The appropriateness of using workplace mediation to deal with workplace bullying

Further materials, links and references


Einarsen, S., Hoel, H., Zapf, D. and Cooper, C. (Eds) Bullying and harassment in the workplace: Developments in theory, research and practice (2nd Ed.) CRC Press, Taylor and Francis (Florida)


Further materials, links and references

Key issues and conclusions

The risk of workplace mediation to deal with workplace bullying does not necessarily arise from an escalation alone, but rather from the privatisation of organisations and socially divisive behaviour. Privatisation not only provides the opportunity to send a message about accountability, but it also denies organisations the opportunity to avoid accountability, but rather from the privatisation of organisations which expose them to legal liability. This has drawn on a long history of workplace mediation whilst addressing criticisms over accountability in relation to workplace bullying. In the context of accountability, organisations should play a particular role in any contribution organisational culture may have played in resolving bullying complaints. Where mediation is deemed appropriate, the notion of ‘tailored mediation’ does offer flexibility for the development of workplace mediation whilst addressing criticisms over accountability in relation to workplace bullying. In the context of accountability, organisations should play a particular role in any contribution organisational culture may have played in resolving bullying complaints.

It is important, however, when discussing the question of the appropriateness of mediation for workplace bullying cases, to recognise that organisations have duties of care in relation to their employees and that organisations have duties of care in relation to their employees and contractors. Employers should have robust processes in place to determine whether mediation is the most appropriate approach.

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This briefing explores the question of the extent to which workplace mediation is an appropriate way of dealing with workplace bullying. The use of workplace mediation to deal with bullying is a contentious issue and debates are often highly polarised. Despite strong opposing arguments and evidence that workplace mediation is an inappropriate way of dealing with bullying, there is a notable lack of research exploring these counter arguments.

An important argument in favour of its use relates to the opportunity for self-determination and for an alleged target to potentially regain control and power. One key argument against the use of mediation in this context relates to its individual and confidential nature and the scope it may provide for employers to avoid accountability by personalising organisational problems.

Drawing on interviews with external workplace mediators and focusing on British workplaces, this briefing considers how confidentiality in mediation can be negotiated to help mitigate objections around personalisation and privatisation whilst preserving the scope for self-determination. It warns, however, that use of confidentiality in this way should be approached cautiously and should not be added to further pressure to an already complex and stressful situation.

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The appropriateness of using workplace mediation to deal with workplace bullying

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Summary

This briefing explores the question of the extent to which workplace mediation is an appropriate way of dealing with workplace bullying.

The use of workplace mediation to deal with bullying is a contentious issue and debates are often highly polarised. Despite strong opposing arguments and evidence that workplace mediation is an inappropriate way of dealing with bullying, there is a notable lack of research exploring these counter arguments.

An important argument in favour of its use relates to the opportunity for self-determination and for an alleged target to potentially regain control and power. One key argument against the use of mediation in this context relates to its individual and confidential nature and the scope it may provide for employers to avoid accountability by personalising organisational problems.

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Introduction and background

The question of the most appropriate way to deal with bullying is longstanding one, and although there is no specific anti-bullying legislation in the UK, failing to deal with bullying in an appropriate way potentially exposes employers to liability for breach of duties of care in contract or warranty. The mediation of workplace bullying is an emerging area where no best practice model has been proposed as an alternative approach (2015). The appropriateness of using workplace mediation to deal with workplace bullying is another question that has garnered much attention, with existing research highlighting the importance of confidentiality, a tailoring of the extent to which workplace mediation may be seen as appropriate in this context. It is, therefore, essential to understand the key principles that underpin workplace mediation, including the role of confidentiality, which is crucial in ensuring the success of the mediation process in the prevention of workplace bullying.

Confidentiality and self-determination

Confidentiality is, however, not necessarily absolute and is subject to a number of exceptions. For example, in relation to illegal activity. Accepting the non-absolute nature of confidentiality allows for the possibility of its use to mitigate the accountability criticisms, to order data, and is required in cases in which the mediator considers the potential for mediation to allow employers to meet management or other organisational failings as individual, interpersonal problems, and that allow them to avoid any responsibility for the dispute having arisen. The mediator is not permitted to reveal any aspects of the mediation to the public or to allow the use of the use of mediation by the parties in conflict. Proponents tout the benefits of self-determination and the role of the mediators as being secondary to the need to develop the environment of trust and openness which facilitates an exploration of this. The consequence of this is that the power to decide how the dispute is to be resolved is not vested in the mediator, but in the parties involved. There were mixed reports on how willing the mediators had found parties to be to share information with their employers. Further to this, there were also mixed reports on how willing organizations were to use mediation in this way. The problem is, you guess, where organizations who are not afraid to do so, they just aren’t making an issue of it. In order to do this, what is needed is a greater focus on the relationship between the mediator and the organization hiring them. Confidentiality is, however, not necessarily absolute and is subject to a number of exceptions, for example in relation to illegal activity. Accepting the non-absolute nature of confidentiality allows for the possibility of its use to mitigate the accountability criticisms, to order data, and is required in cases in which the mediator considers the potential for mediation to allow employers to meet management or other organisational failings as individual, interpersonal problems, and that allow them to avoid any responsibility for the dispute having arisen. The mediator is not permitted to reveal any aspects of the mediation to the public or to allow the use of the mediators had found parties to be to share information with their employers.

The research

The proposition that workplace mediation is inappropriate in relation to bullying was a longstanding one, and although there is no specific anti-bullying legislation in the UK, failing to deal with bullying in an appropriate way potentially exposes employers to liability for breach of duties of care in contract or warranty. The mediation of workplace bullying is an emerging area where no best practice model has been proposed as an alternative approach (2015). The appropriateness of using workplace mediation to deal with workplace bullying is another question that has garnered much attention, with existing research highlighting the importance of confidentiality, a tailoring of the extent to which workplace mediation may be seen as appropriate in this context. It is, therefore, essential to understand the key principles that underpin workplace mediation, including the role of confidentiality, which is crucial in ensuring the success of the mediation process in the prevention of workplace bullying.