

## **'Mediation Works' Symposium**

*Royal Hospital, Kilmainham  
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### **Panel Discussion 2: Mediation Works – in Civil Communities**

**Michael McDonnell, Director, CIPD Ireland**

Thank you very much Aine. I was telling a cynical line manager that I was coming here this morning to talk about mediation. And he said to me, you are wasting your time because this mediation thing will never catch on. There are some people for whom you can get absolutely no good whatsoever. So I thought it was a fairly gloomy start to a kind of a major symposium like this. And David's reference to the church and Bishops, however, fired me up quite enthusiastically. And it...and it reminded me of the story of this rogue who died. And as is the custom at his funeral, you know, where people kind of get up at the end of the funeral and they say a few words in appreciation of the deceased, and so the priest said, would somebody like to say a few words in appreciation of the deceased. And there was absolute silence in the church and nobody got up. And the priest got a bit irritated and he said again, would somebody like to get up and say a few words, you know, in appreciation of the...the poor man in the...here. And a fella down at the back thought, God, I better sort of end this impasse. He may have been a mediator, you know. But he...so he got up anyway and the priest said, would you like to say something good about the deceased. And he said, I would. So fire ahead, said the priest. Well he said, his brother was worse, you know....[laughter]...so...I kind of...I can sit down now...that's the most profound piece of my presentation. So at least it gave me some hope that there is good in everybody. And...and therefore there is an opportunity to continue with your...with your work. So don't wrap up the MII so soon...notwithstanding my cynical friends. I would like to say just a few things about it in the seven minutes that are left...about where mediation might fit in in a work place setting. And I think maybe a starting point is that most leading employers, you know, already have basic formal grievance procedures in place. But best practice is now focused at keeping or helping managers to deal with conflict before it escalates. There is an inherent problem, I think this would be the first point I would make, with grievance procedures, even though most documents will stress that they are separate from grievance issues, the reality is that in most cases they are seen as the beginning of a continuum. And so people often see moving into the grievance area as the beginning of a dispute issue that is going to end up in a disciplinary kind of way. So there is an inherent difficulty to begin with in looking at the grievance issue in...in mediation terms. And it is perhaps an issue where mediation could

fit in into issues. It does work. The CIPD in the UK did a survey and found that organisations that trained line managers in mediation skills dealt with only 22 formal disciplinary cases a year compared with 49 for those who did not train managers. We would certainly say in CIPD that all line managers should be skilled in conflict management and mediation. And I think Lucy touched on the reason for this earlier on, that the work place of today, and as the two previous speakers have said, is very different to the work place of the past. We now, the old command and control doesn't work anymore. Because we now operate in an environment of the knowledge worker. And knowledge workers by definition are people who are knowledgeable. And knowledgeable people won't take the sort of control that they would have taken in the past. And people ask the question why. And so therefore there is far greater ...far greater debate required in the modern work place to get people willingly to give the discretionary behaviour to make the job go properly. So therefore it requires a very different type of approach. And I think side by side with ...with mediation and why mediation is so relevant, and as Turlough said it doesn't apply in all cases, it's not a panacea for everything, but why it is relevant in an awful lot of cases is parallel with this is the growing interest in work place coaching and seeing managers primarily as coaches. And it is part of the coaching process to be able to mediate because inevitably when you bring people together interpersonal disputes will arise. So I see it as part of a new approach, tied in to some degree with the whole coaching area. The difficulty of course is that mediation is little used by employers internally. It tends to be a late alternative when all else has failed. The objective should be to bring it into organisations before the employment relationship breaks down. And I think it's a...I think it's an issue at the moment that it is seen as kind of a...a last ditch effort in too many cases. How it might apply, there may be three areas that might be worth looking at. And I am only going to take 10 minutes on each of these three areas, Aine, you know. I will probably never get that chance again to tell Aine Lalor to sit back and be quiet and relax. [laughter] Chill. [laughter] You have got your pension sorted out, David has looked after you, don't worry. [laughter] There are...there are three areas that are worth looking at in this whole area. One is the early use of external mediators, you know, and that whole question again of where your own professional issue is. Secondly it's the establishment of an internal mediation process within your organisations. And thirdly it's the training of managers in mediation...in mediation skills. I was encouraged...I thought I was the only luddite here but I am glad to see that...I think Turlough typed this thing, but David has his written down as well. So I am glad there is a few of us old luddites left here that are still using joined up writing...not many of us we are a dying breed. I think the poor take up of mediation is probably down to a few things. But principally it is probably work place culture, that while we are talking

about inclusiveness and all these kind of issues today there still is a kind of a command control manager... management knows best type of culture. And that can militate against the establishment of mediation. I think most organisations don't understand the value of resolving disputes through joint approaches as yet. Mediation I think still needs to be voluntary. I mean there was a very big debate about this kind of issue. But I think in the context of Ireland and where we are going probably as in...as a voluntary approach is the way to go, rather ...unlike say the New Zealand model or...or what happens in the States or whatever. You... you can't write a mediation clause into a grievance procedure and expect it to work. Also it's not appropriate in every situation as Turlough said. The aim should be to ensure that ...that mediation skills which line managers have become integrated into the working relationship. And again Lucy talked about that. It's about creating this kind of problem solving one it's about creating an awareness that in the ordinary everyday working environment disputes will arise. They are ...they are an integrated...integral part of it. We see it at the moment as something separate to the work place and therefore we try and solve...resolve it. The difficulty of doing that kind of thing is that if you...if you have a dispute situation that...that moves into the grievance thing the difficulty very often is you need to have a win:lose situation. And...and quite often a relatively minor issue that could be resolved by people sitting down with a skilled person to help them through it, becomes a situation where the basic issue gets lost and the work relationship irretrievably breaks down. And...and even when you resolve the basic dispute there is so much bitterness engendered by the thing that the cure is worse than the problem. And one or other of the parties ends up leaving the organisation or they don't talk to each other for decades to come depending on the work environment they are in. So as I say, the aim...the other aim should be to ensure that the mediation skills, you know, that they have as I said should be incorporated into the organisation. All too frequently employers end up with problems because managers lack the skills to deal with conflict. I think mediation in this sense can provide a win:win solution as I say. Another reason for keeping it voluntary is that while mediation is similar to conciliation a more directive role is taken by the independent party who works with the individuals to help them understand each other's point of view and reach an agreed solution. If this is not possible the independent person can make recommendations and ask the parties to consider them carefully. So I think again the voluntary issue. Another issue ...and I say this because I know there quite a lot of legal people here today, is that for want of a better term is the kind of ambivalence that exists between mediation and the pursuit of rights under employment or civil legislation or law. I feel that there is still a strong policy of pushing conflicting parties too quickly towards legislative or legal solutions to the issues. As I said earlier, that while the legal

profession is starting...is embracing the concept of mediation it is usually as a last resort alternative to...to litigation. And I think perhaps again the...the legal profession has a very significant proactive role to play in this area of seeing it as not coming in as a last resort ...last ditch effort to solve things, but coming in far earlier in the issue, primarily if you want to keep a work relationship in existence. Finally in terms of partnership I think real scope does exist. One of the great things in this country, and I think we have two of the great...I was going to say unsung...but the sung heroes of....well they are not going to sing hopefully...but the sung heroes of...of social partner...I mean...you know, the country wouldn't be in the position it is in today if we didn't have the sort of ...you know, leadership, you know that David and Turlough and the respective representatives have given in terms of showing social partnership at macro level at the broad level...at national level, what it can...what it can achieve. So I think there is scope particularly in the unionised and maybe public sector environments in particular, but certainly in union...for joint training of line managers and...and employee representatives in mediation techniques, and in the joint design of internal mediation processes. Because if you can design those with people in mind, if people are part of the solution it is...it is far better. So looking at developing some joint approaches to the establishment of those areas can...can be useful. And as Turlough again said, this can be a very cost effective way of doing it. And very...very last point, we certainly at CIPD, we are very keen on developing mediation as a way of resolving disputes and as an alternative to the traditional adversarial routes. The key reason is that it can produce an acceptable outcome for both parties as I said unlike tribunals or courts where usually one party has to win and the other party feels that they have lost. That's why we welcome very much this conference here today. And I would make one last point. I think Lucy made reference to it. There is an excellent initiative by the Labour...the LRC, the Labour Relations Commission in this field. And certainly if you haven't looked at it already it's well worth looking at the LRC website. They have ...they lay out extremely...very well there the case for mediation and also the innovative way that the LRC are going about providing it. It's something that I would commend that you that you look at. So that's why it's a ...it's a great...I think this is a really timely initiative. I think...this is certainly something that is here. It's going to I think offer real alternatives to organisations. And that's why it's a great pleasure to be with you this morning and to wish this symposium and the...the Mediation Institute every possible success. I think the country needs it. Thank you very much. [applause]