



Mediating Ways

Pathways to Dispute Resolution or the Ways of a Healthy Enterprise

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ABSTRACT

Conflict is often portrayed as the harbinger of disputes but it can be the precursor of change and innovation. Eminent contributors to management and conflict literature agree that conflict can be productive when managed effectively. Mediation, involving a third party, has been effective in the management of conflict. This study considers whether mediation's precepts can become an integral part of organisational culture and shift the conflict paradigm towards constructive engagement. It reports on the wide role of mediating ways in organisations and their impact on organisational life. The benefits from the case units studied are classed as business as usual, strategic focus and work culture. The study concludes that mediating ways in the grain of organisational life furthers productive interactions across a range of activities involving engagement with conflict.

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Abstract

Conflict is often portrayed as the harbinger of disputes but it can be the precursor of change and innovation. Eminent contributors to management and conflict literature agree that conflict can be productive when managed effectively. Mediation, involving a third party, has been effective in the management of conflict. This study considers whether mediation's precepts can become an integral part of organisational culture and shift the conflict paradigm towards constructive engagement. It reports on the wide role of *mediating ways* in organisations and their impact on organisational life. The benefits from the case units studied are classed as business as usual, strategic focus and work culture. The study concludes that *mediating ways* in the grain of organisational life furthers productive interactions across a range of activities involving engagement with conflict.

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Introduction

**"Nature desires eagerly opposites and out of them
it completes its harmony, not out of similars."**

Heraclitus, Greek Philosopher, (535 – 475 BC)

Mediation has found its way into organisational life as an intervention for dispute resolution. In this role it can relate to the external environment of people and organisations and to the internal environment of employees and employer. In both, mediation performs as an event which interposes to bring any serious deviation from the state of harmony back to a new stable state. By that I mean that mediation is brought into play to correct a process or a relationship which is held to have gone wrong or become disruptive to the normal flow of organisational life.

But what if harmony is not the normal state but diversity and difference and their symptom, conflict, are the norm. If we stopped viewing conflict as pathology but as a normal symptom of complex reality then we might see mediation or at least the ways it teaches as a normal response and not something we reach for in extremis. Several writers on whom I draw later take this view but none better than Richard Delgado¹:

"Conflict as pathology, I mused aloud. ". . . In a society like ours, conflict is normal, the ordinary state of affairs. Our society is made up of competing classes in endless struggle: consumers and manufacturers; whites and the descendants of former slaves; workers and factory owners. This conflict is normal, maybe even healthy. Smoothing it over ignores something important. And structuring a dispute resolution system so as to treat its every manifestation as a sign of unhealth is a very big mistake."

This study seeks to look at mediation from this alternative viewpoint. If we regard conflict as a normal part of the goings-on within our enterprises and between enterprises and between people in enterprises, do we create a different role for mediation? What if, in place of mediation being an event that is applied to fix a deviation from a state of harmony, we see *mediating ways*² as a feature of a management culture which values difference and diversity and harnesses their potential to contribute to healthy organisational life?

¹ Professor Charles Ingis Thomson as his alter ego, Richard Delgado, in a tribute: *From Alternative Dispute Resolution--Conflict as Pathology: An Essay for Trina Grillo*, (Minnesota Law Review, Vol 81, 1996-1997)

² I have chosen to write about *mediating ways* in the singular throughout this paper as I am treating it as a category or genre of conflict engagement rather than a number of different elements of a process.

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Scope and Objectives

***Leaders do not avoid, repress, or deny conflict,
but rather see it as an opportunity.***

Warren Bennis

I will explain my concept by taking a different field which, in many organisations, is now part of organisational life. Coaching started as an intervention offered by consultants to support the development of high flying senior executives. It now has an established role in the development of staff being depicted as a '*pervasive learning and development tool*' by a recent CIPD survey³. The coaching debate is now about how to build coaching capability within organisations⁴ and what is meant by a coaching style of management.⁵ The 2012 CIPD survey⁶ says that respondents rate it as one of the top three most effective development and learning practices and it indicates that its future will be in its greater integration with broader strategic goals.

The question for me is whether there are reasons to believe and evidence to support a case that *mediating ways* might follow a similar path to coaching and become integrated with the achievement of broader strategic goals. Might organisations see mediation assuming a wider role in which it is no longer almost exclusively associated with re-ordering the disordered but is part and parcel of a management and leadership culture which is needed for today's fast changing business environment? Might a researcher in the future report that *mediating ways* has become a pervasive learning and development tool which works best when integrated with broader strategic goals?

It might be useful at this point to pause and ask whether the emerging field of conflict coaching offers a readymade discipline for my proposition – after all it links conflict as a theme with coaching as a discipline. However, this would miss the point of my intention which is to link conflict as a theme with mediation as a discipline. One text on the practice of conflict coaching, a book by Tricia Jones and Ross Brinkert⁷, defines it as '*a process in which coach and client communicate one-to-one for the purpose of developing*

³ Chartered Institute of Personnel and Development (CIPD), *Learning and Development Survey* (London, CIPD, 2008), p.18

⁴ Ann Knights & Alex Poppleton, *Developing coaching capability in organisations*. (London, Chartered Institute of Personnel & Development, 2008).

⁵ Valerie Anderson, *The Line Manager as Coach: An assessment of coaching characteristics reported by line managers*, (University of Portsmouth, 2009)

⁶ Chartered Institute of Personnel and Development (CIPD), *Learning and Talent Development Survey* (London, CIPD, 2012), p.5

⁷ Tricia Jones and Ross Brinkert, *Conflict Coaching – conflict management strategies and skills for the individual*, (Thousand Oaks, California, Sage Publications, 2008)

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the client's conflict-related understanding, interaction strategies, and interaction skills'. This is the context of the coach as consultant and not coaching as a style of management. It is the latter which is my quest.

The line of inquiry I will take is to review what thought leaders in management and leadership have written about organisational conflict. I will review thought leadership in dispute resolution, mediation conflict transformation and conflict engagement. I will identify what researchers have reported about broader strategic influences of mediation in organisations. I will describe four studies of case units which have embraced mediation as a skill set for groups of staff and discuss my findings from these studies looking for any evidence of there being a contribution to wider organisational goals. I will conclude with final reflections on the purpose and outcome of my inquiries.

My proposition is that if we limit mediation's role to dispute resolution as if conflict is pathology, we are missing a trick. It is in the complex realities and the natural properties of organisations that mediation will find a greater role. *Mediating ways* has the potential to add value to organisational life by working in the grain of its ordinary affairs. A narrow focus on dispute resolution would limit mediation's potential within the milieu of organisational life. It is here that conflict dialogue and engagement can become the currency for new ways to develop relationships, work practices and change management in meeting an enterprise's strategic goals.

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Literature Review

It is possible to conceive conflict as not necessarily a wasteful outbreak of incompatibilities but a normal process by which socially valuable differences register themselves for the enrichment of all concerned.

Mary Parker Follett⁸

It would be difficult to overlook the influence of Mary Parker Follett in a review of management thought leaders on conflict. She is regarded by giants of contemporary management theory including Rosabeth Moss Kanter⁹, Peter Drucker¹⁰ and Warren Bennis¹¹ as being a prophet and seminal thinker from the first quarter of the last century whose writings are apposite today. Follett's relevance to mediating ways is that her paper 'Constructive Conflict' explained a method for handling emotive and divergent challenges which anticipated the ethos and principles of a mediating approach within good management practice.¹²

Carrie Menkel-Meadow, one of today's authorities on alternative dispute resolution (ADR) describes Follett's ideas as '*the touchstones of much of what we teach and hope to accomplish in good dispute resolution environments*'¹³. Follett's premise is that: '*As conflict - difference - is here in the world, as we cannot avoid it, we should, I think use it. Instead of condemning it, we should set it to work for us.*' She compares conflict to friction which an engineer may seek to eliminate for some purposes but makes use of in others, whilst in a violin it makes music. She classifies the ways to deal with conflict as domination, compromise and integration; and it is in her writings on integration that we see a foretaste of what mediation can offer workplace practices.

Follett's theory of integration starts with not asking who is right (both are, but to different questions) and seeks to bring the two desires into the open where they can be broken into smaller parts and examined, and where revaluation can take place, and the two positions can be integrated through the creation of a new position. Revaluation, her *flower of comparison*, was of key importance since neither side ever

⁸ Mary Parker Follett, *Creative Experience*, (New York, Longman Green & Co, 1924), p.301

⁹ Pauline Graham (ed.), *Mary Parker Follett: Prophet of Management: A Celebration of Writings from the 1920s*, (Washington, Beard Books, Havard Business School Press, , 1995), pp. xiii-xix, Preface by Rosabeth Moss Kanter

¹⁰ *Ibid*, pp.1-9, *Introduction* by Peter Drucker

¹¹ *Ibid*, pp.177-181, *Commentary 'Thoughts on the Essentials of Leadership'* by Warren Bennis

¹² *Ibid*, pp.1-9, *Constructive Conflict*, pp.67-95

¹³ Carrie Menkel-Meadow, *Mothers and Fathers of Invention: The Intellectual Founders of ADR*, (Ohio State Journal on Dispute Resolution Vol 16.1, Hein-Online, 2000) pp.7-8

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gives in but there ‘comes a moment when there is a simultaneous revaluation of interests on both sides and unity precipitates itself’¹⁴.

Follett’s integration uses methods akin to Fisher and Ury’s principled negotiation, a joint approach to problem solving, described in their classic ‘Getting to Yes’¹⁵, a standard text for many mediators. Fisher and Ury sub-title the book ‘negotiating without giving in’ and say that their ‘method of focusing on basic interests, mutually satisfying options, and fair standards typically results in a wise agreement’.

Follett’s foresight does not stop there. Admonishing college debates for always trying to beat the other side she says the greatest obstacle to integration is the lack of training for it.¹⁶ In proposing ‘classes in discussion which should aim to teach the “art” of co-operative thinking’¹⁷ she might well have been advocating mediation training.

Follett’s art of co-operative thinking, in which one converses with both an open mind and a great respect for one’s own view, is analogous to Peter Senge’s theory, in the Fifth Discipline, of collaborative learning in which participants master both dialogue and discussion¹⁸. Senge, widely recognised as the architect of learning organisations, describes dialogue¹⁹ as a free flowing of meaning through which, in exploring complex and subtle issues, there is deep listening to one another and a suspension of one’s own views. By contrast, in discussion the two proponents’ views are presented and defended back and forth. In this conflict of extremes the danger is either smoothing over difference or no holds barred claim for one’s own view.

On team learning, Senge says that developing dialogue so discussions are productive rather than destructive requires the skills of inquiry and reflection. It is in the process of opening up the conversation to others’ ideas that it becomes a team discipline which taps into the larger pool of meaning of the group and influences us to modify our mental models to take on the wider

¹⁴ Graham, *op. cit.*, p.75

¹⁵ Roger Fisher and William Ury, *Getting to Yes – Negotiating an Agreement without Giving In*, (London, Random House, 1999)

¹⁶ Graham, *op. cit.*, pp.84-85

¹⁷ *Ibid.*, p.85

¹⁸ Peter Senge, *The Fifth Discipline, The Art and Practice of the Learning Organisation*, (London, Century Business, 1990) pp.236-239

¹⁹ *Ibid.*, Senge refers to the work of physicist David Bohm who saw thought as a collective phenomenon in which there are two primary types of discourse, dialogue and discussion. While their power lies in their synergy there is a lack of understanding of the distinction between them. The word *discussion*, which has the same roots as percussion and concussion, is represented by a ping-pong ball going back and forth between two players until one wins over the other, and its emphasis is on winning. By contrast, dialogue has its roots in the Greek *dialogus* where *dia* means through and *logus* means the word and its meaning with their coming together signifying a free flow of meaning between people.

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realities of the group. This process, which is similar to methods used in mediation, is what Senge calls collective inquiry and consensus building²⁰.

The cornerstone of Senge's learning organisation is a shift of mind from seeing parts to seeing wholes. The approach known as systems thinking is close to an accepted truth in contemporary management literature. It recognises that organisations are complex systems with natural properties. Senge stresses the need to take the long term view, a dynamic perspective of interconnected parts, using feedback loops for learning.²¹ This is also reflected in mediation approaches.

These themes are developed in *Leading Change*²², a book which uses whole systems thinking and action learning as team practices in advising on the process of culture change. Systems thinking develops the teams' understanding of the task and creates the action learning agenda which leads to culture change through the following process:

It is through the cyclical practice of this [action learning] work – questioning, probing, analysing, negotiating, taking action, reflecting, collaborating – that roles, relationships and behaviours start to change and confidence is built.²³

These activities could well describe the roles a mediator performs and based on the foregoing management theories it is not surprising to find that mediating ways could contribute to culture change.

Conflict as an opportunity for learning and for developing solutions is developed by Cloke and Goldsmith²⁴ who stress the need to alter the conflict dynamics and create positive conflict cultures in their first of ten strategies. For them learning organisations²⁵ are crucial to discovering the opportunities in conflict as they '*can diffuse appropriate lessons and mediative processes throughout the organisation*'.²⁶ What lies beyond resolution and settlement is their goal of transformation and a path of creative problem solving and innovation. This is described in three strategies: *Search beneath the*

²⁰ *Ibid.*, pp.246-249

²¹ *Ibid.*, pp.68-92

²² Margaret Attwood, Mike Pedlar, Sue Pritchard and David Wilkinson, *Leading Change – a guide to whole systems working*, (Bristol, The Policy Press, 2003) pp.26-27

²³ *Ibid.* pp.138-139

²⁴ Kenneth Cloke and Joan Goldsmith, *Resolving Conflicts at Work – Ten Strategies for Everyone on the Job*, (San Francisco, Josey Bass, 2000) pp.1-27

²⁵ *Ibid.* pp.17-19

²⁶ *Ibid.* p.19

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Surface for Hidden Meanings; Solve problems Paradoxically and Creatively; and Lead and Coach for Transformation.

Cloke and Goldsmith view conflict in the normal grain of work life and in their conclusion they describe it in the following way:

'If we can learn to experience our conflicts as journeys rather than wars, as challenges rather than burdens, and as opportunities for growth and improvement, we may actually begin to anticipate with pleasure the next chance we have to transform our conflicts into satisfying communications, creative and paradoxical problem solving, collaborative negotiations and better relationships.²⁷

Transformation is also a goal of *The Promise of Mediation*²⁸ by Baruch Bush and Joseph Folger whose approach is not problem solving or solution focused but empowerment and recognition of the parties in transforming their conflict. They associate their approach with the relational worldview saying conflict interaction is implicitly a positive phenomenon and human nature has the capacity to bring out its potential. They contrast this with some other mediation traditions which they suggest seek to control and manage conflict.²⁹ There is a sense here of Follett's principles of integration as well as the enduring nature of conflict engagement described in the next paragraph.

Another conflict specialist, Bernard Mayer, has written about the enduring nature of some conflicts. In *Staying with Conflict*³⁰ he cautions against a solution focused approach. He shuns short term remedies which may only fix a symptom of the problem and looks to engage people with conflict in the longer term. As well as a shift in time horizon he encourages a paradigmatic shift from conflict as an inconvenient disruption in an orderly state of existence to it being an essential part of life's journey affording opportunities to grow, confront our biggest challenges, and give fuller meaning to life.

In contemporary management literature a significant contribution to the role of conflict in organisations was made by Richard Pascale in *Managing on the Edge*³¹. Pascale was writing shortly after a decade in which management writers had emphasised the

²⁷ *Ibid.* pp.330

²⁸ Robert A Baruch Bush & Joseph P Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (San Francisco, Jossey-Bass, 2005)

²⁹ *Ibid.* pp.237-266

³⁰ Bernard Mayer, *Staying with Conflict – A Strategic Approach to Ongoing Disputes*, (San Francisco, Jossey Bass, 2009)

³¹ Richard Tanner Pascale, *Managing on the Edge – How the smartest companies use conflict to stay ahead* (New York, Simon and Schuster, 1990)

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importance of excellence and perfection. His book did not seek to underplay these goals but in his words ‘our fixation on “what is” obscures that other aggravating necessity of worrying about “what isn’t” and what “might be”.’ Pascale develops his argument about what is needed to unlock self-renewal based on the idea of constructive contention. Contention, he argues, is about drawing attention to the presence and value of conflict and generating debate. He describes the usual managerial response to disruptions as seeking to impose order as quickly as possible. The tendency to seek stability is in this author’s view a mistaken goal when what organisations really need is resilience. Resilience is what Pascale describes as the ability to continue to function, to survive, and to absorb disturbances.

Pascale identifies the role of paradox in forcing people to think outside the box and he draws on poets and writers such as Chaucer and Shakespeare as adopters of paradox ‘from which the reader’s only escape is to achieve a deeper level of insight’³². Charles Handy, one of the most influential management thinkers of our time, wrote a book³³ about the confusions of modern life and work and how paradox is a factor of the dynamic and constant change.

‘If the contradictions and surprises of paradox are going to be part of those futures, we should not be dismayed. The acceptance of paradox as a feature of our life is the first step towards living with it and managing it.’³⁴

Paradox, contention, diversity: these are the everyday fare in our workplaces and while management writers and philosophers for a century have understood their value there is little evidence that management and leadership practice has paid little attention. Morton Deutsch³⁵ and Dean Tjosvold³⁶ emphasise the importance of the attitude that is taken to conflict; is it cooperative or competitive? A cooperative context is likely to secure constructive outcomes while a competitive context will intensify the destructive elements. And yet Tjosvold says that still the traditional image of effective leaders is they ‘make tough decisions and then use their power to enforce compliance’.

³² *Ibid.*, p.111

³³ Charles Handy, *The Empty Raincoat – Making Sense of the Future, The Inevitability of Paradox*, (London, Hutchinson, 1994),

³⁴ *Ibid.*, p.17

³⁵ Morton Deutsch, *Cooperation and Competition* in Morton Deutsch, Peter T Coleman, and Eric C Marcus, *The Handbook of Conflict Resolution*, (San Francisco: John Wiley & Sons, 2006), pp.23-42

³⁶ Dean Tjosvold, The conflict-positive organization: it depends upon us (J. Organiz. Behav. 29, pp.19–28, 2008) [WWW document] URL <http://onlinelibrary.wiley.com/doi/10.1002/job.473/pdf>

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Attempts, as early as Follett, have been made to design structures for constructive dialogue and in this decade Johnson and colleagues addressed the need to have a structure for what they say Aristotle described as *deliberate discourse*. Their structure³⁷ starts by two parties developing opposing positions, then presenting them and listening to the other, moving to a debate of respective strengths and weaknesses, after which each party presents the others position, before synthesising to take both perspectives and positions into account.

F Scott Fitzgerald, in his famous quotation, that '*the test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function*'³⁸ suggests that the challenges of working with conflict will need to be left to first rate intelligences! If so we might muse that no wonder there is so much disruptive conflict in the world! What hope is there for ordinary mortals? Can mediation teach what only a first class intelligence knows?

Howard Gardner, the renowned educationalist and author, who developed the theory of multiple intelligences, described in 'Five Minds for the Future'³⁹ what people will need if they are to thrive in future eras. He distinguishes his five minds from his eight or nine human intelligences by describing them as broad uses of the mind that draw on the innate multiple intelligences. His good news is we can cultivate them at school, in the professions and in the workplace.

Gardner's five minds are: the disciplined mind, the synthesising mind, the creating mind, the respectful mind and the ethical mind. All can have a role to play in mediation but it is the synthesising mind that may be key to turning destructive to constructive conflict. The synthesising mind⁴⁰ is the one that knits together information from disparate sources into a coherent whole. The times we live in are not like those of Aristotle and Leonardo da Vinci when it was possible to be a polymath with a panorama of knowledge of what was then known. Today, the amount of accumulated knowledge is reportedly doubling every two or three years. However, it is not just the vastness of the information but also to its disparate nature which is our challenge.

³⁷ David W Johnson, Roger T Johnson and Dean Tjosvold, *Constructive Controversy – the value of intellectual opposition*, in *The Handbook of Conflict Resolution*, (San Francisco: John Wiley & Sons, 2006), pp.69-91

³⁸ F Scott Fitzgerald, *The Crack-up*, (New York, Esquire, 1936) <http://www.esquire.com/features/the-crack-up>

³⁹ Howard Gardner, *Five Minds for the Future*, (Boston, Harvard Business School Press, 2006)

⁴⁰ *Ibid*, pp.45-76

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Gardner's synthesising mind does not simply merge the disparities but rather creates from them a compelling strategic big picture by taking a *multiperspectival* approach. He acknowledges that the term may jar but the concept, which '*recognises that different analytical perspectives can contribute to the elucidation of an issue or problem*'⁴¹, is similar to Follett's *flower of comparison*⁴². This accommodates disparate perspectives in a way that appreciates their respective strengths.

If Gardner is right we ordinary intelligences will be relieved that holding opposing ideas in the mind and still functioning can be learnt by putting the synthesising mind to work. I would posit that it can also be nurtured and cultivated by the ways of mediation.

John Paul Lederach in his *Little Book of Conflict Transformation*⁴³ describes how conflict transformation can be a potential catalyst for growth. Although, not specifically addressing conflict in organisations, Lederach describes conflict as an opportunity and a gift, which '*can be understood as the motor of change, that keeps relationships and social structures honest, alive, and dynamically responsive to human needs, aspirations and growth*'⁴⁴

From Follett to Lederach, this review has focussed on the ideas of philosophers in the fields of conflict and leadership who recognise an organisational paradigm in which conflict and difference are not just natural and healthy but necessary for change and potentially creative. In an optimistic foreword to *Ten Strategies for Resolving Conflicts at Work*, Warren Bennis offers the following view on the personal and organisational transformation the ten strategies can bring about:

*'This creative model is replacing a limited approach to conflict that seeks to suppress, avoid, or compromise issues rather than resolve the underlying reasons that gave rise to them'*⁴⁵.

That there could be a link to mediation may be intuitively supposed but is there evidence that this might be the case? The next part of the literature review has searched for these threads of evidence.

Despite the learned writers lining up behind the notions of constructive conflict, our work environments have disappointingly resisted its practice. For example, William Ury, one of the authors

⁴¹ *Ibid.*, p.71

⁴² *Supra*, Note 14

⁴³ John Paul Lederach, *The Little Book of Conflict Transformation*, (Pennsylvania, Good Books, 2003)

⁴⁴ *Ibid.*, p.18

⁴⁵ Cloke and Goldsmith, *op.cit. Foreword by Warren Bennis*, p.x

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of *Getting to Yes*⁴⁶, co-authored a book, *Getting Disputes Resolved*⁴⁷, as part of the integrated conflict management systems (ICMS) movement. This used a structured alternative to adversarial negotiations between management and unions based on interest based negotiation which in many ways matched the ideals of a more egalitarian and diverse modern workplace. The author's themselves admit that procedures alone are not enough but motivation, skills and resources are needed. Another writer suggests that its limited development, comes from it taking on the management perspective.⁴⁸

Researches into mediations' impact on organisations are few, particularly in the UK, and they only relate to workplace conflict. I have been unable to trace studies about its organisational impact when used for other purposes such as handling complaints or supplier disputes. The review below is therefore restricted to what has been carried out in relation to workplace disputes.

There is evidence of the prevalence of workplace conflict. A recent CIPD employers' survey reported that '*the scale of workplace conflict is remarkable and has increased in the recession.*' Half the organisations surveyed had increased their use of disciplinary action, grievance procedures and mediation in the preceding two years by almost half.⁴⁹ Significantly, in a ministerial response to a consultation paper the government predicts a big role for mediation and places its faith in it changing the adversarial culture.

Some evidence of wider benefits exist but only based on relatively few research reports either internationally or from the UK.

Drawing on a large scale study of a mediation programme in the United States Postal Service, Professor Lisa Bingham reported that '*there is at least preliminary evidence that mediation produces upstream effects in terms of disputants' conflict management skills*'⁵⁰.

In the UK the Lancashire Business School has completed three studies which, while having as their purpose the study of mediation's impact on three workplaces, they also report on indirect benefits.

⁴⁶ Fisher and Ury, *op.cit.*

⁴⁷ William Ury, Jeanne M Brett and Stephen B Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, (San Francisco, Jossey-Bass, 1988)

⁴⁸ Howard Gadlin, '*Bargaining in the Shadow of Management*' in Michael L Moffitt and Robert C Bordone (*Eds*). *The Handbook of Dispute Resolution* (San Francisco, Jossey-Bass, 2005) pp.371-385

⁴⁹ Chartered Institute of Personnel and Development (CIPD), *Conflict Management Survey* (London, CIPD, 2011), p.2

⁵⁰ Lisa B Bingham, *Employment Dispute Resolution: The Case for Mediation*, (Conflict Resolution Quarterly, Vol. 22.1–2, Wiley Periodicals, 2004), p.168

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The first report,⁵¹ found that mediation provided a medium through which attitudes, behaviours and relationships were transformed underpinning the development of trusting relationships and supporting partnership working⁵². In the second⁵³, some mediators reported enhanced skills, changed attitudes and recognition of benefits from informal resolution. In the third⁵⁴, the evidence pointed to mediation training giving managers increased confidence in dealing with conflict, better understanding of alternative views and a more patient and conciliatory approach to conflict. There was also evidence that by bringing managers and union together barriers were broken down which made informal discussions more likely to resolve conflict early.

These studies indicate that benefits flow from training managers in dispute resolution processes which reach beyond the direct purpose of the training. They also signal a feedback loop in that organisations which used mediation are more likely to reap the wider cultural benefits and the organisations which appreciated the wider cultural benefits are more likely to get successful outcomes. This link to systems thinking and seeing the interrelationships is an indication that mediation training supports the strategic development of learning organisations.

Research by Zweibel et al⁵⁵ showed that a short professional development course in conflict resolution can make a difference in the conflict management skills of professionals. Participants developed a positive outlook on conflict and their ability to solve problems. Some of the study's findings went further, indicating that professionals who receive conflict resolution training see workplace conflict in a positive light.

Lipsky and Avgar cite research on ADR's influence on a variety of management practices and the culture of the organisations. While there have always been strategic implications in the way organisations handle conflict and disputes there has been virtually no research on the link between conflict management and

⁵¹ Richard Saundry, Louise McArdle, Pete Thomas, Transforming Conflict Management in the Public Sector? Mediation, Trade Unions and Partnerships in a Primary Care Trust, (London, ACAS, 2011)

⁵² Partnership Working: See Case Study 1, page ** for a description of the partnership working model in the public sector.

⁵³ Richard Saundry, Gemma Wibberley, Mediation and Early Resolution – A case study in conflict management , (London, ACAS, 2012)

⁵⁴ Richard Saundry, Conflict Resolution and Mediation at Bradford MDC – a case study, (London, ACAS, 2012)

⁵⁵ Ellen B Zweibel, Rose Goldstein, John A Manwaring and Meridith B Marks, *What Sticks:How Medical Residents and Academic Health Care Faculty Transfer Conflict Resolution Training from the Workshop to the Workplace*, (Conflict Resolution Quarterly, vol. 25, no. 3, 2008 © Wiley Periodicals, Inc. and the Association for Conflict Resolution • DOI: 10.1002/crq.211) pp.321-350

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organisational strategies.⁵⁶ Their work was in the employee relations field but they said their theory could be adapted to other types of disputes such as commercial, product liability and financial. Their theory classifies organisations according to the way they deal with conflict (contend, settle, prevent) and creates a typology for different objectives organisations may adopt (management and resolution of individual complaints, enhancing employee voice and improving organisational co-ordination). In the third of these Lipsky and Avgar distinguish relationship conflict which has a negative effect from work associated conflict which has a positive effect.⁵⁷ This latter conflict which they describe as task conflict ‘enhances dialogue and debate regarding how work is conducted, thereby leading to better understanding of how things are actually done in the organisation and the manner in which they should be done’⁵⁸.

Their conclusion stresses the need for alignment between conflict resolution mechanisms and the organisation’s strategic goals.

Arguably, current practice tends to use mediation in the workplace like a sticking plaster to treat a dispute. And yet there is evidence that wider benefits are accruing but without becoming part of the strategic thinking and without any alignment between the ways of dealing with conflict and the organisations strategic goals.

Finally in this review I wish to turn to the question of whether the use of mediation terminology is appropriate. After all the commonly used definition of mediation is where a third party assists two disputing parties with their conflict.^{59, 60 & 61} My proposition that the skills of mediation are used without the necessity of a third party may seem at odds with normal usage. My defence is to reach for support of writers on mediation who also cast the term in a broader context below.

Dan Dana⁶² says mediation is an emerging profession with ‘a core body of knowledge and skills that the general public may learn and use for their own benefit’ like other more established professions. He

⁵⁶ David B Lipsky and Ariel C Avgar, *Toward a Strategic Theory of Workplace Conflict Management*, (Ohio State Journal on Dispute Resolution Vol 24.1, Hein-OnLine, 2008) p.147

⁵⁷ *Ibid.* p.179

⁵⁸ *Ibid.* p.179

⁵⁹ Kenneth Kressel, *Mediation Revisited*, in Morton Deutsch, Peter T Coleman, and Eric C Marcus, *The Handbook of Conflict Resolution*, (San Francisco: John Wiley & Sons, 2006), p.726

⁶⁰ Kimberley Kovach ‘Mediation’ in Michael L Moffitt and Robert C Bordone (Eds). *The Handbook of Dispute Resolution* (San Francisco, Jossey-Bass, 2005) pp.304

⁶¹ Bush & Folger,*op.cit*, p. 41

⁶² Daniel Dana, *Conflict Resolution*, (New York, McGraw-Hill, 2001), pp.14-15

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describes managerial mediation, self-mediation, team mediation and preventive mediation.

William Ury⁶³ takes the approach in his book *The Third Side* that no dispute takes place in a vacuum; ‘There are always others around – relatives, neighbours, allies, neutrals, friends or onlookers. Every conflict occurs within a community that constitutes the “third side” of any dispute’. He conceives of the community serving as the container for any escalating conflict within which it can be transformed from confrontation into cooperation.

Kenneth Cloke⁶⁴ also develops a broadly based idea. He describes mediation as a search for an invisible bridge that connects every living thing to every other and takes us on a journey to a time when we will all learn it as a life skill and social art in which practice is congruent with values. Cloke does not identify the third party issue but the breadth of his conception is of the mediator as the invisible bridge just as Ury’s third side is the container which transforms conflict.

‘Mediation Goes Mainstream’ was the conference theme addressed by Joseph Folger in 2002. He shaped his keynote speech around the question of what the theme meant.⁶⁵ On the one hand it had become an established feature of the justice system and that the success in its institutionalisation was a measure of mainstreaming. On the other hand it could be recognition that in a variety of ways mediation applies to everyday life for a multitude of people and so going mainstream could be seen from the perspective of mediation’s broader upstream impact on a community, organisation or society. Folger conjectures that in the latter vision mediation’s core skills and impact extend beyond the institutional setting in which it is practiced.

⁶³ William Ury, *The Third Side*, (New York, Penguin Books, 1999), p.7

⁶⁴ Kenneth Cloke, *What are the personal qualities of the mediator?* in Daniel Bowling and David Hoffman, D, (Eds) *Bringing Peace Into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution* (San Francisco: Jossey-Bass, 2003) pp.49-56

⁶⁵ Joseph P Folger, Mediation Goes Mainstream – taking the conference theme challenge, Keynote address to the SCMA conference, (HeinOnline, 3 Pepp. Disp. Resol. L.J. I 2002-2003)

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Methodology

Ideas stand in the corner and laugh while we fight over them.

Marty Rubin

My perspective on this study draws on a four decade career in leadership and governance of organisations. It has been shaped by the last decade being immersed in coaching and mediation through which I became interested in their potential to change the management ethos of today's organisations. Coaching is embedded in the received wisdom of management and leadership practice as capable of empowering and transforming in a rapidly changing organisational climate. My idea was that the ways of mediation can similarly contribute to the challenging demands of today's organisations.

One approach to studying this might be to learn from research what personal development needs require to be tackled in our organisations and consider the fit with *mediating ways*. For example, a study into leadership development needs posited four trends which will define how to develop tomorrow's leaders. One of these is to focus more on collective rather than individual leadership and so, it argues, that the future focus should be on managers' competencies in influencing and collaboration.⁶⁶

Another example, from a paper on lawyering, contrasts disciplines of legal training needed to approach problems deductively and prioritise facts that support clients in a competitive arena, with the paradigm for ADR of holistic ways to approach problems drawing on emotional, imaginative, and spiritual ways of knowing, recognising that all parties may contribute solutions through intuitive and creative contributions and using emotional intelligence.⁶⁷ From such understandings of educational needs, the next step might be to design a study which first assesses whether the training provided for mediators can deliver the new competencies required.

As a jobbing manager for most of my career my special interest is to learn what works in practice, what attracts people to own their development and then how theoretical frameworks can help us to improve understanding and performance. I therefore wanted to start by learning what is happening within organisations which have

⁶⁶ Nick Petrie, Future Trends in Leadership Development – a white paper, (Greensboro, NC, Centre for Creative Leadership, 2011)

⁶⁷ Michelle Lebaron and Zena D Zumeta, *Windows on Diversity: Lawyers, Culture, and Mediation Practice*, (Conflict Resolution Quarterly, Vol. 20. 4, Wiley Periodicals, 2003), p.469-470

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trained their staff in mediation and whether it fills a gap or meets a need in personal development. My view is that if we can establish whether there is credible potential for *mediating ways* to serve wider organisational development needs then by understanding more about its alignment with practice we can develop the theoretical frameworks.

How then should I translate this interest into a research study? I was aware that little had been written or researched about the role of mediator skills and behaviours in this wider context. This is not surprising as the wider context would not have been a formal goal when commissioning mediation training. My first task was to find organisations with sufficient in-house experience of mediation as contributors to my study. My second was to convey a concept which is about mediating but which is not formal mediation. My third was to obtain data that would allow me to test my hypothesis when I was aware that it is unlikely to be formally recorded.

My approach to the first task was to use my mediator network to discover organisations which had an in-house capability or resource of trained mediators. I made an assumption that since the indirect gains would take time to permeate; I would need organisations which had been training mediators for four or more years. I also sought them from a range of sectors with diverse mediation traditions in varied disciplines. The final contributors came from the public, private and third sector and covered organisational development, workplace disputes, complaints and litigation management.

I introduced the novel nature of my inquiry to potential contributors by phone to establish the fit to the study topic. This was followed by a meeting for about an hour to: explain how the study is different from one into formal mediations and my use of the phrase *mediating ways*; establish whether there is likely to be relevant data from a more structured inquiry; achieve agreement in principle; arrange the practicalities of an interview; and build a relationship with the contributor. Relationship building was vital because in the interviews I wished to accomplish the quality of dialogue which conveys a depth of meaning and understanding and tells a story rather than yields disconnected responses to a sequence of questions.

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Although the main part of my findings has come from interviews I have also made use of documentary evidence where this was available. By the nature of my quest, the documentation available was limited since I was exploring a by-product of mediation rather than its use as the main purpose. However, some unpublished and published documentary evidence did provide opportunities to validate data.

Research literature⁶⁸ provides five classifications for qualitative studies (biography, phenomenology, ethnography, case study and grounded theory). Robert Yin, a respected writer on case study research defines its scope as '*an empirical inquiry that investigates a contemporary phenomenon within its real life context, especially when the boundaries between the phenomenon and context are not clearly evident.*'⁶⁹

Yin and others' advice⁷⁰ on case study research is that it should use a variety of evidence from different sources such as documents, artefacts, interviews and observation. A feature of reporting on multiple case studies is that each is treated as a single case and the conclusions can then be used to report on the whole study.⁷¹ Other features of this approach are that it is particularly well suited to bringing out details from the participants' point of view⁷², to exploratory and new research for which existing theory may seem inadequate and as a prelude to more detailed study⁷³. While I recognised the limitations of the narrow range of data in this study and the consequent lack of triangulation of evidence for verification I concluded that as a general approach the case study suited best.

Originally I planned to hold three interviews of three organisations. However, in the course of my initial enquiries a second case study unit came to my attention in one organisation and I added this as a separate study. The interviews were carried out by me over a three week period in August 2012.

⁶⁸ Mark L McCaslin and Karen Wilson Scott, The Five Question Method for Framing a Qualitative Research Study, (Idaho, The Qualitative Report, Vol 8 No 3, 2003) pp.447-461

⁶⁹ R K Yin — Case Study Research: design and methods, (London, Sage Publications, 3rd ed., 2003) p.13

⁷⁰This is a feature to be found in most papers on case study research including: Jennifer Rowley, Using Case Studies in Research (Management Research News, Vol 25 Iss 1, Emerald, 2002), pp.16-27

⁷¹ Susan K Soy, The Case Study as a Research Method, (Unpublished Paper, University of Texas, Austin, 2006) [WWW document] URL www.gslis.utexas.edu/~ssoy/usesusers/I391d1b.htm (visited June 2012)

⁷² Winston Tellis, Application of a Case Study Methodology, (The Qualitative Report, Vol 3, No 3, 1997) [WWW document] URL www.nova.edu/ssss/QR/QR3-3/tellis2.html/

⁷³ Kathleen M Eisenhardt, Building Theories from Case Study Research, (The Academy of Management Review, Vol 14 No 4, 1989) pp.548-549

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Contributors received a Participant Information Sheet (Appendix 1) and an Interview Question Sheet (Appendix 2) in advance. They signed Participant Consent Forms (Appendix 1) and each chose a pen name, of a plant, for identification purposes.

The interviews were between one hour and one hour and fifteen minutes. In order to avoid stilted questions and responses and create the ambience of a conversation in a narrative sense I used a mindmap (Appendix 3) rather than the list of questions as my framework. For the same reason, no notes were taken and the interviews were recorded using an iPad lying on a table between me and my contributor. The recordings of the interviews were professionally transcribed in full. A draft case report was prepared for each interview which included evidence from such documentary sources as were available. The case reports were finalised after being sent to the contributors to ensure they were satisfied with my interpretation of the case study unit.

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Results

Devoting a fraction of the energy and time now wasted on avoiding conflict to developing cooperative conflict management would pay off handsomely for many organizations.

Dean Tjosvold⁷⁴

Case Unit One: Sage

Sage is an organisational development manager in a statutory body which has several hundred employees. Four years ago the organisation got a new head of human relations who as a member of the senior management team made it her purpose to resolve some entrenched employee relations issues. Her approach was to introduce the partnership working model which had been adopted in parts of the public sector as a way to improve union-employer workplace relationships. Partnership working adopted a more inclusive approach to decision making by developing an atmosphere of trust and openness between management and trade unions. As part of this partnership approach Sage was asked to organise mediation training for a group of staff including himself. In all ten staff took the training including senior members of the trade union and directors of the organisation.

Sage recounted that while only three of those who trained went on to become qualified mediators the training radically changed the perception of mediation within the organisation. Hitherto, it had been used occasionally by involving an external mediator but with little success. With new commitment and understanding from senior management and trade unions, mediation was now used with marked success and its reputation for resolving disputes grew.⁷⁵ Sage describes formal mediations as taking place fairly infrequently – about 3 or 4 times a year – but he reports the use of mediation techniques outwith the formal setting have spread ‘right through the organisation in the way we do a lot of things’.

Sage described the biggest area for him of use of his mediation skills as working with teams which are having difficulty functioning. The requests for his help in working with these teams usually started with one of the Directors or HR team who took part in the original mediation training identifying a problem where Sage’s mediation skills could help. However, Sage did not describe his intervention as an offer of mediation; rather he depicted himself as

⁷⁴ Tjosvold, *op.cit.* p.25

⁷⁵ Policies show that mediation is an option in the policies of Dignity at Work, Grievance and Discipline

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going to have a chat with colleagues in a way that would not set up any expectations or barriers for him in gaining an understanding of what was going on.

Sage described one example of this being two staff, a supervisor and employee, who were finding it difficult working with each other. He met them for a 'chat' through which their problem was resolved. Sage concluded that they had solved their own problem because they had been open minded enough to come and have a discussion about what was bothering them which was something they could do for themselves in the future.

Sage was able to identify quite a number of different areas where mediation skills had been used which he thought came about because a lot of change was going on and in particular deliberate culture change and structural change. He had been involved with a number of teams where his work in supporting staff to improve performance started out as the organisation on one side and the team on the other. Sage likened his use of mediation skills in situations where people are resistant to change as him having a constructive conversation focused on where people want to be, what their motivations are and what the organisation can do for them to move forward.

Queried as to why he linked the skills used to mediation training Sage reflected on how the organisation was five years ago and that it was the same very senior managers who had now changed their approach radically who had previously been adherents of the past bureaucratic culture. Sage describes what happened to two individuals who had gone on the mediation journey in the training he had organised as reaching '*a watershed in their thinking because prior to that there is no doubt they were part of the top down, command and control approach to managing their managers*'. After the mediation training one of the managers commissioned a lot of training for his staff in motivation, team building and dispute resolution while another trained and became an accredited coach and introduced coaching and mediation training for his managers.

Asked about any upstream effects of mediation on the goals and strategies of the organisation Sage describes his experience of leading a workshop of managers about the organisational changes in which they questioned the reality of their empowerment. In an example of how they felt disempowered they described the wait for a decision about recruitment of a single post for over 6

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months from further up the hierarchy. Sage wrote a paper for the Chief Executive on the back of this recommending how budgets should be devolved which was accepted. In Sage's view his approach to the problem raised by the managers and his recommendations were grounded in mediation principles of hearing people's voice and enabling them to have meaningful dialogue as a route to resolving their own resource issues. Sage admitted that the origins of such a strategy could have been founded elsewhere but as the person who penned the paper he confidently attributed it to the journey he personally took from the mediation training into developing these skills and behaviours in his change agent role in the organisation.

Sage said that the term mediation had become part of standard operating procedures in the organisation. It was now contained in the whole sweep of HR policies including discipline, grievance, diversity and dignity at work. It was also being introduced into complaints procedures and the impact of some workplace mediations had been so visible that its potential was taking on a legendary quality. This to some extent had resulted in the term mediation being morphed with the skills that mediators bring to help with problems and it is then a matter of judgement whether a formal mediation is what is really required or whether it is what Sage described as a *mediated conversation*.

Sage feels he had made use of mediation skills and behaviours in an example of two development days each for half the organisations managers which had the twin objectives of promoting the new organisational culture of empowerment and putting the spotlight on the need for improved performance in the light of performance figures that did not make good reading. Sage went into the sessions with concerns about how the messages may conflict and said he decided to use mediating techniques of getting different perspectives, being non-judgemental, and looking for the benefits to different parties. He explained how the poor performance message had been able to be made with managers complimenting him afterwards on the value of the presentation. Sage's first thought was surprise about how he had got away with it but for him it summed up the incredibly powerful skills of mediating ways. His comment was 'an onlooker would have thought nothing other than this was a person with some kind of strange craft or gift' but Sage put it down to '*a range of techniques that can be learned, and properly applied, they get incredibly good results*'.

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Magnolia: Case Study Two

Magnolia is a lawyer and head of a litigation department in a multi-national financial group with many thousands of employees. Magnolia's department is a team of 16 lawyers and paralegals handling a mix of claims, at pre-court and court stages, and a lot of contentious situations that affect the group. The group began to integrate mediation into its case management protocol after a new head of group litigation took up post ten years ago. He had trained as a mediator, and while he did not practise as one, he believed that the group's litigation lawyers should understand the practice and consider its use before a case was allowed to run to court. Under the new boss the culture began to change from a win at all costs, toe to toe fight with an opponent to something more holistic which thought more about what was wanted for the group including the potential to save the relationship and the impact on the organisation's public image. Magnolia's department has trained 8 staff in mediation to date and soon all of the lawyers on the team will have received training.

Magnolia explained that while the training ensures that her team of lawyers can support other departments and represent the group at mediation, it is also being done because they try to use its techniques in dealing with cases in house, during pre-litigation stages and more generally by injecting mediation thinking into any contentious situation they deal with. The experience is now spreading to other departments with complaint handlers being trained and two colleagues from other business areas who were so impressed by their experience of formal mediations they trained as mediators. The influence of her department's mediation training was also being spread by her lawyers, who are usually represented in critical incident management teams, bringing mediation skills to the table and encouraging different thinking rather than battling an opponent into submission.

The shift away from a culture of contention comes up often in Magnolia's discourse. Historically the group did not tolerate critics and if the media were critical it would attract an aggressive reproach using law suits for defamation against newspaper journalists. Similarly, protesters were unwelcome and met with legal remedies to silence their action. In more recent times things had changed and the lawyers who had

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experience of both mediation and the lack of success of an adversarial stance had been at the forefront of shaping the new policy which is now pretty much embedded. It was showing the organisation in a new light as being prepared to listen and to talk to critics. The shift of culture also showed in the level of litigation being pursued. Magnolia estimated that in the past fifty to sixty per cent of cases would be taken through court litigation even if they often settled at the door of the court but now eighty to ninety percent of cases are being settled and resolved in a non-court way. '*It has been a huge shift in which I have seen us travel from fighting everything on the beaches to resolving pretty well everything before we get to court.*'

While there are the high profile cases, Magnolia said that the benefits of mediation training are most regularly found in the class of work she described as BAU (business as usual). In this work her team are a sort of intermediary between the organisation's business unit and the external complainant or claimant. Despite being an employee who may be seen as on the other side of the fence from the customer, Magnolia saw her team's role as straddling the fence by influencing the business unit to think about the wider interests of the group. She described these situations as often emotionally charged with business units which have stretching targets not wishing to compromise with a customer where a relationship has gone wrong. While her lawyers are not formally mediators in these situations she saw their role as trying to calm the situation, diffuse the anger and engage in practical and rational dialogue with both the business unit and the customer to understand what would be a good outcome for both sides. Magnolia revealed that the mediation technique of reality testing comes into play and it is often the case that the '*big work has to be done in their own room rather than in the room of the claimant or complainant*'.

Magnolia thought that the events of the last few years and the post financial crisis changes that the sector now needs to implement map perfectly skills and behaviours which mediation training engenders. The sector was now seeking to implement cultural change in which a new relationship was sought with customers and the public which is being driven forward by the regulatory environment. This required a positive relationship, not an adversarial one, with the regulators. In the past

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products had been sold that may have complied with legislation but were of questionable value to the customer and now the regulators will not accept a justification which only looks through the lens of technical compliance with consumer credit legislation; financial services organisations must also demonstrate mutual gain and offer good value to their customers. The litigation team's role in this was shifting. It could no longer rely on ticking the legislative compliance box and finding itself acting to resolve disputes five years on when the regulator questions a product's value to the customer. It must now anticipate future disputes, asking the difficult questions and having the difficult conversations that influence business units to act differently. '*I think mediation skills embolden lawyers to have those difficult conversations rather than relying on the tick box control of what is legal.*'

A significant influence on the way the litigation department operates was that its legal policy and its guidance for panel firms states that mediation must be explored or considered in every case. This encourages the wider consequences of conflict to be considered in every case and Magnolia thought it changes people's general approach whether a case goes forward in a formal sense to mediation or is negotiated in house. She said that her staff's objectives all include the use of ADR as standard and they are encouraged to give examples of using it in their annual and half year appraisals. Not only this but in the software that tracks the progress of claims they record the cases resolved by ADR and the staff's development and behaviours in the management of the case.

Magnolia described how she takes a pride in both the formal mediation work of her department but also in the informal use of mediation behaviours and skills. She quoted an example of a case where she was involved in sorting the compensation claim of an elderly person who had been defrauded and had been left in a distressed state. Magnolia was concerned to go beyond ensuring that the person was fully compensated for the financial loss. Her approach was to seek to rebuild trust and demonstrate that the organisation was also concerned about the emotional upset caused. '*It's not that we can turn the clock back ten years but being trained in mediation techniques helps in thinking about what is really required for the person to feel that the situation has been put right and that they can move on.*'

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Daffodil: Case Study Three

Daffodil heads up a complaint handling team of 30 people and works for the same financial institution as Magnolia. She has worked for the organisation for over thirty years and been involved in complaint handling for fifteen of them. Her first experience of mediation was in 2005 and was triggered by Magnolia who suggested it as a possible way to bring a sensitive and difficult complaint to a close by paying for a day with an external mediator. Daffodil was especially taken by the seemingly effortless way that the mediator drew out the issues and took away the barriers. It was a long day – twice the normal office worker's day – but it ended with a way forward for a complaint that her team had been working on for 6 months.

Daffodil's experience of the mediator's skills so impressed her of the potential for the use of these in complaint handling that she persuaded her boss to agree to training for her team. This was not training so that everyone would become mediators but training which would give the whole team the flavour of mediation skills. Daffodil's training agenda included not judging, not assuming, being better listeners, asking better questions, thinking about what the customer wants to hear, and building rapport so that her complaint handlers created an environment which made it easier to resolve complaints. But Daffodil said it was not just about resolution of the complaint, sometimes that was not possible and she wanted both parties to understand where they had got to and why the decision was not what they wanted it to be.

Daffodil spoke of how mediation training helps her staff '*open up the conversation so you start to understand the underlying issues*'. For her the normal complaint handler approach felt like looking at the surface too much and she emphasised the importance of asking open questions and staying quiet to help the customer say what they wanted you to hear rather than having to respond to what you wanted to ask next. She said complaint handlers can be quite good at answering their own questions but if the right questions are chosen then the customer opens up, tells their story and the complaint handler builds rapport which can be reinforced by reflecting what has been learnt back to the customer.

Daffodil has taken her skills training further and become an accredited mediator. She spoke about using mediation training methods to provide support to her team in mediation skills and behaviours. Some of this team training was through an assortment of exercises she drew on from her mediation training which helped people to question their preconceptions from first impressions or how we risk drawing wrong

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inferences from inadequate information. There was also what Daffodil described as ongoing business as usual coaching which was asking staff on the job to reflect on things like the tone of their voice, the questions they asked and the conversation they had.

Daffodil had also put three other members of her team through the full mediation course and explained how one used these new found skills in case management of complaints, another in performance improvement conversations with staff and the third in process improvement activities with the team. She said all her team managers were able to coach their staff in the business as usual sense using the mediation approaches they learnt in their training.

Daffodil's promotion of mediation training extended to work beyond her team when a few years ago she brought together a group of her complaint handling colleagues from customer facing services across the division for a 2 day workshop in mediation skills. There were eight people involved and after the workshop, the group created a training pack so that when they went back to their teams they could provide the training to their staff to help them deal with complaints. This group also came together some months later for a refresh and review session.

Daffodil's team had developed a reputation for being able to help other parts of the organisation deal with frontline complaints which they often do. She described this as when they get a cry for help, they assist without taking the job away, but by using the soft skills learnt in mediation training to help colleagues with tips on what to ask and how to manage the complaint. In Daffodil's terms it was complaint handling through ad-hoc coaching. In a more formal way, when a new complaints handling team was being set up in another part of the UK, Daffodil recommended that they included mediation skills training because '*that's one of the key elements to help get a good outcome for the organisation and the customer*'.

Daffodil was very conscious of the critical climate that the financial services sector has operated in for the last few years and how '*there is never a day without something in the press which customers are going to complain about*'. She said it was a challenge to keep morale up but rather than complaint handling being reactive Daffodil's approach was to think herself into the customers' shoes so she was able to address the issues of concern to customers. This approach of looking at emergent challenges from the other parties' viewpoint was something Daffodil put down to her mediation training. Daffodil gave as an example how critical public views about an activity of the organisation when approached in this way had influenced a change in policy.

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Tulip: Case Study Four

Tulip is a solicitor and a director of legal services in a university of 3000 staff and she is the lead for the university's early dispute resolution service. She became an accredited mediator in 2004.

The university started using mediation to resolve disputes within the staff body in 2007 and it established the formal service in 2008.

The pool of mediators includes academic, administrative and technical staff and union representatives. There are eight accredited mediators who carry out about 20 mediations a year but the service has a role within the university and beyond which is wider than the conduct of mediations and involves people well beyond the mediator pool.

Tulip describes the service in an integrated way as part of the organisational structure and the strategic plans of the university. From its formal launch in 2008 it has had close strategic links into the university's aims and objectives with five university objectives being referred to in the service's 2008 strategy. The service reports bi-annually to a strategy group, annually to the HR committee and through it to the university court. The strategy group, which she chairs, involves 17 people from across the university including academic, administrative and technical staff as well as union and court representation. The current strategy which has over two years to run goes well beyond the resolution of disputes by mediation and includes amongst its objectives: enhancing management skills, creating an optimum work/study environment and aligning its development with the university's strategic aims.

Tulip described the university's ambition as being a leader in this particular area and the strategy confirmed this by having as an objective: to create within the university a centre for excellence. Its aims were not only associated with excellence in the in-house practice of mediation but also developing a leadership reputation in the higher and further education sectors. In this connection a UK wide forum was brought together at Tulip's initiative to share experience, methods and developments of in-house services and consider the potential for inter-institutional exchange of in-house mediators.

An important way that the service made itself available to staff and students was through its internet presence. This was not simply a gateway to the mediation service to help with a dispute but it

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provided access to a number of self help tool kits designed to help with identifying and supporting people, skills for dealing with disputes, advice on promoting positive discussion and a model for facilitated discussion. The facilitated discussion tool kit was only recently published and Tulip described it as '*quite different from mediation but using the same skills*'.

One way that the service was changing the standard and more formal procedures was that trade union and HR officers who have mediation training were becoming much more aware of the options available. Rather than escalate a complaint or grievance through the formal process people were more likely to be referred to an early dispute resolution option. It might be mediation but Tulip described a recent approach by an HR officer about a pending grievance which was then resolved very quickly by using the facilitated discussion procedure. Before the early dispute resolution service was available the HR response would have been that it needs to be put in writing and it needs to be framed as a grievance for it to be considered.

When speaking about how mediation training may have affected normal working practices, Tulip was of two minds that there is necessarily a direct link. She says that some of their mediators talk of wearing two hats. And then she says '*but I do think they don't jump immediately to having to defend their position and they are less likely to have as their first approach to gather their armour and evidence about them*'.

There was now a curiosity developing about what mediation skills offer to normal working practices. The organisation had a professional development programme available to staff and a recent innovation had been a module starting soon which introduces people to the method and skills of mediation. It would be two three hour sessions: the first would introduce people to the concept of mediation; and, the second would be about things staff could do for themselves, the skills they could take back to the workplace and use in everyday working life.

Tulip saw this new course in the context of a range of ways that the university was introducing people to building capacity in early dispute resolution.

It is part of an escalation of knowledge in which people may start by taking an online quiz, a coffee break taster, which is a little bit about giving people a very basic knowledge of mediation;

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then they may get knowledge of the facilitated discussion approach from the toolkit; then they may come to staff training; and they may then be interested following that in taking one of the academic modules that we are looking at for next year. So there are opportunities there for people to escalate their skills.'

The service was coming up to the fifth anniversary of its launch and next year Tulip and her colleagues are planning an event on the theme of a celebration of differences. The event was being programmed to set mediation and early dispute resolution in the context of its value added role. Tulip spoke of her concern that an obstacle to mediation was that it can become the only option when it should be seen, not as the only way or the best way but as a way that has its own set of benefits while other ways have theirs. The event was being planned to highlight other ways of dealing with disputes while showcasing what mediation and early dispute resolution can do as well. A feature of the event would be the participative way in which it plans to engage students and staff not just on the event days but in the lead up to it taking place.

Tulip links the background for the anniversary event to the wide range of roles mediators have in university life. Their view of a resolution reached at mediation is within the wider system and sometimes when they conclude a mediation they realise the resolution can only be achieved if they spoke to other people to fix things that were outside the resources of the parties at mediation. From this viewpoint there were other discussions to be had to implement the mediation settlement and these needed to bring into play the whole system so the conference is about generating a debate about how early dispute resolution and mediation sits within the realm of the organisation.

Tulip concluded by giving examples of how the mediation rooms had acquired a sense of identity and how the service name had become part of normal language in the university. Both convey a sense of meaning which linked with trade-marking the logo had now moved the service on from being an initiative to being common usage and a way of life recognised by the university.

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Discussion

It is the ethics of the sentimentalists to say that all men's interests are the same; if they were life would stagnate.

Mary Parker Follett⁷⁶

Each organisation I reported on in the last section has been training staff as mediators for four or more years. Each has used both internal and external mediators with a measure of success. However, my enquiries were not directed at the impact of formal mediation on the organisation. I wished to discover whether they could identify wider influences on the organisation and its staff from having a pool of mediators within their midst. Here, I discuss what my contributors told me and the relationship with the literature review.

In making my enquiries I had in mind two types of influence: one being a 'ripple' effect and the other being an 'upstream' effect. In my terms a ripple effect is where the influence is incidental and likely to be at a skill enhancement or behavioural level. An upstream effect is where the influence is more significant in that it reaches the parts of the organisation where it provides a fresh strategic focus by which I mean it changes the way it uses its resources to achieve its goals or indeed it changes the organisation's goals.

I did not define *mediating ways* for my contributors other than to describe them as techniques taught in mediation training and used by mediators. My contributors told me during the interviews that the skills and behaviours included active listening, open questioning, not judging, building rapport, showing empathy and testing realities. These were used to calm situations, diffuse anger, remove barriers, engage in practical and rational dialogue, encourage different thinking, understand underlying issues and find deeper meaning. They illustrated an ethos in which the use of power made way for influence, where rivalry became less the tone than recognition, and in which control might be best achieved by empowerment. These features, as exemplified throughout the interviews, are a fair summary of my take on *mediating ways* which I will consider in the section on reflections.

I have divided this discussion of my findings into three areas: business as usual, strategic focus and work culture. For the most

⁷⁶ Follett, *op.cit.* p.xii

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part I was more likely to come across the ripple effect acting on business as usual whereas the upstream effect was likely to be identified with strategic focus while work culture is a combination of the two. However, these descriptions are more to do with structuring the discussion than as definitive classifications.

Business as Usual

There was a sense from all four contributors that while mediation can be a formal event to resolve a dispute, and that this is how they all first came to experience it, there is another way that it is being realised within their organisations which is by the skills and behaviours becoming part of the grain of how things work. This is the part of my findings I have described as business as usual.

Sage describes helping out other teams by going to them and having a constructive conversation; Magnolia speaks about her lawyers working with other business units by engaging them in practical and rational dialogue; Daffodil encouraged her complaint handlers to open up the conversation and understand the underlying issues. All three link these approaches to their training from mediation.

These are illustrations of principled negotiation⁷⁷ or the integrating approach to difference⁷⁸. They are not about debates in which one side wins the argument but about cooperative thinking⁷⁹ or dialogue in which the meaning is coming through⁸⁰, the engagement is collective inquiry and the aim is consensus building⁸¹. It is an indication that the mediation training which lies behind these practices has the potential to develop the synthesising mind⁸². Follett, Senge and Gardner's theories are all being demonstrated in these case reports which also show signs of Cloke and Goldsmith's positive conflict culture⁸³.

When there is disagreement in the air, people do not find it easy to engage with others in opening up the difference to search for the pool of common meaning. The idea may sound simple enough but the more likely response to disagreement is defensiveness. To open up the division requires a new kind of confidence which

⁷⁷ *Supra*, Note 15

⁷⁸ *Supra*, Note 14

⁷⁹ *Supra*, Note 17

⁸⁰ *Supra*, Note 19

⁸¹ *Supra*, Note 20

⁸² *Supra*, Note 39-41

⁸³ *Supra*, Note 24

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Magnolia described the emboldening of her lawyers to have difficult conversations. Daffodil also talked about the training providing herself and her managers with techniques they use in coaching their staff and supporting them to use the approach. Tulip gave examples of taking the techniques online by means of a self help toolkit designed to support people, not only in dealing with disputes but also in promoting positive discussion and facilitated discussion. The research discussed earlier in this paper also draws attention to the confidence gap when staff handle difficult conversations and disputes and there are indications in both Saundry's⁸⁴ and Zweibel's⁸⁵ studies that mediation training could increase the confidence in handling these issues.

Another theme that ran through my contributors' interviews was the way those trained in mediation were rolling out the skills they had learnt to others. When Sage spoke about going in to have a chat he left behind not only a resolved problem for two staff but encouragement for them that they could do it for themselves in future. Daffodil coached her staff and also arranged full mediator training for three of her colleagues with at least one of the purposes being that they were able to coach their staff using the mediation approaches they learnt in training. She also brought together several business units for training and recommended to a new complaints handling team that it undertake mediation skills training. In Tulip's university, enhancing skills more widely is an explicit objective of the early dispute resolution strategy and Tulip identified approaches from a new training module to the online services and the coming conference as ways they seek to engage a wider student and staff body.

Strategic Focus

Tulip's university has created a clear strategic link between the role of the institution and the early dispute resolution service. As the work of the strategy group demonstrates there is a broader ambition than delivering a formal mediation service. Clearly, the initial mediation workshop and training that took place in 2007 contributed the strategic thinking and direction for conflict management skills development within the university. The documents produced by the strategy group demonstrate that its thinking has developed well beyond the formal provision of a

⁸⁴ *Supra*, Note 54

⁸⁵ *Supra*, Note 55

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mediation service with a website presence that provides self help tools and developments taking place so that facilitated discussion skills can be spread beyond the pool of trained mediators. The new training module has also been designed to introduce people to the skills of mediation as everyday skills and in this the strategic focus seems to be capturing the benefits of the positive conflict culture in Cloke and Goldsmith's strategies⁸⁶.

Both Sage and Tulip suggested that informal conversations and facilitation are starting to have the effect of less use of the formal complaints or grievance procedures even before the mediation option is chosen. They suggested that the growing confidence in using mediation skills in informal dialogue can lead to a problem being resolved before it escalates. A similar benefit was indicated by Saundry and Willerby who found some evidence of informal discussions involving a third party leading to those in dispute resolving matters for themselves.⁸⁷ The distinction here from the earlier discussion of the ripple effect is that through informal dialogue nascent disputes are being diverted from formal to informal processes. This allows a strategic shift in the use of resources and the manner in which conflict is handled to follow.

The use of mediation and mediating approaches has a clear strategic role within the work of Magnolia's litigation team which can be seen as acting at two levels. The guidelines, which lawyers are required to follow, include a statement about the requirement to explore the use of ADR. An objective in the performance appraisal of lawyers is the effective use of ADR which is not only about the reference of disputes to mediation but also to the way staff perform their personal role in the management of cases. Magnolia's lawyers are using their mediation skills to manage and support their cases through mediations but a large part of their work is to use these skills in the integration of differences and principled negotiation to secure settlements⁸⁸.

From a personal angle Sage felt he had been able to use his mediation training to develop in his change agent role within the organisation. In his story of a workshop with a group of managers he relates how he used mediation skills to understand the real issues and on the basis of this developed a proposal for his chief

⁸⁶ *Supra*, Note 24

⁸⁷ *Supra*, Note 53

⁸⁸ *Supra*, Notes 14 & 15

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executive which changed the scheme of budgetary delegation for the organisation.

Working Culture

Both Magnolia and Sage spoke about mediation training following a new boss coming on the scene. The new leaders wanted to change the culture in relation to their specific responsibilities. Both were modernisers in their fields of human resources and litigation management with one wanting to bring in partnership working with the unions and the other seeking to settle claims without going to litigation. From the descriptions of these two contributors mediation training was a central plank of the culture change strategy of the senior executives.

Although, both expected their staff to engage in mediation, becoming a mediator was not the principal aim of providing their staff with the training. Magnolia explained that while the training helps lawyers in decisions about taking cases to mediation, this has not resulted in a high number of mediations but it has encouraged and supported a mediative approach to be adopted in negotiating the majority of cases. Sage explained that while ten executives and union officials took mediation training, there were only three who went on to become accredited as mediators and use the skills in formal mediations. However, he describes how the training led to a new commitment from both management and unions to a mediative approach but again formal mediations only taking place infrequently.

In both cases culture change was being led by top team leaders and mediation training was introduced as part of the support strategy. In Sage's case it was about organisation wide change whereas in Magnolia's example it was about a support services unit within the organisation. These accounts do not suggest that mediation training will of itself be the vehicle of culture change but rather that it can be effective in supporting an organisation to achieve its objectives when the principles of mediation and the desired culture are in alignment.

Daffodil also saw the opportunity for a change of culture in the complaints handling service she managed. She commissioned shorter skills training courses for all 30 in her section but it was the experience from her own and her three team leaders' mediation training that gave them confidence and knowledge to coach their teams. Sage reported how, for two top team leaders,

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mediation training was a watershed in their thinking from being adherents of the hierarchical management style to engaging in developmental training for themselves and their staff in order to foster a new management style in their teams.

Once introduced in one part of the organisation there was also some evidence from my contributors that the ways of mediation can be spread to other parts. This was not so much of a ripple spreading under its own momentum but more a current propelled by the motivation and commitment of those who adopt mediation as their metier. Magnolia took engagement with the practice of mediation to Daffodil and she in turn took it out to other business units and geographical units in a cascade fashion. Tulip has been the catalyst for a UK-wide forum which is not only engaging with existing users of mediation in the higher and further education institutions but also encouraging others to join and take an interest.

No doubt the impetus for the changes which Sage and Magnolia described was that their bosses recognised that the old forms of adversarial engagement were no longer appropriate for modern conditions. To change the embedded culture is not only a case of leadership from the top; in the literature of organisational management it also requires bottom up team learning⁸⁹, whole systems thinking⁹⁰ and action learning.⁹¹

Caveat

Assessing the impact of mediation training for its contribution to the operations needs to carry a cautionary warning. There will be a lot of circumstances and initiatives which will have had a contributory effect. It is not the intention of this paper to argue that there is necessarily a certain and exclusive link. However, (and I will return to this in the next section) there was a sense from each of my contributors that they were not simply speaking about a basket of skills and behaviours that they can ply but more that mediating had become a way of life at work and a movement with which they associated their work values.

⁸⁹ Jon R Katzenbach and Douglas K Smith, *The Wisdom of Teams – creating the high performance organisation*, (Boston, Harvard Business School Press, 1993) pp.199-208

⁹⁰ *Supra*, Note 21

⁹¹ *Supra*, Notes 22 & 23

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Reflections

'Be the change you want to see in the world'

Mahatma Ghandi

I started my paper by asking if mediation might assume a similar role to coaching in organisations – not just as a consultancy offering but integrated with the practice of management. Do mediating ways offer complementary features to those which are seen as advantageous by modern managers in coaching ways? The coaching model is not about managers taking on formal coaching but is better conceived as a style of management which shifts the command and control culture to a more participative style.⁹² Similarly a mediating culture could support the shift from a hierarchical and competitive style of management to one based on collaborative and integrative approaches.

My literature review shows that management and organisational theories within the received body of knowledge are well aligned with current thinking and approaches in mediation. They recognise the value of contention, paradox and difference in informing richer dialogue and developing sounder strategies. However, neither management leaders, nor conflict specialists, have successfully made the transition from thought leadership to practical and sought-after models of delivery.

As conflict professionals, we generally meet the needs we are presented with in organisations by offering prevention, resolution, management and settlement of disputes. My instinct in pursuing this study was that training in mediation should not only serve these purposes but others such as constructive engagement, transforming relationships and creative conversations. It would be over-claiming to say that my conversations with Sage, Magnolia, Daffodil and Tulip can prove my hypothesis but they demonstrate a need and an opportunity at the sharp end of organisational life which is inadequately recognised or satisfied.

The context is that our organisational environments are getting more volatile and ambiguous. Organisations sit in a landscape characterised by the interconnectedness of society and business – crossing cultural, generational, disciplinary, functional and organisational boundaries. Traditional forms of hierarchical leadership and controlling management are not attuned to modern

⁹² Valerie Anderson, Charlotte Rainer and Birgit Schyns, *Coaching at the Sharp End – the role of line managers in coaching at work*, (London, CIPD, 2009), p.5-12

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conditions. Today's problems often have complex causes, many stakeholders and highly contested solutions. They require distributed leadership and participative management capable of decision making in conditions of uncertainty and contention which can integrate cross-sectoral contributions.

It can be argued that there are plenty of skills and behavioural courses being offered that could help managers develop the necessary skills toolkit. There would be no difficulty putting together a programme of short courses for managerial development that included active listening, open questioning or dealing with challenging conversations. What is it that mediation training and a mediation ethos can offer which is so different from a basket of skills based courses?

This may be somewhat of a retrospective but as I wrote this paper I pondered why I did not seek to define *mediating ways* to my case contributors before interviewing them. I think I was following my intuition but looking back I am glad I did not. I am sure that the quality of the conversation I was able to have with them was deeper than it might have been had I given them a taxonomy of skills and behaviours as the framework for my inquiry. Skills and behaviours are only two perspectives on *mediating ways*. Another and a most important perspective is that they are the ways of the mediator's philosophy and not just her toolkit.

Fisher and Brown conclude their book, *Getting Together*⁹³, by a chapter they sub-titled '*putting it all together so it fits*'. That is the characteristic that the ethos of *mediating ways* adds to the skills and behaviours. It is not a disjointed inventory of talents that is needed but a way for them to work together. This quality of congruence means that the basket of skills and behaviours are suited to the case, corresponding in character and consistent. This added value of congruence is developed from the theoretical underpinnings of mediation. It is what lifts mediation training from skills development to a whole systems discipline.

Systems thinking is a theoretical underpinning that places mediation in a class with coaching as disciplines that can add huge value to development of styles of leadership and management that are needed to deal with the complexity of organisational life today. Both coaching and mediation are ways of understanding wholes and the interrelationships of their parts – a vital attribute in a

⁹³ Roger Fisher and Scott Brown, *Getting Together – building a relationship that gets to yes*, (London, Business Books, 1989)

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complex world. Coaching ways include a development outlook, a performance orientation and a forte for giving good feedback.

Mediating ways include an integration outlook, a negotiation orientation and a forte for coping with ambiguity. The two together can provide a transformative framework, a quality that they both excel in delivering.

In short, *mediating ways* is the way of life embodied in the stories of Sage, Magnolia, Daffodil and Tulip.

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Conclusion

Integration, the most suggestive word of contemporary psychology, is, I believe, the active principle of human intercourse scientifically lived. When differing interests meet they need not oppose only confront each other.

Mary Parker Follett⁹⁴

As a method of engaging with conflict, mediation has managed, prevented and controlled the disruptive effects in its search for resolution or settlement. Mediation has the capacity to offer more by way of collaborative, integrative and creative frameworks for utilizing conflict productively. This will require a different mental model of conflict to that commonly associated with this condition.

Philosophers through the centuries have recognised the positive and natural dimensions of conflict and sought to advance these. In our western culture the competitive orientation in dealing with difference has tended to dominate and its impact has been to frame our conflicts as a win-lose contest. This adversarial attitude has emanated from a command and control management style which leads to negative mental models of conflict.

Today's complex, cross-cutting and uncertain organisational landscape requires a more participative style of management. Command and control are being replaced by greater autonomy and shared decision making which require constructive ways of handling difference. A participative management style will benefit from an integrative attitude to conflict through which a positive mental model of conflict may flow.

This study's exploration of the wider benefits from mediation training indicates that it is serving useful purposes outwith the formal mediation setting. These purposes are associated with business as usual, strategic focus and work culture. They contribute to skills in the normal activities, confidence in dealing with conflict, to developments in strategic thinking and direction, and to the development of more collaborative work cultures.

The study indicates that by integrating mediating ways into the grain of organisational life organisations will encourage productive interactions across a wide range of activities involving engagement with conflict. There is a dearth of enquiry and study into the

⁹⁴ Follett, *op.cit.* p.156

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ripple and upstream impacts of mediation training for managers and the potential for it to make a contribution to management culture would benefit from greater understanding of its potential.

Postscript

Conflict flows from life. ... Rather than seeing conflict as a threat, we can understand it as providing opportunities to grow and to increase our understanding of ourselves, of others, of our social structures. Conflicts in relationships at all levels are the way life helps us to stop, assess, and take notice. One way to truly know our humanness is to recognize the gift of conflict in our lives.

John Paul Lederach⁹⁵

⁹⁵ John Paul Lederach quoted by Bernard Mayer in his 'Staying with Conflict' address to CADRE National Symposium on Dispute Resolution in Special Education, 26/10/ 2011

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Participant Information Sheet & Consent Form

Appendix I



Participant Information Sheet

Name of department: Law School

Title of the study: Mediating Ways: a means of resolving disputes or an agent for change and innovation?

Introduction

I am undertaking this research as part of my Masters degree in Mediation and Conflict Resolution at the University of Strathclyde

What is the purpose of this investigation?

In-house mediators are becoming more common within organisations, both for resolving internal disputes and as a way to resolve external conflicts. Either way the role of mediation is likely to be seen as a short term event with a focus on a settlement which has the potential to benefit the work environment or a business undertaking. However, some writers on mediation and management have suggested that the effective handling of conflict can have benefits which assist organisations to meet their strategic goals. Some researchers in the course of studying in-house mediation services have identified spin-off or upstream benefits from in-house mediation. Your organisation has trained staff in mediation for several years either for the operation of an in-house mediation service or to engage in mediations with external parties. This study seeks to enquire whether you have identified any wider benefits from this activity which I am describing as mediating ways. If you have seen wider benefits I am interested to learn more such as what these might be and what impact have they had in the organisation? The hypothesis I am testing is that by introducing *mediating ways* into the normal, ordinary ways of the organisation we lay foundations for a healthy, open and creative culture which is also skilled up with techniques to resolve disputes when needed.

Do you have to take part?

Your involvement in the study is entirely voluntary and there is no obligation to take part now or at any stage throughout your participation.

What will you do in the project?

I am interested in having an interview of about an hour with you which will explore the development of your in-house service and other linked or spin-off activity within your organisation. I would also be interested to receive copies of documents that you have produced about the service and reports about its performance as well as any associated developments. I would like, if possible, to hold the interview during August and hope to be able to find a date that will be convenient to you. We can agree a location that you find convenient which may be your office.

Why have you been invited to take part?

This study into mediating ways is involving three organisations, all of which, like yours, have developed the use of mediation competencies and skills within its staff. Your organisation was selected since it has been running a service for a few years during which there may have been the potential for wider benefits to be identified.

What are the potential risks to you in taking part?

The interview will be taken at your pace and I hope you will find a discussion about your service stimulating. There is in my view no risks associated with your involvement.

What happens to the information in the project?

I have explained above that your involvement is voluntary and I wish to assure you that the information you

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Mediating Ways: paths to dispute resolution or the ways of a healthy enterprise?

Appendix I - continued



provide will be anonymised. In order to help me record a lot of information as efficiently as possible I hope you will agree to me taking a sound recording of the interview. I would then transcribe the interview onto word-processing software and the original recording will be destroyed. The transcription will be held on a password protected personal computer with no-one other than me having access without your permission. The transcription will be used to prepare a case study of your organisation's role in mediating ways and you will be sent a copy of the case study in order to check any matters of fact.

The University of Strathclyde is registered with the Information Commissioner's Office which implements the Data Protection Act 1998. All personal data on participants will be processed in accordance with the provisions of the Data Protection Act 1998.

Thank you for reading this information – please ask any questions if you are unsure about what is written here.

What happens next?

If you are happy to take part you will be asked to sign a consent form attached to this information sheet to confirm this.

Explain the process for participants receiving feedback after the investigation is complete. Inform the participant if the results are to be published.

Researcher Contact Details: **Robin Burley;** Email: robin.burley@strath.ac.uk Tel: 0131 271 4000; Mob: 07774 127809; Address: Eskhill House, 15 Inveresk Village, Musselburgh EH21 7TD

Chief Investigator Details:

The Chief Investigator for this research is Professor Charlie Irvine who may be contacted if you have any questions that cannot be answered by the Researcher. His contact details are:

Telephone: 0141 339 9211; E-mail: charlie.irvine@strath.ac.uk
Address: Law School, University of Strathclyde, Graham Hills Building, 50 George Street, Glasgow G1 1QE

This investigation was granted ethical approval by the University of Strathclyde, Head of Law, Government and Public Policy, Graham Hills Building, 50 George Street, Glasgow G1 1QE

If you have any questions/concerns, during or after the investigation, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

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Research & Knowledge Exchange Services
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Email: ethics@strath.ac.uk

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Appendix I - continued



Consent Form

Name of department: The Law School, Faculty of Humanities and Social Sciences

Title of the study: Mediating Ways: a means of resolving disputes or an agent for change and innovation?

- I confirm that I have read and understood the information sheet for the above project and the researcher has answered any queries to my satisfaction.
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, without having to give a reason and without any consequences.
- I understand that I can withdraw my data from the study at any time.
- I understand that any information recorded in the investigation will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project
- I consent to being audio recorded as part of the project

I hereby agree to take part in the above project

(PRINT NAME)

Signature of Participant:

Date

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Mediating Ways: paths to dispute resolution or the ways of a healthy enterprise?

Interview Questions

Appendix 2

Outline Interview Questions

Name of department: Law School



Title of the study: Mediating Ways: a means of resolving disputes or an agent for change and innovation?

What are: (i) the case study unit and (ii) the context for having an in-house mediation resource?

- Please tell me about your involvement in mediation within your organisation?

Prompts: Are you a mediator, co-ordinator, sponsor, trainer, etc; how long have you been involved; has your role changed over time; etc?

- Please tell me about the origins and history of the mediation resource/service within your unit/organisation and how has it developed since it was first established?

Prompts: When was it set up, why was it set up, what was the configuration of the service at set up including where did it sit within your organisation, how has it changed since it was set up, what service levels have been provided, from where do you draw your mediators, what is the pool of mediators and how has that changed over time?

- Please tell me about the nature and dimensions of the service/resource today?

Prompts: Has its purpose changed and if so how and why, what is the configuration of the service today including where does it sit within your organisation, what service levels does it provide today, what is your mediator pool today?

- Does mediation play any roles in your organisation other than described in the first two questions and if so how would you describe these roles and how did they come about?

Prompts: Use similar prompts to the ones in the two questions above.

What ripple effects have the mediation resource/service had on the unit/organisation and how have these been revealed?

- If what you have described so far covers the way mediation is formally recognised within your organisation, are there any ways that mediation approaches or mediation skills and behaviours have come to be used in a less formal way or been an unintended influence on your organisation?

Prompts: Do staff learn from mediation training to help in their work without intending to be a mediator; do staff who are mediators find that their skills are used/sought in other activities; have you come across spin-off benefits from the way that your organisation has adopted mediation?

- Since mediation was introduced have you identified any changes in the way that what goes for ordinary work disagreements, conflicts or challenges are engaged in before they are escalated to formal mediation or other means of resolution? If so can you give any example(s)?

Prompts: When difficult conversations are to be held might a third party facilitator be used; are mediators invited to help in situations which are not mediations because of their mediation skills? If debate is like ping-pong (exchange of views back and forth where winner takes all) and dialogue is like the Heineken factor (reaches the parts not usually reached), is there more understanding of the value of dialogue to find deeper meaning?

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Appendix 2 - continued

What upstream (strategic) influences have the mediation resource/service had on the organisation beyond its unit boundaries?

- Describe any ways in which your mediation service/resource may have influenced the wider activities or strategies of the organisation?

Prompts: How would you describe these influences: e.g. operational, strategic or cultural? Have you experience of any innovative or creative outcome from a mediative approach being adopted to tackle a problem. Why/how do you trace these influences back to mediation?

- Are there any plans for using mediation or mediation behaviours and skills within your organisation in new ways in the future and how did this come about?

Prompts: Might you use it for external facing services such as complaint handling, negotiating business contracts or agreements or in service delivery? Might mediation or mediation skills play a part in shaping the strategy of your organisation in the future?

What other evidence of the impact of 'mediating ways' on the organisation is available?

- Is there anything in the organisation's annals or folklore which would provide insights into my central research question as to whether there is evidence that mediation skills training may make a wider contribution to the strategic goals of organisations?

Prompts: Are there, for example, documents or reports, which show a wider organisational influence of mediation behaviours and skills. Are there any mediation spin-offs or upstream outcomes in your organisation which you have not mentioned so far?

- Do you have a story which for you puts in a nutshell the nature of any spin-off or upstream benefits that your organisation's investment in mediation skills and behaviours has brought to your organisation?

Prompts: If I asked you to tell me any story of mediating ways in your organisation, what might it be?

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Interview Plan – Mindmap

Appendix 3

