the organisation now needs to move to, em, other... other problems. (5i)

… where organisations, and sometimes they are quite explicit about this if you know the people well, they'll use an external mediator or mediation in the knowledge that it's not going to work but that they have to do it because they have to be able to say that we offered mediation. (9c)

4.2.4 Settlement rate of cited by HR/case managers
The HR/case managers interviewed confirmed the number of external mediation cases as ranging from one to six, and the settlement rate of those cases, qualified as ‘the resolution of the identified issues in dispute at the time of the mediation’, as ranging from 50% to 100% (see Table 8 below).

<table>
<thead>
<tr>
<th>HR/case manager</th>
<th>No. of cases in last five years</th>
<th>Identified issues resolved</th>
<th>% success rate (cited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR/case manager #1</td>
<td>6</td>
<td>4 (one partially resolved)</td>
<td>60%</td>
</tr>
<tr>
<td>HR/case manager #2</td>
<td>6</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>HR/case manager #3</td>
<td>3</td>
<td>3</td>
<td>100%</td>
</tr>
<tr>
<td>HR/case manager #4</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
</tbody>
</table>

A full copy of the structured interviews, with identifying information removed, is included in Appendix 5 for reference.

4.3 Analysis of Mediator Sample Participation
As discussed in the methodology section above, there are considerable and significant issues inherent in directly engaging parties to mediation in research.

In light of the particular and significant challenges inherent in this research project, it is appropriate that responses from the sample mediator group be considered, as these findings are relevant to both this research project and also the wider question of how to include the voice of parties to mediation in research.
4.3.1 Overall response from mediator sample

Figure 5 below presents an overview of responses from the mediator sample. Engagement with a total sample of 173 resulted with: a ‘No reply’ rate of 35%; a bounce back rate of 5%; and a response rate of 60%, based on 104 responses out of a total of 173.

The 60% response rate comprises: 42.2% (73) ‘No’ response and 17.9% (31) ‘Yes’ response. The participation rate of 17.9% ‘Yes’ response appears low, but as discussed, there are valid and significant reasons for the high decline rate (see Table 9 below).

(A breakdown of the reasons given for declining to participate is presented below in Table 10: Mediator sample decline response by type.)

<table>
<thead>
<tr>
<th>Sample total</th>
<th>‘No’ response</th>
<th>‘Yes’ response</th>
<th>No reply</th>
<th>Bounce back</th>
</tr>
</thead>
<tbody>
<tr>
<td>173</td>
<td>73</td>
<td>31</td>
<td>61</td>
<td>8</td>
</tr>
</tbody>
</table>

Figure 5: Mediator sample responses by type
4.3.2 Mediator sample decline response analysis

A total 92 mediators declined to participate including the initial 73 ‘No’ responses and the 19 who initially responded ‘Yes’, but subsequently declined.

Of the 92 who declined: 36.96% (34) cited a lack of relevant experience as external mediators; 14.13% (13) were excluded due to being internal workplace mediators (6.52%) or family mediators (7.61%). Of the 6.52% (6) who cited concerns, three related to concerns around confidentiality, one to a concern that engagement might ‘open old wounds’, and one because the mediation they had conducted had not been called ‘a mediation’ (see Table 10 below).

<table>
<thead>
<tr>
<th>Table 10: Mediator sample decline response by type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total decline to participate</td>
</tr>
<tr>
<td>Lack of workplace mediation experience</td>
</tr>
<tr>
<td>Internal mediator</td>
</tr>
<tr>
<td>Concerns cited</td>
</tr>
<tr>
<td>Personal reasons</td>
</tr>
<tr>
<td>No reason given</td>
</tr>
<tr>
<td>Organisation declined to participate</td>
</tr>
<tr>
<td>Too busy</td>
</tr>
<tr>
<td>Confidentiality concern</td>
</tr>
<tr>
<td>Family mediation</td>
</tr>
</tbody>
</table>

Of the 6.52% (6) who cited the organisation’s decision not to participate, two cited concerns around confidentiality and one cited a concern that questionnaire forms being issued by the HR manager may be seen as an instruction, and thus undermine the voluntary aspect of individual participation in the research.

The 36.96% (34) that cited a lack of relevant experience was higher than expected (see Figure 6 below). A significant number of these mediators observed that this was despite their efforts to secure mediation work.
4.3.3 Mediator sample ‘Yes’ response analysis

Of the 18% (31) of total sample who initially agreed to participate, 61.29% (19) subsequently did not proceed. Of this 19, 26.32% (5) cited organisation/HR/case manager reluctance; 10.53% (2) cited own confidentiality/boundary concerns; 5.26% (1) was an internal mediator and 5.26% (1) was a family mediator, and so not eligible; and 52.63% (10) did not give a reason (see Table 11 below).

<table>
<thead>
<tr>
<th>Initial agreement to engage</th>
<th>31</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal mediator</td>
<td>1</td>
<td>5.26%</td>
</tr>
<tr>
<td>Personal reasons - other</td>
<td>1</td>
<td>5.26%</td>
</tr>
<tr>
<td>No reason given</td>
<td>10</td>
<td>52.63%</td>
</tr>
<tr>
<td>Organisation declined</td>
<td>5</td>
<td>26.32%</td>
</tr>
<tr>
<td>Confidentiality concern</td>
<td>2</td>
<td>10.53%</td>
</tr>
<tr>
<td><strong>Total declined</strong></td>
<td>19</td>
<td><strong>61.29%</strong></td>
</tr>
<tr>
<td><strong>Total proceeding</strong></td>
<td>14</td>
<td><strong>45.16%</strong></td>
</tr>
</tbody>
</table>
The breakdown of the ‘Yes’ responses that subsequently declined to participate is shown in Figure 7 below.

A total of 140 sets of questionnaire documentation were issued to the 14 participants for circulation to the parties to mediation via their HR/case manager contacts.

**Figure 7: ‘Yes’ replies - subsequently declined**

![Chart showing breakdown of responses](image)

From the outset of this study, it was known that there would be considerable difficulties in conducting this task, and these inherent difficulties are evident in the findings above. These findings in relation to mediator sample participation are of interest as they illuminate the very real challenges in researching external mediation.

These results are discussed further in Chapter 5, Findings and Discussion.
5. FINDINGS AND DISCUSSION

The purpose of this study was to examine the efficacy of external mediation as a conflict management process in workplace disputes.

Two specific questions were identified:
1. Does external mediation result in satisfactory outcomes for the parties to mediation?
2. What is the value and benefit of external mediation to the contracting organisation?

Each of these questions is considered individually below.

5.1 Research Question 1: Findings and discussion

**Question 1: Does External Mediation Result in Satisfactory Outcomes for the Parties to Mediation?**

The results from the anonymous questionnaire indicate a high level of satisfaction on the part of the respondents in relation to the external mediation in which they were a principal party.

That 87.5% of the respondents confirmed that the mediation they engaged in resulted in a mediated agreement – 75% of which were confirmed as still standing and only one confirmed as not standing at the time of response – indicates a high agreement level, comparable with available statistics for statutory-based, workplace mediation and industry-specific mediation (construction disputes), quoted as, respectively, 82% (Labour Relations Commission, 2004, p.21) and 81% (Construction Industry of Ireland figure cited in the Law Reform Commission Report, 2010, p.150-p.151).

However, it is the quality of satisfaction identified in the findings that is most interesting.
As noted by Mayer (2004, p.xiii-xiv), conflicts are ‘immense sources of stress and pain’ that cannot fully be resolved without some understanding of our own role within the conflict. Mediation differs from other forms of conflict resolution processes in that it is a collaborative process based on recognition, empowerment and understanding (Bush and Folger, 1994; Cloke, 2001; Cloke and Goldsmith, 2000 and 2001; Fisher et al., 2011; Lang, 2000; Lederach, 2005; Mayer, 2004), and so it is not surprising that the most frequently cited comments by the respondents were in relation to gaining new insights and individual understanding (see Table 2 and Table 3 above):

- It helped me thinking about the larger picture and the hurt that was caused. (4b)
- Understand we were both part of the problem and we had the power to fix it. (4d)
- Getting an understanding of each other – it was much more complex than I thought. (5e)
- Understanding the other person’s prerogative this allowed me to move on. (5o)

However, mediation is a challenging process for the individuals. As noted by one respondent in response to Question 6, which sought feedback on anything that might have been done differently to improve their experience and/or outcome of mediation (see Table 4 above):

- Not really it was always going to be hard. (6m)

This same respondent, who confirmed that mediation had improved the situation (Question 2), had delivered a mediated agreement that was still standing (Question 3) and was in their view, helpful (Question 4), commented in response to Questions 4 and Question 5:

- It cleared the air between me and my work colleague. (4l)
- It took the stress away and got me back to work. (5t)

Another respondent who confirmed that their three-year dispute (Question 1) was resolved through mediation (Questions 2 and 3) made the following observations in response to Question 5 and Question 6:

- I got a better understanding of what was going on. (5p)
- The whole thing was very stressful. (6k)
Two recurring factors noted by the respondents deserve mention. Firstly the procedural strengths of mediation, particularly its voluntary and confidential nature which allows for a different type of dialogue to other dispute resolution processes:

- Helpful to put all on record in neutral and impartial fashion. Showed commitment by me to resolve situation. (4h)
- It created a safe place for the underlying issues to be brought out into the open and to be looked at. (4o)
- The ability to air problems quickly and without prejudice. (5f)
- The opportunity to speak without fear of assumptions being made and to air grievances in a controlled environment. (5h)
- Airing of views that otherwise could not be aired. (5l)
- Being able to talk honestly and openly about what had happened. (5n)
- I think it created a space for my manager to see me as a human being and a professional and to see me as I am – not as she perceived me. (5z2)

And secondly, the role of a skilled mediator in enabling resolution:

- Yes, mediation gave both of us the opportunity to raise issues that heretofore we found difficult to discuss or address. Having a trained and experienced mediator facilitate the process made a huge difference. It gave comfort that each was being heard and in our case this case resulted in better understanding of the other person’s perspective and allowed us to come to an accommodation that was workable. (4j)
- The patience and understanding of the mediator – taking both sides into account and analysing the situation. (5d)
- The support of the mediator and lack of judgement. (5j)
- The professional and effective manner and processes of the mediator to move participants along the journey. (5m)
- The mediator was so good in helping us to deal with very delicate issues. (5u)
- Mediator facilitating reflection and opening up for better understanding. (5x)

Most significant however, is the quality of outcome and level of satisfaction cited by the respondents:

- Yes, we have a much ‘easier’ working relationship now. (4e)
- It brought matters to a level and provided a pathway to resolution. (4e)
- Both parties left with a better understanding of each other and appreciation of roles and responsibilities in the workplace. (4m)
- It allowed us to work out a long series of difficulties. (4n)
- It put me in a better place to deal with issues in the future. (5c)
The findings unequivocally show that external mediation resulted in satisfactory outcomes for the majority of respondents. This does not, however, suggest that mediation is a panacea. As clearly shown, it is a challenging and demanding process that requires a level of expertise on the part of the mediator, and commitment by the parties.

Also, it must be noted that the response group was 32, an insufficient number to make general presumptions.

5.2 Research Question 2: Findings and discussion

**Question 1:** *What is the Value and Benefit of External Mediation to the Contracting Organisation?*

The purpose of examining the key drivers of the work environment in the Literature Review was to establish a context within which to examine the efficacy of external mediation from the perspective of the contracting organisations.

Roche et al. (2013) considering the role of human resources in the context of the current recession in Ireland observe:

> After the financial crash, the business environment changed completely. Large numbers of companies stopped hiring people while others, facing harsher economic times, began the process of shedding labor. Many human resources managers now face the challenging task of devising policies that would allow firms adjust to adverse market conditions in the short term without disrupting the potential to innovate and grow in the long term. 

*Roche et al. (2013, p.2-3)*

That the current recession has had a profound effect on the Irish workplace is without doubt. However, had the recession not come about, the Literature Review suggests that globalisation, new technology, changing demographics and employment legislation would still have necessitated a shift to a more innovative, productive and cohesive work model.
The findings in relation to the four structured interviews with HR/case managers are limited by the narrow scope of this study, and, as with the findings in relation to the questionnaires above, cannot be interpreted as definitive. However, as with the findings from the questionnaires, they do provide valuable insights that deserve consideration.

Analysis shows that each of the four HR/case managers confirmed that external mediation had been effective in resolving dispute situations in their organisations (Table 5: Rows C and D: 1e; 1s; 2k; 3a; 3c; 3f; 3g; 3h; 4e; 4f; 4g; 4i; 4j; 4m; 1f; 2i; 3e; 4c; 4s; 4t). However, as noted in the methodology section above, an understanding of the quality of resolution is required if we are to gain insight into the value and benefit of external mediation to the contracting organisation. The experience of the contracting organisation using external mediation is discussed below from the perspective of the HR/case managers in light of the three identified themes of productivity, cohesion and innovation.

5.2.1 Outcomes in relation to productivity

A community of conflict is one in which dialogue remains superficial, simplistic, antagonistic, and based on rage, guilt, shame, denial, or fear. These negative communities are secretive, risk-averse, divided, unstable, and collapse… whenever people engage in authentic dialogue and collaborative negotiation over issues that divide them.

Cloke (2001, p.231-p.233)

The voluntary and confidential nature of mediation allows for a quality of dialogue that is problem-solving rather than blaming, collaborative rather than adversarial and insightful rather than superficial (Bush and Folger, 1994; Cloke and Goldsmith, 2000; Cloke, 2001; Cloke and Goldsmith, 2001; Fisher et al., 2011; Lederach, 2005; Mayer, 2004). Rather than dealing with the ‘rights’ and ‘wrongs’ of a situation, mediation supports the parties in gaining an understanding what happened, and why, and what can change, and how, so that viable and appropriate outcomes can be achieved.

The HR managers/case managers, while not party to the mediation discussions, were clear in their understanding of the importance of how the discussions had taken place, and the value of this in terms of beneficial outcomes for the organisation:
…the parties have to construct that outcome which reflects the reality of their working relationship and hopefully interdependence on each other. (Interview HRM #2: 2c)

… they might expect loads but actually what is settled for is more real and I think too that if it is focused and if it is a solution that whatever the burdens they have been carrying they are lifted off their shoulders, or are apart I suppose because they have to work together. (Interview HRM #2: 2g)

… external mediation is really trying to support people in their roles to address conflicts which may impact on the ability to have open conversations, to raise issues which are important to them and to inspect difference… and then how will they address it. (Interview HRM #2: 2n)

… I suppose the biggest quality was that, eh, faces were saved which did enable people to get working together again and put the conflict behind them. (Interview HRM #3: 3a)

But the new ways that were found to work together involved something that was definitely facilitated by management, local management… Well in fairness in that particular conflict probably at the root cause of it was an over burdened manager with insufficient training… so I can see how a separation, or a new alignment of duties may have been a very useful outcome. (Interview HRM #3: 3b)

And I think the quality of that engagement no other process offers. Em, and the fact that an external mediation can, can build that space for the parties I think that's quite a rare thing that mediation offers that none of the other processes do. (Interview HRM #4: 4d)

The quality of the working relationship where a mediation succeeds are likely to be far more functioning than following on from other processes… (Interview HRM #4: 4i)

The benefit of having a process that allows for complex and sensitive issues to be constructively addressed was identified as particularly significant:

I think they were very successful… two were very complex… they involved multi-parties and stuff like that, and I think that they were, I think that the parties were delighted, they were delighted to put it to.... because it had rumbled for years. It hadn't been caught early they had festered and grown legs and stuff like that and d'you know. (Interview HRM #3: 3h)

Em, and I think allied to that then is that when the matter is settled, when it gets settled, it's settled in a way that is beyond what an investigation can settle, or you know any kind of process where somebody else determines an outcome. I think the quality that the two parties have arrived at, at a position that they feel is fair and equitable and that they can stand by and they can commit to themselves and to the other party, I think the quality of that kind of an outcome way exceeds anything that's imposed. (Interview HRM #4: 4e)

Also, where total resolution was not achieved in mediation, the process was still deemed to have been of benefit to the organisation by simplifying the situation and taking some of the issues off the table:
Em, I think in an odd way that [confidentiality] also is good for the organisation because you know the only things that would come to the organisation out of the process would be things that are beyond the control of the two individuals so if there needs to be some change beyond that that would support their positive outcome. But in, in general, em, the parties would tend to work through it and all we would know is that they either stayed with the process or they've reached a conclusion point and an agreement. (Interview HRM #4: 4c)

Em, that certainly would have been successful in taking a very complex situation, em, and in assisting the individuals involved in working through the issues and again what was very useful there was that the pieces that were resolved kind of got removed so that what ended up in the final reporting was only the outstanding matters. So I think that in itself is a huge success in that the organisation doesn't need to know about the issues that the individuals have arrived at a successful resolution of. And I think that's a huge benefit to both the individuals and the organisation. (Interview HRM #4: 4t)

A particularly significant factor from an organisational perspective – being able to appropriately address grievances and to close files that might otherwise find recourse to formal investigation, tribunals or the courts – was also identified:

…do you want to spend time in litigation, in the Rights Commissioners, in the Labour Court, the Equality Tribunal, do you want to spend time in there because there are big issues for everybody including reputation. (Interview HRM #2: 2e)

They were [grievances taken off the table], they were [taken off the table] with the mediated agreements. The files were closed. They were. (Interview HRM #3: 3c)

That went to full mediation and, em.... the, I suppose what we would call a success, was that the complaints were withdrawn on foot of the mediation, do you know what I mean. And so the file would be closed with a statement from the mediator saying 'look we've met, or signed off by the people’. (Interview HRM #3: 3g)

Once something is committed to paper, even if that paper is restricted to very few individuals I think that there is always a concern - where might that piece of paper end up, or might it lead to some legal process? And I think that's a big peace of mind factor that the mediation offers that other processes don't. (Interview HRM #4: 4f)

… for the organisation that lack of creation of the paperwork can have benefits because once issues are resolved there's no need to commit anything to paper. And paper by its nature seems to lead its way to processes at different stages and it's very hard to control. It could end up in a newspaper article - it could end up in another legal process and it's very difficult to control that. (Interview HRM #4: 4g)

The findings from the HR/case manager interviews indicate significant benefits to the organisation from the use of external mediation in terms of improved productivity in
particular, the resolution of complex and entrenched issues, improved working
relationships and organisational savings.

5.2.2 Outcomes in relation to cohesion/commitment

Achieving competitive success through people involves fundamentally altering
how we think about the workforce and the employment relationship. It means
achieving success by working with people, not by replacing them or limiting the
scope of their activities. It entails seeing the workforce as a source of strategic
advantage, not just as a cost to be minimized or avoided.

Pfeffer (2002, p.67)

Throughout the literature, cohesion and commitment are identified as essential aspects
of a high-performing workforce (Avgar, 2010; Kaufman, 2003; Lipsky et al., 2003;
Lipsky, 2007; Roche and Teague, 2011; Roche et al., 2013).

Cohesion and commitment are fundamentally about relationships – both inter-staff
relations and employee-employer relations – and how we view and understand those
relationships.

The HR/case managers identified layers of relational benefits arising from the use of
external mediation, particularly with regard to the employee-employer relationship:

… a sense of recognition by the individual that the organisation takes it [the
situation] seriously enough to bother to invest in expert external mediation.
(Interview HRM #1: 1d)

If people believe that the organisation is committed to actually delivering, em, a
safe, respectful workplace for all that’s a benefit. (Interview HRM #1: 1j)

… it’s probably a benefit for the organisation that the culture is seen to be such
that we’re not looking to sweep things under the carpet but to address the less eh,
pleasant aspects of what can go on and eh acknowledge when we have let people
down or got it wrong. (Interview HRM #1: 1l)

…you want as an organisation to be able to demonstrate that you tried to resolve
it, em, in a way that does not necessarily ascribe blame, that is solution focused
rather than problem focused. (Interview HRM #2: 2d)

And I suppose thinking back to what a lot of employees want is to know that their
employer cares about them. I would imagine that a mediation process, you know,
creates that better sense that this isn’t just about completing a process or
defending the organisation that it really does allow the individuals to feel cared
for in the resolution of the issues. (Interview HRM #4: 4o)
Cohesion, on the other hand, while informed by the culture of the organisation – in particular the conflict competency and learning ability of the culture – plays out in inter-staff relations.

The findings point to significant organisational outcomes in terms of conflict competency and enhanced learning arising from the use of external mediation:

…if you have a more open and appropriate place of work for people to come where they don’t, you know, have problems that have become chronic and positions entrenched then the more likely you are to have higher engagement and more of the people’s time and expertise. (Interview HRM #1: 1n)

I do certainly see and have used external facilitation to broker difficult conversations, and give evidence of an openness to have different views expressed. And to be able to unlock those different views. (Interview HRM #2: 2o)

Absolutely it [mediation] did [help]. But now maybe it wasn't just the mediation. That particular mediation came after an investigation where the person had been found, do you know what I mean, the findings had been against her so there was disciplinary stuff as well so I suppose that person was maybe forced into it, a period of reflection. (Interview HRM #3: 3e)

And I think again that… this is an organisational benefit… is that sense of ‘this is about individuals and the recognition of every aspect of an individual in a workplace’… (Interview HRM #4: 4q)

A particularly striking comment that resonated strongly was the deep hurt that can arise as a result of the formalisation of a complaint, and the impact of this on the employee’s perception of the organisation:

Em, another thing that we would find from an organisational point of view is once a formal complaint is put in writing against someone, and again the mediation allows that you could enter into it without being formalised, there is just... there is a wound nearly created at that point that anyone in an organisation will always say well my employer, you know, put that complaint to me. (Interview HRM #4: 4p)

Roche et al. (2013, p.35) maintain that engaged organisations have ‘strong authentic values, with clear evidence of trust and fairness based on mutual respect and reciprocal commitments between employers and employees’, which suggests that commitment to the organisation is subject to the quality of employee-employer relationship.
External mediators are generally contracted to support individuals and organisations in resolving specific disputes, however, at the centre of all conflict we find relationships. The HR/case managers interviewed identified significant benefits from external mediation in terms of employee-employee and employee-employer relationships.

5.2.3 Outcomes in relation to innovation

The Literature Review stresses the importance of innovation in work practice as organisations struggle to meet the challenges of the modern work environment and identifies the capacity to adapt and learn as an important feature of a skilled, high-engagement workforce (CIPD, 2013; Henry and Mayle, 2002; Kaufman, 2003; Pfeffer, 2002; Quinn et al., 2002).

All of the HR/case managers interviewed identified new insights and learning as outcomes from external mediation for both the organisation, and the individuals:

…the lag between the learning that can derive from these, eh, issues which can better inform how to address similar or other issues that arise in the future which may not be directly recognisable a the time. (Interview HRM #1: 1g)

…the organisational learning… the organisational learning would be leading to better able to work in unison with, eh, the employers and employees. (Interview HRM #1: 1k)

… that they understand that there are limits to each other's roles, responsibilities and that they cannot set them aside. (Interview HRM #2: 2h)

So I think that if in the process of the discussion that the actual issues are understood and the respective responsibilities around those and how it might help each other to achieve those, then even though they may be suspicious of it if they are able to sign an agreement, then at least that binds them to make every effort to work it. (Interview HRM #2: 2i)

…and if people got to a stage where they identified that there were things happening which neither of them had any direct responsibility for but they both were reacting to the environment, if that resulted in clarifying exactly what that meant and how you might articulate that, that would be a positive outcome in itself for the two people involved. Because there would be recognition that there was need to feedback or otherwise how are we going to progress it. (Interview HRM #2: 2m)

I do certainly see and have used external facilitation to broker difficult conversations and give evidence of an openness to have different views expressed. And to be able to unlock those different views. (Interview HRM #2: 2o)

But the new ways that were found to work together involved something that was definitely facilitated by management, local management… Well in fairness in that particular conflict probably at the root cause of it was an over burdened manager
with insufficient training… so I can see how a separation, or a new alignment of duties may have been a very useful outcome. (Interview HRM #3: 3b)

…that sense of a more holistic resolution maybe would be the word, you know where it's everything from the feelings to the actions to the facts. That it kind of allows a far more in-depth exploration. (Interview HRM #4: 4j)

While, at first glance, this type of learning and awareness may not seem as significant as other, identified benefits, Avgar (2010, p.253) suggests that informal methods of resolving conflict that improve ‘communication, information sharing and exchange of ideas’ are of particular significance:

Task conflict, which, in some respects, forces actors to think about the content of their work, may, therefore, enhance and facilitate processes of combining and exchanging new knowledge, or learning…

Avgar (2010, p.242)

If we accept the workforce as a source of strategic advantage, rather than simply ‘a cost to be minimized or avoided’ (Pfeffer, 2002), then the findings suggest that conflict resolution mechanisms that enable learning and enhance knowledge may be an important asset for high-performance work environments.
6. CONCLUSIONS AND RECOMMENDATIONS

This research was conducted on a small scale and so the conclusions drawn are tentative and require further examination through more in-depth research. However, the following conclusions seem valid:

1. **Settlement rate:**
   The findings indicate a high settlement rate from external mediation (87.5% of respondents to the questionnaire), and where full resolution is not achieved, external mediation may deliver partial resolution and clarity in relation to the outstanding issues to be addressed.

2. **Quality of outcomes for the individuals:**
   The findings indicate that external mediation can deliver outcomes for the individuals in conflict that exceed the simple resolution of issues, allowing a high level of satisfaction with process and outcomes.

3. **Benefits to the contracting organisation:**
   The findings indicate that external mediation can deliver outcomes and benefits for the organisation that exceed the management of workplace disputes including: cost savings (management time; financial outlay etc.); compliance; improved productivity; and enhanced cohesion and commitment. In addition, the findings suggest that mediation can enable new learning and enhance knowledge, important aspects of innovative work environments.

*Final conclusion:*
The findings from this limited research support the contention that external mediation is an effective and appropriate conflict management process.

Furthermore, the findings suggest that external mediation can result in benefits to the organisation in terms of improved productivity, enhanced commitment and new learning.

*Recommendations:*
Recommendations arising from this research include:
1. That further research be conducted into the experiences of parties to mediation. How this might be done while respecting the privacy of participants and the sensitive nature of the situations in which external mediation is used, however, presents real and significant challenges. There may be a role for member organisations, such as the Mediators’ Institute of Ireland, in supporting this research.

2. That further research be conducted into the role of mediation in emerging work practice.

3. That organisations be encouraged to make greater use of mediation to constructively address workplace conflict.

4. That mediators work closely with organisations in seeking new ways to develop mediation and mediative intervention as a conflict management tool in workplace development.

5. That mediator actively engage different stakeholders such as researchers, policy makers, private industry and public sector representatives to explore ideas and to develop new thinking.
BIBLIOGRAPHY AND REFERENCES

Books:

Reports:


Articles and papers:


Additional online information sources:


Appendix 1A: Research Information Sheet

Research Information Sheet

Dissertation Topic (working title): A study of the efficacy of external mediation in workplace disputes with particular reference to the outcomes for the individual parties and the organisations

Code of Ethics:
1. The research is being carried out as part of an MSSc in Work-Based Learning (Mediation Studies) in Queen’s University Belfast and is for use in preparation for a dissertation which seeks to examine the efficacy of external mediation in workplace disputes.

2. Anonymity and confidentiality are guaranteed to all participants in this research and to their organisations. The only circumstance under which the Researcher may breach confidentiality is where she is required to do so by law.

3. The information gathered in the course of this research, through interviews and anonymous questionnaires, will be confidential to Margaret Bouchier, the researcher, and her academic supervisor. No one else will have access to the data gathered other than in it’s analysed and anonymous form. No individual or organisation’s identity will be discernible in the final presentation of data.

4. The research methodology will include:
   Structured Interviews with a small number of external workplace mediators and HR/case managers who refer workplace disputes to mediation. These interviews will be conducted on the following basis:
   a. All interviews will be conducted in private and at a location that is acceptable to the person being interviewed.
   b. The interviewee may ask questions and receive answers regarding their participation.
   c. Participation in these interviews will be on a strictly voluntary basis and the interviewees may withdraw at any stage before, or during, the interview, and without having to give a reason.
   d. Interviewees will not be expected to divulge information that they deem to be sensitive or in any way compromising to them or to their organisation.
   e. The only record of the interviews will be notes taken, with agreement, during the course of interview.

75
f. The interviewees will receive a copy of the notes from their interview at the end of their interview.

g. A four-week cooling off period will apply post-interview, during which time the interviewee may request that the information gathered during their interview not be used in this research.

**Anonymous questionnaires:** People who have taken part in workplace mediation with an external mediator will be invited to complete an anonymous questionnaire. These questionnaires will be circulated by the relevant HR/case manager to people in their organisation who have previously engaged in a mediated intervention with an external mediator. Completion of the questionnaires is subject to the following conditions:

h. The questionnaires are anonymous.
i. Completion and return of the questionnaire is on a strictly voluntary basis.
j. All potential participants have a right to decline to answer the questionnaire if they so wish or not to answer a particular question or questions on the questionnaire.
k. Completed questionnaires are to be returned directly to the Researcher.
l. The HR/case managers will not be informed of engagement or non-engagement of any party.
m. Informed consent shall be indicated by the completion of a Consent Form.

5. All information gathered will be appropriately stored for the duration of its use and then destroyed in line with Data Protection legislation and the requirements of Queen's University Belfast.

6. The information gathered will only be used for the purpose of this dissertation and only with the informed consent of each participant.

7. Neither individual participants nor organisations will be discernable in the final report.

Thank you for your consideration in the matter. If you have any queries or require any further information please do not hesitate to contact me.

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Appendix 1B: Letter to Party to Mediation

Dissertation Topic (working title):
A study of the efficacy of external mediation in workplace disputes with particular reference to the outcomes for the individual parties and the organisations

Date

Dear Sir/Madam,

I am writing to you in relation to research I am undertaking as part of an MSSc Work-Based Learning (Mediation Studies) in Queen's University Belfast. My dissertation topic will explore the effectiveness of external mediation in workplace disputes and the personal experience of people who have directly participated in mediation with an external mediator is a key aspect of this research.

As a party to mediation, I invite you to complete the attached, anonymous questionnaire and to return it directly to me in the provided, stamped addressed envelope. Please note that engagement in this research is strictly voluntary and there is no onus, whatsoever, on you to complete this questionnaire. However, should you decide to engage in this research, the full and only extent of your engagement will be the completion of the attached, anonymous questionnaire and its return to me, the researcher, in the provided envelope. No member of your organisation nor the mediator who mediated your particular situation will be informed of your engagement or non-engagement. Neither your identity nor that of your organisation will be discernable in the presented data.

Your HR/Case Manager has agreed to forward this letter, Consent Sheet and Questionnaire to you on the understanding that your potential involvement in this research will be strictly on a voluntary basis and that all information gathered will be treated in the utmost confidence. The information gathered will only be used for the purpose of this dissertation and only with the express permission of each participant: In light of this I include a consent section at the start of the research questionnaire.

All information gathered will be appropriately stored for the duration of its use and then destroyed in line with Data Protection legislation and the requirements of Queen’s University Belfast. This research has been approved by the Ethics Committee of Queen’s University Belfast.

I appreciate your consideration in this matter. If you have any queries, or if you would like any further information, please do not hesitate to contact me.

Yours sincerely,

Margaret Bouchier
Researcher
Appendix 1C: Consent Form and Questionnaire

Consent Form and Questionnaire
(Please complete and return in the attached, stamped, addressed envelope)

As outlined in the Research Information Sheet accompanying this Consent Form and Questionnaire, participation in this research is strictly on a voluntary basis and all information gathered will be treated in the utmost confidence. The identity of individuals and organisations that participate in this research will not be discernible in the presentation of data (dissertation report).

As a prior party to mediation, I invite you to complete the attached, anonymous questionnaire. Please note that engagement in this research is strictly voluntary and there is no onus on you, whatsoever, to complete this questionnaire. However, should you decide to engage in this research, the full and only extent of your engagement will be the completion of this anonymous questionnaire and its return directly to me, the Researcher, in the provided envelope. No member of your organisation nor the mediator who mediated your particular situation will be informed of your engagement or non-engagement. Neither your identity nor that of your organisation will be discernable in the presented data.

All materials will be maintained in line with the requirements of Queen’s University Belfast and Data Protection legislation.

Participation in this questionnaire is subject to the following conditions:
1. The questionnaire is anonymous – please do not sign your name.
2. Completion and return of the questionnaire is on a strictly voluntary basis.
3. You have a right to decline to answer the questionnaire if you so wish or not to answer a particular question or questions on the questionnaire.
4. Completed questionnaires are to be returned directly to the Researcher in the provided, stamped, addressed envelope.
5. The HR/Case Managers will not be informed of your engagement or non-engagement.
6. Your informed consent as indicated by your completion of the consent form below:

Consent confirmation (please read and tick the box below if you consent to engage in this questionnaire):
I have read the attached information sheet which outlines the proposed research into the efficacy of external mediation in workplace disputes and the voluntary and confidential nature of this research. (Please tick)

I understand that I have been invited to participate in an anonymous questionnaire (attached) as part of this research. (Please tick)

I understand that all information gathered will be kept strictly confidential and that my name and the name of my organisation will not be included in any reports or presentation of this information. (Please tick)

I understand that the analysed, anonymous information will be published in the form of a Masters dissertation and that neither I nor my organisation will be discernable in the presented data. (Please tick)

Please complete the following if you consent to proceed:

I agree to take part in the research described above: (please tick)
Research Questionnaire

To be fulfilled by participants who have previously engaged in an external mediated intervention for a workplace dispute.

1. For approximately how long were you experiencing difficulties with your counterpart to the dispute before mediation was suggested?

2. In your view, did the mediation improve the situation? Please circle: Yes or No

3. Was a mediated agreement reached? Please circle: Yes or No
   
   If Yes: Is the mediated agreement still standing? Please circle: Yes or No

4. In your view, was the mediation helpful? Please circle: Yes or No

Comment (optional):

5. Is there any one thing that stands out as being particularly helpful to you?

Comment (optional):

6. Is there any particular thing that you found unhelpful, or that you would have liked to have been done differently, to either improve your experience and/or the outcome of the mediation?

Comment (optional):

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79
Appendix 1D: Letter to HR/Case Manager (re. Structured Interview)

Dissertation Topic (working title):
A study of the efficacy of external mediation in workplace disputes with particular reference to the outcomes for the individual parties and organisations

Dear Name,

I am writing to you in relation to research that I am undertaking as part of an MSSc Work-Based Learning (Mediation Studies) in Queen’s University Belfast. My dissertation topic will explore the effectiveness of external mediation in workplace disputes and will consist of a quantitative aspect and qualitative aspect.

I am contacting you because of your role in directing cases to mediation/as an external mediator and invite you to take part in a structured interview which will form part of the qualitative aspect of this research. (See attached Research Information Sheet for details).

I would be grateful if you would consider engaging with me in a structured, one-on-one interview. The proposed interview would be carried out in private and at a time and location that is suitable to you. The only record of the interview would be the recording/notes taken, with your agreement, during the course of the interview, and all information gathered will be treated in the utmost confidence.

Engagement is strictly voluntary, and if you agree to take part in this interview, you have the right to withdraw at any stage, to refrain from answering a particular question or questions, to request, post-interview, that information from your interview not be used in the research. (See attached Research Information Sheet for detail).

The interview, which will be a once off, should take no longer than a maximum of one hour.

This research has been approved by the Ethics Committee of Queen’s University Belfast and all information gathered will be appropriately stored for the duration of its use and then destroyed in line with Data Protection legislation and the requirements of Queen’s University Belfast. I will forward a copy of the dissertation to all participants.

If you have any queries, or would like any further information, please do not hesitate to contact me.

Yours sincerely,

Margaret Bouchier
Researcher

Ps. See attached Research Information Sheet, Consent Form for Research Interview
Appendix 1E: Consent Form for Research Interview

Consent Form for Research Interview

As noted in the Research Information Sheet accompanying this Consent Form, your participation in this research is strictly voluntary and non-participation will have no effect on our subsequent standing. All information gathered will be treated in the utmost confidence and used only for the stated purpose of this research. The interviews will be conducted in a sensitive and non-stressful manner, and you may decline, withdraw or opt not to answer any specific question as you see fit, and without giving reason.

The identity of the individuals and organisations that participate in this research will not be discernible in the presentation of data (dissertation report) and all materials will be maintained in line with the requirements of Queen's University Belfast and Data Protection legislation.

Please complete:

I have read the attached Information Sheet which outlines the proposed research into the efficacy of external mediation in workplace disputes and explains the voluntary and confidential nature of this research.  
(Please tick) ☐

I understand that the letter is inviting me to participate in a structured interview as part of this research.  
(Please tick) ☐

I understand that all information gathered will be kept strictly confidential and that my name and the name of my organisation will not be included in any reports or be discernible in the presentation of data.  
(Please tick) ☐

I understand that the analysed, anonymous information will be published in the form of a Masters dissertation and will not be used for any other purpose.  
(Please tick) ☐

Please complete the following if you consent to proceed:

I agree to take part in the research described above  
(please tick) ☐

Signature: ____________________________________________

Date: ________________________________________________
Appendix 1F: Interview Questions: HR/Case Manager Interviews

HR/Case Manager Interview Questions

1. What factors, in your view, determine the advancement of a workplace dispute to external mediation?

2. What is your sense of the quality of outcomes (tangible and intangible) for:
   A. The individual parties to the mediation and
   B. The organisation

3. What, if any, level and type of feedback does the organisation receive from the mediation(s) with the permission of parties in relation to contextual/structural factors?

4. Can you describe the culture of your organisation and the significance of organisational culture in the use of external mediation?

5. Can you indicate the approximate number and percentage success rate of cases that have progressed to external mediation in your organisation in the last five years?

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Appendix 1G: Interview Questions: External Mediator Interviews

External Mediator Interview Questions

1. What factors, in your view, determine the advancement of a workplace dispute to external mediation?

2. What is your sense of the quality of outcomes (tangible and intangible) for:
   A. The individual parties to the mediation and
   B. The organisation

3. What, if any, level and type of feedback does the organisation receive from the mediation(s) with the permission of parties in relation to contextual/structural factors?

4. Can you describe the culture of the organisations that you provide mediation services to and the significance of organisation culture in its use of external mediation?

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Appendix 1H: Questionnaire Documentation: Letter to HR/Case Manager
(re. Questionnaire to staff)

Address of Researcher
Contact Tel Numbers
Email address

Name
Address
Address
Address

Date

Dissertation Topic (working title):
A study of the efficacy of external mediation in workplace disputes with particular reference to the outcomes for the individual parties and organisations

Dear Name,

Name Name, a Mediator who has provided mediation services to you, has kindly agreed to forward this letter and accompanying documentation to you.

I am writing to you in relation to research that I am undertaking as part of an MSSc in Work-Based Learning (Mediation Studies) in Queen’s University Belfast. My dissertation topic will explore the effectiveness of external mediation in workplace disputes, with a particular emphasis on the personal experience of people who have directly participated in external mediation. While mediation is well established as an important option in the continuum for addressing workplace disputes, there is a lack of research into the efficacy of mediation and I hope to address this through this study.

The quantitative aspect my research consists of an anonymous questionnaire to be completed by people who have directly participated in external mediation. Participation in this research is strictly on a voluntary basis and information gathered will only be used for the purpose of this dissertation (please see attached Research Information Sheet and Code of Ethics). All data and information gathered will be treated in the utmost confidence and neither individual participants nor their organisations will be identified by name or inference in the research dissertation.

I would be grateful if you would consider forwarding the enclosed cover letter, Consent Form and Questionnaire, Research Information Sheet and stamped, addressed envelope to individuals in your organisation who have engaged as a principal party in an external mediated intervention by Name Name. Those individuals that agree to take part in this research will be requested to complete the Consent Form and anonymous questionnaire and to return them directly to me in the provided, stamped, address envelop.

This research has been approved by the Ethics Committee of Queen’s University Belfast.

If you have any queries, or would like any further information, please do not hesitate to contact me.

Yours sincerely,

Margaret Bouchier
Researcher
Appendix 2: Raw List of Narrative Comments from Questionnaires

Question 4. In your view, was the mediation helpful?

‘Yes’:

4a Initially I found it very adversarial as I was perceived as the ‘guilty party’. Issues were on the table so it pre-empted the mood of the mediation. I found it a difficult but eventually worthwhile process.

4b It helped me thinking about the larger picture and the hurt that was caused.

4d Understand we were both part of the problem and we had the power to fix it.

4e Yes, we have a much ‘easier’ working relationship now.

4f To talk about the issues and to understand their side.

4g Absolutely

4h Helpful to put all on record in neutral and impartial fashion. Showed commitment by me to resolve situation.

4i We got to talk through the issues and to understand the other side.

4j Yes, mediation gave both of us the opportunity to raise issues that heretofore we found difficult to discuss or address. Having a trained and experienced mediator facilitate the process made a huge difference. It gave comfort that each was being heard and in our case this case resulted in better understanding of the other person’s perspective and allowed us to come to an accommodation that was workable.

4k Things slowly slipped back to normal. [yes to mediation improving situation; mediation agreement still standing and mediation being helpful]

4l It cleared the air between me and my work colleague.

4m Both parties left with a better understanding of each other and appreciation of roles and responsibilities in the workplace.

4n It allowed us to workout a long series of difficulties.

4o It created a safe place for the underlying issues to be brought out into the open and to be looked at.

‘No’:

4p Success or other of mediation is entirely dependent on the relative strength of any potential legal claim.

4q Mediation promised much but didn’t deliver. In the end weariness with the process meant just signing anything to finish it.

4r My complaint was about being bullied by a co-worker. Mediation encouraged him to become stronger and more directed in his behaviour towards me. After mediation things slowly slipped back to normal.
Question 5: Is there anything that stands out as being particularly helpful to you?

5a Getting other opinion.
5b It provided a breathing space to discuss matters in an open forum and [undecipherable]
5c It put me in a better place to deal with issues in the future.
5d The patience and understanding of the mediator – taking both sides into account and analysing the situation.
5e Getting an understanding of each other – it was much more complex than I thought.
5f The ability to air problems quickly and without prejudice.
5g If forces both/all parties to engage with the issues. If anyone has up until that point been stubborn or manipulative or obstructive, they find it more difficult to do so when a third party is introduced.
5h The opportunity to speak without fear of assumptions being made and to air grievances in a controlled environment.
5i Yes, mediation supported compliance to my duty of care and any legal fall out.
5j The support of the mediator and lack of judgement.
5k To see the view of the other party.
5l Airing of views that otherwise could not be aired.
5m The professional and effective manner and processes of the mediator to move participants along the journey.
5n Being able to talk honestly and openly about what had happened.
5o Understanding the other person’s prerogative this allowed me to move on.
5p I got a better understanding of what was going on.
5q Having the space to talk and listen.
5r Much determination needed. Organisation’s dignity at work policy useful as guideline.
5s Breaking ice.
5t It took the stress away and got me back to work.
5u The mediator was so good in helping us to deal with very delicate issues.
5v Creating a space to be heard.
5w Sharing responsibility.
5x Mediator facilitating reflection and opening up for better understanding.
5y The calm mentality of the mediator.
5z Finding common ground.
5z2 I think it created a space for my manager to see me as a human being and a professional and to see me as I am – not as she perceived me.
Question 6: Is there any particular thing that you found unhelpful, or that you would have liked to have been done differently, to either your experience and/or the outcome of the mediation?

6a Issues on the table pre-empted the [undecipherable] of mediation. I believed initially I was on trial despite reassurances to the contrary.

6b For the company to go forward to mediation earlier.

6c The long period of time the mediation took.

6d By putting a budget on the process although necessary I found we rushed the agreement in the end. Things that although agreed in mediation were loose and ultimately reversed (I predicted they would). Because of this one year on I have proposed re-examining some of the problems and meeting again to further resolve them in the mediation.

6e I’d prefer if she hadn’t brought a big file. We didn’t view her file but at the time it made me think she had stuff on me. Parties should be discounted from bringing in files.

6f Felt that the process was very dragged out and expensive.

6g More time in mediation.

6h Would have preferred to have a better understanding of the mediation process before I started out on it.

6i It’s difficult to pinpoint any particular aspect that was “unhelpful”. However, personally I felt the process can be too accommodating and thus the process appears to drag on and on. Fully appreciate that folk do operate at different speeds and are coming from different “understanding of reality” but nevertheless it did seem to drag and kept going over old ground. That said the ‘prize’ to be gained from a successful mediation is well worth the effort.

6j More time especially in relation to our current work practice. Our two hour conversation on this was really helpful - would have liked longer.

6k The whole thing was very stressful.

6l Made quicker

6m Not really, it was always going to be hard.

6n Counterpart’s reluctance to engage, though handled very well, was still a challenge.

6o Some participants did not wish to complete the work.

6p It took so long for mediation to take place.

6q No don’t think so – I found it a bit slow at times but I think that was necessary for the other person and it paid off.

Additional comments end of page:

Delighted I had the courage to go for it – pity it had to be so bad before I considered it as an option.
Appendix 3: Summary data: HRM and Case Manager Interviews: Benefits and Outcomes for the Organisation

Interview 1: HRM/Case Manager #1

1a … a perceived or actual acknowledgement of the deficit in-house to facilitate the complexity of a particular issue or set of issues

1b … again a perceived or actual lack of confidence in the independence of, quite apart from the competence of, the internal resources to address matters of contention

1c … or the potential intransigence in being able to move parties along

1d … a sense of recognition by the individual that the organisation takes it [the situation] seriously enough to bother to invest in expert external mediation.

1e … obviously if there is a total resolution of the matter that’s a very tangible benefit [for the individual]

1f … a partial resolution of the matter is still a tangible benefit.

1g … the lag between the learning that can derive from these, eh, issues which can better inform how to address similar or other issues that arise in the future which may not be directly recognisable a the time

1h … an intangible benefit would be that, yeah, it [external mediation] helps the organisation reflect and, eh, approach matters of conflicts hopefully in a more appropriate way.

1i … improved employee relations

1j If people believe that the organisation is committed to actually delivering, em, a safe, respectful workplace for all that’s a benefit.

1k …the organisational learning… the organisational learning would be leading to better able to work in unison with, eh, the employers and employees.

1l … it’s probably a benefit for the organisation that the culture is seen to be such that we’re not looking to sweep things under the carpet but to address the less eh, pleasant aspects of what can go on and eh acknowledge when we have let people down or got it wrong

1m …seriously commit to not making the same mistakes over and over again.

1n …if you have a more open and appropriate place of work for people to come where they don’t, you know, have problems that have become chronic and positions entrenched then the more likely you are to have higher engagement and more of the people’s time and expertise.

1o …feedback in terms of contextual and structural factors eh in my experience in this organisation would be more, eh… I suppose, easily understood where it has come from an expert in mediation.

1p … there has been appropriate feedback in relation to opportunities for improving communication

1q … I guess the feedback from external mediation would not be just about the set of issues at hand but also about what might have led to them and what’s likely to need to change in order for prevention of subsequent occurrences.

1r … joining up the dots.

1s The resolution of the matter were accepted by both or all parties to have fulfilled their needs so that there was, you know win/win.
Interview 2: HRM/Case Manager #2

2a But escalating to external also brings with it the hope that, you know, that you can benchmark it against what might be the external environment, it might be the competitor, it might be what's good practice

2b ...it might be, you know, their perception that there is no vested interest here

2c ...the parties have to construct that outcome which reflects the reality of their working relationship and hopefully interdependence on each other

2d ...you want as an organisation to be able to demonstrate that you tried to resolve it, em, in a way that does not necessarily ascribe blame, that is solution focused rather than problem focused

2e ...do you want to spend time in litigation, in the Rights Commissioners, in the Labour Court, the Equality Tribunal, do you want to spend time in there because there are big issues for everybody including reputation.

2f ...we are just trying to get an independent view on this and that will become, even though it is confidential what the outcome and discussions, the fact of the mediation having taken place is a statement that effort was made.

2g ...they might expect loads but actually what is settled for is more real and I think too that if it is focused and if it is a solution that whatever the burdens they have been carrying they are lifted off their shoulders, or are apart I suppose because they have to work together.

2h ...that they understand that there are limits to each other's roles, responsibilities and that they cannot set them aside.

2i So I think that if in the process of the discussion that the actual issues are understood and the respective responsibilities around those and how it might help each other to achieve those, then even though they may be suspicious of it if they are able to sign an agreement, then at least that binds them to make every effort to work it.

2j ...the fact of a mediation being available means that the organisation is interested in trying to solve the problem and is not necessarily taking sides in a particular scenario.

2k Well you might see less conflict on the emails. You might see just different responses in the people. You might see where there was a closed conversation now there is a more open conversation.

2l Em, you might see somebody who had switched off because this problem was just not soluble for them or they felt responsible for it in a way that was unhealthy, you might see them being more positive.

2m ...if people got to a stage where they identified that there were things happening which neither of them had any direct responsibility for but they both were reacting to the environment, if that resulted in clarifying exactly what that meant and how you might articulate that, that would be a positive outcome in itself for the two people involved. Because there would be recognition that there was need to feedback or otherwise how are we going to progress it.

2n ...external mediation is really trying to support people in their roles to address conflicts which may impact on the ability to have open conversations, to raise issues which are important to them and to inspect difference... and then how will they address it

2o I do certainly see and have used external facilitation to broker difficult conversations, and give evidence of an openness to have different views expressed. And to be able to unlock those different views.
Interview 3: HRM/Case Manager #3

3a … I suppose the biggest quality was that, eh, faces were saved which did enable people to get working together again and put the conflict behind them.

3b But the new ways that were found to work together involved something that was definitely facilitated by management, local management… Well in fairness in that particular conflict probably at the root cause of it was an over burdened manager with insufficient training… so I can see how a separation, or a new alignment of duties may have been a very useful outcome.

3c They were [grievances taken off the table], they were [taken off the table] with the mediated agreements. The files were closed. They were.

3d Well, I would say, in fairness I would say that a party central to that conflict, em, would be one of the people who most engaged with the training… Who actually did quite a lot of soul searching out of the situation. But on another case the person in that key pivotal supervisory role did the opposite.

3e Absolutely it [mediation] did [help]. But now maybe it wasn't just the mediation. That particular mediation came after an investigation where the person had been found, do you know what I mean, the findings had been against her so there was disciplinary stuff as well so I suppose that person was maybe forced into it, a period of reflection.

3f I think myself, the one where the sort of settlement was reached, to my surprise, I think maybe that one was done, instead of it coming back through that route as being ‘these are issues which need to be handled outside of the mediation and separately’ you know, ‘we are in agreement that this needs to be reviewed’, it was sort of done and dusted.

3g That went to full mediation and, em.... the, I suppose what we would call a success, was that the complaints were withdrawn on foot of the mediation, do you know what I mean. And so the file would be closed with a statement from the mediator saying ‘look we've met, or signed off by the people’.

3h I think they were very successful… two were very complex… they involved multi-parties and stuff like that, and I think that they were, I think that the parties were delighted, they were delighted to put it to…. because it had rumbled for years. It hadn't been caught early they had festered and grown legs and stuff like that and d’you know.

3i …because I do know I certainly would have got at least two phone calls from people [the parties to mediation] saying listen that's just the best, I'm so happy, I'm so pleased. You know it was great.

Interview 4: HRM/Case Manager #4

4a So the... in a way then the external mediation would only be where the internal wouldn't work. And that might be if the internal mediator knew any of the parties involved and that it wasn't appropriate for them to mediate. Or if they just weren't available at the time to give the time to the mediation. Or if there was other factors maybe, given the different potentially roles even though it wouldn't always be a factor that… the mediator wouldn't always be in a senior role in the organisation.

4b …it’s so different for the trust in the mediation is that all of the other processes, the grievance or em, if, if someone was even disciplinary can sometimes arise around these issues, the kind of right to representation is there with the trade unions or a colleague and I think that is another, em, you know, aspect of mediation which
makes it very unique and makes it work very well when you get in, or you get parties into it.

4c Em, I think in an odd way that [confidentiality] also is good for the organisation because you know the only things that would come to the organisation out of the process would be things that are beyond the control of the two individuals so if there needs to be some change beyond that that would support their positive outcome. But in, in general, em, the parties would tend to work through it and all we would know is that they either stayed with the process or they've reached a conclusion point and an agreement.

4d And I think the quality of that engagement no other process offers. Em, and the fact that an external mediation can, can build that space for the parties I think that's quite a rare thing that mediation offers that none of the other processes do.

4e Em, and I think allied to that then is that when the matter is settled, when it gets settled, it's settled in a way that is beyond what an investigation can settle, or you know any kind of process where somebody else determines an outcome. I think the quality that the two parties have arrived at, at a position that they feel is fair and equitable and that they can stand by and they can commit to themselves and to the other party, I think the quality of that kind of an outcome way exceeds anything that's imposed.

4f Once something is committed to paper, even if that paper is restricted to very few individuals I think that there is always a concern - where might that piece of paper end up, or might it lead to some legal process? And I think that's a big peace of mind factor that the mediation offers that other processes don't.

4g … for the organisation that lack of creation of the paperwork can have benefits because once issues are resolved there's no need to commit anything to paper. And paper by its nature seems to lead its way to processes at different stages and it's very hard to control. It could end up in a newspaper article - it could end up in another legal process and it's very difficult to control that.

4h Well I suppose the potential is there in the mediation that you might gain a new perspective whereas the other processes are far less likely to offer that. Because it's, the other processes I suppose can give facts or establish things, but it's more maybe an insight into another person's behaviour, or if that person might choose to share something that they wouldn't have shared up to then...

4i The quality of the working relationship where a mediation succeeds are likely to be far more functioning than following on from other processes…

4j …that sense of a more holistic resolution maybe would be the word, you know where it's everything from the feelings to the actions to the facts. That it kind of allows a far more in-depth exploration.

4k … it's back to the better functioning of the working relationships

4l …time frame generally is shorter although for more deep set difficulties it, it could take a number of months, it would generally be a shorter time frame.

4m It would also I believe tend not to lead to follow on processes because, eh, once it's resolved it's resolved. Em, so again there are organisational benefits in the time that has been invested in the resolution.

4n …and I suppose even again going back to the simplicity of it being just the parties there is fewer organisation peoples’ time being taken up in even the, you know, attending meetings and keeping sets of minutes and that sort of thing…

4o And I suppose thinking back to what a lot of employees want is to know that their employer cares about them. I would imagine that a mediation process, you know, creates that better sense that this isn't just about completing a process or defending
the organisation that it really does allow the individuals to feel cared for in the resolution of the issues.

4p Em, another thing that we would find from an organisational point of view is once a formal complaint is put in writing against someone, and again the mediation allows that you could enter into it without being formalised, there is just... there is a wound nearly created at that point that anyone in an organisation will always say well my employer, you know, put that complaint to me.

4q And I think again that… this is an organisational benefit… is that sense of ‘this is about individuals and the recognition of every aspect of an individual in a workplace…

4r …the way we would offer the mediation, it could be offered at any stage of the process, em, so it's never not available. But if it comes in at a very early stage a complaint doesn't even need to be in writing and that could allow maybe a better, em, opportunity then for the parties to hear from each other what the issues are rather than it being down on paper to say this, this is the complaint.

4s I suppose there is an element of success there. And that might have even assisted that individual in terms of the pieces that they have been able to let go of and move on from and the other pieces that have remained.

4t Em, that certainly would have been successful in taking a very complex situation, em, and in assisting the individuals involved in working through the issues and again what was very useful there was that the pieces that were resolved kind of got removed so that what ended up in the final reporting was only the outstanding matters. So I think that in itself is a huge success in that the organisation doesn't need to know about the issues that the individuals have arrived at a successful resolution of. And I think that's a huge benefit to both the individuals and the organisation.
Appendix 4: Summary data: External Mediator Interviews: Benefits and outcomes for the organisation:

Interview 5: External Mediator # 1

5a ...where people really test the tangible outcomes, you know what it means in terms of how people are going to work together. You know how they are going to communicate with one another. Em, how they are going to, em, address the, perhaps, the leakage of that conflict into other areas.

5b But that kind of sense of people.. that they will be able to work with one another again. And they simply have that kind of confidence that they will be able to do that.

5c …that the dispute or conflict would be resolved.

5d You know if it is something that has been raised under a particular policy or procedure that the organisation has a confidence that this has now been closed to the satisfaction of the parties.

5e Em you know, where agreement is reached, em, and I think you know that is a really important one for organisations. You know they have done what they can in a fair way and that people have actually addressed issues and found a resolution.

5f I think there is also a part there, which, definitely for organisations is about performance. You know which is that people can get on and do their job. And that is a tangible outcome that people actually are in a position now to give their energy and their time to the work, as opposed to the dispute that exists between them.

5g …an intangible, in some ways for the organisation, but a kind of a confidence of the parties in the organisation that they have a process that actually is helpful and has helped them to reach a resolution.

5h I think you know for the organisations within that as well, I suppose, there is an outcome which is that actually their confidence then in the process as well, that is something that has addressed or allowed people to address their issues.

5i …where it doesn't reach agreement, em, for the organisation again there is a clarity that that has been tried and they now need to do something else. So you know I think that that is a very tangible outcome. Because there is a, you know, a very specific kind of clarity that the parties themselves have now not been in a position to find a way forward on this, or a resolution to the issue. So the organisation now needs to move to, em, other.. other problems.

5j …one of the outcomes is that it is no worse than at the time when mediation began, if you know what I mean? And may even be better from the point of view of the people at least may have some better understanding and may be slightly less polarized going into other processes than they might have been…

5k … if issues are coming up which are about the organisation, em, you know whether culture or structural issues, em, then I would tend to hold those to kind of one side. You know deal with the issues that are directly within the control of the parties themselves, and then look with the parties at what potential they might have, or what options they might have for, I suppose, influencing the organisation through feedback at the end of their mediation.

5l … part of what had influenced the escalation of that dispute and conflict between the two of them was the way in which the organisation had managed its processes. So what they identified was that there was some feedback that the manager could helpfully give to their own line manager and senior manager.
They also identified that they themselves would value the organisation being given some feedback because for both of them they felt that the way in which, at senior and I suppose HR levels, it had been done where not necessarily in the best interests of everybody concerned. And that there would be some very important learning to come for the organisation, from what had happened.

I mean they were both angry with the organisation and, em, annoyed that things had happened but actually as they began to think it through, you know, rather than holding onto that anger and it becoming destructive towards the organisation, which is where they were both sitting around it in some ways, they began to look at well what are the options for actually giving some feedback here. And influencing as opposed to feeling like little cogs in a machine.

…a mediation process between people led to a mediation process between those people and the organisation with the organisations agreement. And again that was because there was a very real kind of structural kind of issue there that needed to be teased out.

the agreement was that I would contact the organisation prior to each review and ask them what they got coming out of each review. They would have gotten a piece of feedback that was agreed with the parties and then they would have fed in to that review as such, and the parties then if they had further questions. So by the time we got to the third time together... the second review Mags, the parties themselves were already beginning to have conversations directly with their HR people anyway, you know. So that was a kind of positive outcome to it.

..if I think about the situation where organisations, you know, listen, take something on board, you know may not accept all of it and that is absolutely fine as well, because they will have a wider lens and view of things. But there is often the potential for patterns to be broken. There is that potential.

Interview 6: External Mediator #2

… resolving the issue is important and the option to have it resolved through mediation in preference to going formal.

… the option of having a informal confidential process to allow the parties have some space. Where the organisation doesn't, obviously doesn't want to know, but knows that the parties are better off having a confidential conversation that is properly managed between themselves.

The issue being resolved…

And perhaps the ability to maintain a relationship and a creation of an understanding of what happened that they mightn't have perceived prior to the mediation. So a better understanding as to how the dispute, or conflict, would have occurred and how they would have contributed to it.

… maybe a better understanding, I haven't asked now so this would just be my sense you know, maybe a better understanding of themselves. Maybe a better confidence within themselves about being more proactive to deal with the issues.

The tangibles for the organisation is the matter is resolved, there is a great relief that there's no formal process.

That it's a relatively speedy and I suppose low cost compared to what they were facing.

And the ability for the parties to be able to work together again…

…invariably the organisation gets a written report of the outcome of the mediation. And most organisations that I would mediate with, or be asked to mediate with, require that so that the file can be complete.
… on occasion the parties might see there're other issues within the organisation that contributed to the conflict and they would want that mentioned in the report… Maybe issues relating to procedural issues within an organisation, and yet again third parties maybe not adhering to those procedures.

So there was kind of a flawed process within the organisation which neither parties could address, and caused huge frustrations… And the parties mightn't know that, in a real sense, until they start discussing the conflict [in mediation]

… the parties then, in conclusion having realised where they have contributed and their apologies and their acknowledgements, or whatever. Or in some cases, you know, if they don't get to that point either way I find they do want their experiences within the organisation, if they believe the organisation has been at fault for it to be brought back to HR. Or brought back to whoever is asking them to do the mediation. So that would be part of the mediation agreement effectively…

**Interview 7: External Mediator #3**

But where you use an experienced and I say popular mediator from external the chances are that they will have covered the ground of most types of dispute. So that they are more likely to have experience maybe of a difficult case, the subject matter of a difficult case, and they will be more likely to have more experience of mediations generally.

I can be very open with the parties as to what the companies might think or might not think, because as I am an external mediator I can put, if you like, theoretical words into the mouth of the company. If I was an internal mediator people might think that I was saying something for a particular reason.

Em, the parties themselves then in the mediation come to an agreement and are very happy to come to an agreement…

And sometimes they may well say to you - yeah you know they [the employer] have to move more quickly, or they need not to sit on it… It would be rare enough but I think I said part of the complaining against the company and therefore wanting to send messages back arises as a result of the conflict having been resolved.

**Interview 8: External Mediator #4**

Sometimes they will call an external mediator in because they believe there is conflict of interest, and that they have found themselves caught, a manager may find himself or herself caught in the middle of a dispute and they feel that they can't win either way so they need the external person to come in.

In the quality of the outcome of mediation for them it [the conflict] was sorted in a day.

And the quality that they began to really understand one another… the difference in personalities of the other person, even though they worked very well together. But they also began to understand how things they did might impact the other person, and how there needed to be change for themselves, and that the responsibility for change could only rest with each person themselves.

The most important thing for them was that they found a mechanism whereby if issues arose again between them they had a code…

… a lot of work around the individual and how the individual needs to change and responsibility for change when it was the individual. That's done in the individual sessions with people to try and help them, and then to try and pre-empt how the other person might feel.
...they were learning how to deal with things in future so that they didn't have to go to anybody else. So that they could sort it themselves...

And so the discussions for them was how would you... how would they move towards a situation where they could deal with their issues outside [of work] separately, and not bring them into the workplace, so that they could maintain the professionalism that was really important to them...

And also to be able to communicate back to the organisation who supported them that they really wanted to move forward and that they had found resolution.

And in having one document [Mediated Agreement] was an important one, rather than them having several, several different documents. And that for the HR manager, the outcome on that reconsolidated the unique piece that mediation is that you can get in no other process, within the policies and procedures of an organisation.

So it enabled a return to the contact person for mediation to say line managers need to be trained around when it is appropriate to bring something, care for staff members is critical around conflict.

Now that, that was not necessarily any discussion around what had happened in mediation but it was around processes, to help an organisation develop good sound processes which is a role that a mediator may have if they are connected on an ongoing basis with organisations.

I think the other benefit to the organisation is where if you take the two women, the organisation wanted to hold on to these people. They didn't want either of them leaving, they even in this economic climate they would have been snapped up by other people and they didn't want that. And that's the retention of staff.

You have equally the sales manager and the manager... they were back into being able to, they were back able to work together.

That lent itself to a huge exposure for the organisation. Because if that was taken to the equality tribunal on an investigation the company would have been exposed... if that hadn't happened in mediation and if the other person had remained disgruntled, that person could have had.... that company could have been exposed under equality legislation.

...in a case that came to mediation again that was resolved... you had layers again of equality, you had gender inequality, you had assault, you had racial inequality, which was solved very quickly. Because in the outcome in terms of, now I wasn't involved with it, but the outcome in terms of the manager was deep regret, but was, had been reciting what had been all over the papers at that time . The xxxxxxx xxxx xxxx was the deep regret that it was just the spur of the moment and it should never have happened. So all of these things got sorted very quickly.

I think that mediation was about three years ago and those two work very well together.... That the mediation was successful. Both of them had resolved the difficulties that they had.

**Interview 9: External Mediator #5**

...usually in my experience as well where, where organisations want to use an external person it's very often because, eh, they see the issues as being particularly complex or serious. And they kind of feel that they need, you know, quite experienced professional person to do it [mediate].

Or they might not want, for reasons of objectivity, they might not want to use an internal person even if they have one available. Because the parties mightn't see an
internal person, even if they're qualified and so on and so forth, they mightn't see them as being as independent as an external person.

9c … where organisations, and sometimes they are quite explicit about this if you know the people well, they'll use an external mediator or mediation in the knowledge that it's not going to work but that they have to do it because they have to be able to say that we offered mediation.

9d … in a majority of cases there is an agreement of some sort which is obviously beneficial to the parties themselves…

9e I think one of the outcomes from the point of view of the disputants is they get a better understanding, if they are open to it, of themselves and of the kind of the causes and the dynamics of the conflict and they also get a better understanding, if they are open minded at all, of the, eh, stance of the party they are in dispute with…

9f … the most tangible benefit I suppose is that the conflict actually ends.

9g … from the point of view of the organisation. I suppose at the very minimum level there is the whole compliance and conformity thing – where they are seen to be a good employer and abiding by their own policies and procedures.

9h … from a HR point of view it is getting it off somebody's desk, you know, and getting the thing resolved, and maybe even shoving it on to somebody else, in the sense that the mediator is now responsible for it rather than the organisation itself.

9i … where, where conflict is interfering with the flow of work and moral and performance and team work and development and all of those kinds of vital aspects of organisation development, well then if the outcome of external mediation is resolution or agreement of some sort then there are obviously very practical benefits from the point of view of the organisation.

9j … sometimes changes are held up because of relationships within work units or between individuals and changes can be freed up then if, eh, if those kind of log-jams are unblocked.

9k I have had some discussions with large organisations where I have done a number of mediations and they might refer to things like their management development programmes and the need for specific training and that kind of thing.

9l And I suppose the other thing would be, although I suppose this is a factor in the public as well but I think it's probably more so a factor in the private sector is, is trying to avoid litigation and costly alternatives…

9m … external mediation not just as a way of bringing a dispute to a conclusion but also as a means of avoiding further costly kind of procedures like court cases, you know, being sued so on and so forth…
Appendix 5A: Structured interview with identifying information redacted and/or removed

Interview #1: HR/case manager # 1

Question 1: What factors, in your view, determine the advancement of a workplace dispute to external mediation:

So, one factor would be complexity of the issue or issues at hand, the other would be a perceived or actual acknowledgement of the deficit in-house to facilitate the complexity of a particular issue or set of issues. In addition to that the perceived or actual benefit of the neutrality of bringing in an external party on occasions where there may be, again a perceived or actual lack of confidence in the independence of, quite apart from the competence of, the internal resources to address matters of contention. So neutrality, perceived lack of bias in external 3rd party, non-partisan expertise coming in to mediate… em in the context of having the deficit, perceived or actual, and… and obviously the complexity of issues or range of issues at hand are the ones that I’d identify as the major determinates.

Researcher: Great, and just with the… complexity of issues, so it’s where there is a particularly complex situation it [external mediation] might be something that you’d consider or it’s where… would that be right?

Yes, I think it’s the self-assessment within the organisation in the first instance of the complexity of it [the situation] or the potential intransigence in being able to move parties along whether it’s employee to employee or whether it’s employee to employer or employer to employee. In our limited, I suppose, exposure to these issues, the ones which seem potentially most intransigent are employee to employee. But there have and eh may arise in the future issues between employer and employee. So, yeah, complexity and, and not so much around, you know, rocket science complexity, but, eh, personality, eh, strongly held views, opinions, ideologies, prejudices, things that are hard to quantify, qualify, measure, and that inform peoples attitudes and behaviours sometimes.

Researcher: And would I be right in taking it – and I may be wrong – would I be right be taking it that you are alluding to where there are particular sensitivities that might tie in to the neutrality and complexity [of the situation]?

Yes, I think gender ….em… would come into play. I’m not suggesting that men have a better way of dealing with… differences, eh, but they certainly have a different way and, eh, a male to female issue will have a different challenge I think in terms of the dynamics, psychodynamics than female to female or male to male - you sometimes have, eh, ethnicity, culture mores, communication, eh, age… so I guess it’s the diversity eh issue and how well or otherwise people feel in relation to being accepted, rejected, isolated or excluded em can have a bearing it would seem on peoples ability to negotiate a resolution of attitudes and behaviours that they have difficulties with. The biggest challenge and the complexity is our own sense of insight or lack of insight.

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?
Yeah, I think the tangible is a sense of recognition by the individual that the organisation takes it [the situation] seriously enough to bother to invest in expert external mediation. Em… obviously if there is a total resolution of the matter that’s a very tangible benefit. If there is a partial resolution that is still a tangible benefit.

Moving on, and I guess some of the intangibles, em… may be the lag between the learning that can derive from these, eh, issues which can better inform how to address similar or other issues that arise in the future which may not be directly recognisable a the time, but I think an intangible benefit would be that, yeah, it [external mediation] helps the organisation reflect and, eh, approach matters of conflicts hopefully in a more appropriate way.

Researcher: Okay, and in relation to the organisation?

Well, improved employee relations. If people believe that the organisation is committed to actually delivering, em, a safe, respectful workplace for all that’s a benefit. Em… as I referred to the organisational learning so that it’s not just seen as successes – any time there’s a problem bring in a mediator, resolve the problem and then let it happen again somewhere else and you bring in a person again to sort it out again. Em… so hopefully, yeah, the organisational learning would be leading to better able to work in unison with, eh, the employers and employees; Eh, I suppose the other one is the culture [of the organisation] – it’s probably a benefit for the organisation that the culture is seen to be such that we’re not looking to sweep things under the carpet but to address the less eh, pleasant aspects of what can go on and eh acknowledge when we have let people down or got it wrong and you know commit to actually – seriously commit to not making the same mistakes over and over again.

In terms of intangible – well I guess it’s hard to judge the lack of absences and the lack of productivity but I think it’s fairly acknowledged that the more unhappy people are and the more distressed that people are the more likely that they are to be absent from work and less likely that they will be productive in work. So I guess an intangible is, eh, that if you have a more open and appropriate place of work for people to come where they don’t, you know, have problems that have become chronic and positions entrenched then the more likely you are to have higher engagement and more of the people’s time and expertise.

Researcher, Question 3: Okay, and number three, what, if any, level and type of feedback does the organisation receive from the mediations in terms of contextual or structural factors?
Firstly, does the organisation or has the organisation received feedback that’s…

Yes, I guess I’d draw a distinction between mediation from professional mediators and mediation where people who come from HR backgrounds have engaged in, em, an activity that could be categorised, you know as a mediation but not necessarily, eh, strictly fulfil the professional paradigm of mediation. So I guess, you know, there might be very empathic and competent HR people who are not trained mediators who can facilitate a mediation process but not necessarily to the same extent of thought as someone who is actually skilled specifically and expertly in mediation. So I’ll qualify the answer by saying the feedback in terms of contextual and structural factors eh in my experience in this organisation would be more, eh… I suppose, easily understood where it has come from an expert in mediation. Em… so I would say there has been appropriate feedback in relation to opportunities for improving communication, em… in being aware of the importance of a workforce that doesn’t just say that it’s committed to being respectful and protecting people but which demonstrates in its policies and procedures and actions that it actually does what it says rather than just talking about doing it. Em… I guess part of the feedback would be signs and symptoms, em which, if you only treat them you are not going to deal with the fundamental [issue]. So I guess the feedback from external mediation
would not be just about the set of issues at hand but also about what might have led to them and what’s likely to need to change in order for prevention of subsequent occurrences. Whereas for the non-mediation experts who have been involved in mediation initiatives or conflict resolution is maybe more appropriate than ‘mediation’ initiatives – eh it [feedback] would be more unstructured and more maybe focussed on the issues at hand rather than necessarily joining up the dots. If that answers the question?

Researcher, Question 4: Can you describe the culture of your organisation or if you were to trying to describe the culture of your organisation…and any thoughts you might have as to the significance of organisation culture in the use of external mediation?

Yeah, I mean I think the culture of the organisation is somewhat fragmented. Em… you know when I was answering the question [at the outset of the interview] I was talking about it being open and participative and inclusive and then I realise that that’s what you want it to be, but that’s not the question that you asked: it’s what is it? I guess it’s a patchwork quilt of peoples exp of the organisation is a positive one and who are, you know, happy enough and well-adjusted and productive to people who are very unhappy and feel aggrieved and don’t feel that their voice is heard and, em, would like to exercise the option to be able to work somewhere else but perhaps… maybe the job market doesn’t accommodate that as much as it might. And then I guess at the top of the pyramid people who are really very happy and would die for the place but yeah I think it is eh… I can’t identify it as one culture… I just think it is an amalgam of engaged, partially engaged, disengaged and, eh, it’s a struggle because, em… I think the organisation is made up predominantly of professionals who strive for their own sense of identity and professional boundaries and demarcations and then you have the patriarchal approach of And yet you have the matriarchy in terms of the , em… you have diversity of culture, diversity in the workforce, em… you have young men and women, mostly women in our organisation, who are starting off in life in partnerships – you know, it’s PC these days – lets keep it simple and say marriage or whatever derivative of it that people are in as a partnership and then you have people with young families who are sort of trying to balance the whole issue of work/family life and em… yeah I suppose people with not as strong sense of career but have the necessity of a double income families to pay the mortgage and keep afloat… Em… I guess in more recent times with… not a huge amount to look forward to with negative equity. Not as much hopefulness, I think problems in the workplace become exacerbated if it’s just another issue that pushes people under… em, so yeah the culture, it’s more brittle than flexible and just needs constant… I don’t know work and nurturing to try and keep some semblance of cohesion and common purpose.

Researcher: And do you think that has any significance or relevance to, eh, the use of external mediation?

Well, I guess there is some correlation between, you know, the health of the culture of an organisation and the lower probability of the future requirements for mediation. But I think to get there, unless you started with an ‘out-of-the-box’ perfect culture to get from where you are to where you’d like to get to maybe the use of external mediation is a marker of improvement rather than dis-improvement, provided what it is doing is helping to deal with all the un-dealt issues that are holding the organisation back. So, like for me it’s like reporting of incidents or near misses. If you have an open culture in an organisation you will have more reporting of what is actually happening rather than somebody saying ‘oh god you have far more going on than we have in our organisation’ whereas in fact there might be significantly underreporting in a more punitive culture. So, I guess it could be read either way in terms of a simple analysis could be, the more your culture is broken, the more you are going to require external mediation
to fix things, and where the more open it is, the more mature… the appropriateness of getting expertise to come in with whatever degree of frequency is appropriate. I guess the acid test is, is it [external mediation] just coming in to fix the same broken problem with different people or is it coming in to help with new consequences, new challenges, but ultimately leading to self-determination and self-correction within the organisation.

Researcher, Question 5: Great, and question 5… eh, can you indicate the approx number and percentage success rates of cases that have progressed to external mediation in the last 5 years?

Yeah, well, when we talk about mediation, if we agree the definition where there’s a trained mediator to deal with a conflict rather than people who…

Researcher: Well, I suppose I would define an external mediator as someone who is brought in who is not an employee of the organisation but who is specifically brought in to help manage or to deal with a dispute or conflict within the organisation…

Good, I’m happy with that…

Researcher: …and I would use it in a broad sense because…

So, in that case then I guess we’re talking, probably an average of one a year – so that’s maybe 6… and out of that, in terms of success, well… success has many faces doesn’t it?

Researcher: Yes, and success isn’t necessarily having a piece of paper….

Well, I’d go 50-60% success, maybe 60%. Em… but how do I do that?

Researcher: We’ll tease through that a little bit. When you say 60% success, what do you mean by that? Do you mean…

The resolution of the matter were accepted by both or all parties to have fulfilled their needs so that there was, you know win/win. I can think of an example where there was a guy who ultimately exited the organisation on early retirement and was, you know a very protracted set of discussions and efforts made but I don’t consider that success per se. I think there was a winner and loser in that which I wouldn’t consider a success. There was change and partial resolution but, eh, you know, whenever it comes to someone exiting the organisation being part of the required outcome than I’m… I’m discounting the success factor significantly. That has happened a few times where people have said ‘I can’t stay here anymore’ so it becomes a constructive dismissal case or they go to work somewhere else. And then in other cases where people are able to work through the issues and, eh, get resolution and to move on, my own sense I think is that once it has gone so far that the trust is so low that people can’t work it out for themselves and then it has escalated – and then between the employer and themselves they still can’t work it out. I think the success index is, you know, more likely to be lower than higher… It’s just, you know, human nature being human nature… I just think people find it very difficult – and understandably so – to have their interpersonal issues under the microscope at work. Em, yeah… I think… there’s also the success in terms of less damage of being done and more harm that might have been done, so, you know, I don’t think you can measure it on a linear scale anyway and it is as much qualitative as quantitative em… so there ain’t a simple answer to that [question] for me.
Appendix 5B: Structured interview with identifying information redacted and/or removed

Interview #2: HR/case manager # 2

Question 1: What factors, in your view, determine the advancement of a workplace dispute to external mediation?

I think they're multifaceted and I think that em, the first one is whether people have a sense that they can have a conversation without it becoming… personal I suppose, or without it eh… leading to conflict and there's lots of fears around a professional engagement, a professional conversation. And they are real because at the end of the day we are people and emotions do get in the way.

Researcher: So would I be right in taking it that where you say 'where people can have a conversation without it becoming personal or leading to conflict', eh, and absolutely where people can have fears around having a conversation, that, would I be right in taking it that you are saying that where you feel that people may be reluctant to have that conversation, where there may be something preventing them from having it that might....

I think history is a great teacher in terms of how have issues, how has a person or any party felt in trying to raise issues... deal with issues. You know, the theory of active performance management in a positive way. That may be the intention but it's not how it is perceived. Equally when conflicts arise between what you might need and what you might be able to negotiate, I think a sense of mutual respect is important. So I think that where somebody is given authority and then it is taken away from them, or whether people just don't have the skill set to progress things in a positive way, and whether somebody's own history has experienced hurt or unwarranted attack, because this comes back down to perception.

And, em, you know when you look at the mutual respect policies and all of those policies, a lot of time can be spent on perception, and very little about how you might solve a problem.

Researcher: Yes, So those are factors that might influence...

…the decision to escalate, so that you would be focusing your attention on trying to arrange for a conversation in a way that was respectful to both, and in a way that might begin to raise the issues, you know that people can see it instead of the immediate conversation between two people, but can see it as a third party might see it and hear it. That in turn may help clarify what are the real core issues and what do we need to agree to differ on and then what do we need to do to build a better relationship. Sometimes that is easy, or easier, and sometimes it requires a lot of work and the problem with it is that, em, internal mediations are not trusted. 

who wouldn't know the immediate working environment and therefore that might be perceived as internal. But escalating to external also brings with it the hope that, you know, that you can benchmark it against what might be the external environment, it might be the competitor, it might be what's good practice, it might be, you know, their perception that there is no vested interest here. So I think that all of those factors and the desire is to try and progress things. The reality of where we are is that sometimes it works and sometimes it doesn't.

Researcher: Absolutely, I suppose just to clarify, so what you are saying is where there may be a lot of emotion in a situation, where there is a need for conversation without it
becoming personalised, but where there may be a tendency for it to become personalised because of a history or where there has been experience of hurt or unwarranted attack, where neutrality is required, where neutrality must be seen...

I think it must be seen because you know the facilitator does not have a vested interest in the outcome as such. Because the parties have to construct that outcome which reflects the reality of their working relationship and hopefully interdependence on each other. And I think that that's what you are trying to advance. I think other factors as to why you might bring it to external mediation is because people are just not hearing what the issues might be. And also you want an organisation to be able to demonstrate that you tried to resolve it, em, in a way that does not necessarily ascribe blame, that is solution focused rather than problem focused I suppose.

They are the factors and I think also another factor would be, you know, do you want to spend time in litigation, in the Rights Commissioners, in the Labour Court, the Equality Tribunal, do you want to spend time in there because there are big issues for everybody including reputation. And I don't mind defending in those environments once we have done our level best to get to the nub of it.

Researcher: So to have previously exhausted the other options before going those more litigious or adversarial routes?

Yes because, you know, if you are down there it is a win/lose all the time and it doesn't matter even if you win, you know, you are accused of using a huge stake and the power of the organisation vis-a-vis the individual. So it is a no-win situation. But it may well be necessary when you have to form an opinion that this relationship is damaged beyond repair. Then it may be part of the process of getting to that because you are suspending judgement for as long as you can. But you know everybody is entitled to work in a reasonably productive environment, in a respectful environment, everybody is entitled to that. And if there are issues continually to emerge... and even just getting people to understand what mediation is and what it is not, because people have a different expectation of the mediator. So we are just trying to get an independent view on this and that will become, even though it is confidential what the outcome and discussions, the fact of the mediation having taken place is a statement that effort was made. Without comment on whether it was successful or not.

Researcher: Great, thank you.

I don’t know if that made much sense.

Researcher: Yes, yes it does... That's really helpful.

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?

Well I think the quality varies and again it comes to how people are prepared for the mediation process and I think every effort is made to give people a sense of what the mediation process is, what the rules around that might be. In order to build trust that it does what it says on the tin. It is about an opportunity for conversation with a third party, so for the individuals the quality of the outcomes, I think that nine times out of ten the expectations of a solution are continually lowered in terms of what they might see as being. they might expect loads but actually what is settled for is more real and I think too that if it is focused and if it is a solution that whatever the burdens they have been carrying they are lifted off their shoulders, or are apart I suppose because they have to work together. I think that that is an important outcome, that they
understand that there are limits to each other's roles, responsibilities and that they cannot set them aside.

So I think that it's not what they have to do but how they might do it, I think is important. So from a tangible point of view is that if you get an agreement, a mediated agreement, that has been worked upon that both sides will feel that is a reasonable way forward, even though they may not be absolutely persuaded that the personalities behind that agreement will actually work to deliver it. But they have a roadmap if they want to use it.

Researcher: So when you say both sides feel that where there is an agreement to mediate and both sides feel that it is a reasonable way forward, am I right in saying, tying into your precursor to that, that you were saying that the parties might understand the limits of roles and responsibilities. So while personalities won't change in mediation that there is a.. would I be right in interpreting it as a reality check somewhat as in brings in a level of.. You would hope that that emerges, because at the end of the day there are tensions between different roles and responsibilities. They are designed into the system because somebody has particular control responsibilities or somebody has particular delivery responsibilities. And somebody has to account in a particular way whereas others are more focused on frontline delivery or you know there is a range that goes with the roles and responsibilities and they cannot be set aside. So I think that if in the process of the discussion that the actual issues are understood and the respective responsibilities around those and how it might help each other to achieve those, then even though they may be suspicious of it if they are able to sign an agreement, then at least that binds them to make every effort to work it. And you know I think trust will be suspended but they will have got to a stage where hopefully they will feel empowered to move forward.

I think that's tangible that you can see those things. Intangible, I think that without external mediation everybody would be suspicious of any dispute resolution process, if things have gotten to that stage. Em... intangible from the individuals point of view is that knowing that the organisation has such a support might help appreciate that, you know, this is not unusual. It is not unusual that conflicts will arise. It may be unusual that they need to be resolved through mediation but that the fact of a mediation being available means that the organisation is interested in trying to solve the problem and is not necessarily taking sides in a particular scenario. But is challenging both sides to work towards a solution. And I think the fact of that being available is, I think, a hugely important facility.

From the perspective of the organisation, well the quality of the outcomes, there is a cost to the organisation financial and emotional and organisational, eh because having to have those systems in place, also there is a cost in reputational concern, we haven't been able to solve those. But depending on the nature of the organisation we work in a very, definitely people organisation so therefore they are going to be either clients in terms of structure, different expectations, different requirements, different delivery options. So I think that that cost is something that has to be borne but the fact that the organisation having invested in this support does not necessarily know the outcome of the conversation, or is not necessarily empowered to support the people who have been through the process. That is a risk for the organisation because we don't know necessarily if it breaks down for example what might have been the factors so we can't do anything about that. We don't know what the roadmap might be unless it is shared with us voluntarily. But that you know, at the end of the day, is a situation where you are trusting the process and you are trusting the facilitator to be able to certify that there was an outcome, without knowing the detail and that you would hope then that
it would deliver the improvements you want or the organisation needs I suppose. What do we need, we need productive relationships and positive relationships in so far as they can be.

Researcher: OK, and as an organisation in your experience of bringing in external mediators specifically to deal with conflict situations within the organisation, you mentioned you need productive relationships, is that an outcome that you have... that might be a difficult outcome to measure across the mediations, or to evidence whether that...

It is very difficult - but how would you see it? Well you might see less conflict on the emails. You might see just different responses in the people. You might see where there was a closed conversation now there is a more open conversation. Em, you might see somebody who had switched off because this problem was just not soluble for them or they felt responsible for it in a way that was unhealthy, you might see them being more positive. Without necessarily understanding how we got there, the fact that the conversation happened, the fact that they agreed a plan may unlock other routes that would become apparent over time. Because anyone that is in conflict you can see it, you can touch it.

Researcher: Absolutely, and it is relational. Conflict can't be but relational. But in the external mediations over, for example, the last five years in this organisation if we are looking at the quality of outcomes from the organisational point of view or the organisational experience, and this is just in your sense because obviously this isn't something that is measured or documented. While there might be agreements an agreement in itself doesn't necessarily mean success because success can be quite complex. But in those things which you were saying that, for example when people are in conflict, you were saying that you might see it in how people engage, how they communicate in their emails, they may be more closed in their conversations when they were in conflict, and where they may seem switched off in their engagements. So if in looking at or considering those who have engaged with external mediators in the organisation, would it be your sense that in general there is a difference in what is happening in the relationship before the mediation and what is happening in the relationship after the mediation. Or would you have any sense of that at all?

I have seen different expressions, I have seen the outcome of our very early mediation in one case, where notwithstanding the fact that there was an agreement as I had understood it, it didn't resolve issues, that's one. In another one it did resolve issues but after a significant length of time, and huge damage along the way. In relation to another it helped clarify issues and it later resulted in investigation. Not because the mediation didn't work but because the initial engagement shifted into investigation, but then there was an offer of mediation at the end of it all to try to move things forward. So I have seen those examples and I think everything is really down to the people and whether they perceive that people are really interested in addressing the issues. So it is very hard.

Researcher: And it's complex…

I know that people are reluctant now to engage in mediation if they believe it is about undermining their power or their authority or their role and if they feel that that is the game. So persuading them that that is not the game because nobody can take that away from them is, you know, an issue. So I think it is providing reassurance to different levels of people who may have to engage in the process, or should be asked to engage in a process, is something that requires some understanding of the complexities by the external facilitator. Supporting that role and responsibility is not necessarily avoiding the issues but it is just trying to put them in context and help clarify. So I think that's an important aspect of the mediation process. Because sometimes when we are all busy going about our roles we either discharge that authority
without having to ever refer to it or where we find ourselves in a situation where we need to have to defend our role and we shouldn't have to do that. But maybe sometimes we need to explain it in a way that, em, that is respectful of the other person and the situation.

I think too in a xxxxxxxxx environment it is very difficult because xxxxxxxx by training are taught to inquire and research, all of those aspects of their job to reinforce professional competence. But research does not necessarily equal understanding and understanding is something that I think has to be worked on and acceptance that at the heart of this are two people trying to do a job. And an organisation needing to get on with a job rather than investing a lot of time and resources on losing productivity and getting distracted from primary purpose and focus. And that conceding some of your authority in areas that are not really important is a judgement call but it may need to be done on occasion to bring people forward. To bring a solution. So I think it is really whether you are comfortable in your own skin, and nobody likes to feel that they are under attack, no matter where they are. So I think it is trying to look at those risks and being real about the risks.

Researcher: And do you think mediation helps or hinders in that? Or do you think it is down to the particular situation in mediation?

Everything is context and, em, I think mediation has the potential to help but it cannot guarantee success. And it depends at which stage it is introduced and it depends on peoples history and experience of that type of facilitated engagement. And a lot of people would be very nervous of it. So to normalise that would be good but to make it routine- no organisation could afford.

Question 3: What if any level and type of feedback does the organisation receive from the mediation in relation to contextual and structural factors.

You might talk to me about it from your perspective as to contextual and structural factors.

Researcher: And I suppose as a mediator I am very aware that feedback should only happen where the parties agree to it happening. I suppose in my own experience I find that conflicts take place as you were saying in context. Nothing happens in a vacuum, so there is always a context. So I suppose I find in my own mediations that very often contextual or structural factors are identified and quite often the parties are happy to feed back to the organisation what their learnings are. In relation... to bring... either to bring some of that learning into the organisation, or to identify if in the mediation they identify contextual or structural factors which have contributed to the conflict. That they may feed back in relation to, em, specific context or structural factors which they feel would be helpful to have some support from the organisation on. Now that is not... it doesn't happen in all cases but I suppose in my own experience I have found that more often than not there is direct feedback to the organisation from the parties, saying this is what we did, this was the outcome of our mediation, we identified these factors that we would like to, perhaps, discuss with the Board or team. So if there is for example a particular mediation that I conducted for a different organisation where there were significant contextual factors but which involved the wider working team, it was in fact a full department. And it was how certain pieces of work were structured so that pressure points were coming together at a particular time of the month, certain things had to happen. Now the parties in the mediation didn't have the authority, even though they were senior in the department, but they didn't have the authority to make decisions within the mediation as to changing some of the scheduling items of how the department worked. But they clearly identified where they were running into trouble with each other and that... part of it was that at a particular time of the month every month they were both under a lot of pressure because things were coming from different angles. So I suppose that is an example of a situation where
they looked for feedback back into the organisation, back into HR, and request whether the conversation could take place at a departmental level.

See it depends, I think there is limited enough feedback in that area because again people experience the organisation through the people that they report to. If they manage as part of their action plan to identify what will improve their working relationship and find expression for that, and then if they identify as you say factors beyond their control well even that would be a good output because then they would have to come up with an action plan as to how they were going to find that reflected back. And, em, in a limited way we would have received some feedback but it would never be formal it would always be informal.

Researcher: And are you saying , and I may be misinterpreting you, that the structural factors would naturally be identified through the action plans or through the, for example, PMDS that people would do.

I am saying that if people got to a stage where they identified that there were things happening which neither of them had any direct responsibility for but they both were reacting to the environment, if that resulted in clarifying exactly what that meant and how you might articulate that, that would be a positive outcome in itself for the two people involved. Because there would be recognition that there was need to feedback or otherwise how are we going to progress it.

And that then may mean, talking about the example you gave, a different mediated approach, and we have done this in the past. Where if there are wider factors emerging that once participants felt they were able now package what might be their own contribution to solutions for the wider team, then there would be a greater openness to see it as requiring a collective response rather than just leaving it sit on their own shoulders. So I think that that is something that, yes, there would be a sense that that was possible. And we have, whether before the mediation between individuals or in our exploration as to what we might do, we have gone down that road in the past.

**Question 4:** Can you describe the culture of your organisation and the significance of organisational culture in the use of external mediation?

Well it would be a wonderful person who could turn around and describe the culture, or the culture of an organisation. I suppose it is challenging... em... historically they say that an is interested in their subject area at a third level, in their discipline, in their area of competence... em... firstly. That is their first motivation. When they begin to interact with the department and their teams maybe that is something that they can readily identify with but less so with the department. And as you begin to escalate up faculty and you escalate up to executive and the functioning of there are always going to be tensions there. Because there is a higher level of quality assurance required now which means that more and more people have to interact with each other etc. So it is challenging. I think the culture generally is positive. I think it is perceived to be open, that is not to say that it is perfect because there are packets and pockets in every organisation where people will perceive the organisation differently. I think there is a recognition that we are trying to do something different and unique. And that that recognition is finding expression now in the reorganisation of higher education. You know, that we are different and that people are supporting what we are trying to do rather than rushing us into amalgamation or something like that. So I think from a cultural point of view, a culture of can do is there.
Researcher: And can I just clarify there, so, it is an environment which brings its own particular culture because as you say tend to be very specialist in a particular area, they tend to be very passionate. Now you weren't saying passionate but you were saying that they are interested in their discipline and when they begin to interact with the department and the executives there can be, I suppose, there can be...

Well they are recruited to be experts. They have a very heavy responsibility to maintain competence in their discipline and their area of expertise. And they are focused generally, so anything that is administrative or structural...

So all of those things are, you know, the symbols of their role and their contribution. So anyone that is involved in structure and organisation and controls, their natural inclination is to try and work within that but really not engage with it unless it hits them smack in their face. And, em, I don't say that in any negative way, I think they have a hugely challenging role and without their focus we wouldn't make progress as an organisation. But equally there is always a tension between, if you like, the delivery areas of the schools and then the research and creative engagement culture and the engagement industry. Because there are different levels and somebody whose primary purpose is to build those relationships needs to engage others. And therefore how that is perceived can be problematic. How it is managed can be problematic. And so that is the reality of our complex life here.

Researcher: Absolutely, and it must be part of the culture otherwise you wouldn't be who you are, but you were saying that...

And I think that when you are looking at in terms of the frontline service of course and the, I won't call them the back office because that offends people, but the other areas like the HR the payroll, finance, facilities all of those functions and roles are not necessarily seen as empowering people but seen as frustrating people, you know. So there is a constructive tension that is going to exist in every organisation. Em, the significance of organisational culture in the use of external mediation... In an organisation where you have the capacity to erect people all of the time and they have limited room for expression then we certainly... there is a significance attaching to an environment as against a production environment or a manufacturing environment. You know it's way, way more complex than that and, em, there must be a tolerance for debate and difference of opinion and there must be a tolerance of being open to being challenged. Notwithstanding that fact that you can point to an X, Y and a Z rule or regulation, department or whatever it is. That does not mean that there is an acceptance.

So I think that yes, em, in communities where they are about developing knowledge, competence, skill, enquiry, critical evaluation and all of those aspects of a you can bet your bottom dollar that they are going to be applied to you as well.

Researcher: Of course.

So that in the use of external mediation I think that environments like big bureaucracies, but particularly environments where there is challenge and where there is nearly a requirement to defend you can expect that those conflicts will emerge.

Researcher: And where you say that those conflicts will emerge and these again you are talking about the dissonance between what makes this organisation unique between the creative tension and also the requirement of standards to allow this to be brought forward.
As yes the interaction between what you might call the schools, the faculties and the corporate governance and the creative engagement in dealing with the community, so there is a range of tensions within that because...

Researcher: And in the relation to the significance that that might have on the possible use of external mediation.

This comes back to roles and responsibilities. If you have somebody who has control over resources and a perception that they are not being equally or fairly shared out then that brings conflict. And it is not necessarily... somebody does not necessarily have all of the levers to be able to decide in your favour but you can expect a sense of unfairness will exist because they are not making the decision. So I think that that's where you might get conflicts between roles and regulations.

Researcher: Okay, but why might external mediation be an option, or not an option as opposed to the other resolution process that might be available. Are you saying that this makes external mediation a greater possibility or a lesser possibility.

No, I am saying that sometimes we've agreed with procedures, we have dispute resolution procedures, we've mutual respect procedures, we've complaints processes etc. but no system is perfect.

Researcher: No, of course not.

And no process exists that can't be improved. And working through those processes and procedures may produce an accepted outcome but if you get to a stage where notwithstanding everybody's best efforts deep-seated conflicts begin to take hold then it may not be about resources. It might just simply be a sense that there isn't an appreciation of roles that there isn't an appreciation of responsibilities, there isn't an appreciation that a slight tweak might make a huge difference to engagement. And equally there isn't an acceptance that there is a limit, so I think that external mediation in relation to business conflicts is not necessarily possible but eh.... because you would expect that the president whose decision is final on these matters and people having access through other procedures can develop their argument and have it presented and have it heard. Whereas external mediation is really trying to support people in their roles to address conflicts which may impact on the ability to have open conversations, to raise issues which are important to them and to inspect difference. And I appreciate that it may not be what they perceive it to be, but it equally can be, and then how will they address it, you know. So that is a very, very complex area because resource management immediately brings you into conflict.

Researcher: Oh absolutely, it can't but. So there, you were talking about managerial prerogative where there is, and am I right in saying that, where there is business conflicts where they would be less inclined to go to external mediation. But that where external mediation may be of benefit is where there is, you were saying, trying to support people in their roles where there is a requirement to bring a level of understanding for people to respect difference whether it is ....

Anybody who holds an office will be reluctant to engage in any process where it can be interrupted or represented as conceding their management prerogative, their authority etc. Because they would be concerned that if I were to engage with that particular process which is not about personality, which is not about behaviour it is about decision making, the allocation of resources. That if I conceded my discretion around these issues then I couldn't function. And not
only could I not function but I have given a signal that everything I do must be defended to the end of the week. And people can't function that way.

Researcher: *No of course not…*

They have been asked to make a judgement and they are making a judgement. What people are asking is that, you know, all of the issues which might influence that decision are clear and transparent to the best possible extent. But there must be, you know, the president in our organisation is the only statutory officer, who is accountable to the Dail. Accountable to the Public Accounts Commissioner. Accountable to the minister. So, you know, her judgement is her judgement, and she decides. We may persuade, we may seek to influence etc. but there is no way in the world that we could do anything or should do anything to undermine that.

Researcher: *No, and thus where there is a what we will term business conflict, where it could be perceived that by virtue of engaging an external mediation, it could be seen as in some way eroding authority. Or seemingly, taking that a decision that someone has a prerogative to make is being brought into a negotiation, that would obviously be inappropriate.*

I think that where we do try to facilitate a difference of opinion would be through facilitation as distinct from mediation. Because facilitation is to try to make sure that all opinions are heard. And that the feedback is perceived as genuine. And we do that when we are looking at strategic plans. For example we have done that recently when we were looking at reconfiguring the institute. And we invested in facilitation and we invested in supporting people but it was clear that at the end of the day there are a number of decision making forums within the [redacted] that they had the function. And that is where the decisions had to be made.

And equally with employment control frameworks, with funding issues, you know, the decision of the president is the decision of the president because they have to account for what they do and they have failed to do.

Researcher: *So those decisions cannot be made in mediation.*

And you know, there are too many interest groups, you know, legitimate and otherwise who could consume a huge amount of time. And time is our most precious resource. So I don't see any scope for external mediation about policy. I don't see any external mediation possible in terms of the allocation of resources. I do certainly see and have used external facilitation to broker difficult conversations, and give evidence of an openness to have different views expressed. And to be able to unlock those different views.

Researcher: *Yes, there are certain things which simply shouldn't be in external mediation.*

Okay…

OK.

Question 5: *Can you indicate the approximate number, and I am going to qualify this if I may, so the approximate number and percentage success rate of cases that have progressed to external mediation in your organisation in the last five years. And if I could qualify external mediation - it is not necessarily where it is called mediation but where an external person who both is and is perceived as neutral, where the conversations are confidential but where there is an identified conflict.*

Now is this an inter-personal as distinct from industrial relations conflict?
Researcher: *I would use the broader sense because I suppose in mediation both myself and people I know who work in mediation as external mediators work in very diverse conflict situations. So from the point of view of this organisation, and again it is only to get an idea of numbers, but I would like to use it in the broader sense. So if for example if there were interpersonal conflicts if there were service or dispute disagreements or even IR issues, but it is specifically when an external mediator, who is not an employee of the organisation, but who was brought in as a neutral.

We would have a number of referrals to the Labour Relations Commissioner for example, as part of the conciliation process. I am distinguishing them now from rights commissioners which would be about a decision, you know, an external decision…

In terms of mediation, I think we would have had, about six mediations.

Researcher: *OK, and of those six.

The first one produced an action plan, and it was a collective mediation. And it was a bit of an investigation/mediation. And that action plan was implemented with some degree of success.

Researcher: *Okay, so would you qualify that as a partial success?*

…The second mediation was not a success. Em … the third mediation was not a success. Eh, there was two this year and both of them seem to be making good progress towards a successful outcome. Yeah that's about five is it?

Researcher: *That's five. So would I be right in saying in around 50% success rate?*

Yeah I would think that that would be reasonable. And it is hard to judge because we don't have any objective measures.

Researcher: *And success if a very complex area, what denotes success in mediation.*

And we have had people withdraw from the mediation, you know, two people withdrew from the mediation and it had to be stopped. Yeah it's very hard to judge.

Researcher: *It is, it is. And again success is a very broad… one could do a study purely on what might be seen as a successful outcome to mediation and the complexity of that.*

The problem comes back to your factors that will determine advancement in a work place history to an extent. You know, that takes time because of cost, because you are trying to encourage people to involve themselves in dispute resolution. Things are harboured for a long time before you get there. And so unravelling it..

Researcher: *And naturally there are different processes which must be gone through at a local level.*

And keeping them all separate is difficult.

Researcher: *So where a case does go to external mediation, would I be right in taking it that it is where the other options have been exhausted at local level through informal processes.*
Yes, informal processes which have resulted in a suggestion of a mediated solution. And it is, em, it is at the end of a process. When we talk about a process we talk about conversations in different forum where it begins to emerge that really this is more conflict with the organisation as distinct with conflict with the individual. And whether sometimes it just needs to be given just to exploring the issues which are underlying that.

Others is very direct conflict between people.

We don't suddenly start off, like in an IR process, you know, there is a stage in the process where the IR discussions have concluded and then there is a referral to the LRC. And those processes are clearly open because they tend to be about issues or claims or perceptions, Whereas we have a formal grievance procedure which sets out the various stages. And we have an individual grievance procedure which sets out the various stages including referral to the LRC. Whereas mediation in this sense tends to be around the whole area of mutual respect and team-working, where you might need to rebuild a team. Some people would call that mediation some people would call that facilitation. Sometimes it is very definitely mediation because people are not talking to each other in a way, there is no sense that you can have a disagreement without somebody taking umbrage.

So, I think that's the complexity of it all.

Researcher: Yes, it is absolutely. So just I suppose in checking my own understanding is that you were saying that you have the IR process but you also have formal grievance procedures so it really depends on particular issues.

The IR procedures tend to be collective, collective grievances. The individual grievances are very definitely an individual.

Researcher: But whichever it is there are processes and procedures that they work through naturally and they should because the organisation has the processes and procedures in place specifically to help people address and work their way through. Would I be right in saying that most of the time the issues are resolved within these processes and that it is just in the exceptional circumstances that they progress through.

Well I would say addressed within the process I won't say resolved because you know at the end of the day the complainant has the right to pursue to the Nth degree. And whether it is defended or not is another question at different stages. So at least people have decisions. You know an individual grievance is tabled by an individual and they have control over process. So if at some stage they are satisfied that the outcome meets their requirement or they are persuaded that there is no real advantage in going to the next stage, well that's a resolution. But whether they are addressed in the sense that people feel that that was a good decision.. they may just park it and it revisits itself or resurfaces later on.

Researcher: Because what they often say about win-win situations is that no one is ever fully happy with a win-win situation - because by its nature there has to be a level of compromise.

Well I remember reading another document today about team-working and negotiation, as distinct from mediation, if you are going in to negotiate on a win-win basis you are going in to negotiate on a win-loss basis because you don't know what you want in the first place. And you haven't been able to persuade, what you have done is capitulated. If however, you are clear about your mission and purpose and that you are objectively trying to represent the organisations best interests well then you have a hope of negotiating and persuading. So there
is this ongoing debate about win-win and win-lose and what does it really look like and taste like.

And I think that's why all the different emphasis on mediation facilitation and negotiation, you know, are finding greater expression in the last ten to fifteen years. Again to nuance all of these things, so that people can then move back to their roles and depersonalise it. And what has been going on for time immemorial - negotiation and persuasion and influence, mediation is not as well known, well as a word it is, but as a practice and the context for that practice and when it is appropriate and when it is not appropriate. You know I think everything comes back to my thing about context. If you get to a stage where you feel that you need a disinterested party with particular skills to work with people with a view to trying to reach a solution, well then that is generally at the end of a painful process for the organisation, not necessarily when there is a painful process for the individuals involved, but nobody really rushes out to mediation straight away or else you are undermining the traditional roles and responsibilities.
Appendix 5C: Structured interviews with identifying information redacted and/or removed

Interview #3: HR/case manager # 3

Question 1: What factors, in your view, determine the advancement of a workplace dispute to external mediation:

Okay, I think I can safely say I think about this from my limited experience I would say, it's when the conflict had exhausted itself out in every other respect. It certainly wasn't the first choice of anybody.

Researcher: So that's when the processes and available mechanisms up to mediation have been exhausted.

Yeah, yeah so there is no further, nowhere else to go, I think that's it. And people haven't got satisfaction. Do you know what I mean? Or dissatisfaction with the outcome of an investigation or something like that.

Researcher: Great.

Now I should just mention while we're on that the goalposts have changed slightly in so far as the Civil Service has established a mediation panel, I don't know have you.... you might have heard of this already from other interviews.

Researcher: No I haven't, is this an internal panel.

Yes...It was made up of volunteers, well volunteers who also had consent of their own management to engage. Because obviously it is obviously a little bit time consuming. And it has taken maybe a year or more to tick off in terms of what is the raison d'être, what are the ground rules and what are the you know. So it is a panel system and the idea is that people in conflict can go and avail of mediation without necessarily having first to make a complaint to anyone. Because you know under the positive working environment thing, mediation was only offered on foot of a formal complaint. It would have been seen as an informal handling arrangement but it would be, em, still a certain degree of formality involved because somebody would have to procure the thing for you and all of that, so there has to be a file .

Researcher: And in the last twelve months while this was being in active operation... would I be right in presuming that cases that... that cases are going to this panel and are being resolved.

That I don't know. I think there certainly will be reports, the idea is that there will be reports of outcomes. And there is a central sort of a steering group who are collecting outcomes and obviously outcomes have to go back to personnel officers, or some sort of a report. I haven't looked into, although I'm on the panel myself I haven't taken a case yet myself so I haven't run through the... but there certainly would be some reporting element.

Researcher: And in relation to, because again my research is all around external mediation, or specifically external mediation, so in I would assume that naturally, and hopefully, would impact on the level of external mediation. Because hopefully this as a mechanism will resolve, certainly, some of the issues that otherwise might find their way to external mediation. Yeah, yeah I think that's partly, in fact I can tell you that that's entirely the plan. It would be about cost saving and using your in-house knowledge and you in-house experts. And then
because there are so many, there are forty different government bodies, at central government level, so it is very easy to anonymise that, and you are an external for the purposes of the person in dispute.

Researcher: So neutrality is still...

Neutrality is still maintained.

Researcher: Alright, very good. Okay and any other factors, so in fact the main factors in relation to external mediation in your experience is primarily where it has... the other processes or options have been exhausted and it is at a brick wall. There are no other options available so it is a last. Right very good, okay. And any other factors, that would be the primary.

I think so because all peoples instincts at the height of a conflict is to say no way. And that has been my experience one hundred percent.

Researcher: And certainly my experience across a swath of interventions, the earliest most localised interventions, without question, are in my experience the best where possible. Okay that's super xxxx thank you. If we move on to question two.

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?

So the ones that I did get, okay, ok. I can think of em, I can think of three, ok. And in one case I would say that the I suppose the biggest quality was that, eh, faces were saved which did enable people to get working together again and put the conflict behind them.

Researcher: So by the face saving that helped the relationship.

It did, it did em, I don't think it had an equal effect, an equal beneficial effect, on each party. Okay so say in one particular case where the conflict was between a supervisor and an employee, there was already and imbalance there, I would say that the employee got more out of the resolution through mediation. But my sense of that was because that was how that person got a hearing of their issues, do you know what I mean? Because the management behaviour in the first place had maybe not been open to hearing.

Researcher: And getting a hearing was that, in that particular case, was the fact that it was an environment where dialogue could take place, or conversation could take place, that otherwise might not take place. Would that have been significant?

Absolutely, that would have been everything for the employee I feel. And I would say that in one case where a person sort or spoke... a manager spoke to me, you know, sometime later, eh, I was completely taken aback to hear a kind of cavalier dismissal - Oh that works a treat, you know, mediation works a treat, it got that person down off their high horse. And I was really aghast that that person had missed... had maybe... maybe that was just a flippant comment, maybe it was just a comment to me because they knew I knew about the dispute. Maybe again it was just something defensive. But it reflects their real view, I felt terribly disappointed if that was all they thought of the process. So Yeah, it helped them get a raging bull off their back, kind of.

Researcher: Rather than any deep understanding.
Or, or any real ownership of the problem in the first place. But then again, as you say, that post conversation wasn't even about, you know what I mean, it was in passing.

Researcher: But it is interesting.

But I was disappointed.

Researcher: OK, and anything else in relation to outcomes for individual parties.

Yeah in another, in a different case altogether I think again, and maybe this reflects my lack of full understanding of what mediation was meant to be about. I had considered a conflict in terms of that it was relation problem, and relationship building that needed to be sorted out and in fact the outcome involved pay and conditions and things that were... yeah, yeah.

Researcher: So therefore was more around IR issues.

It turned out, well that turned out to be the solution, or the preferred solution....

It was a, I suppose, you might say it was a carve up of, of... there was a bit of autonomy given by way. And that was... and that's fine and dandy, okay, but that autonomy was... definitely came with a certain new status and I think, I think, more money.

Researcher: But that would obviously have implications in an organisation like this where roles are very well defined. There is a whole IR mechanism. And did the parties in mediation, did they request this or did they have the authority to look for this within the mediation.

You see I was out of the loop of that, because I was the facilitator for the conflict resolution, I wasn't any part of the IR, separate to the IR mechanism. And I stepped right back as was my role, because I was only just - put that in place and step aside. And it went on for quite a particular numbers of time, do you know what I mean, there were a number of interventions and then there were suggestions back to me, well are there any... is there any wriggle room. And I said no absolutely not, that is not what this is about. This is about finding new ways to work together. But the new ways that were found to work together involved something that was definitely facilitated by management, local management.

Researcher: Right, so out of that mediation a request, or recommendations or suggestions were put to management that this would, as part of our putting this to bed, these are being requested, could these be facilitated and management said yes. Okay, very interesting. Alright.

I felt myself, I didn't... I wasn't happy about that at all.

Researcher: No but obviously that could have implications for other people and how mediation would be viewed as well. Exactly, yeah which really worried me, which really worried me I have to say.

Researcher: Okay, that's an interesting outcome yeah.

And if I'm not mistaken, now I may be speaking too soon, but if I'm not mistaken that may be already beginning to back-fire in other areas. You know, em, I felt again it was the expedient there was a degree... instead of actually going to... Now it was a complicated case, there are no two ways about that, do you know what I mean. And that, em, maybe some of the conflicts did
arise from a micro-management situation where a person maybe did need more autonomy but I wasn't, well I wasn't enamoured with the... but again I'm half in the dark about it.

Researcher: *And an unexpected outcome from my side as a mediator, that's not what one would expect.*

Yes, well okay that's very interesting to hear. And I'm interested to hear that because normally... If you were talking to the mediator you might get a completely different, and then it might all make sense to you, but to me it still doesn't make sense.

Researcher: *But the fact that that wasn't on the table going into the situation, it would be very unusual that these type of things would end up on the table. I suppose that ties in with question, eh, which one, question three. Because here we are talking about contextual or structural factors. Certainly were, em, at play in that particular engagement.*

Well in fairness in that particular conflict probably at the root cause of it was an over burdened manager with insufficient training. Very insecure in their position taking a heavy handed approach to people who were their seniors, in terms of age, who were very diligent who didn't need that. And, you know, so I can see how a separation, or a new alignment of duties may have been a very useful outcome. But the fact that it came with a kind of a, I don't know, I don't know, I'm still scratching my head over that one.

Researcher: *But again I suppose in mediation quite often through the dialogue in mediation where people, especially in interpersonal cases, it is not unusual in my experience for contextual factors to be identified which have perhaps contributed in some way. Em, but there would tend to be a great need for reality-testing as well again, because em, mediation is called on foot of, certainly for external mediators, on foot of a particular issue or named issues. And with any intervention if you commit to doing an intervention you have to work with what is on the table. You know so they shouldn't grow legs as such.*

Yeah, yeah and again I felt that because I wasn't part of the management team, it definitely went off in that direction and everybody was satisfied. And probably I was the only person that went ‘this is all.... I understood this dispute...’.

Researcher: *Well it's good to have someone questioning what's coming out as well. And in relation to individual parties, so you have mentioned that there are some where working together where the relationship has been improved because of the conversation or dialogue that took place in the mediation.*

Yes but in, certainly in two cases, in fact the two cases that I have alluded to, in both cases I would say that the, the, a little bit like a geyser, the conflict has sprung up a couple of feet tall inside maybe involving a slightly different configuration of parties, or, do you know what I mean. But the conflict in that working environment has not gone away. Maybe the line up has changed, maybe the, the...

Researcher: *So there is still, there are still symptoms or there are still reoccurrences of instances so whatever was resolved it wasn't the core issues.*

I don't think so because I think the core issues were management issues.

Researcher: *Yeah okay.*
That is just my personal, maybe it wouldn't be the view of anybody else. And also Margaret I would be looking at this through a gauze because I'm not privy, I'm not on site, I'm not you know.

Researcher: No but as a... the particular team or the particular unit from your role on the HR side, you would see...

Well I have been made aware of, do you know what I mean.

Researcher: You would have been made aware of that there were other occurrences.

Yeah absolutely.

Researcher: OK, very interesting. And would that be unusual in your experience.

See these are the cases of my experience…

Em, I have to say that I think, no more than anything, no more than the reasons for these conflicts is that at a management level there is, you know, if you can't knock their heads together then cut a deal or separate them or, do you know what I mean. There isn't really, unless you're a mediator, there isn't really an appreciation of what the, of the… maybe deeper possibilities of mediation. And I think that peoples experience in both of those cases have been limited.

Researcher: Yeah that's interesting because again as a mediator I would see the role of obviously supporting and identifying issues and all of that good work, but also challenging and challenging perceptions where people are, eh, presenting that... because very often we place our conflict issues as all arising outside of our control. Which isn't the case, if there is conflict we all have a role in whatever conflicts we are in, em...
And then from the point of view, the sense of quality of outcomes from the point of view of the organisation. And again you have been touching on those there.

I don't think they have changed, em, for example if I'm correct that at the source of it all is management, not incompetence, but maybe poor management practice, that has not changed. I did tell you that we had a programme of training. And that whole... the funding of that and the sanction to run with that came entirely from our head of personnel, who had been observing these conflicts. Had, do you know what I mean, had... would have been responsible for taking the disciplinary approach. If and when, or seen through the outcomes and investigations and stuff like that. And that person was the person who shouted for training, do you know what I mean. But as I say the money hasn't been there to give it to them, on an intensive basis. But we have made a start. There has been something done. So I suppose there has been a management appreciation. But I would say that's at one level, but that is a very overview level, that has not translated down to the immediate managers, some of whom didn't think they needed to come to training courses. Most, like they thought no, no they delegated that to somebody junior, because they didn't need.

Researcher: And, okay so. I suppose just teasing through that from your sense was that there was at least part of what was contributing to those situations were questions around management.

Yeah, so in relation to the outcomes there were, well what you had stated, where those cases arrived through formal grievances. So were they, I suppose from a HR view, were the grievances taken off the table.
Eh, let me just think about that, eh. They were, they were with the mediated agreements. The files were closed. They were.

Researcher: But from your point of view there were other outcomes from an organisational level that, for example that case where there was a....

A settlement type of affair. Well, I would say, in fairness I would say that a party central to that conflict, em, would be one of the people who most engaged with the training. Who lapped it up. Who actually did quite a lot of soul searching out of the situation. But on another case the person in that key pivotal supervisory role did the opposite. So I think it comes down really to individuals, or how reflective an individual's is about their own self and performance.

Researcher: Absolutely and we are complex.

Also I think maybe how long a person is in their job because that person who maybe embraced the need to change their own style was relatively young, relatively junior, relatively inexperienced. Another person who is there a very long time, do you know what I mean, and would see no need to.

Researcher: And the person who is there a long time and who would have been reluctant, shall we say, to engage with the training, em, they wouldn't, would I be right in presuming that they wouldn't, you wouldn't have had a sense that they would have gained any great enlightenment in any way through mediation.

No, not at all, that would be the person who said "that worked a treat, all he needed was to get it off his chest".

Researcher: So that was in one case and in the other case you believe the person... do you think mediation would have helped at all.

Absolutely it did. But now maybe it wasn't just the mediation. That particular mediation came after an investigation where the person had been found, do you know what I mean, the findings had been against her so there was disciplinary stuff as well so I suppose that person was maybe forced into it, a period of reflection.

Researcher: But your sense was that they did, they did move though...

They did, they did.

Researcher: Interesting... their self-awareness. Right, okay. Em... anything else on organisational outcomes, or would that cover it.

No not really. Except I suppose there is a culture, an organisational culture I think at the heart of a lot of this. And that certainly, do you know what I mean, has not changed. And I would say that does, I have heard many of the managers say "Oh that positive working environment, you don't want to broadcast that too loud, because you'll bring everyone out of the woodwork". And that would be a very common, a very common... And people think the role that I was in would be considered to be 'stirrers'.
Researcher: Rather than bring up issues that are going to fester and at some stage come up. Well we'll be talking about that on question.... we'll be going back into, question four is all about culture. Okay, maybe will we move on to question three?

Yeah, sure.

**Question 3:** What if any level of feedback in your experience does the organisation receive from the mediations, but specifically in relation to contextual or structural factors. Or does it, in the mediations you would have been involved with? Yes because obviously the organisation gets feedback as to whether there was a successful outcome or not. I know sometimes quite detailed feedback will go back where parties feel it is helpful to themselves. But have you, have you had experience of, em, specific feedback around context or...

Yes I think that was eh... I think in each, well one case, well certainly those two which were big cases, definitely there was, yeah, it was all by the agreement of the parties as to what would go back or who would get access to what part of the responses. I think myself, the one where the sort of settlement was reached, to my surprise, I think maybe that one was done, instead of it coming back through that route as being 'these are issues which need to be handled outside of the mediation and separately' you know, 'we are in agreement that this needs to be reviewed', it was sort of done and dusted.

Researcher: And that was all structural?

Indeed it was, indeed it was.

Researcher: Ok, and in the other mediation would there be anything structural?

Yeah, the other one I actually did myself, as it happens, it's the one that I did in house and again there was no structural issue really, do you know what I mean. It was about performance, management and it was about personalities and do you know.

Researcher: But that was as an internal mediator.

But it was also, yeah, it also pre-empted a complaint. D'you know, I got in there early, do you know what I mean, I got in there early and they were willing, d'you know. So and that was just the luck of the draw really that it was nipped in the bud, do you know what I mean. So there ended up not being any structural issues.

Researcher: Yes. And was that there weren't any structural issues because the discussion took place which meant that issues could be managed or that there weren't structural issues as part of the substance.

I think that there might have been a less than clear understanding of what their roles were in relation to one another. So the person taking the supervisor stance was seen to be, eh, interfering busybody, you know. When in fact that person did have a role so that just needed to be...

Researcher: So the structure wasn't changed but some clarity was brought to the structure.

Exactly, you know, you know. And then issues about performance, you know. And it was more about how those issues were brought up, or the forum and how they were discussed, or
how they were received. How messages were received. And both parties, I think, were very, very willing, d'you know. I think they were both willing to try and put it on a correct foot. Do you know what I mean, it was a minor....

Researcher: Sometimes that helps.

Yeah it could have become big maybe if...

Researcher: But it hadn't gotten to a stage where it was totally caught up in negative emotions or that type of stuff. Great. And again early intervention there is so much to say for it, there really is.

And again that was a big learning thing for me to see that. How and in fact it was one of the parties knew a lot about mediation and that was really why, do you know what I mean, was interested in that kind of thing so they called for help so it was.... yeah.

Lovely... okay. Shall we move onto question four.

**Question 4:** And that is, and you have been speaking to this Xxxx. Can you describe the culture of your organisation and if you have any sense of the significance of organisational culture in relation to the use of external mediation. So I do apologise, it's a bit of a long question. But, and you have spoken a bit about the culture of your organisation and what you were, because I do believe organisations do have very specific cultures, they can have lots of sub-cultures within them as well. You can have pockets of very enlightened teams or management, and pockets of less enlightened shall we say. So in your sense of your organisation how would you, how would you describe the culture.

Okay , I think it's quite a polyglot of an organisation in some respects from the de-centralisation programme. There has been a lot of turnover of staff, a lot of new influences in terms of culture. But there is really two organisations at least. So there is the sort of civil services, desk bound, office bound, policy making, budget holding, spending capital works, that sort of thing. And then there is the state industrial sector. And they are even different in our, in terms of how their records are kept on a personnel system, two separate personnel systems. Two sets of employment legislation governing the two types. And the state industrial sector is, eh, would have very different types of grades and very different types of work to standard civil servant, d'you know. And I think there is a massive culture difference between the two of those.

Researcher: And where would they sit if we, if we take it that a culture... if we're looking at it perhaps say a closed culture and an open culture. Where closed culture, if we maybe describe a closed culture as being conflict adverse, where conflict is seen as a problem and it's something that shouldn't be dealt with and we avoid and we... Whereas an open culture being a conflict competent where conflict is seen, or issues are seen as not in themselves being bad and if they are well managed that is a good thing. In relation to the two parts of this organisation as you see them. And if that is a continuum, because there is no such thing as a fully organised...

I know they are all over the place.

Researcher: And if we had a continuum where one side is very closed and very, eh, conflict and issues are always seen as problems. So if someone raises an issue it is almost the person is bad as opposed to the person tried to get something addressed. And the other end of the spectrum which is all about lightness and eh... Where would you see...?
As a whole?

Researcher: *Yeah, well you were saying that there are two different bodies almost in this.*

Okay, I would say if you took the organisation as a whole I would say that we are pretty closed, pretty far down that [continuum].

Researcher: *If that was on a 1 to 10. 10 being very open. 1 being very closed.*

As a whole I would put us on a four probably. And I would say that on the state industrial side that would be even further back, I think it's a command and control type, very old fashioned actually, very, very old fashioned ways.

Researcher: *OK and how does that or does it, it certainly may not, but in your view does that em, impact or does that influence the use of external mediation. Now it may or may not, I don’t mean... and I know the questions suggest that it probably does, but...*

I think that mediation would be seen as a soft sappy corporate type of a thing. It really would be, now this may sound sexist, okay, but the gender balance on the state industrial side would be very, very heavily orientated and an industrial outdoor working environments where there is a lot of noise, there is a lot of, what shall I say, the working environment is kind of rough. It's rough, physically rough and the work is tough physical work up on scaffolds and ladders and driving noisy machinery and that sort of thing. So it's not conducive...

Researcher: *So it's not about deep conversations.*

No, it's not conducive maybe to great communications in the first place. And then there certainly would be a macho... the XXXXXX is extremely macho, extremely macho organisation. I think that probably informs a lot of the...

Researcher: *Okay, so mediation wouldn't be, would be seen a bit, a bit ‘soppy’?*

A resource for the weak. Yeah. And a weak response by a manager. That a strong manager would command and control. And a subordinate would be expected to go along with that. And I think management attitude would be, if you have your head down and you're working flat out working really hard there shouldn't be a problem. You get your wages and you do your work and there's no...

Researcher: *Absolutely, no...*

It would also be unusual, so it would be part of the culture to unusually in, quite unlike the civil service were we are very tied into our, say, centrally negotiated pay, grades and all that. There is no room for manoeuvre, there is actually no room for favouritism in terms of advancement or anything like that, or you know, promotional competitions.

Researcher: *Yeah so it is very structured.*

So it's done externally, or there done in a very, very obvious kind of way, do you know what I mean. That, that... it's transparent. On the state industrial side there is a lot more scope for.... yeah there is a lot of power at relatively junior kind of levels. Power that wouldn't be exercised in the same way in a corporate way, but at local level, but that's necessary, you know, it's necessary to figure out who is going to do the overtime who is going to do... you know what I mean. But it's also ripe then for unfairness or perceptions of unfairness. And that just puts you
in a conflict environment before you begin. And if you then have a command and control attitude and someone raises their hand and goes that doesn't look fair to me, instead of actually having a conversation and being fair you mightn't be able, you are going to be defensive, do you know what I mean. So I think it's yeah, I think there is a lot of power and a lot of power wielded and maybe not a lot of eh, not a lot of time for governance. People that focus on, focus on... you know. Again this is my view, maybe a person working in that, I've never worked in that, you know.

Researcher: But this is absolutely around getting a sense of the individual experience or the individual perception of it so this is absolutely about what your personal understanding or sense is from the work you've done. So it is the personal view.

Well you know I've had it in feedback. I've given a few presentations and stuff about the positive working environment and about mediation I think to try and just... in places where I knew there was a conflict climate and certainly the feedback I got was...

Researcher: ... that 'girly' stuff?

Yeah, but then... and then at the same time an awful lot of anguish about, you know, 'I'm not respected and I'm treated unfairly' and 'I'm not given my due or I'm not... or that person is singled out and why is that?' A lot of bitterness actually. A lot of bitterness.

Researcher: But yet despite that mediation is still seen as just culturally not, just not... it doesn't fit?

And where I met people who were quite bitter what they wanted was an investigation and that person sacked or trunked out of office. They can only see these extreme solutions, they'd like to... you know what I mean. And no amount of trying to explain that that's not really what the outcome is likely to be no matter what's going on here. Because in fairness no matter what the miss-managed situation is it's almost never malicious. In fact it's... I don't think in any of the experiences of any of anybody who has been involved in conflict I don't think there has been any malice at the centre of it really, do you know what I mean.

Researcher: But there is so many reasons for conflict arising because we're different, we're complex, we've different expectations. Em, different ways of engaging, communication, different ideas about how discussions should be made and how authority should be held and all that kind of stuff. So it's absolutely normal and natural that things go wrong. It is interesting though, and part of the reason that prompted me to do the masters and specifically a work-based learning masters is because I get so many calls for investigation, Xxxx, and I get... mediation is my passion... but the propensity for people to fall into or to look to investigation. And to call it....

Justice!

Researcher: Yeah, they want to be validated, they want the other person to be hung up by their toenails. And em...

And they are so disappointed every single time, I have seen a good few investigations, well not a good few, but a number of investigations come through and not at, you know, yes this behaviour was inappropriate, yes this behaviour was unfortunate, yes this behaviour was, you know, of a bullying type. But no there is not a pattern, you have not been bullied – you know. So and I think that that disappointment of people who have been on the receiving end of a report
like that, who made a complaint in good faith feel very let down. Really let down, and then usually the thing is - well you're all in this together, or, your backing up the boss or that sort of stuff.

Researcher: Yeah that's why I do think, I do think the writing of a investigation report and how it's laid out and how its explained why the findings are found because no one is ever happy with the outcome of an investigation, never. Because again people want validation or vindication and generally that's not what happens. They establish facts and that's the extent of it. But it's a bit like the day in court, people think the day in court will deliver, it but it doesn't.

Yeah exactly, no, no and it's exactly the same.

Researcher: It is, but yet people call for it. Okay shall we move on to question four. Sure

**Question 4:** Can you indicate the approximate number of cases or situations that have progressed to external mediation in your organisation in the last five years, and the success rate. Now I wouldn't mind qualifying that if I may? By external mediation I am talking about where someone who is not an employee of the organisation, where they are brought in. Now it doesn't have to be called mediation, but it's where someone external to the organisation is brought in specifically to help manage an issue, a conflict or a dispute. Em, so it can be within the inter-personal, it can be around contract, it can be around, eh.... because certainly my understanding of mediation, my experience is that it's as broad as the issues that arise. It's not always called mediation but it's specifically where an external has been brought in to mediate a dispute. So I suppose firstly the number of cases, would you have a sense.

Okay the first thing to say again I have quite a small view because all the cases that I came across were just ones where there had been rumblings of complaint under the positive working environment, so that's about bullying and harassment. So if it wasn't around that, if there was grievances, there could be plenty of grievances where there would be a meeting called and maybe who would be brought in...

Researcher: An external facilitator?

More likely that it would be adjudicated by the personnel people here. There would be plenty of those but no.... the only externals would be say advocates coming, the union rep and stuff. So that's not the same. Well then I would say that the practice is for those kind of grievances about conditions and stuff like that...

Researcher: Yeah, it's under the dignity at work policy.

For bullying and harassment complaints or of those nature but for everything else it would be handled in-house by the personnel people. So that would be.... so probably could rule those out.

Researcher: So the ones that came... would have come under the 'positive working environment'?

Well there are these three, there are three where mediation was sort or, I wouldn't say got off the ground but where at least one of the parties met and in some cases both parties met with mediators. I had, I had a slightly..... we'll take this off the record, no, no I'm only joking, but you won't tell on me - I would question my own ethics around this. Where people would say "Mediate - no, no, no" and I would go "I've set up a meeting for you with a facilitator here to
discuss your options with her, you know, to explain what investigation is what mediation is blah, blah, blah’, but the person I had brought in would actually be a mediator. And what I would be trying to do is trying to, not to manipulate them, I'm very aware of the whole thing of the voluntariness of it, do you know what I mean? A bit close to the line.

Researcher: I don't, I wouldn't personally,... and okay you could call me biased but I don't believe ..., provided there is clarity around the process and how the process works and what the persons role is... I don't think it matters what they're called.

I learnt from you, when we did our consultation that time, about the process being everything and that's what I would normally say I'm bringing in a person, I'm arranging a meeting for you, it's not would you like to.... this person will tell you what happens at an investigation at mediation and any other ADR that you can think of.

Researcher: Yeah, yeah. And that's what a good mediator should be doing anyway, testing options. I had a case, a recent case, and it was a mediation case, em, two individuals quite senior within the organisation, and it was organisation, and they were having significant problems but the HR manager suggested that it should not be termed a mediation because that wasn't going to sit. And people have sensitivities. So I said 'I have no issue with that provided we are very clear of what the process is and the parties know precisely what the process is. You can call me anything you like.' And, em, we did and it was structured as a mediation, it had the same confidentiality and neutrality and clarity around all those things. And it was super. And the parties were very happy with it and we were calling it... a facilitated engagement, is what we called it. So I wouldn't... I think ethically again it's all about clarity.

Yes and I think definitely with my own plan would be to get these people to understand that there might be something in this for them. Whereas when you mention the word upfront to them it's universal response "No thanks, no thanks, I'm not sitting in a room with that person".

Researcher: And people sometimes thing it's this cosy, cosy chat which is the last thing people want to do with someone who is their counterpart [to a dispute].

So I would say that there were three cases where it didn't get off the ground but there was engagement with a mediator. In one case actually the mediator had to walk, em, because she felt that one side was fuelling their campaign, you know, maybe trying to abuse the process or attempting to abuse the process and the mediator walked out. So three that didn't get off the ground and then three that did. And out of the three that did the outcomes were successful.

Researcher: Now by 'got off the ground' you mean that went to joint session?

That went to full mediation and, em,... the, I suppose what we would call a success, was that the complaints were withdrawn on foot of the mediation, do you know what I mean. And so the file would be closed with a statement from the mediator saying "look we've met, or signed off by the people", I can't remember, saying "look we've met and resolved our own differences through mediation".

Researcher: So from your side they were seen as a success to some degree in that the complaint has been withdrawn and in the.... that's the other thing to...

Or resolved, shall we say.
Researcher: Or resolved, yeah. But again success, and again there is a very wide continuum of success. And you can have short-term successes and long-term successes. Or where people come out of mediation where they really feel that they've, they gain an understanding and they understand their own part in a situation as well. Or you can have someone who comes out and just because they just want to finish and put this to bed so they sign a piece of paper which puts the complaint to bed. Which is a very different level of success if you can even call it that.

I think they were very successful, well very, the one that I was involved in, as I say, was very minor because I'm not experienced so I wouldn't have been....

Researcher: No but this wouldn't be about size.

No but it wouldn't have been a complex kind of case, do you know what I mean. The other two were very complex. I would have thought, they involved multi-parties and stuff like that, and I think that they were. I think that the parties were delighted, they were delighted to put it to... because it had rumbled for years. It hadn't been caught early they had festered and grown legs and stuff like that and d'you know. So I think people...

Researcher: So that would have been a very, very highly...

How long it stuck I don't know, do you know what I mean, because I do know I certainly would have got at least two phone calls from people saying listen that's just the best, I'm so happy. I'm so pleased. You know it was great.

Researcher: Okay, that's super. And then maybe just go back to the three cases that didn't progress to, em, didn't progress to joint session. One of them the mediator decided... felt that the process was perhaps being open to abuse, so quite rightly decided not to proceed.

That one side was not willing.... not really wanting to resolve it. They were always going to investigation in the end.

Researcher: And as mediator you always have to keep an eye that it's not going to be in any way abused, the process. It's really important. The other two cases there did you have any sense of why they didn't proceed.

One case if I can remember now, em, he met with a mediator, actually it wasn't an external, it was an internal mediator now that I think about it, and he, the person had walked himself into a corner, he really had walked himself into a corner and the mediator was really offering him help out of that corner and he wouldn't take it. A big mistake, do you know what I mean, on his part. It went to investigation and the...

Researcher: So the party, the respondent in that case he said no.

Yeah, yeah he said no to mediation that he wanted an investigation, but I think he didn't really, he was very upset at the time and I think he didn't really understand what either... it wasn't that he didn't understand but he had boxed himself into a corner and there were helping hands and he wasn't able to take them because he was in a ‘tizz’. He'd gotten himself into a ‘tizz’.

Researcher: Okay, and the third case?

The third case was, em, I can remember now the details of that. I think it was possibly the mediator might have pulled the plug as well on it. I think yes... The complainant, it was a very
delicate case because it involved sexual harassment. The person was extremely un... out on sick leave and, do you know what I mean. So it was maybe a delicate kind of case before you would even begin the notion of getting two people in a room, whatever d'you know, was going to be a long shot, okay. But she had agreed to meet the mediator and met with the mediator and then prevaricated… and then the mediator said ‘look , you know, this person isn't ready, it's not appropriate to continue’. And the mediator closed the door on the thing. And then the party was going - what... what... what? But then again the party was locked in a big internal battle, do you know what I mean, and this would have been one of her strings of battle, do you know what I mean. So it wasn't right, it wasn't right even though the complainant didn't quite see. I think she just thought this was another person to work it all through to get, d'you know, she was on an, em, you know a person who would follow every strand of everything, and getting into layers and layers of meaning and words and letters, and a file this height, do you know what I mean. And it was her way of working through her conflict but this was not, so it wasn't ripe.

Researcher: *And that was a judgement call on the mediator's part.*

Yeah on the mediators part to, to say it now rather than wait interminably with interminable half engagements and cancelled arrangements for the other person to come to the same conclusion. But I think the party would have come to the same conclusion anyway. And I think given the nature of the case it probably was never going to be a runner. Or maybe in the very long distance future and it was held out at the end of that whole case, it was sort of held out - look this option if you ever feel that you could or want to sit down in a room and have a facilitated thing to clear the air with the other party, that will always remain open to you. But I don't think it will ever be activated.

So that was those and then there was one that I only know of through, I suppose, not hearsay but only just that the personnel officer would have said to me ‘oh, I think they might have been asking for a list of mediators, of recommendations of names of people that they could engage for a conflict that hadn't gone the complaint route’ so didn't come through those channels. And again it was, I suppose, the more senior up the food chain the less you like to admit that you need help with anything. Okay, so it would have been that kind of a case where people would not have wanted us handlers to know there was a issue but they needed help and they sought it, and got it. And I have no idea how it...

Researcher: *...what the outcome was?*

I have no idea, in fact I know nothing about it. I don't... I only know the name of one of the parties and I didn't ask because everyone was trying to keep confidentiality and at the same time... so I can only tell you that's a hearsay thing.

Researcher: *Yeah and it is interesting again and that's, that's a conversation again as a mediator I would have very regularly with colleagues in a mediation forum, which is where does mediation sit? Is it this very nicely boxed process or is it flexible and...? Which is a really interesting and it's a very current conversation in mediation, as it should be.*

I believe myself it comes with a touch of a stigma.

Researcher: *I believe it can and I believe if it's not... I believe one of the great things about mediation is its flexibility and that should apply to how the framework is structured but also what it's called and how people are brought into it or are engaged with it.*
I think that a bit of education around the nature of conflict is what is probably needed for it to become a mainstream tool that you can reach for. But it is definitely not that in the

Researcher: No, em, but *I do think the preventative work on building capacity, management training.* Without question is where the answer should be.
Appendix 5D: Structured interview with identifying information redacted and/or removed

Interview #4: HR/case manager #4

**Question 1:** What factors, in your view, determine the advancement of a workplace dispute to external mediation?

Well there would always be an examination where, you know, when the conflict arises as to what are the factors. And often the first thing is to try and see are there elements that are more a grievance than being covered under the em, bullying or harassment or sexual harassment headings. And in a lot of instances then it would be initially the line manager who might be dealing with it or it could be our equality officer here who would be dealing with an individual and would make them aware of the different policies. So where it would be considered suited to external mediation, em, the examination there would generally, I suppose, we would use our internal mediation where possible and that, that works quite well and we've had a good, kind of, outcome from that. So the... in a way then the external mediation would only be where the internal wouldn't work. And that might be if the internal mediator knew any of the parties involved and that it wasn't appropriate for them to mediate. Or if they just weren't available at the time to give the time to the mediation. Or if there was other factors maybe, given the different potentially roles even though it wouldn't always be a factor that... the mediator wouldn't always be in a senior role in the organisation. But the, I suppose, the mediator, the internal mediators judgement around whether it would be an appropriate mediation for them to take on, em would be factors in that. So, em, where we have used external mediators in the past they would have been some of the considerations.

Researcher: Okay and where the internal mediator would view a case, okay it's gone through... It's had initial examination at within the HR function as to where it sits, policy wise, whether its grievance or bullying or sexual harassment. If it's decided that it is appropriate to move it into an internal mediation, em, process, the internal mediator reviews the case at that stage. Determines in their own mind whether there is a reason perhaps they shouldn't themselves do it or whether they have any reason to question whether, whether it sits appropriately there.

Yeah, I suppose the equality officer here would play a large role in even trying to assess is it suited to mediation or is the timing right for mediation. So if a dispute is in a very early, maybe, stage there may be an opportunity for the local manager to take more action in terms of trying to resolve the issues, or at least clarifying the issues that are within the managerial remit. And then I suppose a lot of the time you are trying to pare down to the core issues that may be suited to em, to mediation. And I suppose we are similar to other organisations where then the voluntary engagement of the parties is essential. But the thing that we would ask is that they would meet with the mediator and that the mediator would explain the process. So at least if they say yes or no they know more detail.

Researcher: It's informed, great.

What they are deciding to opt in or out of.

Researcher: Great, and when you say XXXX where the equality officer part of their determination is whether the issues are suited to mediation and whether the timing is right,
which absolutely makes sense, do you have any sense of the, what type of factors, might determine whether it is suited to mediation or not.

Well there was a recent case and one of the parties wanted their own, kind of, management response to the issues first. So I suppose that's a specific example of where, you know, one of the parties to the dispute felt that there needed to be managerial clarity on some of the issues before they weren't rejecting mediation but they were saying I'll consider it once this step has been taken. So, I suppose, it would be off an in-consultation with the parties, em, who are in dispute, em, it, it could also be factors like if something, you know, is a grievance that that might need to be progressed to a certain point to then see where the other factors lie, em, they'd be some of the timing issues. Or one of the I suppose other factors, I was talking to the equality officer earlier, that he felt that the individuals' judgement, even that they had an issue with each other and that they were rejecting mediation could allow them to address those conflict issues. But if individuals are more seeking an investigation or seeking a process that was going to support their position and they're not willing to allow their position to be altered by that engagement they would be stepping into. They would certainly be the kind of factors, yeah.

Researcher: Okay so the wishes of the parties would be quite significant as well.

And, em, another I think factor that it's so different for the trust in the mediation is that all of the other processes, the grievance or em, if, if someone was even disciplinary can sometimes arise around these issues, the kind of right to representation is there with the trade unions or a colleague and I think that is another, em, you know, aspect of mediation which makes it very unique and makes it work very well when you get in, or you get parties into it. But, eh, it is that sense of - I’m very vulnerable potentially in this space because it's just me and the other party and the mediator. And so em, but then at least there is a good awareness now in the organisation about mediation and what it is and how it can work, em, which wouldn't have been there a few years back.

Researcher: And that the vulnerability of the party whereby in a different process they would have union representation or I assume HR representation depending on the situation itself, and is that around, would that be a consideration as to capacity if the person is... would have a capacity to engage in mediation? Or am I misinterpreting that?

I suppose that that sort of more detailed assessment as such might be part of what our internal mediators, say, might feed back if, if they felt that perhaps that there was a vulnerability or that it wasn't going to be a successful mediation in that sense. But I'm not aware that that has ever arisen. I suppose that ongoing engagement with the parties and trying to judge what would be the best process. And I mean any process is clearly there to try and make things better rather than to make things worse.

Researcher: So it really is about fit both in relation to the issues and in relation to the individuals.

Yes absolutely, if, if I suppose an individual mindset is just determined on, you know, wanting to be just found fully right in their position and wanting some form of punishment against the other party, they're not really in a space where they're likely to really give the mediation a chance.

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?
Okay, well I suppose the quality, I think a big factor for the individuals is the confidentiality that the process affords them, and I suppose the... you know while internal mediators would, would seek to maintain that as well for some parties and external mediator might give them an even greater sense that this individual knows none of the other parties in the organisation and is completely coming at this from beyond the organisation. So I think that is a huge, you know, aspect to what the process offers the individual, em, which is very beneficial. Em, I think in an odd way that also is good for the organisation because you know the only things that would come to the organisation out of the process would be things that are beyond the control of the two individuals so if there needs to be some change beyond that that would support their positive outcome. But in, in general, em, the parties would tend to work through it and all we would know is that they either stayed with the process or they've reached a conclusion point and an agreement.

Researcher: So, so whether an actual agreement has been reached would be... would always... you would always be informed of that.

Yes, em, I think part of then the quality for the individual is very much that, em, they have that space with the mediator to explore their own maybe broader sense of how they feel and things that have occurred and then that opportunity to hear from the other party, em, why maybe certain things happened and where... what space they were at the time. And I think the quality of that engagement no other process offers. Em, and the fact that an external mediation can, can build that space for the parties I think that's quite a rare thing that mediation offers that none of the other processes do. Em, and I think allied to that then is that when the matter is settled, when it gets settled, it's settled in a way that is beyond what an investigation can settle, or you know any kind of process where somebody else determines an outcome. I think the quality that the two parties have arrived at, at a position that they feel is fair and equitable and that they can stand by and they can commit to themselves and to the other party, I think the quality of that kind of an outcome way exceeds anything that's imposed. Em, and I think their standing and their good name and their... you know I think that all links into the confidentiality and you know while confidentiality is, every effort is made to maintain it. Once something is committed to paper, even if that paper is restricted to very few individuals I think that there is always a concern - where might that piece of paper end up, or might it lead to some legal process? And I think that's a big peace of mind factor that the mediation offers that other processes don't. And then equally for the organisation that lack of creation of the paperwork can have benefits because once issues are resolved there's no need to commit anything to paper. And paper by its nature seems to lead its way to processes at different stages and it's very hard to control. It could end up in a newspaper article - it could end up in another legal process and it's very difficult to control that. Em, and I think the other thing, the quality is... is what we spoke about earlier… the vulnerability is just two individuals and the mediator so there is no else listening in, there is no one taking notes, there is no one who is a witness to that engagement and, and I think that, you know, really brings something quite unique and, and of value to the parties if they can trust the process and work through to the end.

Researcher: And can I just draw on that, because that point again about being just about the two individuals and the quality of engagement, which ties back into what you were saying earlier that the, the quality of engagement for the individuals where they get to explore, eh... where they get to explore their own understanding or perception, but where, and the broader sense, and hear from the other side. In relation to – and this is a very subjective question – but in relation to your sense of what that means in terms of outcomes for the individuals or the organisations do you.... or is that... because you're saying here that that's a
very important part and it's unique element of mediation. Do you have any sense of what that means in terms of output or in terms of... either on a personal basis or....

Well I suppose the potential is there in the mediation that you might gain a new perspective whereas the other processes are far less likely to offer that. Because it's, the other processes I suppose can give facts or establish things, but it's more maybe an insight into another person's behaviour, or if that person might choose to share something that they wouldn't have shared up to then about maybe issues beyond the work place or... so that you gain maybe a sense of maybe even the vulnerability of the other person and why maybe their behaviour at that time was, you know, far from perfect or whatever. It's those kind of insights that eh, when the process is working well and people trust it that they might be willing to contribute that they wouldn't ever contribute in a formal investigation because people are more likely to stay within their roles of you know – 'I'm the great... whatever... and this is what I do’. And the justification is more likely to come into that whereas the opportunity to say look I was having a bad day or whatever it is, I think the mediation offers that context where people can be more open and drop the facade that maybe their role or the protection of, you know, the different things within a work environment that people will cling to justify their behaviour.

Researcher: Great, lovely… There is quality of outcome in relation to where the mediation, where there is an agreed mediated agreement and thus what gave rise to the situation can be set aside or the circle is closed on that.

The quality of the working relationship where a mediation succeeds are likely to be far more functioning than following on from other processes where, I suppose, there is still a lot of unanswered questions for individuals and often the thing the individual wants to know, you know, won't necessarily... they won't necessarily have had a chance to raise it or to get an answer to it. So I think that sense of a more holistic resolution maybe would be the word, you know where it's everything from the feelings to the actions to the facts. That it kind of allows a far more in-depth exploration.

Researcher: Great and on... where there is obviously an individual benefit from that but from an organisational benefit that is...

I suppose it's back to the better functioning of the working relationships, the, em, time frame generally is shorter although for more deep set difficulties it, it could take a number of months, it would generally be a shorter time frame. It would also I believe tend not to lead to follow on processes because, eh, once it's resolved it's resolved. Em, so again there are organisational benefits in the time that has been invested in the resolution.

Researcher: As opposed to other processes to resolve it.

Yes and I suppose even again going back to the simplicity of it being just the parties there is fewer organisation peoples’ time being taken up in even the, you know, attending meetings and keeping sets of minutes and that sort of thing. So it certainly is more beneficial from that perspective. And I suppose thinking back to what a lot of employees want is to know that their employer cares about them. I would imagine that a mediation process, you know, creates that better sense that this isn't just about completing a process or defending the organisation that it really does allow the individuals to feel cared for in the resolution of the issues. And I don't think the other processes can offer that in the same manner. Em, another thing that we would find from an organisational point of view is once a formal complaint is put in writing against someone, and again the mediation allows that you could enter into it without being formalised, there is just... there is a wound nearly created at that point that anyone in an organisation will always say well my employer, you know, put that complaint to me. And no matter where it
goes from there, and it has to be done if that's, you know, where things are at, but it, it does alter that sense of everyone expects the organisation to know what kind of individual they are and somehow to maybe make certain things go away. And even though there is a naivety in that it is a strong human emotion. And I think again that is an organisational benefit is that... that sense of ‘this is about individuals and the recognition of every aspect of an individual in a workplace’, the mediation can stretch to that whereas the other processes are more...

Researcher: And that's that the... so with the mediation there is an option for an issue to be brought to mediation without it necessarily having to be formalised through the processes in written.

I mean, just to say to you that the way we would offer the mediation, it could be offered at any stage of the process, em, so it's never not available. But if it comes in at a very early stage a complaint doesn't even need to be in writing and that could allow maybe a better, em, opportunity then for the parties to hear from each other what the issues are rather than it being down on paper to say this, this is the complaint.

Researcher: But, and I'd be.... I take it I'm right in saying that efforts would, and this is alluding back to what you said earlier , that efforts would always be made though to see if it could be resolved at local level first.

Absolutely yeah, yeah. We would certainly know from experience that the best chance of resolution is at local level.

**Question 3:** What if any level and type of feedback does the organisation receive from the mediation in relation to contextual or structural factors. Because we have spoken about, to some degree, about what comes back in relation to agreement. Em, but in your understanding has information been fed back, with the permission of the parties obviously, in relation to context or structural factors which may have impacted on their working relationship or in some way fuelled...

I think that's probably one of the few weaknesses of the mediation, in that we would rarely get feedback on the contextual or structural factors. And you would be relying then on the local manager to be addressing those, maybe in parallel to the process but generally having to use their own initiative because the process is so separate. But I think it is the, probably the one, potential weakness is that we all behave in, in context and in an environment and while the mediation gives that chance to just look at the behaviour and allow the individuals to explore that, what it's not really looking at is that part of that behaviour is, is perhaps triggered by a contextual factor. Em, and while you could be lucky to have a manager who's aware of that and is picking things up and is altering things to support the... you know the positive working relationship moving forward. You could equally have a manager who just feels - well the mediator is dealing with all of that mess and I don't have to think about it. And I think that that is probably one area that, maybe because the mediator focuses more on the individuals, and while the benefit of the external mediator is that they're fresh and new to things, they may not be as confident in saying there is a contextual or structural problem here, this is dysfunctional or this needs to be addressed. Because they may be just stepping into a particular context and they only have the view of the two individuals which says this is normal or this isn't or this was applied or this should have been done differently. They don't have the context of maybe the manager or other people who might be able to say, to get a different backdrop even for the mediator to understand if everything that the parties are presenting stands up in every aspect. Or if that is purely how they are seeing it, you know, where they are working in the organisation. And I suppose that's something that we haven't really addressed.
Researcher: So you haven't tended to get any feedback from parties or through the... em, where the mediator has been requested by the parties to bring back specific information in relation to context. That hasn't tended to happen?

No and I know the mediators would know that, you know, the parties can only agree to things that are within their remit to agree to, but, but it tends not to... issues tend not to come back to say well allied to what they have agreed themselves these other issues need to be addressed. And I'm not sure if that is just because they didn't arise in the particular situations or because a mediator mightn't be as clear on where their remit stands in relation to that or who even they would... you know, while they would have been contracted by someone in HR they mightn't be entirely clear on how directive they can be or even how suggestive they can be in issues that need to be looked at beyond the agreement that the individuals have arrived at.

Researcher: Okay, but in your own role that's something that, again within the parameters of Researcher, if a mediator in engaging with the parties in relation to a conflict that they have, em, if part of the discussion... if something arose in relation to context and structural factors that were contributing to their conflict, or that they believed were causing stress for, for whatever reason. Is that something that you would be open to receiving feedback on.

Oh absolutely yeah. Because it would be an essential part of the resolution and it would be a learning for the organisation in, you know, how systems contribute to conflict and, em, it would be very valuable. And sometimes they might be issues that there isn't an easy resolution but it still would be important to know, em, what is contributing to conflict for the parties.

Researcher: Great, thank you. Em, moving on to Question 4.

Question 4: Can you describe the culture of your organisation and the significance of, in your view, of culture, of organisational culture in the use of external mediation. And maybe just to qualify that certainly in my view, and I work across a lot of organisations, I do a lot of work in the public sector and the private sector. There are certain, em, certainly in my view organisation have particular cultures but they can have lots of sub-cultures within those cultures. So it's not that there is a simple, but if we looked at say a continuum where we have at one end, we have a very conflict positive organisation. And by that I would mean an organisation that recognises conflict as normal and natural and issues arise and it is how you deal with the conflict that's important. That's one end of the continuum, and at the other end of the continuum we have a culture where conflict is seen as just bad and it's... and I would call it a conflict avoidance culture. You know if someone who raises an issue is a troublemaker or... so perhaps using that.

I certainly think we have been, you know, moving more in the recognition that particularly I think change and conflict are almost interlinked and that, em, the need to be very transparent and clear with people on the rules, you know, can often help to minimise the perception of inequity. And I think often the conflict arises from a sense that something unfair has happened and that you are treated less favourably and that maybe a number of individuals are, you know, party to that. So certainly as an organisation we have been growing in transparency, in an understanding that, you know, the local manager has a large role to play. But I think we would still have a ways to go in terms of insuring that the capability is there across the organisation. And in terms of organisational culture even in terms of day to day management it would be very different in Dublin Fire Brigade where it would be much more a command and control structure and that would affect every aspect of the working life there. Or outdoor work force, you know, where it is inspectors and depot based work again a very different engagement in terms of how
much staff can question a management decision and what processes there are to raise any issue. Or the more office based staff, so I would kind of nearly see our work place in those big divides and the culture around conflict would you know, equally be very different. There might be much more of a use of foul language and em, you know, maybe even a physicality to conflict in certain parts of the organisation whereas other parts might be calmer on the surface but an awful lot of emotion going on below the surface. Em, but I think in general, em, managers realise that inevitably conflict will arise and how they manage it and the processes that they utilise are critical in moving it forward and ideally to resolution. But it varies hugely across the organisation, em, depending on the individuals, where some individuals may feel that's a HR matter and it will be pass straight to HR and others would very much seek assistance from HR and make sure that they're on tract and they're applying things correctly. Em, but the em, certainly culture we would encourage would be that yes they would seek the assistance and would get all the support but that they would seek to resolve it locally where possible. I think the other things in terms of the conflict culture because we are heavily trade unionised and because we have, you know, other like the grievance processes is a very active one. I think that helps people feel well it's not that their issue won't be addressed but they really need to frame their issue and move it through the correct process. Whereas a lot of individuals would just come saying -I'm being bullied and harassed, and then when there is an exploration of which of the nine grounds then they would drop the harassment piece and then if there is an exploration of well how regular, was this a one off incident, it allows them to even frame their own understanding of the behaviour and what they need to do to, to have the issues addressed.

Researcher: And does that happen, that framing of issues and that conversation, which is a really important conversation, where someone feels there is something going wrong here, I can't manage it, I have to talk with someone, is that conversation that generally takes place with someone from HR or depending on what section or what area the person is in within the organisation. Are there pockets where the managers will have those conversations.

Definitely, I suppose again staff who have a manager like that are probably more likely to raise the issue with the manager. But anyone in the organisation can make an appointment with the equality officer here. And they can also make appointments with our staff support services, and often people who are going through a conflict they might choose to talk to the counselling service first, again to just get a sense of you know how they are managing it and also what action do they need to take. So there would be a range of supports and again the trade union movement would be very much there to advise and support people so those conversations could really be happening in any of those arenas.

Researcher: Correct, and the counselling service obviously that's a confidential conversation if someone raises it. Em, with the equality officer someone can raise an issue and have a meaningful conversation as to what their understanding is of it. And I take it that the equality officer would step them through and help to deconstruct and see well where does this sit.

Yep, and insure that they have access to the policies and understand them and then that, you know, they would keep checking in to see well where is it at now and has it been resolved. So that once it has kind of come to the attention they can insure that it hasn't just festered as such.

Researcher: And likewise the managers, would I take it that where the conversation takes place with the manager it would be a similar conversation to with the equality officer in that the manager would take out the policies and procedures and try to help locate what it is.

If they are doing their job correctly, but it is very hard to know what actually happens. That's how it happens when they are on the training courses but how it happens in reality....
Researcher: And it's a big organisation so people will have different ways of doing. Okay, em, and the significance of this because again XXXX you were saying that you have a very,... within this organisation, and I know there are lots of layers of difference and complexity and all that, but you're saying that there would be, in your view there would be a sort of general cultural, eh, divides within the organisation. And the significance of those different cultural divides in relation to the use of external mediation, so you are saying for example you have the one which would be very, em... almost physicality in relation to conflict and how conflict is discussed or addressed, so it's if something needs to be said it's said. You have, on the other end of that continuum, you have perhaps a very calm, but conflict can go underground quite easily because people might not be as open to discussing or even saying 'listen, I have a problem with you'. And then obviously you have.... you'd have variations in between those. Would you have any sense of the significance of that divide or that continuum in relation to the use of external mediation. Like which, which would be more inclined, or do both sometimes end up in....

I think that's probably why most of our mediations have been with the internal because it can be, I suppose, subtler in a sense. Even in terms of if a new face shows up in a [redacted], straight away there's who is he or she and it's quite hard to maintain the confidentiality because people will ask questions. Now while you can always arrange to meet off site and things like that, em, whereas the internal mediator maybe has a better sense of, you know, even how to subtly go about that. Em, in terms of, em, how the culture of the organisation would you know accept or receive an external mediator, I think all managers would be open to... that that might be the appropriate way to address and issue but there might be more of a sense of, em, I suppose that judgement about is it necessary, you know what I mean, and is it,... I suppose has.... again what we were saying about the timing and the appropriateness and things like that. But I would certainly see there is no part of the organisation that would say categorically they would never use an external mediator. Because often that decision would be guided by HR as well. You've kind of got that balancing aspect going on.

Researcher: Great, okay. And then the last question.

Question 5: Can you indicate the approximate – and I'm going to qualify a number of things here if you don't mind – the approximate number of and percentage success rate of cases that have progressed to external, and this is specifically external mediation, in the last five years. Now in relation to the number of cases that go to external mediation, working as an external mediator I would qualify that as it doesn't have to be called mediation, I go in and depending on the situation where sometimes... I had a case recently and it was between two people in a [redacted], very senior, there was... a significant issues had arisen over a period of time, and for a lot of reasons it wasn't called a mediation. Now it had the framework of a mediation, it was confidential, it had a very.... it was, it was... now I was being brought in as a neutral external, which they were aware of and which is what they wanted, but we didn't call it mediation. So it doesn't need to be called mediation and it can, I suppose, in relation to the type of issues that might be, em, as far as I'm concerned it can be any issues within the working environment that... where there is an issue, whether it's contract or inter-personal or whatever else. But it's where there is an external, neutral person being brought in, who doesn't make a decision but simply supports the people. So that is to qualify that part. And in relation to success there are lots of different ways to success so we might qualify that in two ways if you don't mind in that success may be a mediated agreement out of it, which means that the actual issue that is on the table is taken off the table. Or, but again there are lots of... as to how qualified a success that is maybe only time will tell, and if... or maybe that people work better after and there isn't necessarily a written agreement but people are in a position to move on and engage or teams can move. So it's, it's.... I don't want to box these I suppose too much.
And you know say the facilitated type, em, well that's almost in a space between investigation-mediation. It wouldn't... the facilitated type process, you wouldn't qualify them as mediation.

Researcher: Well only if... I would if they bounded by the self-determination of the parties and that there is an identified conflict issue at the core and the engagements are protected and confidential. So to be... some of the work that I do as a mediator is called facilitation and especially with larger groups. And then there is facilitation proper as I would call it where there is... and it might be around change and bringing understanding or bringing, em, drawing understandings from the group. But I wouldn't consider that to be mediation unless it has an identified conflict issue at the core. Does that make sense?

Yes, so those processes we have engaged in recently would you see them as...

Researcher: Well the one... I would see that as, my hope was that it would be mediation, but it moved into a different process though. If they had in that particular case, if they had chosen after stage one, if they had opted for the mediated engagement I would have qualified that as being a mediation but as they opted for the independent review it went into a whole different process. So that wouldn't qualify... It could have, but sadly it didn't

And again with the parties, with their wishes taken on board it kind of got moved in a different direction. Well in terms of cases in the last five years I'm only aware of one pure mediation as such with an external mediator. And while it was successful in that the parties arrived at an agreement and we were told it was concluded, em, in recent times the conflict has arisen again and I'm not sure if it's entirely related to the issues that were mediated or if it's new issues, but in terms of the individuals and certainly one of the individuals, em, they're, they're back in a place where there is conflict that they are raising with the HR department.

Researcher: And it's with the same individuals?

Yes, em certainly one of them anyway. Em, but because I suppose the nature of the mediation being so, em, confidential it's difficult to say afterwards which new issues now were old issues or are entirely new issues. But looking at the, the, you know, the context it would appear, em, that some element would have been part of the mediated process. But that again in terms of success, was it a success that for a period of time the conflict had at least appeared to be resolved. Em, so, em, I suppose there is an element of success there. And that might have even assisted that individual in terms of the pieces that they have been able to let go of and move on from and the other pieces that have remained. Em, in terms of then the, I suppose we're relatively new into this facilitated processes that, em, could qualify as mediations or not. If, if the one that proceeded the piece of work that you did fell into that category I think it did. Em, that certainly would have been successful in taking a very complex situation, em, and in assisting the individuals involved in working through the issues and again what was very useful there was that the pieces that were resolved kind of got removed so that what ended up in the final reporting was only the outstanding matters. So I think that in itself is a huge success in that the organisation doesn't need to know about the issues that the individuals have arrived at a successful resolution of. And I think that's a huge benefit to both the individuals and the organisation. Em, and I think particularly again in terms of what different workers value, I think in that instance, you know, reputation and standing and all of those issues would be, eh, of huge value to the individuals and the process was very successful in managing those interests. Em, but I would, I would think that, em, that type of facilitated arrangement would definitely suit a lot of the arrangements that we have here. And I certainly feel that based on our recent experience it's something we would certainly look to explore more. It's probably the advantage that it might have over the pure mediation is that it does come, you know, while there is still the
voluntary and the opportunity to step out there still is more of a sense of here is the process, and sometimes people need that little bit of certainty, of, without pressuring people or making people feel like they don't have a choice, there needs to be a little bit of a, you know, persuasion to say, you know, you have raised issues, here's the process, give it a chance, work with it and see where it goes. Whereas I think people can be overly focused on - I can step out of this whenever I want to - with the mediation. And I think that somehow can undermine the chance of it ever getting started. Em, Now I'll just check the records to see where there more than that sort of one pure mediation with an external mediator and, em, come back to you if I'm wrong on that.

Researcher: No that's great. And just in relation to that point that you were making, just in relation to the flexible framework where there is clarity around process, em, but where it counter balances the... where it's pure mediation... so you're... and again this is, because I'll only be working off what we have on record, obviously, other than knowledge that I might have from work that I have done with you. Em, but in relation to, I suppose, differentiating between pure mediation where someone is brought in as a mediator and it's named mediation, or you have a flexible framework where mediation is an option within it. Am I right that in that second case that you are referring to, there was a flexible framework where mediation was one of the options that could flow depending on the wishes of the parties. But that other, em, if they didn't opt for mediation there was another identified process that would automatically....

Em, I'd have to, I suppose I'd have to have a look at the terms and reference again to see but my understanding of it was that, em, I suppose aspects of mediation would have been utilised in terms of giving the parties the opportunity to really discuss, explore and be fact to face in, at appropriate times, in discussing the issues and listening and hearing from each other. So that aspect, you know what I mean, would have been part of the process. There would also have been an understanding that if issues emerged that required investigation that they could have been separated out of the process. Em, but I'm not sure if the parties had to explicitly elect for mediation or whether the techniques just were inbuilt into the process and then the other aspects of once issues were resolved they didn't appear in the final written document. I think it may have been more that it was build into the procedure rather than the individuals having a sense that they were opting into a mediation or opting out of it.

Researcher: So it was a procedure that would, that could, accommodate mediation, direct mediation with the parties and that, but where there were particular issues that weren't able to be resolved within that scenario there was an option for them to be brought forward.

Yes.

Researcher: Okay, and you're saying that from your, looking with your, your organisational hat on that that level of flexibility was in fact quite helpful, you feel in being able to I suppose, separate some of the issues, put to bed some issues and bring forward other issues as need be.

I think it was very helpful in, again, giving that space to the individuals. I think the only, maybe, piece of it that might need a bit more clarification is because the individuals would have, you know, processed a lot of time, information, material, emotions they may have had an expectation that the final piece would capture more of that as opposed to an appreciation that, that you know, that because something didn't appear in a final report it didn't mean it wasn't heard or it didn't have its place in the process. And I suppose this is again while it's relatively new to the organisation it's new to individuals as well and some of their maybe expectations around what should have been captured through or followed through, em, there may have been a sense of disappointment or, em, a sense that em, the individuals should have been able to be,
em, controlling of what would end up as opposed to trusting that it was the facilitators who
would make the ultimate decision around what appeared. And that there was a reason around
what needed to appear around the structural context type issues and recommendations. Em, so
I'm not sure how you would ever entirely, you know, fix that one as such, but maybe as part of
the original briefing to individuals. So they have an understanding that it will ultimately be the
facilitators decision as to what material ends up...

Researcher: *So there may have been a slight gap there around expectation or the managing of
expectation.*

Yeah, and I suppose that fact based piece versus the, you know, the future focused. And I
suppose the past focused piece versus the future-focused piece.

Researcher: *Right, okay, and in relation to the... it's not, it's not formally part of the question,
but in relation to the... would you have any sense of the number of cases that go to internal
mediation.*

Yes there would probably be about I'd say two or three a year, em, would arise. Now again, I'll
check that but, em, in fairness to the person who provides the internal mediation he has taken on
quite a number of cases and some of them have run for quite a period of time but there, there
seems to be, em, a good success from the work he does and I suppose he has that ability to kind
of nearly be camouflage within the organisation in a sense. Em, so you know while some
parties would want an entirely external person because we are such a large organisation with
thousand staff there is almost an element of external in that they are different.

Researcher: *Well neutrality, he's not going to... there would be so many people that he wouldn't
know.*

Yeah so again his judgement around that. So a smaller organisation probably couldn't offer that
in the same way because there would be too many... knowledge and you know it would be very
hard to create that sense of separation.
Appendix 5E: Structured interview with identifying information redacted and/or removed

Interview #5: External mediator 1

Question 1: What factors in your view determine the advancement of a workplace dispute to external mediation? And this again in true mediator sense would be what is your sense of what is it about the cases that go to external mediation... what is your sense of the factors that might determine they do so.

Em... Okay I suppose for me there would be probably two elements to it Mags. One would be organisationally, what is it that.. that brings them there and that very often is the quality of the information that people get within the organisation initially. So that is often one of the things. I suppose the other one in terms of the parties themselves, em, that actually, kind of, move things into the kind of external mediation would certainly be the fact that there is an ongoing working relationship. That is probably one of the big ones, you know. That people know they are going to have to work together, em.... particularly as an amount of the work or mediations I would do are in organisations where people either are, em, going to be in that organisation for the long term because of the nature of the organisation. You know it is either public or semi-public or the sort of work they are doing doesn't allow necessarily for people to easily move to other areas within the organisation. Even it's found it's quite specialised. And, em, yes it's really that, the fact that people have either had a long term working relationship with a person or know they are going to continue in a working relationship with a person.

Researcher: Okay.

And that would be... I was doing a pre-mediation even this week and one of the people was very, sort of very 'angsty' about going to mediation, you know. They were in that kind of place of - Oh I don't know, and I don't think it will do any good - and all the rest of it. And actually the primary area that we then were looking at was the ongoing working relationship.

Researcher: Right. And this would, would I be right in, em, taking it that it is with a view that where the parties are going to be working together, or where they have had a long working relationship, mediation is seen as in some way helpful. Or having the potential to help manage that aspect of how they are going to work together.

Yeah, the fact that they are going to have to communicate with one another if they are going to be able to work together in the future. That using a process like mediation where they, where people have got to talk to one another, is certainly kind of a helpful kind of element to it. You know the benefit of actually being able to establish some type of reasonable communication with each other.

Researcher: Great, super. Thank you XXXXX.

Question 2: What is your sense of the quality of outcomes, and this can be tangible and/or intangible, from external mediation. And maybe if we look at firstly maybe from the point of view of the individual parties. So this is your... what is your sense of the quality of outcomes.

Okay so in terms of things like the, em, what people agree at one level, you know, what's actually, em, I mean certainly I think where people really test the tangible outcomes, you know what it means in terms of how people are going to work together. You know how they are going
to communicate with one another. Em, how they are going to, em, address the, perhaps, the leakage of that conflict into other areas. Em, I think certainly the, em, there’s really a high, I suppose, tangible quality of outcome where people invest some time in actually talking most things through. And also, you know, debating with one another around that, because I think that's something that I think really influences quality of it, in my view. You know that the degree to which people can have a really robust conversation with each other very often that in itself is quite sort of tangible for them. And being reflected back that they managed to have a discussion around things to, perhaps, tease out how that would actually work together without it disintegrating into kind of, you know, negative communication between them.

Researcher: Lovely.

So I think, you know, certainly I think those tangible outcomes are things that go into a written agreement between them. And again I suppose I would tend in my own work over time, or more, you know to make sure that things like communication and I suppose some things that we do, you know, in relation to you know, what would you do if these issues arise again in the future between you. Because even that is one of those sort of outcomes that I think sometimes at the beginning of a mediation people just don't believe that they will ever be able to have a conversation with the other person about.

So I think as tangible outcomes, the fact that there is that, there is a confidence that people have talked about it. That they have a robust agreement that will have some value. Em... the.. let me think of other things. I suppose also you know, that the problem itself has been addressed. Because I think, you know, as a tangible outcome that for people... you know that relief for people that they have actually talked about something which perhaps they had not talked about up to that point. Em... in terms of the intangible... I suppose again some of those probably drift a little into connection with things, you know, with the fact that people have that opportunity to have a robust discussion builds confidence. You know which is a little less tangible sometimes for people to put their finger on exactly what is happening here. You know there can be those intangible shifts then back into the beginnings of trust being rebuilt in the relationship. Em... And you know sometimes the, the... I suppose that moment of transformation, if I can put it that way, where literally, and it is almost quite, you know, something that is intangible em... that the... now people literally have a, I suppose again it's that link it's back into the other trust begins to rebuild, they begin to see the person as human again. They begin to talk to the other person directly and em, to engage with the other person directly. Em... and actually, always for me the kind of again, I think sometimes the tangible and intangible they kind of drift into one another because one forms the other in some ways. But that kind of sense of people... that they will be able to work with one another again. And they simply have that kind of confidence that they will be able to do that.

Researcher: Great. You may be able to hear me, I am scribbling away as we go just in case my recorder doesn't do the job. That's great... And from the point of view of the organisation, what is your sense of the...

For me the kind of quality of outcomes, you know, would be that the dispute or conflict would be resolved. That would be a tangible one. You know if it is something that has been raised under a particular policy or procedure that the organisation has a confidence that this has now been closed to the satisfaction of the parties. Em you know, where agreement is reached, em, and I think you know that is a really important one for organisations. You know they have done
what they can in a fair way and that people have actually addressed issues and found a
resolution.

I think there is also a part there, which, definitely for organisations is about performance. You
know which is that people can get on and do their job. And that is a tangible outcome that people
actually are in a position now to give their energy and their time to the work, as opposed to the
dispute that exists between them. Em... And... I suppose again a kind of, em, this is something
that is probably less tangible in the sense that it's, em... I think in situations where mediation...
Okay let's start with where an agreement is reached and people get a resolution. I think there is
an intangible, in some ways for the organisation, but a kind of a confidence of the parties in the
organisation that they have a process that actually is helpful and has helped them to reach a
resolution. Em.. And.. em, I think you know for the organisations within that as well, I suppose,
there is an outcome which is that actually their confidence then in the process as well, that is
something that has addressed or allowed people to address their issues.

I think where it doesn't reach agreement, em, for the organisation again there is a clarity that
that has been tried and they now need to do something else. So you know I think that that is a
very tangible outcome. Because there is a, you know, a very specific kind of clarity that the
parties themselves have now not been in a position to find a way forward on this, or a resolution
to the issue. So the organisation now needs to move to, em, other.. other problems. And I think
that is a very tangible outcome from mediation.

Em, just to see if there are any sort of intangible ones I come up with, where things aren't........
Again I suppose one of the things Mags that would always strike me that where mediation,
again as a process, one quality of outcome for the organisation is that it hasn't dis-improved the
situation. You know, so the dispute may still exist, the parties may not have been able to reach a
resolution themselves, em, but that it hasn't... one of the outcomes is that it is no worse than at
the time when mediation began, if you know what I mean? And may even be better from the
point of view of the people at least may have some better understanding and may be slightly
less polarized going into other processes then they might have been, you know.

Question 3: What, if any, level and type of feedback does the organisation receive, or the
organisations, you work with receive, with permission of the parties, in relation to contextual or
structural factors. Or do they, are there times when with the permission of the parties that there
is specific feedback in relation to context or structure.

Em... There can be, em, I suppose one of the things that I would always do with people if issues
are coming up which are about the organisation, em, you know whether culture or structural
issues, em, then I would tend to hold those to kind of one side. You know deal with the issues
that are directly within the control of the parties themselves, and then look with the parties at
what potential they might have, or what options they might have for, I suppose, influencing the
organisation through feedback at the end of their mediation. So I suppose that is the type... the
sort of approach that I would take to it, because again I was working with a group there recently
- you know very easy for people to spin off into -it's all down to the structure of the
organisation, it's all down to the context we work in. And again I would just tend to kind of
catch that and put it to one side and say Okay that's something we will come back to. Let's
focus now on what is within the control of the people in this room, you know to actually focus
on. But certainly I would come back to it Mags. Then the discussion I would have with the
parties is the degree to which they themselves can give that feedback and how they might do
that. So for example in some situations, em, you know let us say for example, there... I am just
trying to think of some specific kind of situations where it would be relevant. Em, a manager of
an area staff member in a dispute that has risen, part of what had influenced the escalation of
that dispute and conflict between the two of them was the way in which the organisation had
managed its processes. So what they identified was that there was some feedback that the
manager could helpfully give to their own line manager and senior manager. Because there was
a kind of a structural piece there about the way in which communication had happened, or not
happened.

Researcher: Okay, great.

They also identified that they themselves would value the organisation being given some
feedback because for both of them they felt that the way in which, at senior and I suppose HR
levels, it had been done where not necessarily in the best interests of everybody concerned.
And that there would be some very important learning to come for the organisation, from what
had happened.

Researcher: And can I ask XXXXX, was that learning which the parties fed back to the
organisation and to the HR managers in relation to how the situation had progressed, that
learning was as a direct result of the engagement within the mediation. Am I right?

Yes it was because it came out of that discussion because they both actually had... it was one
area where they both completely agreed with one another. That the way in which it had been
handled by the organisation was not em.... had in many ways exacerbated some of the conflict
between the two of them. And so that was very much something that they hadn't even thought
about. I mean they were both angry with the organisation and, em, annoyed that things had
happened but actually as they began to think it through, you know, rather than holding onto that
anger and it becoming destructive towards the organisation, which is where they were both
sitting around it in some ways, they began to look at well what are the options for actually
giving some feedback here. And influencing as opposed to feeling like little cogs in a machine.

And I have had that I suppose a few times in situations. Not every time, because every time
there aren't contextual or structural issues.

Researcher: No of course not...

I think though where perhaps people have invoked formal policies or procedures that may be a
situation. Em, I think in other contexts em.... you know I am thinking again of one very specific
one where, em... a mediation process between people led to a mediation process between those
people and the organisation with the organisations agreement. And again that was because there
was a very real kind of structural kind of issue there that needed to be teased out.

Researcher: But the subsequent engagement between these particular parties and the
organisation was in a framework of a mediation, secondary or follow on?

Yes, yes it was and I mean often it would be.. you know the agreement is  that either they would
go back and have a discussion. So I would always look at those options, you know, maybe one
person goes back and has some discussions because that is relevant. They both go to their
respective line and have discussions. They both go together to people and potentially to HR and
have discussion, em, or the mediator, being myself, feeds back on their behalf.

Researcher: Right, okay, on agreement.
With agreement, absolutely. And I mean it is absolutely signed off as being, and I would always write that into the agreement at the end, that this is what is being agreed. That the request is... and then the wording of that is... And I am kind of thinking of some situations I would deal with where perhaps the, em, the agreement that has been there with the organisation and the parties is that there will be review of the agreement at a later stage. And that as part of that that there might be feedback. Again I am thinking of one particular one where the organisation had agreed that it would feed back into the review with the parties, so that it would give them feedback on what it was doing, let's put it that way, through its HR function was being done to, I suppose, ensure that some of the things that had happened were not... were now being dealt with in a way that would be... would make sure that it wouldn't happen that way again. It was actually very positive.

Researcher: Very good, it sounds great.

If I can say it that way, the HR manager wasn't particularly jumping up and down with delight when they got the initial feedback, would have felt quite attacked in some ways. And I think had the parties themselves given that feedback in that instance it could have been an extraordinarily difficult thing for the HR person to have heard and for it to have been dealt with productively. Em... in that instance the parties themselves actually felt quite strongly that they would probably not be at that point, at that stage where they could have had that conversation constructively.

Researcher: No, But that kind of conversation and that feedback was able to happen via you as the mediator.

Yeah.

Researcher: On the agreement of the parties and that led to a different type of communication and dialogue and steps between the organisation and the parties.

Yeah, well I mean it allowed for at out next review, and we actually had two reviews of that agreement which again had been part of the original contract, em, that because just of the nature of what had happened and the relationship between people, the kind of power relationship that was there, the kind of sense that trust was fairly well kind of chewed up and spat out. And that they did need to work together into the future they really didn't have too many choices about that, em, in the short term certainly. Em... the organisation then... you know the agreement was that I would contact the organisation prior to each review and ask them what they got coming out of each review. They would have gotten a piece of feedback that was agreed with the parties and then they would have fed in to that review as such, and the parties then if they had further questions. So by the time we got to the third time together... the second review Mags, the parties themselves were already beginning to have conversations directly with their HR people anyway, you know. So that was a kind of positive outcome to it.

But as I say not everybody is going to.... yeah they kind of... I suppose there are not always situations where structure or context is particularly relevant, you know. Em... But again I am thinking of another situation where a party.... the parties had some concerns em, em... again the same sort of thing they made a request of the organisation about how the review process might be managed. And again that was something that was helpful. And in fact I have just concluded one, just, review of a situation that was a return to work for somebody who had been out.... had made no formal complaint but was certainly distressed and, em, had had a, from their perspective, a very bad experience in the work place and, em, that particular one was the person with their trade union representative with them. And the senior manager of the area with HR
with them and that was really interesting because the... in the context of all of that, well one obviously the context was hugely important. Em.. the structures of the organisation and what the person could do to get support if something like that was to ever happen in the future were actually really sort of pertinent conversations. And both HR and the trade union person in the room were really extraordinarily helpful. I have to say now in all that it was far more helpful to have them in the place than to be going out and, you know, conveying messages to them. So that was really helpful.

Researcher: Very good, Ok. And that obviously fed in directly to HR and the Union.

Yeah and I suppose the other side of that Mags is also the one where the feedback coming out with permission of the parties, you know again, is very dependent on the willingness of the organisation to hear it. And I think, you know, that is another thing. In fact here is another completely different type of example which is where parties, where there were contextual and structural issues without a doubt, I mean you know, there were things that the organisation really and truly needed to sort out. There were major, kind of, communication difficulties, em, you know some on the part of the parties themselves and equally you know, some on the part of the organisation. Both their...the more senior manager behind both of the people and also the HR function. And unfortunately in that situation, you know again, we looked at whether the parties themselves would have those conversation and they didn't feel, em, able to... to do that constructively. Em... and we teased that out quite a bit and we tested that and what that would mean for people and particularly for the more senior person in the room, that they were actually saying that the relationship between them and their own senior manager was so problematic that they couldn't .... that was done in [redacted] that particular conversation by the way. But looking at it then together with the parties, em, the agreement was that, em, I as mediator would go back and give feedback.

And I would help them... I'm not saying it won't really establish again but certainly the senior manager was in a highly problematic state themselves. And I would have, I suppose, listened to them and looked at what options they had for getting some supports for themselves. And the HR function.... unfortunately the individual in that, as nice as they are, em, has a very limited capacity to, em... yes to sort of deal with some of these things, you know. That was just very... a great shame, so I can almost guarantee that, and in fact I had contact from another person who had been asked to get involved in another situation, in the same organisation, and they were just having some concerns particularly when they heard my name mentioned as having been involved and they had come not to talk about the actual issue but they had things that were triggering in their head, you know. And I would say what you were seeing was again a pattern, exactly the same thing happening but just in a different area.

Researcher: Okay and if I am hearing your right [redacted] you're saying that there was a... not necessarily a reluctance but a lack of openness on the HR side or capacity to hear or really engage with feedback which was... which I take it would have been constructive feedback as to how something might need to be... something that might need to addressed or discussed further.

Yeah, yeah and potentially to be open to looking at how their function might do something differently. Em, and they seemed very locked into, you know I encounter that anyway in people during the first kind of conversations. That they are you know - well no that is that persons problem, or it's those people, nothing to do with the rest of the organisation.

Em, but in this particular incident they literally couldn't move beyond that at all. They couldn't, even with space and even with going back, they literally simply saw it as a problem between those particular people and that in fact was exactly the feedback that the other mediator was
getting as well, in a different situation in the same organisation. So again it was, you know, more from other perspectives that we would try to maintain some link there over time just to see if it was possible to support, if it was acceptable, you know. You can only do so much, that was just really unfortunate.

But I do think there is that bit for HR people to.. again I suppose there is that assumption very often that HR people understand conflict and they understand systemic issues as opposed to simply -this is a conflict and it might be completely disassociated from anything and everything else that might be happening. You know which is sometimes the case.

Researcher: But you are saying more often in your experience you have found the HR managers that they do understand, they have a broader understanding of conflict.

I think that they are open to hearing and I think if it is constructively put to them they will think about what can be done, if they are worked with constructively they will engage around that. Because I don't genuinely think that most HR people particularly don't want a reoccurrence of a conflict.

Researcher: No of course not.

And I do think that's one thing, but I do think where there is less of that relationship or willingness to engage on the part of HR, I think then it is more problematic. You know, and I think that is a reality. And I would have to say Mags that I would kind of find that if I think about the situation where organisations, you know, listen, take something on board, you know may not accept all of it and that is absolutely fine as well, because they will have a wider lens and view of things. But there is often the potential for patterns to be broken. There is that potential. I think where HR people work more from the perspective of - well you know you are here to do this for us - it's just this bit, we are not looking for anything else from you, we don't want to hear it. Well, then that reality is that reality. And so you can look to sort of build a relationship but invariably there is something that somewhere down the line the phone rings again and somebody says 'Hello'. They've been thinking about that or it comes through in a different place, or they go and they work with someone else and maybe that's when they've heard it a few times like everything else people begin to take it on board.

Question 4: Can you describe the culture of the organisations that you provide mediation services to and in your view the significance of organisational culture in relation to the use of external mediation. Now I know that is a huge question and a huge topic... because you were talking there very much about culture, open and closed organisational cultures. Cultures that are... where dialogue can take place but also there are a lot of different... you know there is the wider view which perhaps senior management or HR may need to take of certain things. But in your view... I suppose maybe we start with the first part of that, because it is a bit unwieldy as a question.

The cultures of the organisations that you provide mediation services to, do you find that you deal with organisations where there are quite different cultures?

Yes because I would work with organisations, now you know I am taking handy pictures of culture, I would deal with organisations that both have bureaucratic structures and cultures. So you know they are silo type organisations. And they are kind of like, em, more public service type environments, em... you know, hospitals, universities. You know organisations where really things do tend to run much more on those lines even though they are shifting. I suppose that is another element of it, that, their culture... I work with organisations where their cultures
are changing. I have just been having a conversation with one organisation where somebody was saying look we don't have disputes as such, or conflicts at this point in time and I can see that we will have because we are going into a major change. She said just what I'm listening to, what we were doing at the time, she was saying I would rather we did something at the beginning of this rather than wait till problems occur, you know.

Em, but I would also work in organisations which much more, what I would call sort of, both matrix structures and cultures, you know so em... there's a lot more flexibility in the system than there might be in other types of organisations. So, and then I work with the kind of organisations where I suppose it is again that kind of the web bit, where you have someone at the centre. You know so they are entrepreneurs or people who started up businesses so they are quite driven individuals themselves, you know. So I suppose I work, when I think about it, when I was looking at that question, in terms of the culture of organisations I think the thing I note in those, in terms of the ones that em... you know why am I... why are they asking for mediation, isn't because they have got more conflicts or disputes. It's usually to do with the fact that within the culture of those organisations there is somewhere along the way, somebody who has recognised that actually, em, either we can't afford this, em, or there is a way of doing this and .... and it's not every time Mags because you know it's like that, there are some organisations who want mediation purely as an intervention. Em, they see it as a one off. They might call you again but they see it as each time it's a one off. And so you are either building a relationship over time with people, em... But I think where I would work more often is potentially where there is that openness, a recognition of what conflict is - It's going to happen and it would be really helpful if we could deal with it constructively.

Researcher: And could I just check back with you there XXXXX you are saying, em, it's in the organisations you work with it's usually to do with the fact that there is, in the organisations, there is someone who has recognised that 'we can't afford this, or we need to resolve or address this'. When you say -we can't afford this, is it we can't afford the conflict or we can't afford the mediation.

No - we can't afford the conflict, we can't afford where this could go, we can't afford to have this conflict disrupting the business. So, em, I'm kind of thinking of I suppose some organisations that I work with a lot at different points in the system and, you know, very often they are... you know it's said in slightly different ways. I'm thinking of one organisation which is very much a business and there for the owners of that business it would be the conflict distracts people from... if it is not positively addressed it distracts people from the work that needs to be done and therefore the profit.

Researcher: Is that a private sector business.

Yeah private sector. But they also, and I suppose this is one of the things that would have been their primary cultural focus in some ways, you know, was that it is very much in some ways a profit oriented, so the other culture would be very much of performance and getting on with it. Equally though the owners themselves are....yeah I suppose it is at one level, okay at a rational level very open to discourse, dialogue recognising that the creativity in some ways, that the development of their business, they are very good at hiring the right people, who are very good at what they do. They themselves are quite uncomfortable with conflict.

Researcher: Interesting.

So it is a very interesting one. And so from their perspective there is kind of a clash between what they say, when you look at kind of the espoused theory and the actual practice, and their
own, on occasions, way of dealing with things. So in some ways that has been a kind of journey for them and mediation and the use of mediation has been helpful for their own kind of learning as well. But that is a very open culture. So if you are looking at that there are people who are willing and open to em... dialogue and discourse and a preference for dealing with things.

Researcher: So you are saying in the open cultures [blank], whether public or private, but where there is an openness to engaging and dealing with things, that in your experience they are more inclined to bring in an external mediator. Is that...

Yeah because I think they recognise that it is going to be important to get things resolved and that, you know, particularly with conflict on occasions they are either themselves maybe too close to it and therefore could never be emotionally detached from it enough to, em, help people to actually find potential solutions.

Em, I would see the same often in the kind of larger or maybe more public sector or semi-private sector. That they again, similar sorts of things where you have a recognising that... you know a preference within the organisation for, em, care for people. You know within the culture that there is care for people. But there is an understanding, along with frustrations on occasions, you know that people would be difficult and contrary and all those other things, but em, at least and openness and a willingness to... you know - the fact that conflict is happening and have we ways of dealing with this - let people actually see what they can do about it. You know so, you know there is a bit of a chicken and egg here as well Mags some of the time around this. In that, you know I think that the ongoing relationship part of it as a mediator, you know the feedback and the going back to the organisation, you know, question which that then influences and impacts the culture as well, you know.

But I do think an awful lot of the time it does have an element that there is somebody.... or even overall the culture is one that they are much more favourable to dialogue and not blaming people within the organisation for the fact that there is conflict.
Appendix 5F: Structured interviews with identifying information redacted and/or removed

Interview #6: External mediator #2

Question 1: In your view what factors determine the advancement of a workplace dispute to external mediation. Or do you have any sense of that.

Em.... The factors that determine it is primarily I think the organisation, from our experience somebody in the organisation would have a sense that resolving the issue is important and the option to have it resolved through mediation in preference to going formal.

Researcher: So the organisation having a sense that resolving the situation is important but also having the option to use mediation... so are you saying...

Yes the option of having an informal confidential process to allow the parties have some space. Where the organisation doesn't, obviously doesn't want to know, but knows that the parties are better off having a confidential conversation that is properly managed between themselves. They are happy to create that space...

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?

The issue being resolved, primarily that's it effectively.... the tangible. And perhaps the ability to maintain a relationship and a creation of an understanding of what happened that they mightn't have perceived prior to the mediation. So a better understanding as to how the dispute, or conflict, would have occurred and how they would have contributed to it.

Researcher: And in relation to intangible, have you a sense of any intangible outcomes for the individual parties?

Um... eh... I suppose because I am only with them for a short period of time relatively. You know you are in the room, you're dealing with the conflict, you're helping them work through the conflict. I think it might be some time after the event that they begin to realise the intangibles. Probably the clearing of the issues, as I said earlier the relationship, the matter being resolved. Em... maybe a better understanding, I haven't asked now so this would just be my sense you know, maybe a better understanding of themselves. Maybe a better confidence within themselves about being more proactive to deal with the issues.

Like, for example, yesterday’s mediation em... I think both parties just didn't realise how helpful the process would have been and both of them said it was a pity that they didn't have the conversations that they were not having some months ago before a dismissal took place. Em... so I think just realisation that, you know, I can resolve this myself and I am gaining confidence in so doing, you know.

Researcher: That's great.

They would be observations. I don't meet with the parties after a mediation. I don't do any in-depth evaluation with the parties about how they felt or what they gained from the process.
Res, thank you for that. And then your sense of the quality of outcomes from the point of view of the organisation. Again if maybe we do tangible initially. So the organisation...

The tangibles for the organisation is the matter is resolved, there is a great relief that there's no formal process. That it's a relatively speedy and I suppose low cost compared to what they were facing. Em... And the ability for the parties to be able to work together again and em.... so the organisation feels much better, you know with that outcome.

Researcher: Great, yeah. Okay, and are you aware of any intangible... or do you have a sense of any intangible outcomes for the organisation.

Not really, yet again I think it is very obvious what most parties that I would be involved with in mediation want, they hope to get a resolution and once that is achieved I don't get a sense that a huge amount of musing around what has happened. They may well do that after I am gone. So the intangibles I think they are so related to the tangible issues I couldn't define them.

Question 3: What, if any, level and type of feedback does the organisation receive from the mediations that you have conducted, with the permission of the parties, in relation to context and/or structural factors. Or have you had occasion to feedback.

Yes, em, in most of my mediations the organisation requires to know that the issue is resolved or not. So the parties coming into the mediation know that the mediator will be giving a procedural report back to the organisation. And when I say procedural I don't go into any substantive issues that the parties have brought into the process unless either or both parties agree that that is what I can say. But invariably the organisation gets a written report of the outcome of the mediation. And most organisation that I would mediate with, or be asked to mediate with, require that so that the file can be complete.

Researcher: And the procedural report that you refer to, the... what I am hearing you say is that that will basically say what the outcome of the mediation was, whether there was an outcome of not.

Yeah, it will set the fact that the parties agreed to mediation, it will probably have the agreement to mediate document the terms of reference for our scope at the mediation mentioned, and whether there was a resolution or not. Em... now if the parties want me to expand or put further information into that I will but it's only if they want me to.

Researcher: Ok, great. And have you had any situations where parties have specifically asked for contextual or structural factors which may have contributed to the conflict escalating or to the conflict forming.

Yeah, on occasion the parties might see there're other issues within the organisation that contributed to the conflict and they would want that mentioned in the report.

Researcher: Great, ok. And would you have to mind.... absolutely fine if you don't have, but would you have to mind or can you call to mind the nature of contextual or structural factors that might be made.

Yep, they can vary. Em... sometimes it can be other third parties, i.e. maybe more senior manager who hasn't done certain things or hasn't supported the parties. There might be a third party, em, that either party or both parties would have referred to during the course of the
conflict and would have appeared to have given the parties commitments to do something but wouldn't have done that. And the parties are making assumptions, therefore, that having confided in a third party certain things should, or ought to, have happened. Believing that had happened they wouldn't have seen a change in the behaviour of the other disputant and that can actually escalate the issue. So I suppose both parties confiding in somebody in the organisation and that person not addressing the issue.

Maybe issues relating to procedural issues within an organisation, and yet again third parties maybe not adhering to those procedures. Like for one example there was a manager and an administrative staff member who used to take admissions into the and their relationship broke down, and it was out of a frustration by the because the administrator reported directly to an administrative manager and not to him. So because of em... em... what's the word I am looking for em... different roles in the organisation the wasn't allowed to instruct specifically the admin. person and likewise the admin. person if they had any issues would go to their admin. manager rather than the So there was kind of a flawed process within the organisation which neither parties could address, and caused huge frustrations. Em... so I wouldn't say that would be typical but there would be many instances in workplace mediations where those structural issues or procedural issues or process issues would have greatly contributed to the conflict.

And the parties mightn't know that, in a real sense, until they start discussing the conflict, and the story telling, and the early stages of the conflict, that that is highlighted. And that is within the mediation, so in the mediation... the conversations can, through the conversations...

Researcher: What I am hearing you say is that the structural and procedural issues can be identified which you have seen brought back, or been asked to be brought back to ...

Absolutely, the parties then, in conclusion having realised where they have contributed and their apologies and their acknowledgements, or whatever. Or in some cases, you know, if they don't get to that point either way I find they do want their experiences within the organisation, if they believe the organisation has been at fault for it to be brought back to HR. Or brought back to whoever is asking them to do the mediation. So that would be part of the mediation agreement effectively, you know.

Researcher: Yeah... thank you And then the last one number four and sorry this is a slightly long-winded question.

Question 4: Can you describe the culture of the organisation that you provide mediation services to and in your view the significance of organisation culture in relation to use of external mediation.

Okay, the culture varies from each organisation Mags, I wouldn't have one specific culture and I wouldn't see one specific trend, let's say, of culture. Other than to say it can become obvious to the parties that, em, they probably felt the organisation had a conflict avoidance, or wasn't a conflict competent organisation, in a sense that knowing the parties were in dispute, or having a dispute, there was no obvious help to the parties in the organisation in the early stages, em.

Researcher: And how does that in your view impact on... or how would you see that influencing the use of external mediation or not. Does that....

Oh yeah, I think.... well, from my view again, it would have a big impact because the organisation itself doesn't have a conflict competence. By the time the conflict escalates to a
dispute, which means an unresolved conflict, and going.... it hasn't got the ability or the confidence or has lost the credibility of the parties to be able to deal with it. So the only option then is to have somebody from a third party who is trusted. So a lack of trust may be.... these are very big statements by the way, but you know an organisation which wouldn't have trust, that wouldn't have a very collaborative approach, an organisation that doesn't address conflict appropriately, they would be the general cultural issues I would see. Having said that, em, we probably find organisations that have policies and procedures in place that encourage mediation are more likely to use mediation than those that haven't. So I think that what got the parties into the unresolved dispute were probably cultural issues within the organisation but somebody in a leadership role within the organisation has a view on mediation or has a view on having a more collaborative approach. So I suppose there is a dichotomy maybe in the culture in many organisations where at one level the parties don't get help in a dispute until it's formalised and gets to somebody in the system who has a sense that this is not helpful and, em, you know that there is a more acceptable way of dealing with it. So that seems a bit of a dichotomy I suppose but, em, very few of these organisations would ever have process for conflicts, would ever have, you know, there is no sense learning from the conflicts. Em... there would be stories within those organisations that people would be telling, you know, that nobody cares, em you know, it's up to ourselves to sort these things out, you know, issues like that, you know.

Researcher: And in your experience that type of closed culture conflict avoidance and lack of competence around conflict, in your experience that is the type of organisation that is more likely to bring you in as an external mediator, is that....

Yeah they are the trends I would be seeing, you know. Em... I suppose by reverse organisations where we spend time working with them building up the skills of their own internal mediators or help them build an internal mediation process generally wouldn't call us into mediation, they would call us actually when they have a feeling that something wasn't right and we would talk to them, with a view actually to use me as a mediator but having had a discussion with them, because they have a competence in mediation, they would probably go off and deal with it themselves. Whereas somebody who hasn't got that or hasn't done any conflict building skills will tend to want us to do it. And no matter what conversation you would have with them eh, they wouldn't be confident in taking it on themselves.

Researcher: Lovely, okay.

Well I suppose the message there is, organisations that grow their internal conflict competence are going to be more prepared to be able to deal with the conflict themselves and not rely as much on an external mediator.
Interview #7: External mediator #3

Question 1: In your view what factors determine the advancement of a workplace dispute to external mediation. Or do you have any sense of that?

Okay, just so that I understand the question. Is the question saying why did the client pick an external rather than an internal mediator.

Researcher: Precisely.

Okay, well one obvious answer is that with some of, eh, my clients they would be too small to have internal mediators, and therefore they would be thrown back on to having to use somebody external to the organisation. Em, in relation then to other organisations through my work, em... some of them... one of them certainly used to have internal and external mediators but my understanding is that they believe it is better to use external mediators and therefore I don't think that they use any internal mediators anymore. One of the reasons that they have given me for that is that first of all they don't have, they think, sufficient cases. Em, there is always a concern by other employees when using an internal mediator, even though they might come from an entirely different department. Thirdly, em, apart from that perceived possible conflict, em, because they wouldn't necessarily have that many mediations, em, the mediators are less skilled than an external mediator who by their very nature will have more experience and more expertise. And I think that most mediators would certainly recognise that the more mediations you do the better you get.

So that was with one company. With another company for whom I act, em, they have internal and external and use both. Em, they would tend to use the external person for, what they would perceive as, the more difficult cases.

Researcher: OKAY, and do you have any sense of why they use the external for the more difficult cases.

I think they perceive that the external have more experience and more knowledge, well not necessarily knowledge but experience, em, and might have met the particular problem before because obviously in an organisation, a particular organisation, you may only come across, you know, two or three different types of case. But where you use an experienced and I say popular mediator from external the chances are that they will have covered the ground of most types of dispute. So that they are more likely to have experience maybe of a difficult case, the subject matter of a difficult case, and they will be more likely to have more experience of mediations generally.

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?

Of using an external rather than an internal.

Researcher: No, of just in relation to external mediation. So it's not a comparative thing but just working as an external mediator what are the outcomes that you see.
Well, I think it makes it easier for the mediator to be external because first of all you don't have the perceived conflict, even though you mightn't be conflicted at all. Secondly as an external mediator you can ask the ‘Stupid’ questions, not knowing the answer. That's much more difficult if you are an internal mediator because you will be assumed to know the answer to some of the questions that you are asking and therefore if you do ask them you may be losing trust with the parties, that they are wondering what game you are playing by asking the question. So in a way it is easier to be an external mediator, not bound by any of the company's policies, procedures, rules and regulations, because then, as I say, you can then actually ask questions that you couldn't otherwise.

Researcher: Absolutely.

Em, I think it's easier to have that innate confidentiality with the parties if you are an external mediator because, you know, you don't know them, they don't know you and you probably will have said to them at the beginning that it doesn't matter to you whether they come to an agreement or they don't so you are completely impartial and disinterested in the outcome. With an internal mediator there is a risk or a fear that if you mediate and the parties don't come, and a number of different cases don't come to agreement, that somehow might affect your reputation within the organisation, or your pay rise, or your bonus or whatever. So I think that the external mediator's probably perceived to be more confidential and less likely to be biased than the internal. Once you have that then you have a much better, I suspect, a much better rapport with the parties without being sort of preconditioned to the company line. Therefore you can bring something fresh to your questioning and your probing of the parties.

Researcher: Okay, and how does that, how might that inform the quality of outcomes.

Eh, I think in a few ways. Firstly, I think it informs... it means that the parties are more likely to focus to answer your questions and give you an honest answer to the questions you are asking, rather than wondering what game you're playing. So they are more likely first of all to be more open with you I think. And they are also more likely to be open even to - well why are you asking those questions. Whereas if you were internal they would be asking - well why are you asking the question - would have a kind of ulterior motive. So you are more likely to be able, I think, as an external mediator to shift the perceptions of the parties than if you are an internal mediator. Of course that in itself, once you can start to shift their perceptions and shift their realities, or perceived realities, then I think you are getting to a better result, because they are better able to actually look at the thing in a slightly different way.

I mean, people are suspicious of mediators in any event because they can't get it into their heads that actually the mediator isn't going to be pronouncing right and wrong. But that, that difficulty I think is even greater if you have an internal rather than an external. So the external is completely, completely away from the company. And if it is thought that it might be useful the external might say would you like me to report this back to the company. And so you would get specific permission and then you would get specific wording and then you only, of course, would use those specific words. I mean, I have a sense that it is better for the parties, they can be more open and more open with each other when they are in an exchange of communications with somebody who isn't in the company. Because there is no risk, or the risk is less that something will go back.

Researcher: OKAY, and in relation to the type of outcomes these would be the, em, what either might be in the agreement or whatever else the parties may take from the mediation. Do you have any.... what is your experience of the ...
Yeah, well I.... the way in which I work, I mean I feel that I can be very open with the parties as to what the companies might think or might not think, because as I am an external mediator I can put, if you like, theoretical words into the mouth of the company. If I was an internal mediator people might think that I was saying something for a particular reason. So if I could give you a practical example, I mean, recently in two cases that I have had I have said to the parties in the pre-mediation sessions, I said if, you know, two people keep rowing with each other the company gets fed up of hearing about it and basically the company will say 'a plague on all your houses'. So the company could lose interest in which of you is right and which of you is wrong and frankly you're both trouble. So I can say that as an experienced mediator because that's what I come across. So I am not saying it about a particular company. But if I was an internal mediator I would have a great deal of difficulty saying that because the parties would think I had been put up to it. So I can detach myself from the specific organisation and I can say in my experience this is what happens. In my experience this is the way this will be perceived, this will be the way that it is viewed. So you can shift, by using that sort of tactic, you can actually shift the parties and get them into a mode where they realise that actually they really oughtn't to be there and if they don't get the thing sorted it's going to get worse. Therefore they start to concentrate on getting the thing sorted and moving on. And therefore in my view that is better because continuing a dispute is not a good way of, you know, carrying on as a rule.

Question 3: What, if any, level and type of feedback does the organisation receive from the mediations that you have conducted, with the permission of the parties, in relation to context and/or structural factors. Or have you had occasion to feedback.

Em... well a couple of points on that and I think the first is... relates I suppose if you will to the conflict itself. Em, where the parties have, em, got themselves into conflict, and frequently unwittingly, really it, as we know, just blows up, and because then when the thing blows up HR, for argument sake, are nervous about it and then put into place the procedures. Sometimes the organisation is slow about doing that, sometimes the organisation gets half way through the procedure and then decides to go for mediation. Em, the parties themselves then in the mediation come to an agreement and are very happy to come to an agreement, you know, because really they have been looking over the abyss, and now that they have become all friends in the agreement frequently they then start to look around for somebody to blame for them being where they have just been. Which is in a terrible place looking over the abyss. So quite frequently I find in mediations there is a tendencies by both parties almost then when they have come to an agreement to gang up, if you will, against the employer and blame the employer and say it was all the employers fault and the employer should have done A, B and C and they never would have got to this stage. So that is just one comment if you will. As an external mediator that is easy because you just .... well , you know, that is nothing to do with here but would you like me to bring anything back to the company, is there anything you think I should say. And sometimes they may well say to you - yeah you know they have to move more quickly, or they need not to sit on it, or whatever. But nine times out of ten I'm not given messages to take back to the company.

Researcher: Great, Okay.

It would be rare enough but I think I said part of the complaining against the company and therefore wanting to send messages back arises as a result of the conflict having been resolved. So they then get together, if you will, to look for a common enemy. As rule I don't usually get stuff to bring back to the company other than you know - the case is settled or it's not - whatever it would be. And then usually, only in one client I have where it is within the terms and conditions that the actual mediated agreement goes back to the company, and I have that built
into the agreement to mediate. And that is in their terms and conditions of employment that that is what will happen. And then the one person in the company then holds all of those mediated agreements separately off the file.

Researcher: Sorry [redacted] just to clarify that, that is with one of the organisations that you work with part of their policies and procedures is that the agreement to mediate will always go back to the company.

The mediated agreement, not the agreement to mediate, I never send the agreement to mediate to anybody… Other than, the only people who have the agreement to mediate are the two parties or three or whatever number parties and me, and any of their advisers or supporters.

Researcher: But sorry the mediated agreement....

But what I have written in for this organisation to their agreement to mediate is that if the parties come to a mediated agreement at the end of the mediation a copy of the mediated agreement will be sent to a nominated person within the company. And that is part of the terms and conditions of all of the employees of that organisation, it is part of their process.

But other than that as a rule I absolutely do not send the mediated agreement anywhere except to the parties and I will only inform the company, the organisation, of the precise words like the matter has been resolved or the files have been closed or whatever the actual words have been agreed.

Question 4: Can you describe the culture of the organisation that you provide mediation services to and in your view the significance of organisation culture in relation to use of external mediation.

I suppose, it's not a very helpful answer really Mags, but not really. Em... What I, what I think is that with larger organisations they have process and as a rule once it gets to a certain point they follow process, probably quite religiously because they have HR departments who are trained in process. And so once it hits a HR department that's usually where the decision will be made as to whether there is an external panel or an internal mediator. What one would like to see is that, that the culture to get things resolved happens at a much earlier stage, miles back before you're picking your external mediator. In other words where an issue arises that the management on the ground are trained and have the confidence and the competence to sort it out immediately, and to have that as a culture. So to me the real issue with organisations is the ability, if you will, and the wish to get things sorted out and to make it as part of... part of their culture, if you will, to get things sorted out at an early stage and not to be having this nonsense going up and up and up. My experience is that in quite a lot of cases the reasons that we have got to a point of appointing a mediator at all, external or internal, is because of bad management. Because the thing hasn't been sorted at a very early stage, people have shied away because it is a dispute, they have dragged their heels, so by the time it actually gets to the point of mediation probably quite a lot of water has gone under the bridge and a lot of bad blood. And certainly a lot of the stuff that I see had they even had a facilitated discussion, never mind mediation, a facilitated discussion at a much earlier stage the problem would never have arisen or would have been dealt with. So I think that a lot of the problems that you see are as a result of bad management.

Researcher: Okay, and that would be.... and that's a lot of the problems or a lot of the cases that go to external mediation in your experience or your view it is.... they are issues that could have
been resolved earlier if management had the competence and the confidence or the wish to do so, but because they weren't managed at an earlier stage sometimes these....

Yeah, just escalate it. And you see the parties... as we know what happens in a mediation, sorry what happens in a conflict is that two parties.... there is a flash point between two parties usually and, em, something has happened and suddenly there is a row. There is an ability to resolve that row fairly quickly after the row has happened or after the row has been brought to attention and at that moment you could sit the parties down and have a facilitated discussion. You could clear up any of the misunderstandings and the chances are you would get the thing sorted there and then. So that process would act if you will like a filter. So it would stop most of the cases. But what happens is that people get terribly concerned when there is a claim or a threatened claim and they don't deal with it, or they take hours, or they debate it, or they run up and down to HR or wherever. And what happens is you get this long drawn out protracted period when the parties are further and further apart. And the further apart they are the more difficult it is to get them together. And that's then... and then you have to have the mediation. But if you could pull them all together very quickly, so if you had a culture in an organisation that wasn't conflict adverse, but actually people were trained to handle the conflict then you would get rid of the conflict at a much, much earlier stage so you wouldn't need all this other stuff and all of the time and energy and money that is spent on conflict wouldn't have to be spent.
Interview #8: External mediator 4

Question 1: In your view what factors determine the advancement of a workplace dispute to external mediation. Or do you have any sense of that.

Well I think that first of all it depends on the company, different organisations have a different view on when mediation should come in. The profile of mediation has changed over the years. And there is a sense that it is part of a progression around - yes we should use mediation. Cost factors come into account for some of the organisations. And for them, very often a HR person might decide that they are going to try and mediate themselves, and I use the word mediate in terms of.... in inverted commas. Because often they don't.... they are not trained as mediators, and they try and work through the dispute themselves.

So that's one of the factors, that people will try and try rather than incur the cost and then when there is no alternative they will then call the external mediator in. Sometimes they will call an external mediator in because they believe there is conflict of interest, and that they have found themselves caught, a manager may find himself or herself caught in the middle of a dispute and they feel that they can't win either way so they need the external person to come in. Sometimes there is policy that when a dispute gets to a certain stage then mediation and external mediation is the appropriate way. And very often that is increasingly the government organisations are taking that approach, or the public bodies. So they're, I suppose, the major ones that I was reflecting on that I think are the factors that come into play.

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?

Aha, Aha, when I'm answering that question can I also answer it in.... because the question is phrased in a very positive piece, in the premises that mediation is always the right thing and sometimes it's not, for a variety of reasons.

Okay if we look at the quality of, and I'll centre it around some case studies. If we take the quality for the individual of the mediation in a particular case that I was involved in there were two people who were extremely good workers, a manager and a sales person. They worked very well together and they had a disagreement. And in the disagreement that they had it was so black over a particular thing that they stopped working together. In the quality of the outcome of mediation for them it was sorted in a day. And the quality that they began to really understand one another... the difference in personalities of the other person, even though they worked very well together. But they also began to understand how things they did might impact the other person, and how there needed to be change for themselves, and that the responsibility for change could only rest with each person themselves. And so that was critical and a major piece. They also had the opportunity of hearing from the other person how they valued working
with one another. So A heard from B how important A was to B and vice versa. And in the years that they had worked they actually never had said that to one another.

Researcher: *Right.*

And in fact laughing at different pieces, and they learnt and laughed and they reflected etc. during the time... as they went towards resolution. The most important thing for them was that they found a mechanism whereby if issues arose again between them they had a code and the code was that they would xxxxx and they would say this is a time out, we need to talk. And there was a particular symbol that they used. I don't want to use the symbol that they would have, I would say that, for the sake of your recording, that it was a xxxxxx and that meant that both of them needed to sit down and reflect and take time out and have a conversation. So that was a huge benefit to them.

Researcher: *And that was established,* [Redacted] *within the mediation process?*

That was established within it. In the, the,... a lot of work around the individual and how the individual needs to change and responsibility for change when it was the individual. That's done in the individual sessions with people to try and help them, and then to try and pre-empt how the other person might feel. But in the joint sessions, and joint sessions might take, perhaps in this case I think the joint sessions took about three hours. And the first hour and a half maybe was about backwards, but after that it was what do they need to do in the future. How do they ensure, a very small organisation in this particular case, and they didn't have a... they didn't really have a huge deal of money to bring the external mediators in so they were learning how to deal with things in future so that they didn't have to go to anybody else. So that they could sort it themselves…

Researcher: *Yeah.*

The quality of outcome in another case… And in their case a personal circumstance outside of the workplace affected them in the workplace, and ended up in a shouting match in front of colleagues. In that particular case they were absolutely adamant in both our individual sessions that they had nothing to say to one another. And they weren't willing to talk. And at the joint session the... a turn came in the joint session because of a question that was asked. And I cannot remember the question that was asked, but the question that was asked and both of them stopped talking. And they thought. For them the outcome, for them, was the realisation that a third party who was not in any way connected to the organisation they worked with… was the problem in the relationship at work. And so the discussions for them was how would you... how would they move towards a situation where they could deal with their issues outside [of work] separately, and not bring them into the workplace., so that they could maintain the professionalism that was really important to them…

Researcher: *And [Redacted] would I be right in saying that the realisation that they achieved through the mediation as to.... that this outside factor was part of what was, I suppose, impacting on their work relationship. It was that realisation that was achieved during the mediation that helped.*

Yes, I would say rather than a realisation – they possibly knew it – but it was articulated. Because they didn't speak… because of that relationship outside, they only spoke in the workplace, so the problems they were having in the workplace were underpinned by the influences of what was happening outside and to be able to articulate the difficulties and the concerns and the upset that centred around that, helped them to move forward.
… And also to be able to communicate back to the organisation who supported them that they really wanted to move forward and that they had found resolution. And in having one document [Mediated Agreement] was an important one, rather than them having several, several different documents. And that for the HR manager, the outcome on that reconsolidated the unique piece that mediation is that you can get in no other process, within the policies and procedures of an organisation.

Maybe I will go back then to that earlier question. Now is there anything that you want to clarify on that.

Researcher: Yes can I, just on that one, [redacted] can I just clarify the agreement which went to the HR manager in that second example you gave, that was.... and just I suppose to tie down... that had been agreed with the parties that details should go back.

Oh yes. In terms of the when, in this particular case, these two women were absolutely very black against one another, as I was saying earlier. By the time we finished the joint session and the mediation went to draw up the agreement in terms of the words that they would use, and very much it is tied as much as possible, to use the words. They were in one room and the mediator went to the office to type up and… they could be heard laughing and talking and then that agreement was brought back to them for them to look at to see did they agree with it. Were the correct words, or anything else they wanted to add, take out etc. So there is a huge ownership to the agreement. Now Mags I'm sure I am probably telling you things that you know already but you possibly need to hear them for your research.

Researcher: Absolutely, and I wouldn't expect anything less of you [redacted]. But again just, I suppose, if the.... and obviously I won't put.... I won't speak to any of the specific details that might in any way identify the parties. But then again just in talking about that where, I suppose, personal information or factors may be included, it's just maybe to tie down explicitly that it is on the basis of the agreement of the parties, which I know it would be [redacted], and I know you well enough to know that but it's just to have it on the record as well.

Yeah I think that's where that would come from. Is there any other clarification?

Researcher: No that's great.

Okay, so if I go to the negative side of the individual... in the individual piece. In a particular case that comes to mind, there was an issue whereby something came to mediation which was much too soon to come mediation. And in doing it the individual... one individual said "Well actually I know nothing about this. I am going to mediation because I have been asked to go to mediation and I have been asked to meet the other party and I am happy to go there". In the other party had decided that, in discussing it, this was quite a big organisation, so in discussing it with the contact person, the contact person in the organisation said don't discuss any aspect until you get into mediation. The line manager never discussed with one person, one person was a customer... The line manager was willing to discuss with the customer but not willing to discuss with the staff member. So when it came to mediation...

Researcher: And the issue was raised by the staff...

…by the customer.

Researcher: By the customer, right, okay.
So when it came to mediation the staff member felt disempowered, under incredible stress, and having to come to a stranger to talk through things there was a serious concern in mediation that this person was not in a well place. And the... this didn't... the well... the person not being in a well place did not come out in the individual session. It didn't come out until the joint session where the staff member held very tightly to self control. But again there were cracks to be seen.

Researcher: *And the joint session was between the staff member and the customer or the staff member and her line manager?*

The staff member and the customer, the line manager never came near mediation and never had a discussion with the mediator etc. So the... in that particular case it was just too early and there wasn't ground work done in the organisation, eh, by the line manager who had an obligation to do it. So it raised a question and I think it's a question that we are going to see more and more if mediation is being used because there is a lack of understanding among... in many organisations around what mediation is and what it can do. There is a notion in some line managers minds that actually I'll send this to mediation because I have too much to do to be bothered with it or to have time to do it, and the organisation will pay for it anyway. And that is when mediation is detrimental. That's when it doesn't work. Because even though in this particular case there was a further ... there were further individual meetings, there was not a conclusion to mediation but the staff member had a very negative view around why they were sent to mediation and believed they were sent to mediation as against having a voluntary notion to come.

Researcher: *And would I be right in taking it that the mediation, because of how it arose and because of the lack of engagement by the line manager with the staff member, that the mediation was in fact a negative experience for the staff member because of concerns it had raised.*

Very, very negative. And not necessarily between the staff member and the mediator it was just the whole mediation process. And then I suppose it will answer, I suppose, the question later on, in terms of an ability to feed back, this organisation was a very, very large, I'm going to... well public body, I suppose is the best way. So it enabled a return to the contact person for mediation to say line managers need to be trained around when it is appropriate to bring something, care for staff members is critical around conflict. Now that, that was not necessarily any discussion around what had happened in mediation but it was around processes, to help an organisation develop good sound processes which is a role that a mediator may have if they are connected on an ongoing basis with organisations.

Researcher: *Yes and that _____, that feed back as to the difficulties encountered by the staff member that was fed back to the contact person in the form of process training...*

No, in the form, so you can imagine confidentiality issues around this, so the... in meeting, in a general meeting with contact person as part of a review of policies and procedures the discussion centres around how does the organisation know when it is time for mediation to be invoked. What is the obligation of a line manager around what that line manager says to their staff member. And how do they engage, what work should the contact person know that the line manager has done before agreement comes... or before a suggestion that mediation... it's now ready for mediation.
Researcher: As with, I suppose, any process that has been invoked. It's good practice that there should be clarity around what brings a particular situation into a particular stage of a process. Okay...

Ahem, it's quite interesting and it was actually quite interesting as an interesting piece that came, that came in the process of that meeting. The contact person at the meeting said ‘well you know sometimes we have people who are vulnerable and HR will say in this context that people must be treated... that all staff members must be treated equally, and you can't favour one over another.’

Researcher: And where you refer to contact person, you're referring to contact person as in the case manager as opposed to a designated contact person in an employee assistance programme system.

Yeah, I am. As the person who processes or is the link in the organisation for mediation. And I would come back and I would put that in context. That in the quality that there is very significant case laws, or enough case law, I think it was in a case in the 1960's and I think it was the only constitutional case that was won on the basis of equality. And, I'll think of it now… It was one in relation to 'Nicolau versus the state', and in that case the court said that you must treat equals equally and unequal’s, unequally. But it seems to have grown up within organisations that we have to be even handed with everybody – but actually that's not the case. But that is just a sidebar to that.

Researcher: And that case that was in the Irish jurisdiction.

Yeah the Irish jurisdiction 1965. The Irish Law Review, I'd say, it probably is in if you... you'd find it in David Kelly's Irish Constitution book. But if you are looking for reference afterwards it's in relation to family law but it just looks at the equality piece.

Just some other minor ones, which I thought of, case that you might be interested in. We also do investigation here so if say one is involved, if one of us, if one person here is involved in a mediation and an organisation comes back to do an investigation, a different person will clearly do the investigation to ensure that there is no breach of or crossover of lines. And we tend not to discuss organisation, the name of organisations, when we do cases. Or the name of the people within an organisation. So one might say I am doing a mediation in the Department of ABC, which one wouldn't know anything else in it. Recently I was doing an investigation and it arose that one of the people had been involved in mediation three years ago.

Researcher: And was that... had you had any connection with it?

No I had no connection with it three years ago. And it had only emerged in my research investigation and one of the witnesses, so one of the people in the mediation has brought an allegation of bullying against a manager, and one of the witnesses was a man who was subject to bullying by this person and has been called as a witness by the manager. It's a bit complicated but it's a bit of a triangle. At the end the mediation was extremely successful. It had been two years going on and the top person in the organisation said that they never believed..., that they told me they never believed they would get resolution. And it has worked, the witness said to me as he was talking that his life is much easier and it is very positive, the interaction is very positive. The reason that I have been brought in is that there was a suggestion that the person moved, even though he has taken his complaint against his manager, there is a suggestion that actually he just moved focus from one person to another. Now I have
a second case that we see something like this, and I will come to that in a minute. But the witness who told me as he was leaving, I said "it sounds as if it was a really good experience".

Researcher: So would I just so I can get these straight in my head. Say we have person A, person B and person C. Person C being the witness, person C had been in a mediation before with person A, shall we say, where there was an allegation of bullying harassment against person A by person C and that was resolved successfully in the mediation. And then person A later took a case against person B or person B against person A.

No a claim and counter claim. So the person B says that after A and C was resolved, A focused his attention on B.

Researcher: Got you...

And that is a difficulty about mediation and I will give you a second case history later in relation to that. But in the case of C, C was very pleased it worked out and C said to, as we finished and as we were just doing the preliminaries at the end of our time together, and I said "so it sounds as if it was a very good case" and he said, yes he said "but you know all of those years since it has been sorted and I have never had a difficulty he said, I've never known what made him turn. One minute he was against me and then he changed. And I will go", he said "for the rest of my life wondering why was it that he turned", and that made me think around sometimes we get to a place where we might get agreement and everybody is very pleased with the agreement at the time, but it could be that questions... that it doesn't give what an investigation might give - answers to something. So even though there is a resolution, there may be a level of non-resolution within the mind of somebody because they haven't had time to say "Look why did you do this?"

Researcher: And was it your sense with that case that, okay, the person C who was the witness in the later investigation was happy with the outcome but didn't know what it was that had brought about the change. Was it your sense that the person who, person A, that there were underlying issues or that perhaps they refocused on someone else. Or am I misreading that or is it simply that ...

I suppose it brings up the same difficulty that I have with the second case. My investigation report is nearly completed and it is likely that person A is a bully because he enjoys it. And that is where mediation becomes a problem.

Researcher: Okay and so where it was brought into a process which shone a light on their behaviours they were able to stop those behaviours but what you're suggesting was that, your sense was that, there may be an underlying issue here and the person may be a serial bully and so that they shifted their attention elsewhere.

Yeah - it would also be my sense that the direct Line manager facilitated that, had facilitated by not line managing appropriately. Now the investigation is not of your concern but I do think it does raise questions around the quality of outcomes for individuals. But also there is the quality of outcomes for the organisation.

Researcher: Absolutely, yeah.

And I suppose it brings the second case study, again an investigation that I was involved in where again there was a person who had been... who had been, eh, where they had gone to mediation and was thought of very, very highly within the organisation…
In this case the organisation were of the belief that the mediation was successful. Two years down the line, a young person brought an allegation and in that it was a very serious allegation of bullying. So again you had party A who had a complaint against a party C that went to mediation. C left and was replaced by B and B took a complaint and it was upheld. And it was upheld, the investigation was upheld. And that actually goes to court, that will eventually end up in court. So again sometimes mediation can suit people, who can present as wanting to resolve it, and will resolve it because they know if it goes to the next level that there is a difficulty.

Researcher: Yes that is a very interesting point. And it has in fact come up in my learning and sharing group once or twice. And it is a very interesting point and one that I think as mediators we need to be very mindful of.

Yeah, I think it is a concern. It's a big concern for us because you see one doesn't want the process to be used.

Researcher: No, no and if there is a potential abuse of process as mediators we need to ensure that we have.... that there's a way that that can be prevented from happening.

Yes and you see it's, I suppose, it's the explicit and implicit place that people are. In mediation, in my view, mediation is a very um... workplace is unlike say family, where you are working with families for weeks and weeks and months sometimes, and we often say in family that you get people on their best behaviour on the first day and then the onions.... the onions skin begins to peel. In workplace mediation very often we're in an out. We can be in an out in a day or to so it's very easy for... it is easier for somebody to hold the facade. So you might get something explicit, and I remember a case where we had a manager and it was a mediation between two different people. And the... so we had one manager and there were.... it had come to mediation so that manager was manager A and she had conflict with an employee B and she had conflict with employee C. At the individual session with employee B, the individual session employee B said "I am going to court with this". But I have to go to mediation because it is in the policies and procedures. So as mediators that was quite explicit.

That mediation was being used for the inappropriate purpose. So therefore it is.... so for that reason we were able to say "no, we're not continuing". But it's the undercurrent, the underlying issues, that's the critical piece.

Researcher: It is absolutely, again it has come to light a couple of times in.... well not in discussion... but what was being discussed in a particular group I was with was that the complaints would be torn up at the end of the mediation if there was a successful outcome. But that they would be taken fully of the HR file and part of the discussion was how then, especially in a very large organisation, if there is someone who is abusing the system and if there is recidivist behaviour how there is a risk that they will continue to do so. I have had a couple of very interesting conversations as to how as a mediator, um, you can mitigate that because as you say when you meet someone in mediation in the workplace situation you very often have a preliminary and then a single joint session.

And you see I wonder then, Mags, does it need to come back to the organisation around education, around mediation. I often think, when I'm trying to put things in context, I often go back and say well what do they do, how do they do it in the legal arena and if you go back to say, how the xxx deal with complaints. Let's go to the xxx arena, you have cautions, so if you have a caution nothing goes on their public file but it is retained so that if there is a second
offense you then go back and you pull out that one but if there isn't then it stay, for instance for a period of five years. Now for the xxx it is a longer period. Because it really does come back to the HR person that if they're unnoticeable, something that is on notice, and they can't just throw away that.

Researcher: No, no. Well I would feel very strongly that whereas complaints can be nullified they cannot be made to disappear. Because if they are made to disappear, it means that if there is a pattern or if there is recurring behaviours, or someone... and especially far more so in large organisations where people can move around, it's too easy for... it leaves it far too open for mediation to be used to, em, to be manipulated. Em... so again, but I would see that as being a very important part of the discussion between the mediator and the... like I would never as a mediator personally agree to... that, that a complaint should be torn up or just vanished. Because it is agreed and if a party to a mediation or HR manager suggested that as an option I would have a conversation around that because I don't believe that is good practice. So that is a really interesting... but again as a.... yes that is an interesting point and well noted.

But that ties in again then into the quality of outcomes for the organisation in some way because a few of those examples there were talking about feedback to organisations as well. Or implications for organisation in relation to for example, I suppose process in the other case where the client or the customer and the staff member certainly that would be a big, to me that would be a big structure or process feedback.

Yes and it's where a mediator may have a role to have a discussion around structure, but it has to be very.... it's fine where several, where the mediator is working with the organisation on several levels. If it is a one to one it can be quite difficult. Em, the .... I think the other benefit to the organisation is where if you take the two women, the organisation wanted to hold on to these people. They didn't want either of them leaving, they even in this economic climate they would have been snapped up by other people and they didn't want that. And that's the retention of staff.

Researcher: And they had a very good outcome on that.

They had a very good outcome on that.

Researcher: So again you are back to a productive working relationship, would that be...

And, and in the.... so that's the case of the young women with the external person. You have equally the sales manager and the manager... they were back into being able to, they were back able to work together. And in this case... That lent itself to a huge exposure for the organisation. Because if that was taken to the equality tribunal on an investigation the company would have been exposed. When in actual fact it was never intended the way it was picked up.

Researcher: So am I right again, just to check I'm taking this up correctly. You had a situation where xxxxx there was a level of concern.... what could be I suppose termed in one way, positively discriminated in that they made an allowance that they wouldn't otherwise have made. Is that what you are saying?

No I think in this... I think you have it reframed from the first piece but in relation to the second piece that in being able to discuss matters in mediation to understand what was the impact that it was a cost cutting suggestion rather than any other suggestion, and it was never meant to be heard or understood in any other way. And if that hadn't happened in mediation and if the other person had remained disgruntled, that person could have had.... that company could have been
exposed under equality legislation. And a second example of that would be where... in a case that came to mediation again that was resolved whereby two, and again you will be able to take out some of the detail of this, where it... on a Wednesday morning a person... an person came in and a manager, an Irish manager, said to the employee "Oh, the are coming in on the again". At which the employee the manager.

The senior manager didn't hear the comment, all the senior manager knew was that the employee, the employee, the manager who was female, one was male one was female, and was suspended without pay, within an hour. That was resolved the following day at mediation.

Researcher: And the had done so because they interpreted the remark as being a discriminatory against...

...comment against them. So you had layers again of equality, you had gender inequality, you had assault, you had racial inequality, which was solved very quickly. Because in the outcome in terms of, now I wasn't involved with it, but the outcome in terms of the manager was deep regret, but was, had been reciting what had been all over the papers at that time. The was the deep regret that it was just the spur of the moment and it should never have happened. So all of these things got sorted very quickly.

Researcher: As opposed to going down to the rights commissioners.

Which would have been very serious had it gone there. And also the employer who didn't, because it was a small organisation, the employer did not have a knowledge that you cannot suspend somebody without pay. So there were whole levels that were dealt with in mediation.

Researcher: And again just to clarify, and I know it would be the case because of the quality of people in your organisation, that those issues which could have exploded in all sorts of ways, certainly for the employer and indeed for some of their employees. But particularly the level of risk for the employer, that was managed appropriately and well through the mediation, with the parties, I take it, gaining an understanding. I suppose getting a self-awareness on the manager’s side of how it might have been interpreted, her comment and that there was some level of appropriate apology, or something meaningful happened within the mediation whereby the parties were able to move on.

Yes exactly, so that they had the opportunity, and prior to mediation when the senior manager discussed.... or called our organisation in the mediator who was responsible for it raised the issue immediately around pay, before it went in, so before anything came out, that the employee needed to be paid. And that needed to be rectified immediately, so that there was no question. Again to protect, to protect the employer.

Researcher: Yeah, very good. Okay... some very tangible outcomes there for the organisation.

Yeah and you know the... especially the small..... well actually I used to think it was the smaller organisations didn't know but I am increasingly astounded at how the bigger organisations are dealing with things. In the current economic crises they think they have more leeway to deal with things that they wouldn’t have dealt in that way a number of years ago.

Researcher: Well they are foolish because our employment legislation is only increasing so it's layers upon layers... so that's interesting.
Question 3: What, if any, level and type of feedback does the organisation receive from the mediations that you have conducted, with the permission of the parties, in relation to context and/or structural factors. Or have you had occasion to feedback.

But if I just give you a general one again for your taping but you'll know, you will know this, when we talk...

Researcher: Yes super that would be great. Yes I will refer back to them there as well.

When we talk, when we talk with them, with people when they engage us first we send out an agreement to mediate, from that we have a discussion, we have discussion with them around what mediation is about, what they can expect.

Researcher: And is that with the parties or with the organisation.

That's with the organisation which employs us first. And then what we would say to them is we will manage it, once they get acceptance from the employees that we are... that they want to mediate. We take it from there and we will say to the contacting person that we'll come back to them if there's an elongated process. Other than that we will come back when the mediation is finished, unless they need a note around time off for the parties. And then we outline to them what can come back to them, so the only thing that will be sent back to them is if the parties want to feed something back. So if... so in one particular case we had a situation where two people had not spoken to one another for seven years and the... their manager because the organisation was downsizing these two people were going to be the only two people left in this department. And so the managers called us in and at the end of the individual sessions the female said to me, this was a good number of years ago, the female said to me "I actually don't even need a joint session, I just needed somebody to listen to me". She agreed that she would meet the other person, and both of them identified the manager as the problem. He had played one off against the other. But they decided that they wanted nothing to go back to the manager, that they would deal with it themselves in terms of how... they felt that they could never challenge him, he would never listen no matter what they would feed back. We've often been back into that company. And that... I think that mediation was about three years ago and those two work very well together. But they never wanted anything to go back. And the manager was really, you know, he wasn't... really wanted to hear. But he didn't get anything because there was no permission and he knew that before hand, that he wouldn't get it.

Researcher: And in that case obviously he was told... there was feedback in relation to the outcome, in general terms, the outcome of the mediation. Was there?

That the mediation was successful. Both of them had resolved the difficulties that they had. They didn't want to put anything in writing and they didn't want anything sent back. But what he did see was the practical side of it. But he never knew that in their view he was the problem.

Researcher: Okay. It is interesting what goes back and what doesn't go back.

And it also depends on who the contacting person is, how near they are to the parties, how many mediations you've gone through, if it's your first. But if it's, as I was saying earlier on, if it's several then it can be identifiable, who it is. So that's the, I suppose one has to work with each case on an individual basis. Always keeping in mind is there a possible breach of confidentiality if this is said back.
Researcher: Absolutely and... but you have had, and you have already noted some instances where during the mediation itself, structural or procedural factors are identified and on occasion the parties ask for them to be fed back to the management, as a learning to the organisation or as something that they are requesting to be addressed.

Exactly but that has to reality tested. And again I know that you know this there is no point in somebody saying I don't want to have to deal with that person ever again. Now that is kind of an exaggerated piece, because that is not a reality. Or two separate offices is not a reality. Or an office on my own is not a reality. All of those things kind of things are not reality.

Researcher: Okay lovely, that's great. You are giving me lots, lots here that is really good.

Well I know what it's like trying to gather the information. Of course what you want to do is to have it, what I would imagine, your research populated by historical features.

Researcher: Absolutely, and in my view information is key. If there is information it can be discussed considered as part of the thesis. If I don't have information it is very hard, I can't create.

Question 4: Can you describe the culture of the organisation that you provide mediation services to and in your view the significance of organisation culture in relation to use of external mediation.

I suppose if go back to when we started working in mediation which is a later time than when you started. So it was when the organisation started in 1999. At that time my view was you had people who thought mediation was soft. It's furry, it's fluffy, it's for, you know, soft organisations. A lot of time people saw it as a waste of money, sure we'll just replace somebody or they'll move on etc. I think over the years that responsible organisations, because they hear courts talk about mediation, they hear about it... So now it was being thought about as a responsible approach. I wish I could say that all the organisations that we work with take a responsible approach towards their employees. On a surface level they talk the talk but really they want to get a problem off their desk...and would think that that's in most, in most cases. I'm just looking through different pieces. Yeah, I just think they don't know where to go with it rather than embracing it in general they probably leave it as long as possible.

Researcher: Okay and would that be most of the organisations in your experience or would that be... would you notice, are some do you feel more open to mediation as a concept. And is there...

Oh without doubt they are open to mediation as a concept and they are also, some of the larger organisations, are employing panels of mediators. And you will probably know this yourself the universities, the universities have panels, like it's open who the panel is for their panels, and you probably know who is on each of the panels... So that is a very proactive approach to mediation. Now it is interesting if you take, and I don't know whether this actually ties in with it or not. In the 1998 case what they decided to do... how they started off developing the whole mediation piece, they decided to deal with one in relation to XXX issues. And in doing that they brought a panel together, a panel of internal mediators, in bringing the panel of internal mediators together they decided to train them. And they asked us to come in to train us, they had a local group.
Researcher: And the, these were staff member that they were training [redacted] as opposed to students.

They took a group of [redacted] and they trained them. And following that training about two years later they thought it would be a good idea if all of HR were trained. Their idea was that HR would do the internal mediation between staff, but of course what emerged very quickly was that HR were the worst... were the worst sounds wrong, let me re-phrase that, were not the group who could do it. Because there were too many conflicts of interest, or perceived conflicts of interest.

Researcher: Very different hats as well.

...You have the internal mediation team for doing customer issues. And then you build up from that. So the ethos of the organisation is one that has to evolve. And where you have organisations that flick into it very quickly sometimes they come to it without a real deep understanding of how it can be used and how best to use it.

Researcher: So would I be right in taking it [redacted] that in... because that's.... you had been working with them since xxx, you started working with them, but you were saying it really took from [redacted] until 2013 to really develop the ethos and, would I be right in saying, develop the capacity as well.

Yes now they would have, they had their [redacted] issues, the internal panel dealt with [redacted] issues which worked, which worked quite well. But there are particular challenges around that, and that's not your... your context is workplace, so the customer base they're very, very distinctive challenges that that group of mediated base have. But they went from there thinking - we need to move this onwards. but for most public organisations it has taken them a while to get into the view around whether or not they can even write mediation into their policies and procedures. So more and more it is becoming part of it. But in the early days we would have review policies and procedures of organisations and our recommendation would have been - you don't have mediation here. So I don't know whether that really answers that question for you.

Researcher: Well it is interesting in tying back into my own experience, because I have done a lot of work in [redacted] and [redacted] but more often than not it has been around investigation than mediation. A lot of my feedback has tended to be around where conversations could have taken place differently or different interventions might have prevented it going to investigation. Em, and again as you say these public bodies they move slowly, in relation to developing policies and procedures.

And having said that it still won't work, it still won't be right for everybody. And for some of the public sector they don't want... the staff members don't want to use mediation. They feel they want it investigated so that it says "I am right". And because the protected ethos of the staff member in the public sector it is an outcome that sometimes pleases a number of staff members.

Researcher: And that is a very interesting one again, that, that looking for validation through a rights based process rather than... and again I would, certainly in my view, I would think that that's very, eh, culturally orientated. And I think for an organisation where there is a certain ethos within the organisation, em... that is orientated towards rights based processes it's very... it's a very big step to even bring them around to the perspective of interest based engagement.
The, the other challenge I think with mediation, ah… that for somebody who feels that they haven't been treated fairly in front of colleagues, or have spoken about it in the staff room, and of course you have all of the people, the bystanders in the staff room egging people on. A major discussion in mediation, or if it does come to mediation is how are other people going to know that it is resolved and what do they need to say. And I think that comes back to the training of the mediator going in, to think about that wider concept, something you don't really have to deal with in investigation.

Researcher: *No, but certainly for what happens after the mediation it is a very important part of the conversation.*
Appendix 5I: Structured interviews with identifying information redacted and/or removed

Interview #9: External Mediator 5

Question 1: In your view what factors determine the advancement of a workplace dispute to external mediation. Or do you have any sense of that.

I suppose there’s probably a number of factors now, I wouldn't put them in any particular order. Eh, and there's two aspects of the question I suppose, one is advancement to mediation and the other one is advancement to external mediation. Eh, usually in my experience advancement to mediation arises when either when there is some kind of a provision in a collective agreement or a policy or a procedure, that provides for, eh, the advancement of a dispute to mediation. Or in the absence of that where there is somebody in HR who is aware of the role of mediation and how it can be used as an informal approach to dispute resolution.

Sometimes in small organisations people get legal advice and I think increasingly solicitors are probably advising companies, as well, to use mediation as a, kind of a, well in theory at least as a kind of speedy and effective and kind of cheap approach to resolving disputes. Usually in terms of external mediation, I mean, obviously there is a money dimension to that now. I find, I find that, eh, there's kind of.... obviously the organisation needs to be able to foot the bill. Eh, and some organisations can't or won't and for that reason will try and do as much mediation as they can in-house. Eh, although sometimes I suppose there is free external mediation, I do come across cases where people have referred inter-personal mediations to the labour relations commission. Because as you know they do a small amount of inter-personal type mediation separate from their industrial relations work altogether.

Eh, usually in my experience as well where, where organisations want to use an external person it's very often because, eh, they see the issues as being particularly complex or serious. And they kind of feel that they need, you know, quite experienced professional person to do it. Or they might not want, for reasons of objectivity, they might not want to use an internal person even if they have one available. Because the parties mightn't see an internal person, even if they're qualified and so on and so forth, they mightn't see them as being as independent as an external person, you know. Eh, and as you know yourself, very often where externals are used parties have an opportunity to have a say in who the external would be. Eh, so there is usually a variety of factors usually underpinning it all is the assumption that the dispute can be resolved through mediation. In other words that mediation is an appropriate approach to it, eh, and that there aren't other more appropriate approaches, like say going to a rights commissioner or taking legal action or, or whatever it might be.

Sometimes then there is kind of a somewhat cynical tick-boxing kind of an approach as well where organisations, and sometimes they are quite explicit about this if you know the people well, they'll use an external mediator or mediation in the knowledge that it's not going to work but that they have to do it because they have to be able to say that we offered mediation. So you could say that it's kind of a, you know it's kind of a tick-box kind of an exercise rather than an intervention that, that the commissioning parties at least would expect to, eh, see resolving the dispute. Obviously the parties themselves then need to agree to mediation. Eh... it's... my experience is that, that parties are probably better informed in a very broad way about mediation now than they would have been, you know, five or six years ago. Eh, but sometimes you would still have to do, you know, quite and amount of, eh, you know, information kind of giving to the
parties and explaining and all that kind of thing before they're absolutely satisfied that external mediation is appropriate for their particular dispute. Particularly when they have other alternatives in mind like an investigation. Eh, or maybe some other kind of a mechanism like, I don't know, a recourse to law or a file to the labour relation commissioner or an industrial relations procedure or whatever it might be, you know.

Researcher: Absolutely and do you do you see the, em, the fact that parties tend to be better informed, do you see that as something which makes them more inclined to go towards mediation, or to consider it as a viable option.

I think so yeah, I think, generally speaking, mediation has a good name. You know I think it's kind of, I think it's kind of assumed to be, eh, a disputant friendly, if I can call it that, kind of a process. Eh, although I have to say now having said that, I often describe it as an informal approach but parties increasingly tell me that they don't think that it's informal. That they find it to be quite formal because, you know, you've got the kind of formal steps that the mediator kind of takes, you've got the contract, you know, you've got all of that kind of stuff. And I suppose the whole experience of people putting themselves in the hands of a third party that for them is by definition almost formal.

Question 2: What is your sense of the outcomes – tangible and intangible – for the individual parties to the mediation and to the organisation?

Yeah, eh, well it doesn't always work so the outcome isn't always an agreement. But I suppose, eh, in a majority of cases there is an agreement of some sort which is obviously beneficial to the parties themselves, although one party might see it as being more beneficial to one of them rather than both, you know. I think in general terms people get an opportunity obviously to air their grievances and, and to be heard as they often say and to get their day in court and so on and so forth. I think they get an opportunity... I think one of the outcomes from the point of view of the disputants is they get a better understanding, if they are open to it, of themselves and of the kind of the causes and the dynamics of the conflict and they also get a better understanding, if they are open minded at all, of the, eh, stance of the party they are in dispute with, you know. Eh, so there is that, that kind of thing. Eh, I suppose the tangible benefit is that, eh, the most tangible benefit I suppose is that the conflict actually ends. Although that probably happens before maybe the mediation actually takes place. But you know certainly I think people... where there is an agreement reached people feel that there isn't going to be a reversion to whatever it was that had kind of led them into the mediation in the first place. Eh, although that wouldn't always be the case. Sometimes people, people make agreement of a very tentative kind and are quite sceptical but you know, eh. So, yeah I suppose they would be the kind of, the main kind of... that would come from the point of view of the individual parties.

Researcher: And just to, just to go back to one of those, when you're saying that the... quite often that the conflict ends before the mediation takes place. Can you say a little bit more about that.

Well let's say, I mean, if it's a kind of a bullying type thing. If somebody accuses somebody else of bullying for example, and they refer it to HR and there are meetings with the parties and HR and mediation is muted and then takes place. You would normally expect that the bullying behaviour would have stopped, you know.
Researcher: *Yeah prior to that, and would that be on a basis of that person becomes aware of... that the other person has issues with their behaviour and they may not have been aware of that beforehand. Or is that for a different...*

Well I think an element of that but also an element of wanting to be seen to be on their best behaviour by the mediator because, ah, people do try and obviously impress the mediator, you know, to some extent people,... even though mediators explain that they are not judges, eh, people tend to want to be judged positively by the mediator. So I think very often people don't want to have very recent events that could be raised in the course of a mediation. Which would be just kind of... which one party could say - well here's the proof of what I've been saying, only yesterday or only last week - or, or whatever you know.

Researcher: *Yeah, Ok great. Ok and then from the point of view of the organisation...*

Well that there's a number of benefits, I suppose, from the point of view of the organisation. I suppose at the very minimum level there is the whole compliance and conformity thing – where they are seen to be a good employer and abiding by their own policies and procedures. Eh, I suppose from a HR point of view it is getting it off somebody's desk, you know, and getting the thing resolved, and maybe even shoving it on to somebody else, in the sense that the mediator is now responsible for it rather than the organisation itself. Eh, I suppose also as well where it,... where, where conflict is interfering with the flow of work and moral and performance and team work and development and all of those kinds of vital aspects of organisation development, well then if the outcome of external mediation is resolution or agreement of some sort then there are obviously very practical benefits from the point of view of the organisation. Eh, sometimes changes are held up because of relationships within work units or between individuals and changes can be freed up then if, eh, if those kind of log-jams are unblocked. So I suppose there are, there are tangible and intangible outcomes from the organisations point of view as well.

Researcher: *Yeah, lovely. Great thank you... Em, moving on to question three.*

**Question 3: What, if any, level and type of feedback does the organisation receive from the mediations that you have conducted, with the permission of the parties, in relation to context and/or structural factors? Or have you had occasion to feedback?**

Only in a very informal way Mags I would say, you know. I mean I've never been... I don't think I've ever been, well maybe occasionally kind of semi-informally debriefed by an organisation where they wanted to kind of look at the conflict in a more contextualised way, let's say, rather than just an event between two or more individuals. Eh, and it does tend to be done quite informally. Eh, frankly, eh, I would often give it without the permission of the parties, I mean I don't think I would explicitly say to parties, you know can I give some feedback in relation to context and structural factors. You know because, eh, I reckon that you probably wouldn't get it or you might kind of, you know, you might frighten them in some way, you know. Eh, and I think contextual and structural factors are very often kind of, eh, in some way independent of the parties, if I can put it like that.

Researcher: *Yeah, so if...*

You know if you had a factor for example like people working in different offices and different parts of the building but purporting to be a team, you know. Or people working in a space that was far too small. I mean if you take those kind of structural factors, I mean I don't, I don't see why you would necessarily need to ask the permission of the parties to kind of talk... speak to those with the HR people whoever it happened to be that commissioned you, you know.
Researcher: OK so, so those would be things that you might feedback from your own observations that, that... where you recognised something that might be a factor. But do those... those things don't tend to come up within the discussions within the mediation, or do they? Where people say - Oh well.. you know the way in, in mediation you get into the conversation of what's happening and what pre-empts certain situations or behaviours.

I'd say they probably would be I think the mediator because, because he or she is an outsider tends to have a bit more helicopter vision for want of a better phrase than the disputing parties themselves because they very often can't see the wood for the trees, you know. But yeah, I suppose they would come up in the course of the mediation as well. I find that organisations, I find that organisations are really kind of more interested in the personalities and what you think of them and they try and prise that kind of information out of you. Or about who's right and who's wrong and did somebody do X, Y or a Z rather than kind of wider contextual and structural factors. Because you would have to have... I think you would have to have quite a number of mediations in a single organisations before they'd attend to that kind of aspect of it, you know. Eh, whereas they often tend to see conflict requiring mediation as kind of once off things you know. I have had some discussions with large organisations where I have done a number of mediations and they might refer to things like their management development programmes and the need for specific training and that kind of thing, you know. But to be honest with you I don't kind of get a sense that, that they follow up to closely on, eh, any kind of underlying contextual or structural factors, you know. That's my impression anyway. Maybe I'm being unfair to them.

Question 4: Can you describe the culture of the organisation that you provide mediation services to and in your view the significance of organisation culture in relation to use of external mediation.

Yeah, that's a difficult one to generalise on now. I mean if you'd asked me that question a year ago I would have said that the organisations that I was most familiar with were large public service unionised organisations that had lots and lots of policies and procedures and the resources to back them up, you know. And that it was in those kind of formal, formal kind of organisation cultures that, eh, that external mediation in my experience anyway tended to arise. But over the last year now I have to say I have done mediations in quite small organisations. I mean I've done... I'm doing... I've done one in, eh, in a xxx, I've done one in a very small organization you know. So I've done them in kind of quite small organisations where you couldn't really say I don't think that they had common cultural factors with the larger kind of organisations that I've just described. Eh, so I don't know whether it's a culture or... well in some cases it is a culture because obviously in big organisations it's embedded, the use of mediation is embedded in it. I think in much smaller organisations it's much more of a once off thing, you know. Eh, and I think it's probably external advice, the use of external advice in the form of solicitors or IBEC or whatever that, eh, would tend to, eh, trigger the use of external mediation. So I don't know if I can be that helpful on the cultural thing.

Researcher: Oh no, no, that's great. And again culture is how we see it. The smaller organisations, I'm just thinking of if... when I started doing the thesis one area that I had been thinking of doing the... or when I started doing the Masters one area I was thinking of doing my thesis on was the difference between public sector and private organisations. Not that... like the same issues arise but they arise very differently I had found. And I found certainly in a lot of my work with, em, either government bodies or academic institutes where you had jobs for life and you've... they're very... there's lots of very well defined policies and procedures in relation to anything that's going wrong, but that, em, issues would arise very slowly. There would be a
lot more covert behaviours and whereas in the private businesses that I would work in, em, conflict tended to be far more open and very different in how it would arise. And basically if people in the private sector business that I have worked in I found that where situations would go wrong, which would land on my desk, very often there would be a big blow-out. But they tended to be shorter-term conflicts. Whereas a lot of the public sector body's I go into people have been in conflict or, you know, not getting on for three, four, five, six, years without ever addressing the conflict. Is that... would you have... would that in any way...

No that, that, that doesn't echo with me now. I mean, yeah ok in the public sector things tend to be let fester and they sometimes have to work their way slowly up through the hierarchy into HR and so on and so forth, you know. Eh, but I've had cases in the private sector where, where rows have festered over a considerable period of time as well, you know.

Researcher: Yeah, no. That's grand and again you know I suppose any organisation...

Just based on my own experience Mags I couldn't generalise. That' not to say that what you're saying isn't valid, it might well be. But my experience is more, my experience is more kind of let's say 80/20 in favour of public as opposed to private. You know yours is probably a bit more balanced, you know.

Researcher: Yeah, okay, that's great. And in relation to the, em, the large public service unionised organisations and the smaller, the more recent cases you were doing in small privately owned business, you wouldn't notice any particular difference in how... in the determinacy of whether one goes to... is that really down to the policies and procedures or who they're are getting their advice from.

I think so yeah, I think ultimately I think it comes down to, eh, in the case of large organisations with lots of procedures it's the requirement to be a good employer. Eh, and I think in the case of smaller organisations it's probably two things. I mean one is, eh, external advice as to what constitutes you know good appropriate practice in the field of dispute resolution. And I suppose the other thing would be, although I suppose this is a factor in the public as well but I think it's probably more so a factor in the private sector is, is trying to avoid litigation and costly alternatives, you know. Because obviously you know if it's a xxx or, eh, you know a small business or whatever it is, it's real money out of their own pockets that they have to stump up. Whereas in the public service, eh, you know it's more ephemeral isn't it, it's tax payers money you know.

Researcher: Oh absolutely, yeah.

And it's going to be less painful because invariably they will find the money somewhere whereas in a small organisation it will actually affect their bottom line.

Researcher: Yeah and could, could have big implications.

So I think, I think for that reason they sometimes see external mediation not just as a way of bringing a dispute to a conclusion but also as a means of avoiding further costly kind of procedures like court cases, you know, being sued so on and so forth, you know.