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**A THEORETICAL FRAMEWORK FOR EXPLORING THE FEASIBILITY AND
FAIRNESS OF USING MEDIATION TO ADDRESS BULLYING AND HARASSMENT
IN UK WORKPLACES**

A thesis submitted to the University of Manchester for the degree of
Doctor of Philosophy in the Faculty of Humanities

2014

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ABSTRACT

A theoretical framework for exploring the feasibility and fairness of using mediation to address bullying and harassment in UK workplaces.

Ria Deakin. Doctor of Philosophy, The University of Manchester, 2014

Positioning itself within policy debates on the best way to deal with disputes in UK workplaces and the (potential) resultant increased interest in mediation, this thesis draws on literature from law, philosophy, psychology and management to add to the growing, but largely theoretically-underdeveloped research on workplace mediation. In this research, mediation refers to a voluntary and confidential process where parties to dispute seek a mutually agreed outcome. This process is facilitated by an impartial third-party mediator. The research offers an empirically-informed theoretical framework exploring the extent to which the use of mediation to deal with bullying and harassment is appropriate. In asking whether mediation is appropriate, it argues that it is necessary to consider whether its use is not only feasible but also fair.

Using Rawls's (2001) theory of justice as fairness to structure the discussion and focusing on cases involving sex, race and sexual orientation it constructs an argument for the use of fairness as a guiding concern for an understanding of mediation grounded in an appreciation of public values and notions of social cooperation. It explores tensions between the nature of mediation and of bullying and harassment to question the extent to which an emphasis on cost/efficiency and empowerment in mediation rhetoric may obscure questions of the privatisation and individualisation of systemic and structural problems. Within this discussion theoretical and practical questions are identified and are then explored through the use of a mixed method research design comprised of a small-scale questionnaire (N=108), interviews (N=20) and focus groups (Four groups, N=16). Samples were purposively recruited and consisted of those over 18 years old with six month's work experience in a UK workplace (questionnaire/focus groups) and external workplace mediators (interviews).

Answers to the questions are offered in the form of a framework comprised of a theoretical model and a practically-orientated schematic. It is argued that the reconciliation of potential conflicts between mediation and bullying and harassment are found in a greater understanding of the way mediation operates in practice. This understanding is guided by an appreciation that different standards of reasonableness apply to different behaviours and that individuals, organisations and the courts have differing levels of responsibility for setting and upholding these standards. In meeting this responsibility it is important an organisation is seen as a party to the mediation process since a threat to fairness arises not from privatisation per se but from a personalisation of problems of organisational and/or societal significance. Rather than reject the use of mediation in such situations it suggests the notion of 'tailored privatisation' offering a compromise between the concerns of privatisation and the purported benefits of mediation.

LAY ABSTRACT

Workplace mediation, bullying and harassment: A fair fit?

Ria Deakin. Doctor of Philosophy, The University of Manchester, 2014

Despite its presence on the peripheries of the policy agenda for a number of years, the use of workplace mediation to deal with disputes in the UK has been relatively low. However recent changes to the law relating to the bringing of Employment Tribunal claims may potentially provide the momentum for an increase in the use of workplace mediation that has thus far failed to materialise. In this research, mediation refers to a voluntary and confidential process where parties to dispute seek a mutually agreed outcome. This process is facilitated by an impartial third-party mediator. If organisational interest in the use of mediation grows, so too should knowledge and understanding about the ways it is, and should be, used. This knowledge and understanding in the academic field is currently sparse since there is a limited (but growing) body of research to draw on.

As bullying and harassment are often said to be particularly suitable for mediation, this research takes such cases as its focus and explores the reasons why this may be the case. In so doing it addresses the question of the extent to which mediation is an appropriate way of addressing workplace bullying and harassment. Here appropriate is taken to mean that its use is not only feasible but also fair. It focuses on cases involving sex/gender, race and sexual orientation to explore whether bullying and harassment should be treated differently from other workplace disputes and indeed from each other. It does so on the basis that there are historical and social reasons for making such distinctions and considers these reasons in light of the rhetoric surrounding mediation and its focus on cost and efficiency and individual empowerment.

A questionnaire and focus groups with those over 18 years old with at least six months' work experience in a UK workplace and interviews with external workplace mediators were conducted to explore understandings of bullying and harassment and gather views on how it should be dealt with. The findings were explored and constructed into a framework which seeks to incorporate theoretical understandings and perceptions of fairness and justice into practical understandings and operation of workplace mediation.

The research concludes that bullying and harassment should be treated differently to other disputes and should not be seen as individual, personal problems but rather as organisational (and potentially societal) ones and therefore an organisation should not shift responsibility for bullying and harassment onto the individuals involved. This shifting may be the case if mediation is used inappropriately and was seen as particularly concerning where the behaviour is symptomatic of organisational culture and/or societal prejudices and stereotypes. Therefore it argues that an organisation must be considered as a party to the mediation process but that confidentiality can be operated through 'tailored privatisation' which preserves aspects of individual empowerment whilst potentially helping to challenge and possibly change organisational practice as well as personal opinion. The skill and integrity of the mediator were seen as crucial to ensuring appropriate use.

DECLARATION

No portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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Finally I would like to acknowledge all those I have spoken to over the last three years who have uttered the words: "It's all just common sense isn't it?" or "Well, life just isn't fair". Such responses provide the unwitting motivation to keep me going to find ways to try and get people to think about what they're saying and how it just isn't quite that simple...

CHAPTER 1. INTRODUCTION

1.1 INTRODUCTION

In November 2011 the UK government announced the results of its 'Resolving Workplace Disputes' consultation, setting out its plans for changing the way disputes are dealt with in the workplace. The aim of the consultation was to divert claims away from the Employment Tribunal (ET) system and encourage an early resolution of disputes. The consultation concluded that: 'Taken together, the measures that we intend to take will support the work the Government is doing to deliver a flexible, effective and fair labour market, where employers and workers are informed and empowered and able to sit down and discuss issues with each other' (BIS, 2011a:5). Those measures included an endorsement of workplace mediation through the piloting of regional mediation networks for SMEs and were accompanied by a statement that lack of understanding of mediation was seen as the biggest barrier to its use (BIS, 2011a:13). This research speaks to that endorsement and lack of understanding. The definition of mediation will be considered in greater detail in chapter 5, but for present purposes, mediation should be understood as referring to a voluntary and confidential process where parties to dispute seek a mutually agreed outcome. The process is facilitated by an impartial third-party mediator.

The 2011 consultation marked the latest in a number of attempts by successive governments to deal with the expanding number of ET claims. Although it was anticipated that the previous consultation's endorsement of mediation (Gibbons, 2007; Sanders, 2009) would lead to an increase in its use in the workplace, the most recent figures available indicate only 7% of workplaces had experience of workplace mediation in the last twelve months (Van Wanrooy, Bewley, Bryson, Forth, Freeth, Stokes and Wood, 2013). Whilst the current steps taken in relation to mediation are arguably limited (Saundry, Latreille, Dickens, Irvine, Teague, Urwin and Wibberley, 2014), other changes introduced since 2013 have the potential to stem the flow of ET claims. The most notable change is the introduction of ET fees in July 2013 which led to a 59% drop in single claims in January-March 2014 compared with the same period in 2013 (Ministry of Justice, 2014:8).

Although there is currently no way of telling whether the drop in claims has been accompanied by an increase in the use of workplace mediation, it is not unfeasible and thus if there is the potential for an increased use of workplace mediation, there is an increased need to understand when it should be used and when it should not. This is the overarching concern of this research.

This PhD focuses specifically on the appropriateness of using mediation to address workplace bullying and harassment since these have been identified as being potentially suitable for mediation (BIS, 2011a:12; Advisory, Conciliation and Arbitration Service (Acas) and Chartered Institute of Personnel Development (CIPD), 2013:12). This suitability however is questioned by those such as Keashly and Nowell (2003; 2011) in the bullying literature who argue there is a fundamental tension between the nature of mediation and the nature of bullying. This tension will

be explored in relation to the extent to which mediation can indeed be seen as an appropriate way of dealing with workplace bullying and harassment.

The existence of workplace mediation on the peripheries of policy debates has been matched by only a limited amount of academic output on its operation in the UK. This output has however increased over the past few years and this PhD seeks to add to the growing contributions on the use of mediation in UK workplaces. This research however takes a different approach to much of the workplace mediation research produced over the past few years which has predominantly focused on exploring the prevalence and use of mediation (for example see Latreille, 2010) and/or concerns over the barriers to its increased use (e.g. Harris, Tuckman and Snook, 2012). The positioning of mediation against the policy background has led to an arguable polarisation of focus towards its cost and efficiency benefits and a strong empirical focus. This has left the concept of workplace mediation largely under-theorised with only one theoretical framework having been offered (by Ridley-Duff and Bennett, 2011). This research seeks to combine the two approaches by offering an empirically-informed theoretical framework to help facilitate understanding and discussion on the extent to which workplace mediation may be seen as an appropriate way of dealing with workplace bullying and harassment.

In so doing it aims to broaden the focus beyond cost and efficiency to explore how bullying and harassment are perceived and constructed on an individual and societal level and how this may influence what is seen as an appropriate response. This aim is achieved by drawing on literature both from the academic disciplines of law, organisational psychology and management, and from practical materials such as policy and practitioner literature. By including a diverse range of sources it aims to offer a pluralistic and nuanced framework demonstrating how practice can be informed and strengthened by theoretical and abstract ideas and *visa versa*. Indeed it argues that it is only through a greater understanding of how mediation operates in practice that one can understand a number of conceptual issues, such as the compatibility of confidentiality in mediation with the change in culture promised in the policy endorsement. It is hoped the resultant framework can be used to facilitate discussion on and explore the question of the extent to which workplace mediation is appropriate for addressing workplace bullying and harassment in UK workplaces.

1.2 RESEARCH QUESTIONS

The construction of the framework is guided by a number of research questions. The overarching research question is what is referred to throughout this thesis as “the appropriateness question”:

To what extent is workplace mediation appropriate for dealing with workplace bullying and harassment?

It is argued that appropriateness should be considered as having two elements, feasibility and fairness. Feasibility relates to the extent to which mediation is appropriate in the sense it is a

feasible choice (for example practically possible). Fairness relates to whether the use of mediation is appropriate in the sense it is not only feasible but that its use would also be fair.

In order to address the overarching question and explore these elements, a number of further questions were identified:

1. What factors influence whether a situation is perceived as bullying and/or harassment?
2. What factors influence whether mediation is perceived as appropriate?
3. Why are certain factors considered to be influential in determining perceptions of bullying and/or harassment?
4. Why are certain factors considered to be influential in determining whether mediation is perceived as appropriate?
5. How do the factors associated with perceptions of bullying and/or harassment and those associated with the appropriateness of mediation relate to each other?

Given the strong analytical and theoretical focus of this research, the research questions were treated as being as theoretically relevant as they were empirically important and thus guided the research design and argument presented throughout. Therefore, both the extant literature and the primary data collected here have been integrated to develop the framework offered in chapter 10.

1.3 THESIS OVERVIEW

This thesis seeks to offer a coherent and integrated argument throughout and its structure is designed to reflect that.

The literature from the different disciplines (i.e. law, psychology, philosophy and management) is therefore not considered separately but is rather presented and compared throughout (i.e. according to theme, rather than discipline). The literature review is presented across four chapters which aim to incrementally develop the argument advanced in pursuit of answering the research questions. This is then further developed through an outline of the methodology adopted and a presentation of the research findings. The final chapter brings all the various elements together to offer responses to the research questions and demonstrate how they can be consolidated into a new framework to help facilitate discussion on the extent to which mediation can be seen as an appropriate-both feasible and fair-way of dealing with bullying and harassment in UK workplaces.

Chapter 2 begins by justifying the need for a new framework and outlining how the various literatures drawn on can inform the argument offered here. It rejects the possibility of developing a framework offering a universally correct and singular ordering of factors and instead accepts the need to embrace complexity and pluralism. In light of this, it begins to make a number of the assumptions adopted in this research explicit, including the assumption that the argument

advanced will (necessarily) not be accepted by all. It establishes the analogy of a map for helping to structure the discussion which follows.

Chapter 3 uses Rawls's thought experiment from his Theory of Justice as Fairness (1958; 2001) to lay the foundations for the thesis that fairness should be considered as an overarching aim when addressing "the appropriateness question". In doing so it questions what the rules for social cooperation in a fair society should be. It introduces the importance of the idea of the government, the courts and organisations as institutions of society who are responsible for setting and upholding standards of behaviour considered collectively as appropriate. It rejects Rawls's separation of an individual's public and private identity in favour of Nagel's (1991) accommodation of personal (private) and impersonal (public) stances and argues that where there is a conflict between the two this should be resolved in favour of the latter in accordance with societally determined standards of reasonableness. It identifies the possible tension between this and the empowering and confidential nature of mediation. Fairness is distinguished from justice. Different forms of justice are distinguished from one another and their potential relevance for workplace mediation is explored. The chapter concludes that whilst justice may be a relevant factor, it will not always be the case and that fairness in accordance with public standards of reason should be seen as the destination the map in the analogy leads to.

Chapter 4 continues with Rawls's thought experiment to consider the extent to which bullying and harassment may be considered as worthy of prohibition in a fair society and argues that dignity may be seen as a unified justification for this. In so doing, it draws on arguments of equality grounded in historical and social justifications for the protection of certain characteristics through the enactment of anti-discrimination legislation and considers how far these can be applied to bullying. It distinguishes harassment and bullying on the ground that the former may involve a protected characteristic whilst the latter will not. The differing levels of institutional protection for the two are considered and the fact harassment is explicitly prohibited by law whilst bullying is not is used to argue for the need to view organisations as social institutions responsible for upholding reasonable standards of behaviour. It is acknowledged, however, that this view may be problematic, particularly where systemic problems of bullying exist. The idea of a spectrum of reasonable behaviour is introduced and the opportunity for mediation to be seen as more appropriate at certain levels than others is offered. Bullying and harassment and the differing levels of protection are therefore offered as potentially different routes on the map.

Chapter 5 moves on to explicitly consider how the emphasis on cost and efficiency and individual empowerment in mediation can be seen as consistent with a social order that prioritises collective and publically determined standards and mechanisms above personal perception of the appropriateness of the reasonableness of behaviour and confidential processes. It explores the characteristics of mediation and the mediator role and limits the discussion to facilitative mediation and how this approach may be reconciled with the nature of bullying and harassment. It argues

that the answer to this reconciliation lies in a greater understanding of the way mediation operates in practice. This is particularly the case in relation to the management of power imbalances and of confidentiality. The apparent disconnect between the confidential nature of mediation and claims of cultural transformation are explored against legal concerns over the privatisation of justice through an increased use of pre-litigation resolution methods, such as arbitration and mediation, classified as Alternative Dispute Resolution (ADR). In light of the spectrum of behaviour and potential barriers identified in the previous chapter it questions the extent to which courts and the legal arguments of privatisation are relevant and concludes that through the positioning of organisations as social institutions responsible for upholding socially-valued standards, the privatisation arguments can be adapted to an organisational context. Thus through a consideration of the characteristics of mediation, those of bullying and harassment and an identification of potential barriers and convergences, the ways in which mediation may be appropriately used to “signpost” directions along the routes set out in the previous chapter towards the destination of fairness are suggested.

Having sought to navigate between and relate the purely philosophical or conceptual to questions of practical relevance to present the argument offered in chapters 2-5, the thesis then moves to consider how these may be explored through data collection.

Moving to research methodology, chapter 6 begins by justifying the critical realist approach adopted by outlining how the characteristics of critical realism relate to the topic, for example, the importance of shared understanding and construction of knowledge and through the recognition of the importance of context, the need to accept pluralism and reject an objectively correct ordering of factors accepted in chapter 2. In so doing, it accepts the aim of the research is to identify the factors which may be of relevance and the contextual factors which may determine the extent to which they are relevant in a given situation. It sets out a mixed method research design and argues for the need to see all three stages (questionnaire, interviews and focus groups) as sequentially contributing to the overall framework developed in chapter 10. It therefore argues that the quality of the contributions of the research should be evaluated on the strength of the theoretical framework and the way this has been justified by reference to both the existing literature set out in chapters 2-5 and the findings presented in chapters 7-9.

Chapters 7-9 present the findings from each data collection stage in sequence. Though presented in this linear way, these chapters do not simply present the findings but rather begin to offer a discussion on how they do or do not conform to the arguments presented in chapters 2-5 and how the results converge or diverge across the stages. Intention and perception, power and the need for shared understanding between the parties emerge as common themes and factors which strongly influence both whether a situation may be perceived as bullying and/or harassment and whether mediation may be appropriate. Notions of fairness and dignity are presented as possible explanations as to why the various factors may be considered as influential. The importance of

contextual factors such as the relationship dynamic between the parties involved, with the organisation and in society, are evident as possible determinates of the ways in which the various factors may relate to each other. There was a disagreement between the mediator interviews and the focus group participants as to the appropriate balance between individual (personal) and collective (impersonal) judgements in assessing the reasonableness of behaviour and resolution choice but this disagreement is arguably mitigated by an acceptance in both stages of the need for organisations to play an active role in any process.

Finally chapter 10 seeks to bring all the previous chapters together to answer the research questions. It concludes that there are circumstances where mediation may be seen as appropriate for dealing with bullying and harassment in the sense it is both feasible and fair but that this is contingent on a number of factors, including a greater recognition of different forms of bullying and harassment and the different institutional protections and responsibilities these attract, the skill and integrity of a mediator and the need for an organisation to be seen a party to mediation. The findings confirmed that a greater understanding of the way mediation operates in practice helped to unlock a number of the conceptual problems. For example, distinguishing between the stages of mediation and understanding it as a non-linear process is important for appreciating how power dynamics can be mitigated. In relation to privatisation arguments, understanding that confidentiality is not an absolute and may be tailored between the parties, the mediator and the organisation provides a potential compromise to the objection raised here over the individualisation of disputes where this would circumvent the standards determined to be reasonable in a fair society. The chapter thus offers a framework consisting of two elements: a theoretical model where disputes can be positioned in relation to understandings of fairness and responsibility and a schematic chart for facilitating discussions on how a dispute may be appropriately mapped onto the model. Limitations, future research and key contributions are also identified.

Briefly however before turning to the review of the literatures, it is important to note at the outset that the scope and presentation of this research have been influenced by my own history and experience.

1.4 THE AUTHOR

I studied law for my undergraduate degree where I gained an interest in equality law and completed a dissertation on the importance yet (in)adequacy of the use of law to tackle social inequalities.

Through a number of legal and non-legal jobs in a variety of workplaces I became fascinated by workplace dynamics and relationships which led me to do an MSc in Human Resource Management and Industrial Relations. This introduced me to a broader range of disciplines and literature including organisational psychology. Following a talk on Acas pre-conciliation I became interested in alternative dispute resolution generally and in workplace mediation more specifically, both at an

academic and a policy level. This led to my undertaking the MSc research dissertation on internal mediation.

These varying influences led to me to seek commonalities and differences across the various literatures and identify the ways they could be integrated to broaden and facilitate understanding on the extent to which mediation could be seen as appropriate when dealing with cases which potentially engage with legal and moral issues, such as racial or sexual harassment.

The structure of the thesis reflects this history since it is driven by analytical, often abstract, critical argument which is informed but not determined by the empirical components. This will become apparent as the thesis progresses.

Having now set out the aim and structure of the thesis, attention will now turn to expanding its substance.

CHAPTER 2. MAPPING A FRAMEWORK

2.1 INTRODUCTION

Stating that an aim is to develop a framework is arguably like joining the story half way through. To simply begin with the formulation of the framework without first exploring the underlying assumptions presents the risk of producing a piece of work 'that is implicit and unconsidered' (Fox, 1971: v). In agreement with Fox (1971), it is accepted here that a framework should possess 'the virtue of being explicit and thus susceptible to conscious thought and challenge' (v). This chapter will briefly establish the need to adopt a pluralistic approach and to develop a new framework.

2.2 RESOLVING CONFLICT: ONE WAY OR MANY?

At the heart of the debate for this framework is conflict and the need to seek to reconcile values, concepts and arguments that may be seen as conflicting. Broadly speaking, the debates may be seen in dyadic terms: economy and efficiency versus social justice; procedural justice versus substantive justice; alternative dispute resolution versus litigation; individual versus collective; equal opportunities versus managing diversity. Presented in this way they can be understood as standing in competition with each other. If one accepts this presentation, the question then becomes whether one can seek to reconcile them or if one must accept that they are indeed mutually exclusive; a favoured side must be chosen.

The dyadic presentation is, however, overly simplistic; as is any attempt to argue that the "pairs" are themselves discrete from one another. It will be argued that the components are best understood as a mesh: interrelated in numerous complex ways. How then does one begin to unpick the mesh? For Bush (1988-1989) the first step is to decide whether or not it is possible to identify a single priority order. Such an order should not be determined by preference but rather must be objectively correct. Here the result would be a prescriptive framework. From such a stance there is no need to pick a side since there is only one correct side. In the alternative one may accept that there may be a multitude of ways in which the various competing elements may be prioritised. This priority will vary with any given number of factors and therefore one can only talk in terms of preferences. This therefore necessitates picking a side whilst accepting that others may not agree. These respectively represent the stance of unitarists and pluralists. The approach adopted in the current research is that of pluralism.

For unitarists, decisions as to the ordering of priorities are taken using objective criteria and in doing so one is able to offer a greater degree of clarity and certainty (Bush, 1988-1989). Arguing for such certainty is a pleasing goal but when one adopts an interdisciplinary and multiparty approach it becomes difficult to see how such an assertion can be accepted. The difficulty lies in accepting an objectively correct and prescriptive reconciliation of competing claims that can be

applied regardless of context. One may argue that, according to their views and assumptions, there should only be a single ordering of factors, ranked according to their importance. It is difficult to take the leap to accept that there *can be and is* only one order since this involves an epistemological shift that, it is argued, it is not possible to make (see chapter 6). A clear example of this will be the discussion on equality/social justice below (see chapter 4). One may argue that given the various circumstances certain things should be prioritised, and indeed that is the position adopted here. However, it is accepted that this is a reflection of one viewpoint, which from the perspective assumed here is considered to be favourable. It is important to acknowledge that in a pluralistic world this will not be supported by everyone since people have different views and different assumptions. It will be seen that even where priorities are determined by law there is still the potential for disagreement and ambiguity. The law does, however, act as an important influence on the way personal and organisational priorities may be exercised (and constrained) in practice.

The necessary consequence of this acceptance of difference is therefore the rejection of a unitarist view in favour of pluralism. In accepting this one also accepts the inevitability that no single framework can be truly comprehensive. The framework developed in this research therefore seeks to offer a way of facilitating discussion about the ways in which certain factors may be ordered and prioritised and how these are context dependent (see chapters 6 and 10).

At the very centre of the discussion that follows is the assumption that different people will react to and assess different situations in different ways and that if mediation is to be considered appropriate one must explore the ways in which these may be reconciled. To take such a stance is to accept the inevitability of ambiguity. Rather than see this as a weakness, this ambiguity is fertile ground for discussion and disagreement, which is arguably so vital if the need for further knowledge is to be satisfied.

The accommodation of ambiguity and therefore the susceptibility to criticism necessitates an even greater attention to detail in the examination of assumptions and use of concepts. In defence of the framework one must be able to offer reasoned responses to criticisms. It is argued that having an empirically grounded framework may offer an important defence (Latreille, Buscha and Conte, 2012; Seargeant, 2005:5).

In pursuit of clarity it is vital that the reasoning underlying the purpose and choice of content of the framework is made explicit (Fox, 1971). If one rejects the universal prescription of the framework, the purpose of both the conceptual and empirical exploration is to identify whether, even with complex and varied priorities, it is possible to identify patterns and common ground which will help facilitate discussion in decision making and help fuel the debate on the appropriateness of the use of workplace mediation in the UK.

2.3 THE NEED FOR A NEW FRAMEWORK

It is exactly in the pursuit of clarity of purpose that the argument for developing a new framework can be found. To put it bluntly there is no existing framework which adequately addresses the issues under consideration here. That is not to say that there are not a number of frameworks which are influential in shaping the new framework; but rather to acknowledge that each framework has its own purpose and focus. If one seeks to accommodate different voices (both in terms of discipline and individual/group position), it is also necessary to offer a framework which reflects multiple voices which few currently do (see Ridley-Duff and Bennett, 2011 regarding the unitary management perspective in mediation; Jenkins, Zapf, Winefield and Sarris, 2012 on the focus on the target in bullying research). This has implications for recognising an important assumption in the proposed framework and that is the need to accommodate the priorities and concerns both of the people who are ultimately responsible for deciding whether mediation is appropriate and of those who may be influencing that decision. Further, even where it is difficult to identify an existing framework there is a wealth of work and insights on important concepts which have also informed the content and the structure of the new framework. These are considered in chapters 3-5.

Academic work on ADR (and mediation specifically) in the UK context is growing but is relatively sparse (Latreille, 2011). The work which does exist provides a useful insight into the way mediation operates and to barriers to its greater use. In terms of frameworks however, perhaps the best (and only) example is provided by Ridley-Duff and Bennett (2011).

They acknowledge that 'the decision as to which type of ADR may be utilised can depend on the type of dispute, the stage of the dispute and crucially what type of resolution is being sought' (:109). They draw attention to the assumption in ADR that there is a possibility of aligning social and economic interests (:108): an assumption which is also accepted here. Their focus is on addressing how mediation (and other ADR techniques) links to and challenges direct democracy. Their framework is ultimately underpinned 'by the question of how power should be used and distributed' (:115) and they concentrate on participation and its importance for autonomy and justice. The significance of power is undeniably important and plays an important role in the new framework. Ridley-Duff and Bennett's framework offers some interesting insights but they themselves may arguably acknowledge that their framework is not fit for the desired purpose of the framework under construction here (:119). Further, their framework is only theoretical in nature. It has, however, been subsequently explored and partially confirmed by Bennett (2013) through a number (60) of interviews with (largely internal) mediators, trade union officials and HRM professionals in the North West. Bennett identified a key deficiency as the framework failed to adequately account for the role of organisational gatekeepers. Thus the role of the organisation in relation to the appropriateness of mediation is given a great deal of attention in this thesis.

The matter of reconciling the nature of bullying and harassment with the use of mediation has been given some (limited and predominantly non-empirical) attention in non-UK academic work, for example Keashly and Nowell (2011), Jenkins (2011) and Saam (2010). There has also been little exploration of how this reconciliation varies with the presence of a racist, sexist or homophobic element and indeed one of the most notable concerns driving the argument behind the need for a new framework is the marginalisation or absence of equality and diversity debates in ADR literature (Baker, 2002). This is particularly concerning as mediation is said to be particularly suitable in bullying and harassment cases (BIS, 2011b). The new framework seeks to make equality and diversity, and the reasons behaviour related to certain protected characteristics is prohibited by the Equality Act 2010 an explicit part of the appropriateness question. Some attempts to explore equality and ADR are evident in the US literature (Bond, 1996-1997; Hippensteele, 2006-2007) but again, it is argued that, given differences in support and legislative structures, one needs to be cautious in relying too heavily on such work for a UK context (Baker, 2002). In seeking to accommodate equality and diversity within mediation discourses the discussion needs to draw on multiple disciplines (here law and management). The aim is to explore whether there are parallels or at least compatible elements in mediation, diversity and equality discourses. Whilst it will be argued that equality arguments should be given priority since these represent societal values, it is a further assumption of the framework that this sense of priority will not be shared by all. This will be explored in chapter 4.

2.4 CONCLUSION: VISUALISING THE FRAMEWORK: CONSTRUCTING A MAP

The preceding discussion aimed to briefly outline the worth in pursuing the development of a new framework to help explore how workplace bullying and harassment is perceived and to position this alongside equality and diversity in order to help understand how different individuals (and society) prioritises competing factors to determine whether or not mediation is appropriate. In short, the quest is to try and develop an understanding of the ways in which the various assumptions (and counter arguments) can be utilised to develop a more comprehensive picture of the realities of addressing the appropriateness question in cases of bullying and harassment. It is argued therefore that whilst the endeavour is no doubt messy, and is necessarily complex, it is needed.

In helping to describe the process of determining possible content for the framework (which is what the next few chapters will do) and in navigating the line between pursuing simplicity and embracing complexity, Riskin (2003) offers a pleasing analogy. He suggests visualising the framework as a map. Where one strives only for simplicity, a framework 'resembles a map that shows only major highways and large cities' (:33). If one begins to embrace complexity however, the map becomes more helpful: 'On such a map, additional information such as smaller towns, smaller roads, rivers, airports, recreation areas and ball parks, topography and weather-could inform and remind travellers of choices and decisions that can enrich their journeys. People

concerned about mediation...could benefit from maps of mediation that highlight particular issues' (2003:33).

This is an analogy which is embraced here and it is therefore to detailing the map which the discussion will now turn. The chapters that follow will draw on existing theory and empirical findings to offer an integrated exploration of the issues associated with the research questions. The next chapter will begin by considering the extent to which fairness may be used as a foundation for structuring discussions over the identification, and relative importance and value of possible influential factors resulting in a perception of bullying/harassment and a conclusion that mediation is appropriate.

The discussion presented across chapters 3-5 seeks to engage with the complexity involved in exploring a theoretical basis for determining the appropriateness of using workplace mediation to address bullying and harassment. The argument is developed and presented in an incremental way and, as such, arguments may be briefly mentioned or referred to, but not discussed until a later point. Each stage of the argument seeks to build on the preceding stage and therefore subsequent chapters should be viewed as extending or refining understanding of the concepts previously presented. As a consequence of this approach, concepts cannot be considered discretely, but rather should be understood as interrelated. This treatment of the concepts and arguments as interrelated will be crystallised in the framework presented in chapter 10. For the purposes of chapters 3-5 however, the relationship between the concepts and themes discussed is shown in figure 1.

Fairness is presented in chapter 3 as the foundation for the discussion and the ideas considered in relation to fairness are returned to in chapters 4 and 5. Chapter 3 also introduces the relationship between fairness and justice and the extent to which the two may be seen as separate constructs. The need to see fairness and justice as separate, though related, is explored further in chapter 5 in the context of the scope of mediation. In chapters 4 and 5, fairness is discussed and related to arguments as to why bullying and harassment are objectionable, and to how this objectionable status dictates the need for a certain response. Therefore fairness is considered both in relation to the determination of behaviour and in relation to the action required in response to that behaviour. In respect of the former, the concept of dignity is offered as a way of approaching bullying and harassment, and is related to notions of justice and fairness. In so doing, it seeks to further demonstrate the need for the accommodation of a substantive element to fairness. Having established the relevance of dignity to fairness, chapter 5 moves on to explore the extent to which mediation may be seen as an appropriate response. Appropriate is considered by reference to not only feasibility, but also to fairness.

Crucial to the question of what may be considered as fair in relation to both the determination of behaviour and in relation to the appropriate response, is the balancing of objective, collective

standards and views, with subjective and individual determinations. This balancing is a key theme throughout this research and influences many of the arguments presented. The mechanism for balancing the potentially competing determinations is set out in chapter 3 and is further developed and applied against the concept of dignity and determining what behaviour amounts to bullying and/or harassment in chapter 4. Chapter 5 takes this application further by considering the role mediation could play in facilitating and/or prohibiting a fair balancing of the objective and subjective arguments. Mediation as a process is positioned against the role of courts and of organisations as social institutions. The role of social institutions is initially presented conceptually in chapter 3 in relation to establishing a fair society and is developed further on an operational level in chapter 5.

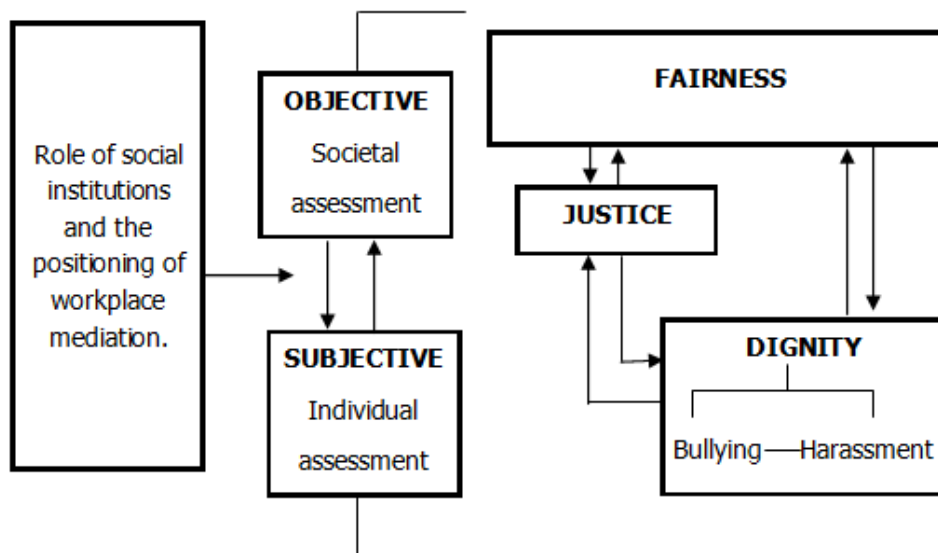


Figure 1. Overview of theoretical relationships.

CHAPTER 3. ADR AND FAIRNESS AS THE DESTINATION

3.1 INTRODUCTION

The first major features to plot on the map are those relating to mediation as a form of alternative dispute resolution (ADR) in relation to other resolution options. Though space does not permit an exploration of all the various mechanisms falling under the ADR umbrella (for example arbitration/conciliation (Roberts and Palmer, 2005)) it is vital to remember that mediation does not operate in a vacuum and nor is it (or should it be) the only option available to parties in employment disputes.

The chapter will then move on to adopt (and adapt) Rawls's Theory of Justice (2001) to demonstrate why fairness should be seen as a guiding concern and as something which is different (though related) to justice. It will argue that personal perceptions of fairness and justice should always be considered in the light of impersonal, objective standards of reasonableness, although it is accepted that determining how these should be balanced is not easy.

3.2 ALTERNATIVE DISPUTE RESOLUTION

In the quest for clarity, before one can discuss the definition(s) of mediation, one must first consider what is meant by ADR. Debates to this end may mistakenly be dismissed as a matter of mere semantics but if one is seeking to understand nuances, to make that mistake would be dangerous. The 'dispute resolution' aspect of ADR is relatively uncontroversial-in the ADR literature at least-and has been explored in a multitude of contexts (family, environment, organisational, commercial). The greatest amount of debate has arguably focused on the operation of 'alternative' and that is the element which has the most relevance here.

The key question is, unsurprisingly, alternative to what? Again, the options can be characterised in dichotomous terms. In much of the legally-grounded ADR literature, the presentation is of ADR as an 'alternative' to the courts, to litigation (Lieberman and Henry, 1986). Here the role of ADR is often a docket-clearing one, concerned with reducing burdens on courts and the costs associated with litigation (Edwards, 1986; BIS, 2011a; 2011b). In literature which is more management/organisationally focused, ADR is argued for in the alternative to formal options like grievance and disciplinary procedures (Blancero and Dyer, 1996; Jameson, 1999; Lipsky and Avgar, 2008-2009). These aims again return the debate to the idea of conflict. 'Alternative' conjures up the idea of either/or: parties either choose mediation, for example, or they choose litigation/grievance. In practice however this is not the case. Rather than either/or, it is probably more appropriate to consider the options as alternative stages in a resolution process (Gibbons, 2007). Kruse (2004-2005) suggests the 'A' should refer to 'Appropriate' and given the aim of this research, this is a more useful way of framing the debates.

It is also perhaps inaccurate to present the legal and management discourses in a similar yet parallel way. Indeed to do so would be to undermine the arguments in favour of comprehensiveness offered by the interdisciplinary approach. Although the focus and forum may change, many of the key pros and cons of using ADR are measured against the same criteria. Some of the criteria were set out in the preceding chapter and typically focus around the demands of efficiency and justice (Genn, 2010). These debates however arguably take place against the backdrop of fairness. It is accepted here, that whilst the concept of 'fairness' may be enduring and exist in an ontologically objective sense, its meaning is necessarily subjective and that there is, and can be, no all-encompassing formula for determining fairness. It is argued that the pursuit of fairness should be considered as a, if not the, guiding principle in decision making and therefore in answering the appropriateness question.

Before turning to that question however, it is useful to provide a brief definition of the facilitative mediation referred to throughout this research. The reasons for and consequences of this choice will be considered in chapter 5 but until then the following definition should serve as a sufficient point of reference: 'Mediation is a confidential and voluntary process in which a neutral person helps people in a dispute to explore and understand their differences so that they can find their own solution' (Ridley-Duff and Bennett, 2011:123).

3.3 FAIRNESS AS THE DESTINATION

In embracing the centrality of fairness, one arguably finds a unifying concept on which to build the framework and begins to build links between the concepts of mediation, equality and diversity and bullying and harassment. In so doing however there is an unavoidable assumption that 'fairness' is important to all. The extent to which this may be universally true is doubted and it may therefore be more accurate to say that there is an assumption that seeking fairness *should be* important to all. This recognition however does not render the proposed guiding force of fairness unusable. There is evidence across the literature that it does play an important role (Blancero and Dyer, 1996 in an organisational context; Genn, 2010 in relation to civil court claimants). It is also (purportedly) given a central role in determining policy (BIS, 2011a). It is argued the accepted subjectivity of the meaning of fairness provides a sufficiently flexible yet stable arena to help understand resolution decisions.

For the purposes of the framework, the differing ways of achieving what one may consider fair are determined by the weighting and prioritisation of the various factors in decision making (sought by the first two research questions). To continue with Riskin's map analogy therefore, one may suggest that fairness is the destination all are (or should be) trying to reach. To reflect the variance in what different individuals may see as being fair, one may suggest that fairness is, for example a very large park, meaning that all may end up in the same broad space but not necessarily in the

same location within that park. Further, they may have taken different routes to arrive there and it is to those which the discussion will now turn.

3.4 FAIRNESS AND JUSTICE: THE SAME BUT DIFFERENT? THE RELEVANCE OF RAWLS

A fundamental battle ground for determining fairness is the issue of justice. Of particular concern here is the extent to which fairness and justice may be considered as separate (although not necessarily) discrete concepts, rather than as interchangeable labels for the same thing.

Both the proposed necessity and the challenges of seeking an integrated interdisciplinary framework are brought to the fore here as one is faced with the need to seek to reconcile constructions of concepts which are not consistent with one another. The pluralist perspective does however provide sufficient flexibility to at least acknowledge these differences and at best offer a way of accommodating (if not entirely reconciling) this by appreciating that they are different, yet intertwined routes, people may take.

It would certainly be easier to simply adopt the approach of Reb, Goldman, Kray and Cropanzano (2006) in the organisational justice literature where fairness and justice appear to be used interchangeably. However, for present purposes, this is, unfortunately, not sufficient. Before moving on to explore the complex notion of justice it is vital to establish why here it is argued that fairness and justice should be considered as separate, yet related concepts and not simply as synonyms. John Rawls is particularly helpful in this regard. Whilst much of the substance of Rawls's theory of 'Justice as fairness' is not necessarily of relevance here, his approach is nevertheless invaluable in helping to structure the way the remaining discussion will proceed.

Rawls's theory of 'Justice as Fairness' is thus used throughout this thesis as a way of both informing, and structuring, the discussion presented. It does so by offering a way to distinguish fairness from justice in a way which allows for the consideration of both individual and societal concerns (chapter 3). Further, it provides a way of positioning bullying and harassment as societal problems (chapter 4) and facilitates discussion as to the role played by institutions in society for addressing such problems (chapter 5). Finally, Rawls's emphasis on public standards and collective knowledge of those standards, and the role of societal institutions in these public processes, provides a way of considering the potential benefits and limits of the individualised and confidential process of workplace mediation (chapter 5).

Rawls: A (loose) blueprint for fairness

In 'Justice as Fairness', Rawls's argued that 'the notion of fairness could be used as a framework, to assemble and to look at [concepts of justice] in a new way' (Rawls, 1958:164). As will be seen, there are many points of departure between the assumptions made and conclusions drawn by

Rawls¹ and those assumed and sought here. However, these differences notwithstanding, the underlying view that fairness 'is in some sense 'prior' to the development of the principles of justice' (Sen, 2009:54) is whole-heartedly embraced and it is taken as the starting point for the justification as to the choice of fairness as the destination. In agreement with Stulberg (1998), it is agreed that fairness must have both a procedural and a substantive element. It is also accepted in this research that when considering the relationship between fairness and mediation 'one must crystallise a sufficiently rich conception of fairness in order to assess how particular statutory features advance or undermine its principles' (Stulberg, 1998:910). He was concerned with drafting statutory provisions for the fair use of mediation in a variety of contexts but one may substitute 'features of a framework' for 'statutory features' and his point stands.

For Rawls, fairness 'relates to right dealing between persons who are cooperating with or competing against one another...The question of fairness arises when free persons, who have no authority over one another, are engaging in joint activity and amongst themselves settling or acknowledging the rules which define it and which determine the respective shares in its benefits and burdens' (Rawls, 1958:178). In the context of Rawls's enquiry, this is arguably an uncontroversial definition; although of itself it is insufficient for present purposes, not least in respect of the assumptions about authority. It does, nevertheless provide a useful point of reference for the discussion of Rawls here.

Perhaps of greater direct relevance is Sen's (2009) description of a broader notion of the fairness endorsed by Rawls: 'So what *is* fairness? This foundational idea can be given shape in various ways but central to it must be a demand to avoid bias in our evaluations, taking note of the interests and concerns of others as well, and in particular the need to avoid being influenced by our respective vested interests, or by our personal priorities or eccentricities or prejudices' (:54). Understanding what may bias evaluations, in what ways and how these may be balanced or mitigated is what this research is concerned with.

To construct his theory of justice, Rawls sought to present a thought experiment where, via the careful consideration and balancing of competing claims to principles of justice, representatives of free and equal, reasonable and rational citizens reach a consensus on those principles of justice necessary 'to specify the terms of social co-operation' (Rawls, 2001:7). According to Rawls, free and equal citizens possess two moral powers: a capacity for a sense of justice and a capacity for the conception of the good (2001, 18-19). Here, that conception of the good is contained in a list of primary goods which are to be allocated according to the principles of justice (2001, 57-59).

¹ Rawls's theory underwent a number of changes (Rawls, 1958; 1985; 1993; 2001) and since it is the most refined version, the discussion in this research will focus on the final formulation ('Justice as Fairness: A Restatement', 2001).

The representatives have to determine the social and political institutions of society which are needed to form the basic structure of a society that operates in accordance with the principles of justice (Rawls, 2001:7-9). Through the institutions, the principles of justice operate to regulate the behaviour of citizens (Rawls, 2001:6). Because of this regulative function, the institutions must be supported by all within a society and this support is grounded in the 'idea of reciprocity or mutuality' (Rawls, 2001:6). This support is crucial for the stability and legitimacy of the basic structure and these features are realised and sustained through publically known and agreed upon standards (Rawls, 2001:6, 92).

These statements seek to concisely introduce the key features of Rawls's theory of relevance to the current discussion.

Before exploring some of these features in greater detail (in this and subsequent chapters), it is important to address the qualification about the use of Rawls's theory given at the end of the previous section.

Rawls's 'justice as fairness' is a complex and multifaceted theory. In the interests of expediency in and clarity of argument for the present research, however, the discussion will predominantly focus on the worth of the mechanisms of Rawls's original position, rather than his substantive conclusions.

The reasons for doing so are rooted in a number of fundamental differences between the underlying assumptions and explicit purposes here and those of Rawls. The first relates to distinguishing purpose. Although Rawls recognises a difference between justice and fairness, he is ultimately concerned with advancing a theory of justice. The concern here is with fairness and the extent to which it may (or may not) be realised through a pursuit of justice, with justice being one category of potential principles. As will be discussed later in this chapter, it is argued that whilst a concern for justice should always be present, this will not necessarily be the case and therefore one cannot define fairness solely in terms of justice (Ake, 1975). Further, it is perhaps disingenuous to talk about 'justice' to the extent it implies a single conceptualisation and purpose. For Rawls, this singularity is precisely what he sought (2001:32). He was concerned with distributive justice and the allocation of disadvantage related to income and wealth (Rawls, 2001:65). As will be seen shortly, such singularity is rejected here.

In order to facilitate this he devised two (sequential) principles of justice (these would be chosen in his thought experiment). These are: 'Each person has the same indefensible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all' (The first principle) and 'Social and economic inequalities are to satisfy two conditions: first they are to be attached to offices and positions open to all under conditions and fair equality of opportunity' (Equality of Opportunity principle) and 'second they are to be to the

greatest benefit of the least advantaged members of society (the Difference principle)' (Rawls, 2001:43).

A body of debate has grown up around the principles and particularly around the second principle (see for example, Cohen, 2008; Shelby, 2004; Shiffrin, 2004; Stulberg, 1998). For present purposes however the focus will be on the first and adapting the discussion to the context of this research.

Rawls's focus on disadvantage associated with income and wealth has led some to criticise him for failing to adequately account for the relationship between such disadvantages and characteristics such as race (Allen, 2004; Foster, 2004; Shelby, 2004; Shiffrin, 2004) and gender (Okin, 1987). The focus on income and wealth, together with the questionable adequacy of Rawls's ability to accommodate understandings of historical and structural disadvantage further limit the applicability of the substance of justice as fairness for this research. It will be argued that bullying and harassment cannot be seen solely in terms of distribution and that any consideration of the guiding principles for society should account for the reasons for the existence of certain disadvantages. This is not only important for determining why there is a need for the principles but also for understanding how they manifest in practice and therefore how they should be dealt with. Rawls alone does not provide sufficient mechanisms or answers to do this: he does, nevertheless, provide insight and it is to that insight the discussion will now turn.

The importance of social institutions

The first insight is the role of the principles in the design and role of institutions forming the basic structure of a fair society. For present purposes, the most relevant institutions are law/the courts² (Alejandro, 1996; Dworkin, 2004, 2006; Wertheimer, 1988) and potentially the employment relationship (Lindblom, 2011). The workplace is not a context Rawls himself devoted much attention to (little beyond a brief consideration in Restatement, 2001:178). There has, however, been some (limited) application of justice as fairness to the workplace, of most relevance to the matter in hand its consideration of affirmative action (Allen, 2004; Shiffrin, 2004). Understanding the role of the organisation in standard setting and enforcement is necessary for present purposes, not least because the focus is on workplace bullying and harassment. A consideration of the relationship between individuals, employers and other social institutions (especially the courts) is arguably unavoidable when one considers the debates over the use of ADR. Rawls's approach also potentially provides a way of assessing whether mediation can be accommodated within existing institutions.

Great attention is to be paid to ensuring the institutions of the basic structure are just since there is an assumption that if the institutions themselves are just, anything which flows from their

² In this research 'courts' should be read as including Employment Tribunals

operation will also be just. This is what Rawls refers to as 'background procedural justice' (Rawls, 2001:50). This is an interesting idea and one may potentially draw parallels between the arguments made in favour of the relationship between the structure of mediation and its outcomes.

The focus on the design of just institutions required for a fair society has led Sen (2009) to criticise Rawls and argue that the better enquiry is to ask 'how would justice be advanced?' (:9). He rejects the 'transcendental' and 'ideal' nature of Rawls's theory (2009:15-17), arguing instead that a theory of justice should be concerned with the realisation of justice and should help to guide 'the actual behaviour of people' (:69). Whilst Sen accepts institutions can play an important role in helping the realisation of justice, for him, an alternative approach focusing 'on information on individual disadvantage judged in terms of opportunities rather than a specific 'design' for how society should be organised' is to be favoured (:232). He therefore advocates the capabilities approach. This approach is concerned with the capabilities of individuals and the extent to which they can realise these in pursuit of their own wellbeing and agency (Sen, 2008).

Sen's formulation of the capabilities approach is not without merit and for present purposes the rejection of an 'ideal' answer and the recognition of the plurality of interests and influences in the lives of individuals (Sen, 2009) is particularly attractive. Beyond this however it offers little assistance above justice as fairness, not least because, whilst it accepts the difference (Sen, 2009:4), it does not advance understanding of distinguishing between fairness and justice. Further, though the role of social structures and norms is acknowledged in respect of the extent to which they may constrain realisation of capabilities (Robeyns, 2005), Sen's approach also fails to acknowledge the reasons for the existence (and of great relevance here, persistence) of certain social structures (e.g. gender discrimination).

Nussbaum (2003) takes greater steps within the capabilities approach towards an appreciation of the need to address underlying rationales for supporting the exercise of certain capabilities and of addressing social barriers (in particular those associated with gender). She argues for the centrality of a respect for human dignity. In chapter 4 it is argued that dignity should indeed play a pivotal role in the appropriateness question. Nussbaum sets out ten 'Central Human Capabilities' (2003:41-42). Of those, two are potentially of relevance here. The first is 'Affiliation': 'having the social bases of respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin' (Nussbaum, 2003:41-42). The second, 'control over one's environment', has a dimension which resonates with protection against workplace bullying and possibly even justifying a role for mediation: 'In work, being able to work as a human being, exercising practical reason, and entering into meaningful relationships of mutual recognition with other workers' (:42).

This approach has more to commend it for present purposes than Sen's formulation but it nevertheless still suffers from a number of deficiencies. The first is again a failure to adequately address and conceptualise the role of social structures and institutions. A focus on 'what people are actually able to do and to be' (Nussbaum, 2003:39) arguably again obscures an exploration of the reasons why social structures exist in a particular form which therefore leads them to operate to constrain (or facilitate) the realisation of certain capabilities and do so in different ways for different people (e.g. for men and women).

Nussbaum also fails to provide any guidance on how conflict between the ten Central Capabilities should be resolved. Her purpose is, she argues, to provide general principles and out of respect for pluralism across nations, questions of implementation and more precise specification are left to individual states (Nussbaum, 2003:42). This is an insufficient conclusion for current purposes since one of the aims of the proposed framework is to consider how various competing interests are weighed and balanced. As it is argued that an appreciation of the history behind the development of various social structures and institutions is a key element in this evaluation, failing to provide any guidance in this regard also fails to adequately address arguments as to how the balance is to be struck between individual and collective interests. This connection between the individual and society leads back to Rawls and his pursuit of fairness through social institutions.

Social cooperation and expanding Rawls from political citizens to private individuals

A further function of the desired basic structure identified above is related to the terms of social cooperation. This focus on pursuing social cooperation as the aim is important since it expresses fairness and justice in terms of a collective (public) rather than individual (private) interest. Rawls limited his theory to the former. He was not concerned with what he called 'local justice' which applies to the conduct of relations between individuals in their private associations (Rawls, 2001:11; Lindblom, 2011). Over time, Rawls came to characterise justice as fairness as a political theory and not a metaphysical or moral one (1985; 1993; 2001). The political character is derived not only through the role of state intervention (through the basic political institutions) but also in respect of the political power of citizens as a 'collective body...regularly imposed on citizens as individuals some of whom may not accept the reasons widely believed to justify the general structure of political authority' (Rawls, 2001:182). In making this clarification he constrained the theory to interactions between *citizens* rather than individuals in their day-to-day lives.

In making the distinction between the influence of justice as fairness over people in their political capacity and in their associational capacity (Rawls, 2001:182) he thus makes a distinction between the public and private (moral) identity of a person (2001:22). Rawls is concerned only with the former. Whilst justice as fairness is not directly concerned with regulating the conduct between individuals in the associations they form with others (e.g. through religion), these associations exist within the basic structure and are therefore subject to the principles of justice (2001:50-54).

However, to the extent their actions and private identity do not contradict justice as fairness, individuals are free to act in accordance with their private identity as they wish (2001:50).

This separation between citizens and individuals is attractive since it potentially recognises the scope for the reasons why different individuals or associational groups may argue for different values, standards and principles (e.g. for religious reasons). However, such a clear separation of the public and private identity is arguably untenable (Cohen, 2008; Murphy, 1998; Nagel, 1973; Titelbaum, 2008; Wilkins, 1997). That is not to reject the distinction between a public and private assessment of values and priorities; quite the contrary. In fact it is accepted that given the plurality of identities such a distinction is inevitable and indeed necessary.

Nagel: Accommodating personal and impersonal standpoints for social cooperation

A preferable argument is advanced by Nagel (1973; 1991) who suggests each individual possesses a personal and impersonal standpoint (1991:3). The personal 'gives rise to individualistic motives and requirements which present obstacles to the pursuit and realisation of such [personal] ideals' whilst the impersonal 'represents the claims of the collectivity and gives them their force for each individual' (Nagel, 1991:3). These are not treated as separate or motivated by different values as in justice as fairness: rather conflict between the standpoints is resolved (or at least addressed) via an individual evaluation exercise. In making this distinction, Nagel rejects a purely personal (private) approach, arguing that the personal view alone is insufficient as one must recognise the importance of the lives of others and the impact that has on our own lives: 'suppression of the full force of the impersonal standpoint is a denial of our full humanity and of the basis for a full recognition of the value of our own lives' (1991:19-20). Of course, for Rawls, it was not a suppression of the impersonal but rather a suppression of the personal which led to his division of identities. In agreement with Nagel, it is accepted here that it is only through a consideration of both one can begin to answer the question: 'How should we live together in society?' (1991:6).

A recognition of both the personal and the impersonal is important to not only determine what the guiding principles of society should be in the first place, why they are important (e.g. for reasons of dignity) and what institutions are needed to support them but also how these structures are then interpreted and manifest in an individual's life. Accepting this two stage approach means accepting that the relative prioritisation of one of the standpoints over the other will not always be the same. Nagel suggests that in respect of the acceptance of general principles, the emphasis will likely fall on the impersonal, however, in respect of 'choices about how to lead their lives and what to do on particular occasions', personal motivations will come to the fore (1991:85). When discussing bullying and harassment this is particularly important as it speaks not only to the reasons why one may object in principle, but also to the substance or boundaries of the concepts. Crucially, it may allow for an explanation of why individuals may apply different personal standards

in situations of varying impersonal significance (e.g. thinking something is acceptable with friends but not at work).

Having sought to position the relevance and preference for Rawls-albeit with some adaptation, the discussion will now use Rawls's thought experiment as a device to demonstrate how guiding principles may be identified, how these relate to institutions and how the balance between individual and social interests could (or rather arguably should) be resolved.

The (Unideal) Original Position, reasonable pluralism and the pursuit of an overlapping consensus

For Rawls the enquiry begins from the 'Original Position' (OP) (1958). This is a hypothetical thought exercise used to facilitate the discussion on the design of the basic structure. Although this research necessarily rejects any claims to an 'ideal' theory where such a theory purports to offer a single, complete conception of justice, the nature of the OP provides a useful starting point to compare how the idealised basic institutions fare against their operation in "reality".

It is from within this OP that the representatives of free and equal, reasonable and rational citizens make their deliberations. Their determinations are dealt with in a sequential manner (Rawls, 2001:48): (1) principles of justice are adopted, (2) constitutional essentials are decided, delineating the rules for the 'acquisition and exercise of political power', (3) the degree of legislative intervention permitted and required by the previous two stages is considered and finally (4) the decisions taken in (1-3) are 'applied by administrators and followed by citizens generally and the constitution and laws are interpreted by members of the judiciary'. This chapter will concentrate on the initial stage, with discussions on the other stages being deferred for consideration in later chapters.

At the first stage, representatives are placed behind a 'veil of ignorance' (1958; 2001). This is the device which seeks to ensure that fairness is necessarily built into all decisions. Behind this veil, representatives are to proceed on the basis they are unaware of their position in society and therefore, denied their knowledge of privilege and bias, they will be motivated to make decisions that seek to benefit the most disadvantaged in society (Rawls, 1958). As all citizens are considered as free and equal, no person is given priority over another and therefore all must unanimously agree on the principles (2001:31-32). This has a pleasing simplicity but is the stage at which the fallacy of a thought experiment is most glaring and again returns the discussion to the point about the extent to which there is a need to acknowledge not only the fact that there is disadvantage but also the reasons for the existence and the persistence of that disadvantage (Okin, 1987). Cynically this acknowledgement is also inherently intertwined with possible objections to the assumption that citizens can be free and equal and indeed that they are both reasonable and rational. However cynical, this objection may be a little premature, since the veil of ignorance is only the first stage.

Of greater concern however is the requirement for unanimity among the representatives (Rawls, 2001:86). In order to facilitate acceptance by all in what Rawls acknowledges as a diverse world (in terms of beliefs and values, expressed through association with and within comprehensive doctrines), he allows the representatives to see what he describes as 'reasonable pluralism' (2001:34-37). This is the notion that there is an inevitable difficulty in seeking agreement in the presence of a diversity of opinions but the qualification of 'reasonable' dictates only certain views should be taken into account (Rawls, 2001:35). 'Reasonable pluralism' offers a useful idea for seeking to argue why certain views and principles should be prioritised above others. The 'reasonable' element in particular is an indispensable component of the framework sought here. It is necessary however to consider the criteria on which reasonableness is to be determined and also who, when moving beyond the representatives (i.e. moving from theory to practice), is to decide what is reasonable: should it be the courts, or perhaps organisations? This is a question the discussion will return to shortly and will be considered at greater length in chapter 5 in the context of mediation and the privatisation of justice.

In the OP the representatives are to agree on principles which no one could reject as unreasonable. For Rawls, the reasonableness his citizens possess refers to their readiness 'to propose certain principles (as specifying terms of cooperation) as well as to comply with those principles even at the expense of their own interests as circumstances require when others are moved to do likewise' (2001:191). He distinguishes between public reason and non-public reason. The former is concerned with justifying the imposition of rules by citizens as a corporate body and the latter with those rules applicable to individuals and associations (2001:92). Again, this reflects the separation of public and private apparently necessitated by his focus on the political and therefore elevates the public over the private. Representatives can only choose from a list of principles which have been predetermined as (publically) reasonable (Rawls, 2001:83). Whilst the content of the predetermined list is not necessarily disagreeable *per se*, it is arguably necessary to take a step back and seek an understanding of why there is an assumption that *all* would find such things unreasonable. Such an assumption makes sense from within the idealism of the OP but more is needed if justice as fairness is to be of relevance for the world as it is.

Given the fact of reasonable pluralism, Rawls relies on achieving a 'reasonable overlapping consensus' (Rawls, 2001:12). This is the idea that whilst it is unlikely agreement could be found on many political and social matters, it is possible to identify common areas of agreement, across the various doctrines, in the form of the principles of justice (Rawls, 2001:28). One may query however how feasible it is to achieve any sort of unanimity without diluting principles to the lowest

common denominator and/or to be an “objective”³ statement of a concept whose subjective interpretation is so varied that the concept itself may be seen as little more than an empty shell.

The objection here is not to the possibility of finding an “objective” concept which is reliant on subjective interpretation for its realisation but rather with the necessity for unanimity. In order to achieve a unanimous overlapping consensus Rawls requires the representatives in the OP to discard any principles based on ‘comprehensive doctrines’ (meaning those grounded in religion and philosophy) (Rawls, 2001:29). The need for unanimity is based on the argument that principles of justice must be general, universal and capable of generating their own public support (Rawls, 2001:86). The possibility of achieving an overlapping consensus is therefore important for the stability of the basic structure of society (Rawls, 2001:183). The issues of stability and sustaining public support potentially reflect the consequences associated with the privatisation of justice.

This partition of comprehensive doctrines returns the discussion to a number of the (arguably interrelated) limitations of justice as fairness introduced above. The first relates to the distinction between public and private identities and the second concerns an assessment of the need for unanimity, favouring instead the acceptance of an “objective” impartial reasonableness based not on unanimity but on political agreement or *modus vivendi* if that is the only viable option (Nagel, 1991:169).

To recap, Rawls is concerned only with the public, or to use Nagel’s terms the impersonal, element of an individual’s identity since, for him, this is the one which is required to participate in society and uphold the basic institutions. The principles of justice in justice as fairness are therefore necessarily public principles and once the institutions are set up in accordance with them, individuals are free to live their life as they wish. Individuals are therefore expected to live within the structure of the society and support the basic institutions but are not required to explicitly factor the principles of justice in every decision.

When one considers the necessary relationship between “objective” principles and their subjective realisation it arguably becomes both theoretically and practically difficult to support making the public/private distinction made by Rawls. It is nevertheless very important to consider and understand the relationship between the two (i.e. how a consideration of the public guides the private behaviour and visa-versa) and the relevance of the basic institutions in a society potentially play a very important role in this. It is not difficult to imagine a situation where one individual thinks they are acting in line with the public principles but another disagrees (e.g. “it’s just banter”). Rawls’s focus on the need for agreement on public reason and shared understandings (2001:114-115) is therefore pivotal in arguing for a prioritisation of reasonableness driven by collective notions, rather than individual perceptions.

³ The framing of objective here as “objective” is an apologetically crude way of distinguishing between objective in an ontological sense and “objective” in the epistemologically subjective sense outlined (see chapter 6).

Reasonableness: a collective determination, not an individual perception

Here it is accepted therefore that the need for unanimity over the importance of a principle is unnecessary and unrealistic, even with the dilution the overlapping consensus allows (Alejandro, 1996). The approach taken by Nagel however offers a more workable solution. He argues that whilst one may seek 'reasonable unanimity', sometimes it is necessary to settle for less (Nagel, 1991:45). Here Nagel accepts the possibility expressly rejected by Rawls of accepting a 'merely political solution' (1991:45; Rawls, 2001:89 n10). For reasons of stability and legitimacy, unanimity is beneficial (or for Rawls essential) but it is accepted here that there may be (many) instances where accepting less is necessary (Titelbaum, 2008:320). This is of particular importance when one moves to consider the substantive meaning of a principle (or construct) i.e. the behaviour people would associate with it.

It is important to note at this point that the personal and the impersonal exist as dimensions of an individual's standpoint (Nagel, 1991:3). Each individual must make an evaluation for themselves as to how they are going to reconcile the two in any given situation. This evaluation starts from an appreciation of their own position but moves to a stage of abstraction which contemplates that things (for example desires and interests) 'have impersonal value i.e. they do not simply matter to particular individuals or groups' (Nagel, 1991:11). For example, it may suit the personal standpoint of an individual to mediate in a situation of harassment which they perceive to be racist, as mediation may help preserve their career but they may also feel that there is an impersonal value in allowing a discussion on the potentially racist behaviour to take place in a more public way and therefore choose to prioritise this aspect and pursue a more formal route. In such a situation however, the individual in the example would be the only person making an evaluation and the conclusions of the others involved may conflict.

When one is talking about seeking agreement on broad principles, the potential for these conflicting views is vastly multiplied. The question is then which areas of agreement are to be preferred and how is this to be determined. For Rawls this was the job of his principles of justice. Here, however, this falls to this recurring notion of reasonableness. At this point the argument presented perhaps risks becoming a little tautological: reasonable agreement is required on the principles and the way of determining what is to be considered reasonable is to be guided by the principles. Hopefully the discussion in the remainder of this (and the following chapters) will help to unpick this tautology.

Although he assigns no substantive principles to reasonableness, Nagel accepts its use as a way of seeking to structure and justify the prioritisation of the personal over the impersonal (or visa versa) (Nagel, 1991:38). He argues 'the reasonableness of a complaint depends on general standards for the accommodation of partiality [personal] and impartiality [impersonal]...in questioning reasonableness one may appeal to both an objective standard and a personal motive' (1991:39).

This is important since it means reasonableness is not to be viewed solely as an individualistic, personal perception. Reasonableness may therefore be read in substitute for the use of “objective” thus far.

Nagel, however, argues that there is no automatic prioritisation of one over the other and both must be considered in any decision (Nagel, 1991:15). In this regard, this research takes a stronger position and argues that where there is an unresolvable conflict between impersonal and personal standpoints, the impersonal should be given priority. This should not however be deployed in an arbitrary way. The decision is to be taken and justified after a consideration of the arguments presented by the opposing viewpoints (Nagel, 1991) and again reasonableness should be the benchmark. The structure of institutions may have a key, if not determinative, role to play here: indeed reasonableness is enacted in the legal definition of harassment in the Equality Act 2010 (s 26 (4)(c)) and is used throughout employment law (e.g. unfair dismissal) (Cabrelli, 2011). The potential conflicts and justifications for competing areas of agreement (on the principles, meaning of bullying/harassment and use of mediation) are, of course, what are being presented throughout this research. The process of comparison required by this evaluation of reasonableness has direct resonance with Rawls’s and Sen’s definitions of fairness adopted above.

If it is accepted then that in the identification and realisation of the significance and relevance of guiding principles, there is scope to go beyond Rawls and accommodate consideration of both the personal and impersonal standpoints and that there is a mechanism for determining how to deal with conflict between the two, consideration returns to the question of the content of the rights and the role of institutions in the basic structure. Of particular interest is the matter of how a right against harassment and bullying may be formulated and how it should be protected (e.g. is it necessary for it to be enshrined in law at Rawls’s legislative stage). These issues will be discussed against the context of the current positions and prevailing approaches in the chapters which immediately follow.

In pursuit of what Dworkin may refer to as ‘appropriation through interpretation’ (2004:1405) an amended version of justice as fairness has, and will continue to serve as a loose blueprint for the discussion offered here. Whilst the content may have been somewhat altered, the aim remains the same, i.e. to determine the rules for fair social cooperation.

3.5 THE MANY ROADS OF JUSTICE

Any argument that there can be a single form of justice was rejected above. Multiple formulations of justice are relevant for the current debate and again it is only by drawing on literature from across various disciplines that it is possible to understand how to position justice in the context of bullying and harassment. In the ADR literature the conceptualisation often focuses on informal and formal justice (Roberts and Palmer, 2005). These are further bolstered by debates of procedural justice, (often, although not necessarily, versus) substantive, social justice (Edwards, 1986; Genn,

2010). Indeed, in the context of mediation, Welsh (2004) argues that the focus on resolution and self-determination has led to a regrettable side-lining of the importance of social justice to that of procedural justice. When one looks at bullying and harassment, particularly in respect of the attitudes of the mediation (and to some extent also the bullying/harassment) practitioner communities, there is a growing need to also add restorative justice to the mix (Ridley-Duff and Bennett, 2011). Further, distributive justice which is a key pillar of equality arguments may also be relevant (Fredman, 2011: albeit with a slightly different focus to Rawls). Inevitably it will be argued that none of these can be considered as mutually exclusive but rather should be seen as often complementary, though sometimes competing, concepts. In agreement with Welsh (2004), this research accepts that any discussion as to the relevance of justice to mediation should be 'infuse[d]' with arguments of both procedural and substance justice (:58-59).

Formal justice typifies litigation and internal procedures (Roberts and Palmer, 2005). The essence is that a clear, transparent procedure is followed resulting in a consistent result. It involves a third party making a decision as to the outcome of a dispute and representatives (for examples lawyers) are often required, or at least recommended. The potential outcomes are often limited in number and prescribed by procedure/rules. Informal justice on the other hand emphasises flexibility in process and outcomes and places a much greater emphasis on the autonomy of the parties (Roberts and Palmer, 2005).

Looking at the essence of formal and informal justice one can see the implications for procedural and substantive justice.

Procedural Justice

Procedural justice is, unsurprisingly concerned with fairness in procedure. Key elements include 'the opportunity to be heard, the opportunity to influence the decision maker, even-handedness of the decision-maker, and being treated with courtesy and respect' (Genn, 2010:14). A procedurally just procedure should provide the opportunity for a decision to be made on the basis of all available evidence by applying clear rules/laws to those facts (Genn, 2010).

Procedural justice is present in Rawls's theory of justice. For him, 'procedure is not a (more or less) reliable method for realising a fair outcome; rather the very fact that procedure has been followed is what makes the outcome fair' (Lovett, 2011:61). The organisational justice literature also offers some illuminating insights into procedural justice (Goldman, Cropanzano, Stein, Shapiro, Thatcher and Ko, 2007; Reb et al, 2006). Here the focus is primarily limited to perceptions of justice of internal organisational procedures and decisions, rather than the use of external/legal procedures⁴.

⁴ Although see Goldman, Cropanzano, Stein, Shapiro, Thatcher and Ko, 2007

Some organisational justice scholars however offer empirical evidence which may be used to demonstrate that certain aspects of what was described as procedural justice above may more suitably be attributed to something they refer to as 'interactional justice' (Bies and Moag, 1986 in Colquitt, 2001; Reb, Goldman, Kray and Cropanzano, 2006; Skarlicki and Folger, 1997). This 'is the perceived fairness of the interpersonal treatment people receive as processes are enacted' (Reb et al, 2006:32). Reb et al (2006:33) further state that '[i]n interactionally fair treatment is respectful, affirms one's dignity and provides employees with relevant information'. This is an interesting contribution to the debate on organisational justice. A further contribution was made by Greenberg (1993), who suggested a four factor model where interactional justice was separated further into informational justice and interpersonal justice (Greenberg 1993b in Colquitt, 2001:386). Interpersonal justice is concerned with the 'respect and sensitivity aspects of interactional justice' whilst informational refers 'to the explanation aspect' (Colquitt, 2001:386). Although this model has not been adopted by all (see Cropanzano, Byrne, Bobocel and Rupp, 2001:181-183), Colquitt (2001) found support for the validity of the four factor model.

The addition of interactional justice may have the potential to separate the characteristics of procedural justice which are seen as advantages of mediation (e.g. treated as equals and given the opportunity to present own point of view in a respectful environment) from those which are seen as lacking in mediation (e.g. low transparency and consistency in outcome). In such a case, the focus on procedural justice in mediation discourses could be diluted. Interactional justice certainly seems to resonate with the arguments of those who seek to promote mediation as a way to empower parties⁵: Nabatchi, Bingham and Good (2007) would arguably agree.

Nabatchi et al (2007) highlighted the need for more enquiry around fairness and justice in mediation (fairness and justice here are synonyms) (:149). They sought to adapt Greenberg's four factor model for a mediation context. One of the reasons they argue for a tailored model is the framing of disputes in organisational justice in bipartite terms, i.e. a matter between the individual and the organisation (or manager) (:153). In mediation, this dynamic is seen to be inappropriate and instead they consider perceptions of justice in two relationships: disputant-disputant (1) and disputant-mediator (2) (:153). Whilst this is an interesting and necessary amendment, the adequacy of this shift in focus will be considered shortly.

In measuring perceptions of justice in mediation they argued that a six-factor model was more appropriate. Nabatchi et al (2007) divided procedural justice into two: a mediator component and a process component (:152). The latter is concerned with capturing information relating 'to the process itself, quite literally the procedural aspects of the process' (:152). The former is concerned with 'the instrumental aspects of procedural justice as they relate to the mediator, and is an objective assessment of the mediator's performance as a professional' (:152). At face value this

⁵ See chapter 5, p72

distinction seems a subtle one. A reference to the items attached to the respective components help illustrate the difference. Participants⁶ were asked to rate their level of satisfaction on various aspects of their mediation experience. For process, these included: the amount of control over the mediation; the opportunity to present their side; the fairness of the mediation and their level of understanding of the mediation process (:158). Those for the mediator dimension concerned the amount of respect the mediator gave them; the mediator's impartiality; the fairness of the mediator and the mediator's overall performance (:158).

In addition to this partition of procedural justice, they also divided interpersonal justice into the experiences between disputants during the mediation process ('disputant-disputant interpersonal justice') and those between each participant and the mediator ('disputant-mediator') (:153). Here the confusion or subtlety does not necessarily come from the split of interpersonal justice but rather by comparison with procedural justice, particularly in respect of the disputant-mediator relationship. One may argue that seeking agreement on perceptions of the extent to which a mediator helped them clarify their goals and/or choice; understand the other person's viewpoint and help the other person to understand their point of view (Nabatchi et al, 2007:158) surely at least parallels (if not overlaps) with those items concerned with measuring the procedural aspects given above.

The extent to which it may be possible to accommodate interactional justice (and/or Nabatchi et al's additional factors) as distinct forms of justice within the legal discourses is, however, questionable. Whilst they may be statistically distinct (Colquitt, 2001; Nabatchi et al, 2007), conceptually (and possibly practically), given the qualitative interrelations and dependencies it perhaps seems like too subtle a separation to make and one would certainly argue for the need for qualitative enquiry. It may be perceived as side stepping the issue but for present purposes, it is sufficient to accept that there are different views but ones which cannot yet (or perhaps ever) be integrated. It is nevertheless important to acknowledge that there may be this plurality of views as to perception of the requirements of justice a person may choose to prioritise in pursuit of what they consider to be fair.

Substantive Justice

A further potential component of fairness is substantive justice. In contrast to procedural justice where an unfair outcome may be accepted provided the parties felt the procedure was fair, substantive justice can be concisely summed up in the statement: not just an outcome but a just outcome (Genn, 2010). Here the concern is with the quality of an outcome. What is considered as a substantively just outcome will vary according a wide array of factors. Of particular relevance here as to whether or not an outcome is considered as a substantively just one is the emphasis

⁶ 48, 024 Exit surveys were used for participants of US Postal Service REDRESS mediation scheme (2007:155)

one places on social outcomes (rather than simply individual ones) and the extent to which one may see state and organisational involvement as necessary.

Restorative justice has its roots in the criminal justice system and prioritises the power and ability of the parties involved to achieve their own resolution (Menkel-Meadow, 2007). By empowering the parties to seek a resolution which speaks both to repairing the harm done to the victim and on rehabilitating perpetrator themselves, the role of the state (legal/court systems) is minimised (Acorn, 2004; Pavlich, 2005). In the context of the role of institutions and reasonableness in the sense described above, this form of justice provides an interesting contrast to other notions of justice (i.e. procedural) since it is positioned as a potentially conceptually and substantively different paradigm (Robinson, 2003; Zehr, 1985 in Johnstone, 2013:33). There is a striking convergence between the principles of restorative justice and the argued benefits of mediation (Bush and Folger, 1994 in Johnstone, 2013). Conversely there are potential similarities with the arguments of those who argue against mediation and the privatisation of justice (Acorn, 2004; Strang, 2002). These points will be considered in greater detail in chapter 5.

Social justice is a central issue here. For Rawls, his concern with distribution starting with the veil of ignorance sought to achieve a society which could be deemed substantively fair by all (Lovett, 2011: 28). As noted previously, there are echoes of Rawls's social justice in the arguments offered in opposition to the privatisation of justice (and therefore the use of mediation). Although it is not labelled as social justice, Cropanzano, Goldman and Folger (2003) in their work on organisational justice recognised a form of 'deontic justice', that is where a person may be motivated to act not out of concern for self-interest but rather in accordance with some *a priori* moral standard (see also Turillo, Folger, Lavelle, Umphress and Gee, 2002). In respect of this form of justice, mediation has been found to be of use for restoring justice in 'ideological' cases, although this success is contingent on perceptions of the mediator (Goldman, Cropanzano, Stein, Shapiro, Thatcher and Ko, 2007).

Deontic justice may perhaps be seen as social justice in a shallower sense since it arguably skims but does not really engage with the deeper arguments about the benefits for society. This limitation can also be applied to Folger's 'Fairness as Moral Virtue' (1998). Folger explicitly engages with Rawls, recognising the importance of general principles being applied to all (:30-31) and argues for the importance of a respect for human dignity as the basis for individuals acting not out of self-interest but out of a sense that '[i]t's the right thing to do' (:25). Whilst the recognition of a role for dignity and broader values is to be welcomed, it does not really engage with the arguments as to why this is the case (Crawshaw, Cropanzano, Bell and Nadistic, 2013; Wade-Benzoni, Hoffman, Thompson, Moore, Gillespie and Bazerman, 2002) and crucially in respect of seeking to balance the impersonal with the personal, here, as with organisational justice work in general, the decisions and perceptions are grounded in personal, individual evaluations of what is needed to

rectify the injustice. This may be sufficient for individual reconciliation of the impersonal and personal but fails to provide a role for the reasonableness/impersonal component argued for here.

What is interesting, especially if comparisons are made with restorative justice (Robinson, 2003:387), is that perceptions are not only individual but driven by a desire to assign blame to and to punish or seek retribution against the wrongdoer (i.e. the organisation) (Truillo et al, 2002; Folger and Cropanzano, 2001; Folger, 1998). Indeed Folger and Cropanzano's Fairness Theory 'presumes that the central topic of social justice is blame' (2001:1). The role of blame and punishment in mediation and in bullying and harassment will be considered in later chapters. It is accepted here that assigning blame may be a consideration but it disputed it is the dominant or sole one (Genn, 1999:254).

A further limitation returns the discussion to the delineation of the relationships involved in constructs of organisational justice. As noted above, the focus often falls on the dynamic between an individual and the organisation (or their manager). More specifically, the research is often concerned with individual perceptions of justice towards the organisation and rarely the other way round i.e. where an 'organisation is deliberating on the actions of an individual' (Folger and Cropanzano, 2001:17). In the context of determining the appropriateness of mediation this latter direction is arguably at least equally, if not more, important.

In addition to Nabatchi et al (2007) and Goldman et al (2007), others, within organisational justice such as Keashly and Newberry (1995) have found that the presence and activity of a third party in interventions impacts on perceptions of justice. Whilst it is therefore accepted that one must consider the relationship between the disputing parties, and their respective relationship with the mediator (therefore agreeing with Nabatchi et al, 2007), these alone are not sufficient. It has been, (and will be) argued that one must also consider the broader societal (impersonal) relationships and in this regard one should not, and cannot exclude the role of the organisation in influencing and achieving fairness. Further, these relationships and the role of the organisation must be considered against the context of the broader institutional framework (e.g. the legal system) which, with limited exception (Wade-Benzoni et al, 2002), organisational justice work fails to do. Therefore whilst organisational justice does offer some extremely interesting insights, the semantic constraining of scope to the organisational context has some potentially substantive limitations.

In seeking to offer an interdisciplinary approach however, there may be more potential to allocate and integrate arguments and understandings here than in respect of interactional justice. In both social justice and deontic justice the aim of fair distribution is again brought to the fore.

Distributive justice may be expressed in many ways. Goldman et al (2007) describe it as 'the perceived fairness of the outcomes received' (:212). Whilst it is suited to their purpose (experimental design concerned with fair reward/punishment for organisational wrongdoing), this,

it will be seen shortly, is arguably too narrow a definition of distributive justice. Broadly speaking (and arguably inclusive of the narrower definition), distributive justice is concerned with the pursuit of a fair distribution of assets and opportunities (Fredman, 2011). There is a clear link back to Rawls here. Now however, Rawls can be used not to explain why bullying and harassment are unfair but rather to help structure the discussion as to whether or not mediation has the potential to operate in a fair way. Essentially, the use of Rawls provides a longwinded way of expressing a number of the underlying concerns about the fairness of using mediation generally and of using mediation for bullying and harassment specifically. These will be considered in greater detail in chapters 4 and 5.

Distributive justice plays an important role in justifying the need for anti-discrimination legislation (and therefore state intervention) in seeking to tackle barriers and re-distribute opportunities to those who have been disadvantaged because of their membership to one/multiple protected group(s) (Fredman, 2011). This has important consequences for bargaining positions and in terms of access to justice and, as far as mediation is concerned, may operate to place those who have been disadvantaged in an even more vulnerable position. This again conjures the need to acknowledge that one must consider not only who is making a decision but also who/what is influencing that decision.

3.6 CONCLUSION: VISUALISING FAIRNESS, ADR AND JUSTICE

From the discussion in this chapter it is hoped that one can begin to see how the framework may take shape. If one accepts that fairness determined by impersonal standards of reasonableness is the overarching principle all *should* aim for, then one must move on to consider how this aim may be achieved. It was argued that Rawls's justice as fairness could be used to this end. In a rejection of Rawls's pursuit of a single justice, it was accepted that justice (in the various guises outlined above) play a fundamental role. To again return to the idea of visualising the framework as a map, the different types of justice act as the main roads along which one may travel towards their destination of fairness. The roads however do not necessarily run parallel to each other and will intersect at various points. There will also be multiple side roads and the routes available will be determined by the choice of resolution technique pursued. Further, for some individuals (or groups) certain routes will be blocked or may be rife with barriers.

Before moving on to explicitly consider the role mediation may play in dictating and navigating these routes, it is important to turn to the question of the basic liberties and how one may justify the need for protection against harassment and bullying.

CHAPTER 4. BULLYING AND HARASSMENT: DIFFERENT ROUTES OR MERGED BY DIGNITY?

4.1 INTRODUCTION

This chapter will consider the role fairness plays in explaining and justifying why bullying and harassment should not be tolerated in a fair society. An argument will be presented for positioning dignity as an underlying and unifying concept for respecting and upholding fairness in respect of bullying and harassment. Bullying and harassment will be considered as a way of operationalising this respect for dignity. Here therefore one is concerned with a two-step justification.

The first step revolves around using the idea of fairness to justify why dignity is important and worthy of protection. This step is aligned with Rawls's theory of justice. The second step however moves away from Rawls and returns to the distinction between the personal and impersonal and the setting of standards which guide individual, as well as societal conduct. In each step one is concerned with how the idea of reasonableness introduced above may be realised. In order to explore the role of reasonableness, the discussion will consider what bullying and harassment are, where the lines between the two are drawn and the implications these have for their relative positions regarding the extent to which they are afforded legal and other institutional protection. On a theoretical level it will be argued that these differing positions should not necessarily alter the way reasonableness is applied to a situation but that in practice, however, it may make a significant difference. This difference therefore has an impact on the arguments one can make as to the appropriateness of the use of mediation in cases of workplace bullying and harassment. The role of mediation will be considered in the next chapter but for now a return to Rawls is required. Unless otherwise stated (for example in relation to the legal position), as the research seeks a unifying, underlying rationale for prohibiting bullying and harassment (i.e. dignity), the arguments in this, and subsequent chapters, should be read as applying equally to bullying and to harassment.

4.2 INSUFFICIENCY OF THE TWO PRINCIPLES

The principles of justice Rawls concluded his representatives in the original position would adopt were set out in the previous chapter⁷. The principles are arranged according to a 'lexical priority' (Rawls, 2001:43) meaning that the second principle can only operate to the extent that the first is respected i.e. so that any measures required by the equality of opportunity principle can only be justified to the extent they do not contravene the principle of a guarantee of basic rights and liberties for all free and equal citizens.

⁷ By way of short hand they will be referred to as the liberty principle (1), the equality of opportunity principle (2a) and the difference principle (2b).

Having argued in the previous chapter that one cannot conflate justice and fairness and that Rawls's conception of a single justice for his political society must be rejected; seeking to rely on his principles in this chapter potentially poses somewhat of a conceptual hurdle. These problems are in addition to the question of whether one agrees with the selected principles and their formulation.

For the sake of brevity, it is argued that although the two principles are far from uncontroversial⁸, for present purposes, their utility is accepted. With some adaptation they serve to provide a useful (and somewhat novel) way of discussing workplace bullying and harassment and how institutions may be designed to help address it.

Whilst concerns about the dilution required by Rawls's original position were set out above, it is argued that sufficient consensus may be reached on the need for and priority of the liberty principle. In accepting this, one may also find the veil of ignorance required to identify the principle to be unproblematic since it is possible to accept that within the idea of *reasonable* pluralism, no one can reasonably reject the idea that 'each person has the same indefensible claim to a fully adequate scheme of basic liberties, which scheme is compatible with the same scheme of liberties for all' (Rawls, 2001:43). However, without more the principle could merely be seen as an aspirational notion. It is when one moves to consider the choice of those liberties (their meaning and content) and the boundaries between them that the situation becomes more problematic.

Accepting the second principle requires a greater degree of persuasion, particularly if one is to position it against the formal equality approaches which favour equal treatment. The second principle accepts the inevitability of the need to deal with social and economic inequalities and to do so by treating certain groups in unequal ways (Rawls, 2001:43). The second principle is of lesser relevance to this research than the first and therefore a discussion of its viability and appropriateness will be deferred (see p75). Before moving on to the matter of "fleshing out" the first principle, one must briefly return to the other potential barriers to the use of Rawls.

Perhaps most problematic is the "fairness-not-justice" barrier. These are principles of justice and the previous chapter argued instead for fairness. Since there was no single conception of justice which can determine what may be considered a fair society, what is required are principles based on the broad notion of fairness (as defined). This is more than a semantic problem and is inextricably linked with the further barrier, that is, the rejection of a number of the underlying assumptions in justice as fairness. In addressing these problems one must again appeal to the purpose for which Rawls is being used here: to structure discussion. It may not be a sophisticated argument and undeniably does a disservice to the complexity and refinement of Rawls's theory throughout the years. It is nevertheless argued here that the mechanics of Rawls's justice as fairness-including the choice of principles-are invaluable for approaching the complex issues

⁸ See previous chapter for references for Rawls's critics, p29

involved in the current discussion, even if potentially drastic (yet arguably necessary) changes are made to the substance. It is to the question of the substance of the first principle to which the discussion will now turn.

4.3 TAKING RAWLS'S LIBERTIES

Again, the focus here will not be on the propriety of the choice of the basic liberties chosen by Rawls's representatives but rather the extent to which these are sufficient to enable the arguments in this research to be made. In other words, are they sufficient to argue for the need to protect individuals (as well as citizens) from bullying and harassment on a constitutional (and possibly legislative) level? The answer to that question is probably not.

The basic liberties deemed necessary to enable equal and free citizens to 'develop and fully exercise their two moral powers to pursue their determinate conceptions of the good' (Rawls, 2001:57) include: freedom of thought, liberty of conscience, the guarantees of the rule of law and freedom of speech (Rawls, 2001:111-114). These may engage and overlap with some of the elements necessary for justifying protection from bullying and harassment, for example freedom of speech (Shiffrin, 2004; Lindblom, 2011), and with the ADR privatisation of justice arguments (i.e. with respect to the rule of law) but they are far from sufficient. Again, it is important to remember that Rawls is concerned with the basic liberties of free and equal citizens within a political theory. Just as the constraining of individuals to citizens was deemed insufficient above for decisions of reasonableness and standard setting, it fails to acknowledge that what is needed to argue for bullying and harassment is an appeal to individuals as human beings, not as political actors.

Greater help is perhaps to be found not in Rawls's basic liberties but in what he sees as the basic primary goods citizens may seek to pursue (Rawls, 2001:58-60). Rather confusingly, these include the basic liberties themselves, together with recognition of the 'social bases of self-respect' (Rawls, 2001:59). Here the good is to be found in citizens being able to possess 'a lively sense of their worth as persons and to be able to advance their ends with self-confidence' (Rawls, 2001:59). This has more resonance with the arguments advanced here but returns the discussion to a consideration of whether or not bullying and harassment should be seen as damaging and/or threatening a person's own perception of their self-respect or whether it is to be seen as a social problem. For Rawls it is the latter (2001:60) but arguably it is necessary to consider it as both (see for example Hoel, Faragher and Cooper, 2004 and Einarsen and Mikkelsen, 2003 on the impact of bullying on targets), and to approach it not solely as a political problem but also as a moral one.

If one then rejects the adequacy of Rawls's basic liberties, what then should be seen as a basic liberty worthy of constitutional (and possibly legislative) protection, sufficient to ground both bullying and harassment? In order to answer this, help can be gained from the arguments associated with the justification for anti-discrimination law and for an appreciation of diversity.

4.4 DISCRIMINATION, DISADVANTAGE, DIGNITY AND DIVERSITY

Distinguishing and defining bullying and harassment: a brief overview

Here one encounters the first potential implications of differing justifications for bullying and for harassment. Precisely where and how the lines may or may not be drawn will be considered in greater detail later in this chapter when the definitional aspects of the concepts are discussed. It is important at this point to seek to clarify the reason this research explores bullying and harassment where there may be an element of racism, sexism or homophobia.

For present purposes it is useful to simply offer definitions of harassment and bullying as they are to be understood in the context of this discussion. In the interest of pursuing the equality arguments, a critical consideration of these definitions is temporarily adjourned.

Harassment here is defined by reference to s26 (1) of the Equality Act 2010: 'A person (A) harasses another (B) if- (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of- (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B'. As there is no explicit legal provision prohibiting bullying in the workplace there is no equivalent legal definition of bullying. A definition of bullying is instead taken from the organisational psychology literature: 'persistently insulting, malicious, intimidating, exclusionary or violent behaviour which adopts a particular pattern and dynamic with escalation of the problem over a time period' (Beale and Hoel, 2010:101). Although a number of similarities are clear (e.g. negative behaviour), the distinction to be made between the two is the requirement for the presence of a protected characteristic in the former but not the latter.

Using the involvement or potential involvement of certain protected characteristics to distinguish between harassment and bullying is not without precedent (see Branch, 2008 commentary); and though it potentially risks massively oversimplifying the meanings individuals assign to the labels bullying and harassment, it will suffice for now. This is chosen in preference to other forms of bullying, such as work-related bullying (Einarsen, Hoel and Noelaers, 2009) which do not allow for such a direct comparison with arguments of equality (in an anti-discrimination sense). These equality arguments are almost absent from UK debates on the use of mediation in bullying and harassment cases (limited reference in Ridley-Duff and Bennett, 2011) but are arguably central and essential to the debate on the appropriateness and fairness of its use.

Discrimination: the centrality of disadvantage

Drawing on anti-discrimination arguments provides a way of exploring and explaining why anti-discrimination needs to be valued as a basic liberty. This enquiry is inherently related to a further issue, that of why only certain groups are protected.

In the context of Rawls, one may ask whether protection from discrimination is covered by the two principles (Shelby, 2004) or whether there is a need for an extra anti-discrimination principle (Shriffrin, 2004). A third option, and indeed the favoured option, is to consider the extent to which protection from discrimination can be accommodated as an additional right under the first principle. This third option is arguably the easiest way of reconciling the arguments advanced here with Rawls's structure.

The choice of rights and liberties can occur at the constitutional stage in the original position and, once the basic principles have been adopted, the veil of ignorance operating to obscure historical and social sources of disadvantage is partially lifted (Shelby, 2004:1707). This brings the argument advanced in support of this research into closer alignment with Rawls since he now allows his representatives access to 'general, non-controversial knowledge' which may include knowledge of historical inequalities (Rawls, 2001:93). The importance of recognising these was outlined above where it was argued that a sense of reasonableness should always be historically and socially defined. This reasonableness should apply not only when seeking to identify the broad concept (i.e. of prohibiting discriminatory treatment/attitudes) but also when the standards to be applied for it to be realised are being considered (e.g. what specific language or treatment is to be considered as amounting to discrimination). This latter endeavour is more complicated and involves a greater tension between the personal and impersonal standpoints since it potentially impacts on an individual's day to day conduct. A consideration of this tension is not new in the equality literature and indeed is well established in the debates between equality approaches (predominantly equal opportunities) and managing diversity approaches.

It is difficult to disentangle the reasons for prohibiting discrimination *per se* and those advanced for justifying protection by law, meaning arguments are conflated in a way which is not helpful when one is trying to argue for them in a sequential manner. Attempts will, nevertheless, be made to try and unpick the arguments.

The first question then is why should discrimination, in principle not be permitted. This may be answered by reference to the identification of disadvantage arising from difference (Fredman, 2011). This disadvantage is traditionally associated with structural and institutional barriers which have operated to exclude or subordinate certain groups from participating in society (Collins, 2003; Fredman, 2011) e.g. women from participating (and then later progressing) in the workforce. When it is understood in this way, one can see why debates around equality often centre round distributive goals (Collins, 2003; Rawls, 2001). There is much conflict-across disciplines-about how to best redress these imbalances. Here the decision is not necessarily (or at least not immediately) that of the most appropriate instrument or institution to use but rather the principle to guide it. These options guide the discussion back to a consideration of formal and substantive justice.

The choices are often presented in terms of a conflict between striving for (or imposing) equal treatment and allowing for some difference in treatment, either through seeking to equalise starting points or the equalisation of results (Fredman, 2011). These may be seen on a spectrum moving from the formal equal treatment principle towards the more substantive equal opportunities and equality of results (Hepple, 2010). There are clear shades of similarity with Rawls's approach, especially with his second principle which acknowledges there are circumstances where different treatment is necessary.

The equal treatment principle, that is, 'treating likes alike', is the approach which dominates the UK legal approach to anti-discrimination law (Fredman, 2011:8). There are many, however, who argue this is not a sufficient approach and that more (for example positive action) is required (Barnes and Ashtiany, 2003; Collins, 2003; Dickens, 2007). In particular, there is a valid objection that equal treatment excuses 'an equal opportunities harasser' who treats all equally poorly (Clarke, 2006:161). Crucially, it also fails to recognise the persistence of certain disadvantages and prejudices (Hepple, 2008). This persistence of disadvantage argument is anchored in the limits of legal intervention (Hepple, 2008; Dickens, 1999; Healy, Kirton and Noon, 2011a; Fevre, Grainger and Brewer, 2011a) and plays an important role in the arguments about the role of mediation presented in chapter 5. There is a great deal of interesting debate on this matter but for present purposes dwelling on the best approach would be an unnecessary diversion since firstly, none really offer an explicit explanation for why discrimination can be damaging or indeed are adequate to explain the need to protect against harassment which cannot be satisfied by appeals to distributive concerns alone.

Unity through dignity

Implicit in the various approaches is that there is some reason why the systematic oppression of certain groups is not acceptable. Fredman (2011) offers a need to respect dignity as that reason. Dignity, she argues, provides a more substantive grounding for equality (2011:19). Dignity is at the core of many international human rights instruments (e.g. Article 1 EU Charter of Fundamental Rights 2000) (Fredman, 2011:20), as well being included in the statutory definition of harassment. As seen in chapter 3, it is also acknowledged to be important by many organisational justice scholars.

The concept of dignity is itself, not uncontroversial and not least because its meaning can be so indeterminate and open to interpretation (Hepple, 2008:11; Khaitan, 2012:3). If one is to accept this criticism one may as well accept that there is no use in any abstract concepts and abandon the pursuit for understandings of fairness and justice too. Clearly to do so would be to concede an unnecessary defeat. It is however, accepted that dignity alone cannot dictate how competing interests should be treated and it therefore should be considered as an addition to, and not a replacement for the equal opportunity and equal treatment approaches (Fredman, 2011; Hepple,

2008). The better course of action is therefore to try and seek clarity in the meaning of dignity in a given context and demonstrate an awareness of the factors which may influence the way it is interpreted and assigned meaning (for example see Khaitan, 2012).

Dignity here is to be understood as 'the value attached to individuals simply by virtue of their humanity' meaning 'that all are entitled to equal concern and respect' (Fredman, 2011:20). Subject to the need to extend the justification to individuals as human beings and not citizens, this notion of equal concern and respect is arguably consistent with Rawls's assumption of all as free and equal. The idea that dignity allows for a recognition that all should be valued 'not because of their merit, or their rationality...or membership of any particular group but because of their humanity' (Fredman, 2011:28) is extremely appealing. The divorcing of disadvantage from an individual's personal group membership is attractive since it potentially allows for a justification as to why someone who does not belong to a particular group may still have a genuine objection to racist or sexist treatment of others. Indeed in practice a person does not need to possess a specific characteristic to claim harassment on a protected ground (*English v Thomas Sanderson Ltd* [2008] (CA)). That one may possess such an objection was assumed in the previous chapter to be a, if not the, guiding force for the impersonal judgement necessary to ensure a fair society. That is not to say, however, that it is simple (or indeed correct) to assume that a person's group characteristics are not important. The relationship between an individual's interpretation and assignment of the personal importance of their characteristics to their identity and the relevance of group membership for assessing standards of behaviour is extremely complex and is something that will be considered shortly.

A respect for dignity allows for other, non-structural or distributive disadvantages, to be addressed. This is a welcome broadening of anti-discrimination since it makes accommodating sexual (and other protected characteristics) harassment easier. These other disadvantages may take the form of stigmas, stereotypes or prejudice (Fredman, 2011:25; Solanke, 2011). An appreciation of the existence of these forms is important for justifying the need to protect dignity by prohibiting harassment, as well as in understanding the form harassment may take, how it may be interpreted and how it should be dealt with. However, this approach still ties the treatment to disadvantage (McColgan, 2007) and in the context of anti-discrimination law, operates to limit protection only to selected groups (ss4-12 Equality Act 2010). These, particularly the last element, provide a significant dividing line between acts which may be considered as harassment (at least according to the EA 2010 definition) and those which by default may fall to the description of bullying.

The protected groups: a clear selection process?

Unlike the discussion offered here, anti-discrimination protection did not develop from reasoned and systematic basic principles but rather 'according to specific legal, historical and cultural factors' (Fredman, 2011:143). The various protected groups have differing histories where the

disadvantage manifested in different ways and at different points in time (Fredman, 2011; Holvino, 2010). This has led to the piecemeal and uneven protection of different groups (Hepple, 2008:22). An example of this was the limiting of protection for sexual orientation to the workplace (Employment Equality (Sexual Orientation) Regulations 2003). These differing histories, treatment and manifestations are the reason for choosing to focus this research on a number of characteristics: sex, race and sexual orientation. It is hoped that structuring discussions around characteristics that vary in their visibility and the length of protection, it is possible to access understandings of the extent to which the characteristics are treated as equally serious, or whether it is possible to identify a 'hierarchy of characteristics' with some (like sexual orientation) being treated as less serious than others (Acker, 2006:445; Colgan and Wright, 2011).

The choice of characteristics afforded protected status is deemed, by some, to be too narrow (Barnes and Ashtiany, 2003; Desir, 2010). Attempts have been made to identify reasons for the selection of certain groups above others. Solanke (2011) argues that stigma itself can be used to decide between groups. She argues that '[s]tigmatisation is a social process' by which there is a collective assignment of 'a negative relationship which permits a collective public 'doubting' of a person's worth' (2011:351). Stigma as a guiding concept would therefore potentially allow for protection to be extended to other groups who suffer disadvantage, for example because of their weight or physical appearance (Solanke, 2011). If taunts or different treatment based on a non-protected physical characteristic has the potential to harm the dignity of an individual, can one reasonably say that it is not worthy of protection?

If protection for some, women for example, resulted from an organised campaign to challenge their treatment in society, is there a principle which would stop the extension of protection to other united groups, for example those who argue against 'lookism' (Desir, 2010; Davis, 2008), if they similarly organised? There is no easy answer to this question, although it is one which is certainly worthy of exploration. One argument may be to retain the link to demonstrating a disadvantaged or subordinated position in society (Hepple, 2008). Another may be made by an appeal to 'immutability or absence of choice' (Fredman, 2011:131; Desir, 2010). This latter argument has an easy logic to it, i.e. someone cannot, and should not, be treated differently for a characteristic they did not choose and cannot change. It does, nevertheless, oversimplify the issues involved. For example, one may question the extent to which religion or pregnancy are a choice (Fredman, 2011:134). A further answer to this question may found in the managing diversity literature.

Diversity: avoiding the question?

Managing diversity, is, unsurprisingly, given the label, rooted in managerial discourses and has, over time 'overshadowed and marginalised' the more 'mainstream interest in equality' (Oswick, 2011:31). There is no agreed definition but in essence it is 'an approach to fair treatment that encourages employers to harness a wide range of visible [and non-visible] differences in their

employees' (Foster and Harris, 2005:5). In managing diversity the discussion returns to a number of potential conflicts and trade-offs identified in chapter 2.

In the current context, what it serves to do is essentially avoid any questions or issues of equality tied to group membership or structural disadvantage and instead champions the worth and contribution of treating individuals as individuals (Healy et al, 2011a; Thomas, 1990). This emphasis reflects government policy which promotes individuality and rejects a 'strand approach' since '[p]utting people into different categories simply because they tick a box on a form ignores their needs as an individual' (HM Government, 2010:7). In this view there is no need to address the question as to why some characteristics are to be treated differently to others since all characteristics are treated as equally relevant or irrelevant. The result of this would be to make race 'as insignificant to a person's aspirations as eye colour' (Barnes and Ashtiany, 2003:291). This arguably serves to side-line, if not eradicate, any need to consider an impersonal, social standpoint since the personal, individual view is paramount. Given the emphasis placed on social cooperation and collective understandings, such a consequence is objectionable in itself but it is also disingenuous.

The rhetoric implies that it is the choice of the individual to decide which characteristics are to be favoured, however, in managing diversity this is not the case. Managing diversity is to be understood as an alternative managerial approach to equal opportunities (equal treatment) which characterises equality discourses (Hoque and Noon, 2004; Liff and Cameron, 1997). The relevance of characteristics in diversity is assigned to the extent to which the possession of that characteristic (or combination of characteristics) can be used by an organisation to gain a competitive advantage (Foster and Harris, 2005). For example, a woman may be chosen as a shop assistant because she reflects the customer base. This leads the discussion to the primary objection of managing diversity: it makes equality contingent on a business case (Dickens, 1999; Noon, 2007).

The need to balance claims to fairness and efficiency is not alien to or absent in anti-discrimination equality debates (Dickens, 2007), for example allowing justification for indirect discrimination (s19 (2) (d) Equality Act 2010). The difference in such a case is that the equality arguments remain grounded in concerns for social justice and not 'economic circumstance', giving the former greater weight when considering the reasonableness of any balance (Dickens, 2007; Noon, 2007).

Beyond offering an alternative option for the treatment of group characteristics (i.e. treat them as individual ones), there are some important potential lessons to be drawn from managing diversity. These can inform the argument presented here for the need to explicitly retain and consider arguments grounded in group disadvantages and collective, as well as individual notions of dignity, in weighing the fairness and appropriateness of using mediation in bullying and harassment cases. The priority afforded to efficiency in the debates surrounding the use of mediation in UK workplaces has the potential to obscure these other issues and it is a deficiency which should not

be overlooked. The research on the operation of managing diversity in practice can also provide an insight into the hesitance employers and managers may have over the use of mediation in cases which may engage with or potentially engage with employment law (Barnes and Ashtiany, 2003; Foster and Harris, 2005)⁹.

An interesting mid-point between the matter of the relevance of group membership and individualism may be found in the concept of intersectionality.

Intersectionality: a middle ground?

The definition and boundaries of intersectionality are far from settled (Holvino, 2010; McCall, 2005; Tatli and Ozbilgin, 2012) but space and current purpose do not permit an exploration of the various different arguments. For present purposes, intersectionality can be accepted as the recognition of the fact 'that a range of social identities can influence people's workplace experiences' (Hudson, 2012:2). Intersectionality rejects the classification of individuals by a single characteristic and replaces it with an acknowledgement that identities may be determined by the 'intersection' of multiple characteristics (Hudson, 2012). This intersection is not to be understood in an additive sense but rather as a 'simultaneity' (Holvino, 2010) or 'synergy' (Solanke, 2011:340) between characteristics. Whilst Tatli and Ozbilgin (2012) argue for a rejection of the pre-determined groups, this formulation of intersectionality works with the boundaries of the existing protected groups. This option is to be favoured as it is most coherent with the argument being presented here, i.e. that fairness requires a collective understanding and appreciation of the need to prioritise certain groups and it is therefore important that known (and knowable) categorisations are drawn.

An appreciation of intersectionality is therefore relevant for the present discussion not only because it may inform assessments of reasonableness from the impersonal standpoint but also because it recognises a further complexity in the interaction between the way in which an individual may personally experience, interpret and choose (or be able) to respond to a particular situation (Berdahl and Moore, 2006; Salin and Hoel, 2013). By way of illustration, there is a growing body of literature which demonstrates that BME woman experience a different type of harassment than white women (Healy, Bradley and Forson, 2011b; Fielden, Davidson, Woolnough and Hunt, 2010). Further, even talking in terms of BME as a group runs the risk of misinterpreting or oversimplifying the experiences of the various composite groups (Giga, Hoel and Lewis, 2008; Holvino, 2010).

Fielden et al (2010) for example found that BME women operate within a culture which seriously constrains the way they may be able to respond to racialised sexual harassment at work. One should also be aware of grouping the experiences of gay men, lesbian women and bisexuals together as Hoel, Lewis and Einarsdottir (2014) found these can be qualitatively different.

⁹ See p74; p158

The complexity embraced by intersectionality also has some important consequences for the interaction between the instruments and institutions utilised to ensure protection against harassment. Following failed attempts to reflect a form of (additive) intersectionality in the EA 2010 (cl 14, dual discrimination)¹⁰ the current legal protection is not equipped to deal with multiple, intersecting characteristics (Bahl v The Law Society [2004]; Hudson, 2012). This has potential knock on effects for organisational recognition of and responsibilities toward intersectionality (Hudson, 2012).

4.5 ACCOMMODATING DISCRIMINATION AND DIGNITY IN RAWLS'S THEORY

Having now presented a number of different arguments, one must return to the initial matter of whether the inclusion of a right to protection from discrimination and harassment can be incorporated into Rawls's first principle. It is suggested that discrimination alone is not enough but that an explicit right to dignity (rather than it simply being implied by the treatment of all as free and equal) should be included to help justify why both harassment and bullying should not be tolerated in a fair society.

Whilst the precise meaning and content to be given to dignity will vary according to which of the above arguments are to be favoured, one would argue there is sufficient overlap and coherency within them to offer a reasonable overlapping consensus which would support the inclusion of dignity. Indeed, one may argue an appreciation of the different arguments offered by the interdisciplinary approach is necessary if appeals to consensus are to be made (Barnes and Ashtiany, 2003). Further it is argued that once one accepts dignity, one must also reasonably accept its value on a constitutional level. If this is the case, one must then seek to explore what institutional protection is required. Here the dividing line in the conceptualisation and operation of bullying and harassment rears its head.

If one is arguing that a fair society necessitates respect for the dignity of all, it is difficult to argue harassment should be prohibited by law but not bullying. Indeed there is an interesting debate on whether legislative protection against bullying is necessary or effective (Lippel, 2010; Yamada, 2003). These are two very different issues. Just as the prohibition of harassment and discrimination by law sends an important message that such conduct is not to be tolerated, it is difficult to see why such a message should not also be given in respect of bullying (Hepple, 2008:13, for example argues for a general tort of harassment). Problems of legislating for a complex concept are certainly not unique to bullying (Hoel and Einarsen, 2010). Particularly if one is concerned with establishing public rules and guidance for acceptable social cooperation in a fair society, it is difficult to understand why bullying should not be prohibited by law.

¹⁰ It was rejected on efficiency/costs grounds (Hudson, 2012).

This, however, is not the approach adopted by UK law and so whilst harassment (on a protected ground) is explicitly covered, legal protection for bullying has depended on an 'imaginative use' of available actions (Beale and Hoel, 2010:104) and through judicial interpretation (Walden and Hoel, 2004). Legal redress for conduct that may otherwise be labelled as bullying must be sought through a number of paths, for example constructive dismissal through breach of implied duties of mutual trust and confidence and reasonable care for health and safety (Yamada, 2003; 2011). Rather confusingly (from a discrete concept perspective), claims may also be brought under the Protection from Harassment Act 1997 (*Majrowski v Guy's & St Thomas' NHS Trust* [2006]). Whilst bullying may therefore be objectionable on moral grounds, its legal position is ambiguous. How mediation may interact with these differing levels of protection will be considered in chapter 5.

If then, one is able to argue for the need to protect dignity through prohibiting bullying and harassment (legally or otherwise), one must then move to consider how decisions as to what may be considered a breach of reasonable standards are to be taken. This again moves beyond Rawls's original position (and pure theory) since it begins to deal with day-to-day and associational interactions. The focus in the remaining sections of this chapter will be on how the way bullying and harassment is understood has important consequences for the ways in which the reasonable standards (and their breach) can be determined.

4.6 SETTING THE STANDARDS: DEFINING BULLYING AND HARASSMENT

The complexity of bullying and harassment: unpicking the mess

At the outset it is useful to quickly address a point which has perhaps been implicit throughout this and the preceding chapters and is wildly basic but nevertheless bears explicit acknowledgement: bullying and harassment are complex. There are instances which may unequivocally be considered to be bullying and/or harassment but this is not always the case. One may seek to establish or argue for rules which should govern decision making (as is the case here) but there are so many interrelated and competing factors and influences in any given situation there can be no absolutes.

The individuals involved, their characteristics, the importance they attach to those characteristics, their sense of job security and their position in an organisation have all been shown to have an influence (Fevre, Lewis, Robinson and Jones, 2011b; Hitlan, Schneider and Walsh, 2006; Hodson, Roscigno and Lopez, 2006). The type, size, structure, culture and composition of their workplace will also potentially have a significant impact on the extent to which certain behaviour is deemed acceptable or unacceptable (Berdahl, 2007; Benavides-Espinoza and Cunningham, 2010; Cowie, Naylor, Rivers, Smith and Pereira, 2002; Fitzgerald, Drasgow, Huhn, Getfund and Magley, 1997; Hutchinson, 2012) and will, in turn have an influence on the ability of an individual to challenge bullying/harassing behaviour¹¹. The existence of and effective (or ineffective) implementation of

¹¹ p61; p75

any policies (Fevre et al, 2011b; Woodrow and Guest, 2014) or the presence of a trade union can also influence the options available (Hoel and Beale, 2006). The pursuit of a personal or impersonal sense of justice (in one or more of the forms) also adds a further level of complexity.

Such is the messy complexity of dealing with conflict in the workplace. Attempts could be made to limit the focus or exclude factors but as this research is concerned with presenting a practically workable framework, one must find a way to try and accommodate and work with the complexity. It is argued here that in that way the concern with fairness and the balancing of competing claims is in accordance with an impersonally informed sense of reasonableness.

The identification of antecedents to bullying behaviour, harassment and even conflict in general are well canvassed in the various literatures. A great deal of work has also been undertaken on the factors which may influence the choice of response and the success (perceived success) of that response¹². The aim here is not to deny or ignore the existence of these multiple influences but rather to suggest a way in which the various and varied factors can be understood and prioritised. This ordering is, of course, not and cannot be the sole, true prioritisation but rather accords with the view advanced here that where there is a conflict between personal and impersonal (individual and societal values), that conflict should be resolved by favouring the latter, since this is what fairness requires. What is important here is an acknowledgement that whilst a multitude of factors may influence how behaviour is perceived by individuals and dealt with (or not dealt with) by organisations, the individual characteristics and organisational climate do not necessarily determine the reasonableness of the behaviour.

The matter of who should be responsible for deciding where the balance should fall will be considered in chapter 5 as it is arguably determined by the interactions between employer approaches and responsibilities and legislation and policy but for now it is important to note that standards should be determined in accordance with these objectively reasonable arguments. With this acknowledged, there is perhaps a prior issue which needs to be addressed: how important is being able to label something as bullying and/or harassment before it is possible to say that a standard has been breached?

Labels: what's in a name?

Having spent the best part of this chapter arguing for the need to protect against bullying and harassment to the extent it should be protected by legislation, it perhaps seems inappropriate to now address the need for such labels when one is determining standards of reasonable behaviour.

The response to such an objection is that if one is relying on codified protection, for example through law and/or organisational policy, then assigning a label before arguing a standard had

¹² See below pp59-60

been breached is important (and necessary). Rather the question refers to the trouble or complications involved in applying, or rather proving that the label is the appropriate one.

This distinction between the application of the label and the requirement of proof is significant when one is considering what the appropriate remedy is to ensure fairness. Demonstrating or providing proof for bullying and/or harassment can be extremely difficult (Harrington, Rayner and Warren, 2012; Hoel and Einarsen, 2011) and is inherently linked with not only the nature of bullying and harassment but also of the consequences following from many of the organisational antecedents and priorities introduced above. Further, establishing a credible case of harassment is also difficult when (if) a case moves to a formal legal process, since institutional and other power imbalances (particularly in respect of access to legal advice and representation) operate to raise the bar (Rosenthal and Budjanovcanin, 2011). These relate to the operation of the institutions and will be explored in chapter 5¹³.

If establishing the appropriate application of the label(s) is so difficult but the behaviour led an individual to seek to label it bullying/harassment this has two implications. The first is the need to try and understand what it is about the behaviour that led to the person to use that label, and the second is the need to recognise that there may be a spectrum of standards, determined by severity and reasonableness. This latter element acknowledges that though behaviour may fall short of the standards protected by bullying and harassment, it may nevertheless be considered as inappropriate and should not be tolerated. It is in this nexus that mediation may be particularly useful.

Possible labels for this behaviour short of bullying/harassment might be ill-treatment or unreasonable treatment (Fevre et al, 2011b) or misunderstanding or personality clash (Ferris, 2004). Exploring the nuances in these different labels is an unnecessary endeavour for present purposes and not least because none adequately capture or reflect the underlying assumptions and argument presented here. Of particular concern however is the classification of behaviour as personality clashes or misunderstandings. Downplaying the severity or significance of behaviour labelled as bullying or harassment is not uncommon (Harrington et al, 2012; Saundry, Bennett and Wibberley, 2013) and runs the risk of at best obscuring and at worst avoiding addressing wider organisational and/or societal problems (e.g. the perpetuation and legitimatisation of stereotypes) (Acker, 2006; Jenkins et al, 2012; Leskinen, Cortina and Kabat, 2011; Samuels, 2004; Thornton, 2002).

That is not to say no dispute can ever be considered as a personality clash or a misunderstanding, but rather to argue that care should be taken in classifying behaviour labelled as bullying (correctly or incorrectly) without careful thought (and preferably not before conducting a fair investigation)

¹³ p76

(Ferris, 2004). For reasons introduced above (and considered in greater detail below¹⁴), a tendency or rush to label behaviour as misunderstandings or downplay it is particularly concerning if organisational support systems are poor or non-existent (Firestone and Harris, 2003; Lewis and Rayner, 2003). For the sake of clarity, this level of behaviour will be referred to as inappropriate behaviour short of bullying and harassment. Rawls would perhaps see this lower category as a step closer to the regulation of individuals in their associational capacities and therefore beyond the reach of his theory. On the adapted version of Rawls argued for here however, this behaviour would still be governed by the protection for dignity and an organisation (as an institution) must act to uphold their employees' dignity. An interesting dynamic in this is to understand how the alleged victim and the alleged target are treated and whose dignity is to be prioritised.

Bullying and harassment: the necessity of power struggles?

Much of the focus in the bullying literature has been on perceptions and harm/impact on the target and the reasons for this will be considered shortly. The dynamics of the bully-target relationship however can be complex and unstable (Einarsen, Hoel, Zapf and Cooper, 2003) and therefore it is necessary to also include the perspective of the bully/harasser (Rayner and Hoel, 1997). This is particularly important in a fairness context.

Some attention has been paid to the personalities of bullies or the conditions which may lead someone to bully another (Hauge, Skogstad and Einarsen, 2009; Sumajin Parkins, Fishbein and Ritchey, 2006) but a qualitative consideration of the way in which bullies and harassers (alleged or otherwise) justify and rationalise their behaviour would help to increase understanding of the way the labels of bullying (and therefore the associated types and standards of behaviour) are reasoned and applied in practice (Jenkins et al, 2012). Whilst there may be methodological issues associated with recruiting (alleged/actual) perpetrators, it is accepted there is a value in seeking to find a way to access their understanding or at least a proxy of understanding how bullying behaviour might be justified (for example through the use of vignettes or reflective interviews with others involved in the resolution process). This desire to include the voice and understandings of both parties reflects the approach adopted by mediation and therefore in the context of the current research would be a worthwhile endeavour.

Understanding the dynamics of the accused bully-target relationship is inherently linked to, if not defined by, the characteristics of bullying. At this point it is useful to return to the definition of bullying provided above. The existence of a power imbalance is a relatively uncontroversial element of the bullying definition and is seen as one of the ways of distinguishing bullying from other forms of conflict (Einarsen et al, 2003; Einarsen et al, 2009; Keashly and Nowell, 2011). Key to this distinction is the ability of a target to defend or retaliate in response to the circumstances): where

¹⁴ p73

parties are both able to “give as good as they get” this may be better classified as conflict rather than bullying (Keashly and Nowell, 2003).

One should be careful however in jumping to this conclusion. Where the alleged target may have initially retaliated or responded, for example ‘ignoring the behaviour or making a joke of the incident’ (Firestone and Harris, 2003:50), such a response may not be indicative of compliance with or condoning the behaviour but rather might be the only or the best choice in the circumstances (Knapp, Faley, Ekeberg and Dubois, 1997): for example because they feel like their job would be at risk otherwise (Fielden et al, 2010; Healy et al, 2011b) or because that is what is expected of them in the culture of the organisation (Ferris, 2004; Jennifer, Cowie and Ananiadou, 2003). The response may even reflect expectations of stereotypical gender and/or ethnic roles, for example men to be more confrontational than women (Rosenthal and Budjanovcanin, 2011; Salin and Hoel, 2013:241). In the case of less visible characteristics, for example sexual orientation, an individual may feel that challenging the behaviour would require them to reveal their sexuality and so choose not to complain (Colgan and Wright, 2011).

It may also be the case that the parties started out in equal positions and/or both willingly retaliating and responding. The initial behaviour may not have been unwanted or consist of ‘negative acts’ but over time what may have been considered a dispute or just a joke may escalate into something more serious. This process of escalation is another important characteristic of bullying (Einarsen et al, 2003) and, as will be seen in chapter 5, is of potentially great relevance when the appropriate timing for the use of mediation is considered¹⁵. Without looking further at the rationales for the response, there is a risk of ‘victim-blaming’ (Keashly and Nowell, 2011:440). Rosenthal and Budjanovcanin (2011) argue that the legal system may be guilty of penalising claimants since an analysis of ET sexual harassment judgments (1995-2005) revealed that failing to complain about the behaviour at an early stage can have a negative effect on the credibility of a woman’s harassment claim, particularly in respect of demonstrating the conduct was unwanted (see also Samuels, 2004).

Focusing on the response and not the reason for the response may serve to obscure the existence and the significance of power imbalances in the relationship. In the UK bullying occurs most commonly in a vertical, downward relationship i.e. a person with managerial responsibility bullies a subordinate (Beale and Hoel, 2010). There is an inherent, formal power imbalance built into that relationship by virtue of the nature of the employment relationship and ‘managerial prerogative’ (Beale and Hoel, 2010; Liefoghe and McKenzie Davey, 2001). The existence of such a formal power imbalance does not however make bullying inevitable (Beale and Hoel, 2010:112). Where bullying does occur in this relationship however it may have important consequences for the assessment of what is to be considered as appropriate and reasonable behaviour and what would

¹⁵ P80

be considered as a fair response. Managers, for example 'have a commensurately greater degree of responsibility than those without managerial responsibility' (Hoel, Einarsen, Keashly, Zapf and Cooper, 2003:416) and it follows from this that the standard of behaviour expected of managers is higher than that of co-workers.

The predominance of downward bullying in the UK however, does not mean that other types, for example horizontal or upwards bullying does not occur. In addition to formal power imbalances, discrepancies in power may arise from other informal sources (Einarsen et al, 2003). These forms of power include greater experience or knowledge (Einarsen et al, 2003). Power imbalances may also arise from the draining of an individual's resources resulting in a decrease in their ability to cope (Einarsen et al, 2009). Of particular relevance to the current focus are sources of power associated with sex, race and sexual orientation (Holvino, 2010; Leskinen et al, 2011; Tatli and Ozbilgin, 2012). Even where the behaviour itself does not explicitly involve a protected characteristic, for example a string of sexist jokes or comments, social power imbalances can play an important role in distorting power relations (Rotundo, Nguyen and Sackett, 2001) and response strategies¹⁶. Although power imbalance is not an explicit defining characteristic of harassment, at least where one is concerned with "status" harassment (as is the case here), for the reasons of dignity and disadvantage considered in the previous sections of this chapter, one may argue that a recognition of social power imbalance is an inherent characteristic (McDonald, 2012:12). Also, as with bullying which does not directly involve a protected characteristic, where harassment is concerned, any one (or more) of the additional power imbalances can be present.

Because of the influence of these conflicting or possibly confounding imbalances, it follows that power in bullying and harassment may be dynamic and particularly so where there is a process of escalation (Jenkins et al, 2012). There may be points where it is not possible to clearly define the roles of perpetrator and target (Jenkins et al, 2012). This fluid nature adds to the complexity of the application of the label bullying and/or harassment. Positions may be fixed or assigned (at least initially) solely 'on the basis of who makes a complaint first' (Jenkins et al, 2012:499). Klein and Martin (2011) argue however that those dealing with the complaint need to be aware of the ways in which a bully may masquerade as a victim and seek to coerce them (HR for example) into 'colluding with the perpetrator against the victim' (:19-24). This arguably also extends to a mediator.

The existence of power imbalances, particularly formal ones, may also serve as reason for a target to not report or challenge the behaviour (Fox and Stallworth, 2004) and where a complaint is made to HR, organisational priorities and support for managers may lead to a hesitance to apply the label bullying and leads to the downplaying of the behaviour considered above (as found by Harrington et al, 2012).

¹⁶ See p60 above.

The relationship between power and mediation is an interesting one and much of the objection to the use of mediation is based on an incompatibility of the assumption of power relationships in mediation as (necessarily) equal and those in bullying and harassment as (necessarily) unequal. The validity of this objection will be considered shortly¹⁷.

In seeking an understanding of how people think about bullying and assign standards and behaviours, it is interesting to explore the relative significance placed on the different sources and dynamics of power and understand the extent to which these are seen as defining characteristics. It is also important to then understand how these power imbalances may influence what is deemed to be a fair way of addressing the situation.

Against these power issues, it will also be interesting to see what impact the characteristics of the parties involved have on the assessments made. For example, does the assessment of fairness vary if the parties are of the same sex rather than different sexes? Using vignettes to explore the perceptions of 293 (Finnish) third parties, Salin (2011) indicated that it would and indeed that men and women prioritise different factors. Would perceptions (and the reasonableness) be different in a situation where a gay man was calling another gay man a queer? What if it was a lesbian woman calling a gay man a queer? One must arguably consider such questions in light of the persistence of stereotypes arising from and perpetuated by certain power imbalances.

The relative importance of perception and intent

In chapter 3 there was a great deal of discussion rejecting a sole reliance on personal, subjective perceptions and evaluations of a situation (as in organisational justice) in favour of a reasoned balance of these perceptions with an assessment which may objectively (collectively) be considered as reasonable. In the pursuit of fairness, it was argued that such an approach is necessary. Although used to different ends, a debate about the balancing of the objective with the subjective in respect of defining bullying is well established.

Here a distinction must be made between the pursuit of objectivity in defining bullying as a scientific construct for the purposes of measuring bullying and the need to balance subjective and objective accounts in respect of managing and addressing bullying in the workplace (Einarsen et al, 2003). In relation to the role and application of anti-bullying policies, however, the two are closely linked. Some of the complexity and implications of the difficulty in assigning the labels of bullying and harassment were considered above. The concern in respect of perception relates to the issue of who is responsible for assigning that label and whether there is a need for that label to be externally verified.

Research into workplace bullying has been dominated by a positivistic, quantitative paradigm (Fevre, Robinson, Jones and Lewis, 2010). There has been a concern with developing scales to be

¹⁷ Chapter 5, p84

used to measure exposure to bullying, its impacts and with predicting the organisational conditions and personal characteristics which may lead to bullying or to a person being bullied (see for example Einarsen et al, 2009; Parzefall and Salin, 2010). Definitional issues within these have been concerned with whether or not to allow participants to self-label on the basis of a given definition or whether it is better to use a standardised descriptive list of behaviours (Einarsen et al, 2009; Fevre et al, 2010). In line with Nielsen, Notelaers and Einarsen (2011) it is accepted there is utility in both approaches, although the latter is not employed here.

This research accepts that bullying is a pervasive and prevalent problem and is not concerned with measuring or predicting the existence of bullying behaviours: therefore the assumptions and purposes of the more positivistic research are inappropriate. Whilst it is interesting to look at the 'negative acts' used to measure bullying in these instruments, for example 'Being the subject of excessive teasing and sarcasm' (Einarsen et al, 2009-NAQ-R), if one is to understand what substantive experiences and meanings are attributed to those statements, an exploration of subjective perceptions is needed (Fevre et al, 2010; Lewis, 2006). This is necessary if one is to understand the level at which individuals set their personal standards.

Although the focus is often the perception of the alleged target, as accepted above, an appreciation of the perceptions of the personal standards of the alleged perpetrator is also important if one is to reach a reasoned conclusion on where the boundaries of reasonableness should fall. That is not to say that equal consideration should necessarily be given to the perceptions of both parties, or at least not in terms of the initial choice of response or resolution strategy but rather that fairness (and procedural justice) demands both be considered. It follows from this that if a consideration of both perspectives is required there is necessarily a role for an assessment of the objective (reasonableness) of those perceptions. This assessment may involve talking to bystanding colleagues (Einarsen, Hoel, Zapf and Cooper, 2011). The factors which may influence this assessment have been introduced above and will be considered in greater in chapter 5¹⁸. The requirement of some external validation is not only important from a social cooperation, collective perspective but also to try and address any cases brought by egregiously vexatious individuals (Goldman, Gutek, Stein and Lewis, 2006) or those whose reaction was unreasonable in the circumstances (e.g. over-sensitivity).

The arguments on the relevance of perception are often paired with those asking what role, if any, should be given to the alleged perpetrator's intention when defining bullying. This is more controversial than the inclusion of perception (Keashly and Jagatic, 2011; Parzefall and Salin, 2010). There are two reasons why one may argue against the inclusion of intention, one practical and one conceptual (Einarsen et al, 2003:20). The first is related to concerns of evidence since 'it can be very difficult to prove intent' (Fevre et al, 2010). The latter resonates strongly with the

¹⁸ p58; p89

argument being advanced here and reflects the view that there is an inherent value in protecting people from bullying behaviour. Making a judgement of bullying contingent on the demonstration of the perpetrator's intent arguably risks undermining the significance of the effect of the conduct on the individual target (Einarsen et al, 2003; similarly for harassment see Clarke, 2006; Hepple, 2008) and ignoring the arguments that, regardless of intent, such behaviour may independently violate what can be considered as reasonable (Berdahl, 2007; Einarsen et al, 2003; Gutek, 1995; Hoel and Beale, 2006).

It is accepted here that intention may not be entirely irrelevant when one turns to questions of providing an appropriate resolution (see for example pp158-159; 183-184; 222-223) but, in agreement with the argument in the previous paragraph, it is also accepted that in respect of the determination of whether standards have been breached, intention should not be a relevant factor. This reflects the position in s26 (1)(b) of the EA which accepts that conduct with either 'the purpose or effect of' violating the target's identity or creating an environment as described in s26 (1)(b)(ii) can amount to harassment.

In arguing for a role of intention in resolution, it is helpful to clarify a distinction which may be made in the meaning of intention: the intention to do the objectionable act(s) and the intention to cause the harm which results from those act(s) (Einarsen, Hoel, Zapf and Cooper, 2003). An example may be a male colleague making jokes about "bums" and "anal sex" to a male co-worker who is gay (but not out at work) who is offended by the jokes (*Grimshaw v Griffin Signs Ltd & Others* (2008) EAT). Leaving aside the question of the (in)appropriateness of such behaviour and regardless of the recipient's sexual orientation, one may argue that the telling of the jokes was intentional but that the resultant offence was not. It is perhaps in such a case that one can see the temptation to label the behaviour as a misunderstanding but to do so would be incorrect because the behaviour itself is not appropriate.

Arguably a distinction should nevertheless be made between this and a situation where the joke teller was aware that the recipient was offended by his jokes but nevertheless continued to tell them with the intention of causing further harm. In the latter case perhaps the language of blame and retribution in organisational justice is more appropriate (Neuman and Baron, 2011). If intention is important for resolution, it will be interesting to explore whether any importance is attached to intention when considering the question of fairness and feasibility of mediation, especially if the concern is with challenging and possibly changing attitudes.

The matter of labelling behaviour and determining whether standards have been breached is a difficult task. Although it is potentially messy, complex and risks imprecision, an open approach to defining bullying and harassment is to be favoured. Providing no prior definition of bullying or harassment is important for understanding how the labels bullying and harassment are assigned in practice (Liefoghe and MacKenzie Davey, 2001; Lewis, 2006) and for accessing information on the

ways divisions between harassment and bullying are drawn (if indeed they are). For example it is interesting to further explore the role assigned to perception and intent in such decisions and whether intent - or at least the 'malicious' element in Hoel and Beale's (2010) definition of bullying - is also seen as a component of harassment. This is particularly important given the wording of the statutory definition which states 'purpose or effect' and therefore does not require a malicious element.

It will be also be interesting to see how relevant the persistency (frequency and duration) of the negative acts is (and how this relates to escalation) since this potentially a further defining characteristic of bullying but not necessarily of harassment (Branch, 2008). That the behaviour should have been experienced on a reoccurring basis and over a certain period of time, and that there is a process of escalation, are necessary features for defining bullying in much of the psychology literature (Einarsen et al, 2009; Einarsen et al, 2011). The s26 Equality Act 2010 definition of harassment, however, allows for a single act to be considered as harassment. In understanding how distinctions between bullying and harassment are made by individuals in practice it will be useful to see how far this distinction is relevant and thus how this relates to the speed at which a label of bullying and/or harassment may be applied.

4.7 CONCLUSION: BULLYING AND HARASSMENT: THE NECESSITY OF DIFFERENT ROUTES

This chapter has sought to argue that protection of dignity should be considered as a basic right in a fair society and that any decisions based on a reasonable balancing of the personal and impersonal standpoints should take respect for dignity into account. Bullying and harassment may be seen as ways of operationalising respect for dignity and any behaviour which amounts to bullying and harassment is to be seen as a breach of reasonable standards of appropriate conduct. Whilst dignity may be seen as a unifying concept, the different underlying rationales for and scope of bullying and harassment, coupled with (or leading to) their differing legal and institutional protections means they have to be considered as separate, yet overlapping concepts. The creation of a possible spectrum of behaviour (determined by differing levels of reasonableness) is a consequence that flows from this separation. The difficulties involved in balancing the personal and impersonal standpoints to assign labels to the behaviour were discussed and in light of these problems the potential for mediation to operate were noted.

Determining where on the spectrum behaviour falls may influence (or dictate) the appropriate route one should take towards the pursuit of the analogised destination in the park of fairness. The role of institutions-namely the government, the courts and organisations in helping (or hindering) this determination was referred to at many points in the previous two chapters and the discussion will now turn to a consideration of how the arguments presented so far may play out in the structure of Rawls's basic society (as amended).

CHAPTER 5. SIGNPOSTING MEDIATION

5.1 INTRODUCTION

This closing chapter of the literature review will bring together the arguments presented thus far and will consider the role mediation does, and could, play in either facilitating or mitigating the pursuit of fairness in addressing workplace bullying and harassment. Therefore, to return to the analogy of the map, the various characteristics may be seen as signposts, guiding the direction a party may take.

Continuing with Rawls's thought experiment it will consider the extent to which the courts and organisations should be seen as basic institutions. The assumption that the State should play an important role in structuring the institutions and in guiding interactions between individuals which is accepted here will be questioned. As this research is concerned not with ideal theory but rather with a practically feasible understanding of the realities of the workplace, a critical consideration of this assumption is unavoidable. This is important given the government's approach to regulation and policy which seeks to minimise its interference in the employment relationship. In doing so it shifts responsibility away from the State and on to individuals (see also BIS, 2013a on coalition reforms to employment law; Dickens, 2012a). The government's encouragement of the use of mediation typifies this attitude.

In light of this (and the uneven legal protection for bullying and harassment), although the role of the courts will necessarily be considered, the emphasis will be on the organisation and the extent to which it can be seen as a feasible (and reliable) body to act in a fair way to uphold standards of reasonableness. Through an exploration of the characteristics of mediation, it will explore the objections to its use in dealing with bullying and harassment and address arguments as to how the two may be reconciled.

In seeking to navigate the roles of the institutions and the balancing of personal perceptions of fairness and reasonableness with impersonal standards, it will discuss the potentially conflicting assumptions underlying mediation and those of the need for the public knowledge of and debate on standards argued for here. Such a consideration necessitates a return to the differing forms of justice considered above¹⁹ and the ways these may be served or excluded by the operation of workplace mediation. Finally it will conclude with a return to the acknowledgement there is no right way of ordering the competing factors and that whilst a particular view has been argued for here, the best that can be hoped for is to seek to offer a framework which serves to both broaden and inform mediation debates.

¹⁹ 3.5, p38

5.2 COURTS AS A SOCIAL INSTITUTION: A PUBLIC GOOD?

Having argued for the central importance of fairness in determining what is to be deemed to be reasonable conduct in a fair society, it is now time to explicitly return to the question of whose responsibility it is to ensure those standards are known and upheld. For Rawls this job falls to the social institutions and in particular to the courts with judicial interpretation of laws as the final stage in his thought experiment. Having decided on the need for justice (here fairness)²⁰ and the broad idea of the two principles in the first stage then assigned content and meaning to them in the constitutional stage and chosen how to enshrine them in law in the legislative stage²¹, it is the job of the courts to deal with any problems or conflicts which arise.

Beyond assigning this role to judges, Rawls actually says little about the role of the courts and of judges (Dworkin, 2004; 2006). Nevertheless, he argued that a coherent and consistent application of the law was important for protecting citizens (Dworkin, 2004:1395). In pursuit of this, judicial determinations are to be informed by and inform public reason (Dworkin, 2004; Rawls, 1997). Reflecting these sentiments, Genn (1999) acknowledges courts play an important role in 'national consciousness' as 'a place in which ordinary citizens can enforce rights' and as such they have a 'symbolic value' (:226). Here the discussion will not dwell on the detail of the ways in which courts can or should be conceptualised or the rules by which judges should interpret the law since this would be an unnecessary diversion: not least because the focus here will be on organisational and individual decision making.

For present purposes the most important characteristics of the legal system is the recognition of public adjudication as a social good and as a means of benchmarking accepted standards. These characteristics have great relevance and resonance with, and for, those who argue against the use of ADR on the basis it leads to a privatisation of justice which can be damaging to society and the pursuit of a collective social justice (for example Bush and Folger, 2012; Edwards, 1986;). Such arguments are longstanding in the wider ADR literature (Fiss, 1984 and Nader, 1979). However, although this has been given some attention in the UK in relation to the broader procedural changes in the legal system (Genn, 1999; 2010), the debates have generally been absent in the workplace context. The potential reasons for this will be considered shortly and are closely related to the way workplace mediation has been framed in practitioner and policy discourses. Before turning to consider the privatisation of justice arguments in the context of the current discussion, it is useful to first return to the matter of what mediation is.

²⁰ Chapter 3

²¹ Chapter 4, p55

5.3 CONCEPTUALISING MEDIATION

Defining Mediation

Mediation was defined above as 'a confidential and voluntary process in which a neutral person helps people in a dispute to explore and understand their differences so that they can find their own solution' (Ridley-Duff and Bennett, 2011:123). This definition was chosen since it reflects the characteristics of facilitative mediation which is the form most commonly used in UK workplaces (Latreille, 2011). Selecting a definition of mediation however is not a simple task and there is a danger of assuming a common definition without explicitly asking whether everyone is talking about the same thing (Dickens, 2012b:31; Dolder, 2004). Unhelpfully, the BIS consultation, for example, called for views on the use of mediation with little attempt to provide a clear definition.

Like bullying and harassment, the study of mediation may suffer from mediation having a lay meaning or indeed meanings. Unlike bullying and harassment, however, the ambiguity is arguably not helpful in understanding how mediation should be conceptualised and is, or could be, used in practice. Arguing in favour of embracing differing understandings of the former but not the latter may be considered inconsistent but it is nevertheless necessary. It was argued above that because of the complexity involved in delineating the boundaries between what may or may not be considered as bullying and/or harassment by any given individual or group of individuals, in order to further understanding of how to deal with bullying and harassment this ambiguity could not be avoided. Within this however, a role for clear definitions as a way of guiding conduct in terms of reasonableness was conceded and a similar argument can be made in respect of mediation: if the appropriateness of mediation is to be understood and determined in a practical context it is necessary to have a consistent idea of what mediation means. The alternative is to run the risk of talking at crossed purposes, for example mediation may be a structured process for one but may simply be a chat with two people to another (Latreille, 2011:12; Saundry and Wibberley, 2012:29).

To argue for greater clarity in definition is not to argue for a single, all-encompassing concept of mediation "proper" but rather to ask for better attention to detail in distinguishing between models of mediation. If one is to seek to address the appropriateness of and consequences arising from the use of mediation, it is necessary to understand the specific characteristics of the process employed since different forms and models of mediation offer different benefits and pose different problems.

Seeking clarity will perhaps become increasingly difficult yet important as the supply of mediators grows and they seek to differentiate themselves through the development or rebranding of types of mediation. Such clarity is also necessary if one is to understand how private non-judicial mediation is to be distinguished from other forms of ADR, particularly Acas early conciliation and judicial mediation which are not considered here (see Roche and Teague, 2012).

Further, if one is to understand the relationship between mediation and the law it is potentially important to also explore the distinction between workplace mediation and employment mediation. Some providers make a distinction between the two with the latter being more closely aligned with the negotiation of legal rights than the former. It appears however that such a distinction is not yet evident in the academic literature on the use of mediation in the UK or indeed represented in policy. Understanding the relationship between mediation and employment law is necessary not only in terms of conceptualising mediation and determining its appropriateness but may also be an important piece of the puzzle when it comes to persuading organisations and individuals to try mediation²².

The above plea for clarity comes with a caveat that, in any given mediation, a number of factors (including the experience and skill of the mediator), may operate to make clear distinctions between the different forms seem like an impracticable demand (Riskin, 2003). One may argue, however, that this recognition, whilst a practical necessity, does not detract from the need to first understand how the different forms of mediation may operate discretely. It is arguably only from this point one can begin to understand how combinations of the various models may operate.

Having argued for the need to seek greater precision in expression, the discussion will now briefly consider the alternatives to facilitative mediation before returning to a consideration of how the characteristics of facilitative mediation can feed into the broader arguments of fairness relevant here.

Distinguishing facilitative mediation

The first area for confusion over the delineation of the different models arises from the influence of US literature on mediation. In the US the debate is characterised by seeking to understand the differences between evaluative, problem-solving (or facilitative) and transformative mediation (Lande, 2000). The focus in distinguishing the approaches lies in identifying the purpose and therefore in the differing roles of the mediator (Bingham, 2004; Riskin, 2003).

In evaluative mediation, the mediator 'gives an expert opinion on the merits of the dispute' (Bingham, 2004:156) whilst in facilitative, a mediator works with the parties towards an outcome that will settle the dispute (Riskin, 2003). In transformative mediation however, their role is far less defined with all control being given to the parties (Bingham, 2004). Transformative mediation allows parties to 'develop a greater degree of both self-determination and responsiveness to others' (:264) since participation in mediation is grounded not in the pursuit of solving a problem but in empowerment and recognition (Folger and Bush, 1996).

According to Riskin (2003) the different approaches are not to be seen as discrete but rather as existing on a continuum potentially allowing the shift (or shifts) in mediator approach anticipated

²² p74; p155 below

above. It follows from this therefore that in seeking to establish the appropriateness of mediation, one must understand the purpose for which it is used, as well as the relationship between the parties involved and the mediator. This, and in particular the latter element, is reflective of the organisational justice approaches to mediation outlined in chapter 3. The significance of the role of the mediator cannot be underestimated (Saundry et al, 2013) as this potentially has very importance consequences for perceptions of fairness and justice.

When the discussion returns to mediation in the UK, the labels shift. Here facilitative mediation is close to problem-solving whilst 'directive mediation' requires a greater level of intervention from the mediator (Ridley-Duff and Bennett, 2011). The purpose of the facilitative mediator is 'to orient disputants to the processual dimensions of interest-based negotiations, rather than focusing on the substance of the dispute'; in so doing 'the mediator's role is essentially passive and pacifying in nature' (Dolder, 2004:332). The notion of transformation, in the sense participating in the mediation process can lead to personal and organisational transformation can, however, arguably be found in arguments of empowerment and shifts in conflict management culture annexed to the use of facilitative mediation. How far such claims of transformation and empowerment can be supported will be considered later²³.

It is perhaps interesting that the facilitative approach is the most prevalent, since this approach is somewhat polar to traditional adversarial approaches, not least because it is 'non-judgmental and based on joint searches for ways forward' (Purcell, 2010:19). In order to understand the reasons why facilitative mediation may be favoured it is useful to return to the policy motivations for recommending the use of mediation in workplace disputes.

The twin pillars of the benefits of workplace mediation

The introduction to this thesis opened with a brief consideration of the legal and policy landscape shaping current discussions on the resolution of workplace disputes. Like previous governments, the current coalition government is seeking to reduce the number of employment tribunal claims which are lodged each year (BIS, 2011b; Sanders, 2009) by making substantive changes to the law, as well as procedural changes to "encourage" a greater use of ADR. This 'docket-clearing' argument for the use of ADR was identified previously²⁴ and is by no means unique to the UK (Goldberg and Shaw, 2010; Stipanowich, 2004 (US)). A focus on reducing litigation has arguably led to an emphasis on process, rather than a consideration of the quality of outcomes (Edwards, 1986). Of particular relevance here is the positioning of the changes in the context of access to, and delivery of, justice and fairness.

²³ See p89-90

²⁴ p25

This balancing is motivated by arguments of economic efficiency and a shifting of responsibility for resolving their own problems onto the people involved (employer and employee), rather than relying on third party decision makers and more specifically to the legal system to address them (BIS, 2011a; 2011b). These two elements may be considered as the “twin-pillars” of the arguments dominating discussions of the use of mediation in UK workplaces: cost and efficiency (1) and empowerment (2)²⁵.

Cost and Efficiency

Unsurprisingly given the wider rhetoric and concern for economic growth, a great deal of attention has been paid to the cost and efficiency benefits of mediation (Dickens, 2012b). These are related to arguments that mediation is a cheaper alternative to formal and legal routes (Zack, 1997), with figures estimating the cost of (external) mediation to be £1,200-£2,000 (BIS, 2010:42) compared with costs of an ET hearing which stood (pre-fees) at £6,200 (employer), £1,800 (claimant) and £3,200 (exchequer) (BIS, 2013:26)²⁶. It is the potential for savings that leads the practitioner rhetoric.

Many of these savings arise from the positioning of mediation as offering a faster resolution to problems (Roche and Teague, 2012). Issues are potentially dealt with in a matter of days rather than months or even years as may be the case with formal and legal procedures (BIS 2011b; Acas/CIPD, 2013). The faster resolution comes from the avoidance of the need for formal investigation procedures and a stemming of the disturbance and diversion of time and productivity spent dealing with conflict, both in respect of the parties directly involved, as well as those, such as HR involved in the process of dealing with the dispute (Acas/CIPD, 2013). A faster resolution also minimises the wider effect of conflict which impacts other individuals within a workplace and beyond, for example colleagues and family. Further, chances of a faster resolution are often linked with the positioning of mediation as an early intervention route (Gibbons, 2007). Although the positioning of mediation in respect of more formal procedures varies (Latreille, 2011:37), it is logical that a number of the benefits (particularly avoiding investigation) depend on mediation taking place prior to formal approaches since formal procedures may lead (or even force) parties to become further entrenched in their positions, making resolution less likely (Irvine, 2014).

If one returns to the conflict and to the bullying literature this early approach seems sensible. Given the acknowledgement that conflict may escalate over time in to something damaging, even where it does not become bullying, it makes sense to try and stop this process of escalation (Jenkins, 2011: 29). Preventing this escalation thus serves to prevent all the costs (financial and time) that flow from it (Saundry and Wibberley, 2012:26).

²⁵ Saundry and Wibberley (2012) suggest cost and efficiency and ‘impact beyond the specific disputes’ (:7) but they were concerned with internal mediation schemes and, as will be see, impact can arguably be subsumed into empowerment.

²⁶On fees see p77.

Given the relatively low use of mediation by employers which was placed at 7% in the latest WERS figures (4% internal/3% external, Van Wanrooy et al, 2013:27) it is early days in terms of being able to say whether mediation delivers on these promises of cost and efficiency. There are also findings demonstrating that mediation may be seen as cheaper but it is not necessarily seen by employers (and particularly SMEs) as cheap, indicating that cost may be seen as a barrier to its increased use (CIPD, 2011:3; Latreille, Buscha and Conte, 2012). There are also indications that the size and sector of a workplace will have an important effect on the extent to which mediation may deliver on any such benefits (Bennett, 2013: higher education).

It is also interesting to note that there is very little, if any, discussion on the cost savings associated with the use of mediation for employees (Colling, 2004). This is perhaps because it is envisioned that employers are likely to be the ones who pay for mediation (Acas, 2008: although the results from SETA 2008 paint a more complicated picture (BIS, 2010:42)) and therefore it makes sense for the rhetoric to target the savings available to them. This feature has implications for arguments of fairness and balances of power²⁷. The focus for individuals has fallen to the second pillar: empowerment. This characteristic is the one which returns the discussion to the comment that the dominance of facilitative mediation is interesting. What is interesting is that participation in facilitative mediation potentially necessitates a significant recalibration of attitudes towards and responsibilities within a dispute processes. A failure to critically consider the feasibility and implications of this, especially in the context of bullying and harassment, is to shield the question of appropriateness from a number of potentially insidious and damaging consequences. This is particularly concerning where such questions are obscured by a blinkered discussion of cost and efficiency and organisational advantage (Saundry et al, 2014).

Empowerment

The idea of empowerment lies in the notion that individuals in a conflict situation should be given greater responsibility to jointly reach an outcome that is mutually satisfactory to them. Through this process individuals are able to regain control and learn new skills to better understand themselves and others (Irvine, 2014). These potential gains reflect the hopes of transformational mediation. The idea of regaining control is attractive but, as will be seen shortly, problematic in any relationship where power imbalances are present.

The shifting of responsibility for reaching an outcome to the parties involved necessitates a reshaping of the dispute relationship away from adversarial processes where representatives or third parties seek to uncover and present facts and arguments to another (or the same) third party who is responsible for reaching a decision which is, on the balance of probabilities, the right one (Hoel and Einarsen, 2011). Here the parties' involvement in the decision making process is extremely minimal, instead this responsibility is assigned to an investigator, employer, or, should it

²⁷ p87

get that far, to an ET. In mediation however there is a significant narrowing of the number of parties involved in the process of resolution.

Although a mediator will be present and may, depending on the role they adopt, suggest outcomes, the decision making power lies with the parties themselves. As was mentioned above²⁸ in relation to Nabatchi et al's (2007) framing of the mediation relationship, great attention needs to be paid to what happens to the role and responsibilities of the organisation in this narrowing (Keashly and Nowell, 2011:439). This point will be considered shortly but it is first necessary to note two further, related consequences of this reshaping which have implications for the balancing of personal and impersonal standards of reasonableness: individualisation and the (ir)relevance of evidence.

Individualisation or personalisation of disputes

The move towards empowerment is also characteristic of the individualisation of dispute resolution (Bush and Folger, 2012; Dolder, 2004). This reflects the drive towards individualisation in the context of managing diversity and in respect of group characteristics considered above²⁹. It is important here to make a distinction between individualisation in the sense of the promotion of individual choice and empowerment on the one hand and the individual nature of enforcement mechanisms in much of employment law and organisational policy, on the other (Dickens, 2012c). Given the argument offered here for the need to stress the impersonal standpoint in respect of standards of reasonableness and accepted principles of dignity, acknowledging this distinction is crucial in navigating arguments of substantive justice and fairness in mediation.

In respect of legal claims, whilst the actions and remedies may be individually-focused, they are defined and assessed by reference to impersonal objective and publically known rules and standards³⁰. The individualisation characterising empowerment runs the risk of avoiding or circumventing these standards and replacing them with almost entirely personally determined standards and perceptions of fairness. Interviews with (25) participants to mediation suggest that treating the behaviour in this way (as a personal issue) made them feel as though agreeing to try mediation required them to potentially accept some blame for the situation (Saundry et al, 2013:15). This seems to reflect Keashly and Nowell's (2011) concerns over the risk of victim-blaming. This also has a further potential consequence since it may serve to treat sexual (and arguably also other forms of) harassment 'as a private shame' serving to secure 'its continuing status as a deeply personal and necessarily private injury' rather than a social harm (Hippensteele, 2006-2007:58).

²⁸ p43

²⁹ p53

³⁰ See chapters 3 and 4 above

In this one finds a further shift away from adversarial processes which are (in theory at least) designed to weigh the validity (reasonableness) of these personal elements with impersonal standards. These judgements rely on (admittedly imperfect) processes of investigation and evidence which are deemed inappropriate for mediation.

This potential to circumvent the arguments underlying the need for legal protection again draws interesting parallels between conflict management discourses and the managing diversity approach discussed above³¹. Reflecting these similarities, recent case study findings indicate that the attempts to make conflict management a strategic issue may suffer the same contingency-based fate of equality in managing diversity (Saundry and Wibberley, 2014). Of greater relevance to the current discussion is the emerging similarity that organisations may be reluctant to try mediation where its relationship with their potential legal liability is uncertain (Harris et al, 2012). Employer reluctance or hesitance to use mediation is perhaps the favourable outcome where the alternative is for employers to seek to use mediation to potentially avoid responsibility or “sweep problems under the carpet” by making individuals responsible for resolving their own ‘misunderstandings’ where these are grounded in more systemic problems. The potential readiness to label situations of bullying, harassment and/or inappropriate behaviour short of bullying/harassment was considered above³² and is of particular concern.

This same fear of litigation (coupled with an alleged tendency for employees to “claim first, think later” (Confederation of British Industry, 2013:6)) has motivated many of the changes to employment law (and the removal of regulation) made by the coalition government (Busby, McDermont, Rose and Sales, 2013; Hepple, 2013). There is, however, evidence to suggest such fear is not motivated by the actual impact of regulation but rather a misunderstanding about or perception of that burden (Hepple, 2013; Jordan, Thomas, Kitching and Blackburn, 2013). This strengthens the argument that any question of the appropriateness of mediation necessitates an understanding of the way mediation relates to employment law and other formal processes. In addition to the conceptual arguments related to the importance of prioritising the impersonal, there is also therefore a practical need to address individualisation. The criticisms of mediation rooted in concerns over the privatisation of justice resulting from an increased use of ADR provide a helpful (and relevant) way of discussing these issues.

5.4 PRIVATISING JUSTICE

In addition (and related to) the individualisation issue, privatisation also returns the discussion to a number of the recurring themes, namely the positioning of courts in society and the role of justice.

³¹ p54

³² p58

The main arguments concerning the danger of privatising justice centre around the idea that a private *settlement* grounded in private interests rather than a public *judgment*, undermines the public right for disputes to be dealt with by those chosen to deliberate on and enforce social values (i.e. judges) (Fiss, 1984). The objections may therefore be considered in relation to the way in which private settlement deprives the legal system of developing precedents and of allowing those in positions of power (here employers) to escape being held to account for their actions.

Mulcahy (2013) argues that precedent setting through the (appellate) courts is important as courts use 'individual disputes to constitute and justify a particular view of how the social world we all live in is and ought to be' (:60). Central to this therefore is the idea discussed in the previous chapter that there are reasons certain conduct has been seen as objectionable by society and therefore should not be tolerated or settled. Private settlement may also lead to an inconsistent application of the law (Dolder, 2004; Harkavy, 1999) or to the application of a 'second class justice' (Edwards, 1986).

The second argument, escaping accountability, potentially excuses poor or unfair employer behaviour and shields such actions from public scrutiny (Mahony and Klass, 2008; Ridley-Duff and Bennett, 2011). Given the inherent power imbalance in the employment relationship and the role assigned to organisations here as societal institutions, privatisation potentially allows employers to ignore or deny any systematic or endemic problems in their workplace and may serve to limit the powers of employees to expose or challenge this even further. This possibility for ensuring the 'disaggregation' of collective complaints (Nader, 1979) is of particular concern in light of the arguments considered in the previous chapter³³.

These objections stem from the private and confidential nature of mediation (and other ADR procedures), a confidentiality which may operate to ensure only the parties to a mediation and the mediator are aware of what happens (CIPD, 2013:10; Acas, 2008).

To return again to Rawls, the courts therefore have an important role to play in providing social justice. Societal values and the associated standards should be publically knowable which, it may be recalled, is important for the legitimacy and sustainability of public reason and consensus around what are to be considered as reasonable principles and standards in a fair society (Rawls, 2001; 1997). It is important to note here that arguments of privatisation again serve to place justice, rather than fairness as a primary goal.

At this point this positioning of justice is arguably not problematic. It has been argued that fairness and justice are different things and that the latter is not necessarily *always* considered as a prerequisite for the former. However, it is accepted that when it comes to *public* adjudication and determination of what is to be seen as reasonable in a given situation, justice in an objective sense

³³ 4.4, p48

(i.e. determined by reference to collective, not personal perceptions of justice) should be treated as a necessary, although perhaps not sufficient component of fairness. This potentially subtle but nevertheless significant distinction should become more apparent as the discussion progresses.

Given the assumptions and leanings of this research, the privatisation arguments are inherently attractive. What is not attractive however, is the prospect of demonstrating how the current legal system operates to deliver on the functions outlined above. In the context of workplace mediation, this demonstration requires the consideration of privatisation in two respects. The first is the more commonly considered i.e. mediation operating to remove actions from public scrutiny in a societal sense. The second concerns the extreme narrowing of confidentiality which potentially shields scrutiny from anyone other than the parties involved i.e. mediation used to deny scrutiny in an organisational sense. The latter is perhaps a necessary component of the first but is nevertheless worthy of consideration in its own regard, especially when one returns to the complexity involved in workplace bullying and harassment.

Access to justice: Necessarily tied to law?

The differing legal statuses assigned to bullying and harassment provide fertile ground for a consideration of the role mediation might play in the workplace and is the starting point for addressing the question as to whether the privatisation arguments can only be applied to the legal system. In short, the answer to this question is, as will be argued here, no. Whilst it is accepted that the law and the courts can indeed play a vital role in a fair society, in practice focussing only on the relationship between mediation and the courts is to be concerned only with the tip of the 'iceberg' (Latreille, 2011:15).

Despite claims of an unreasonable and unsustainable increase in the number of ET claims, as was seen in the previous chapter, individuals, for many reasons, may choose or not feel able to report or challenge the way they are treated, meaning ET statistics represent only an extremely small proportion of negative (and even potentially unlawful) treatment at work (Colling, 2004; Dickens, 2012c; Twining, 1993).

Even where individuals do report the behaviour, a number of potentially prohibitive barriers to access the legal system need to be overcome. Although it is not a point which will be pursued here, one may see access to justice (or at least access to equal resources) concerns in light of Rawls's second principle (equality of opportunity) (Wertheimer, 1988). These barriers may be substantive and/or procedural.

Substantive barriers may take the form of qualifying criteria, for example the need to be an employee with two years continuous employment for unfair dismissal. This will serve to leave many of those in atypical employment without protection (Dickens, 2004). A further example is the (non)existence of specific legal protection (which, as has been seen is not necessarily the case for

bullying). A prior substantive barrier may operate in the form of an individual's lack of awareness of their rights and possible options (Dickens, 2012c; Perren, Roberts, Stafford and Hirsch, 2012a). This barrier may also be compounded by a lack of access to free or affordable legal advice (Busby and McDermont, 2012; Hudson, 2012).

This latter barrier, together with the procedural aspects immediately takes the discussion back to the cost and efficiency arguments considered above. Accessing ETs is potentially expensive for both the employee and the employer. With the introduction of ET fees in July 2013 (with a view to 'encourage mediation and arbitration'³⁴) the cost of lodging a claim for any of the jurisdictions which may cover bullying and/or harassment immediately adds £250 to the claimant's costs to lodge a claim, with the potential of having to pay a further £950 should the claim proceed to a hearing (The Employment Tribunal and the Employment Appeal Tribunal Fees Order 2013). Although the fees order did also establish a system for the remission of fees for those on lower incomes, it is complex (Schedule 3, *ibid*). These fees are in addition to any which may be incurred accessing legal advice and/or representation³⁵.

One need only to look at the disparity in the Ministry of Justice statistics between the number of claims submitted and those reaching a full hearing to see the tip of that publically knowable iceberg is even smaller than initially anticipated. Therefore, even where claims are lodged, they may be privately settled by conciliation or compromise (/settlement) agreements (Dickens, 2012b), meaning any public value in knowing about such cases is lost.

Even where a claim does make it to a hearing, the barriers are not overcome. Whilst it is possible for parties in an ET claim to represent themselves (Morris, 2012), the need to frame the arguments in legal terms can be highly disadvantageous to those with no legal background and who cannot access any, or sufficient legal advice. The adversarial nature and need for one party to win and the other to lose also opens the gates for advantages to be gained by those parties who have greater resources (and experience) (Ridley-Duff and Bennett, 2011). One may argue that such disparities operate to mitigate any fair operation of procedural justice and may therefore have an impact on the fairness or justice of any substantive outcome. Indeed it is the need for the disadvantaged 'have-nots' to overcome such barriers that leads Green (2005) to strongly argue in favour of the use of mediation to tackle employment discrimination.

Leaving aside the fairness of any such outcome for a moment, although in principle the outcome of a hearing is publically knowable, that does not mean that it will be publically known. This is particularly the case in first instance cases since full ET judgments are becoming increasingly rare and records are not easily available. For individuals who are not deliberately engaged with ET case law, they may only find out about the details and standard-setting through those cases deemed

³⁴ Ministry of Justice Press Release, 13 July 2012: Employment tribunal fees set to encourage mediation and arbitration

³⁵ i.e. in addition to those given on p71

newsworthy by the national (or perhaps local) press. The situation may be similar with employers. Unless an organisation is proactively concerned with staying informed, and has the resources to do so, awareness of the law (updated through the dissemination of the judgments) is likely to be limited (Perren, Roberts, Stafford and Hirsch, 2012b; 2012c).

The accountability arguments can similarly be derailed by a consideration of the number of private settlements and by a return to the consideration of the individual nature of remedies in employment law. For example, even where a successful claim for sexual harassment is brought there is limited scope for the claim to trigger wider changes in organisational behaviour and attitudes (Dickens, 2012a:212). The coalition government would no doubt counter this with an assertion that specific legal remedies to this effect are not necessary since they would expect employers 'at the sharp end of a tribunal finding' to make changes anyway (Government Equalities Office, 2012:8). Although no evidence was offered to support this, this was their reasoning for the proposed repeal of the wider recommendations provision in the EA 2010 (s124 (3) (b); GEO, 2012). There is something unsettling about relying on organisations deemed to have acted unlawfully to police their own behaviour but it is not surprising. Indeed, this attitude is not exclusive to this point but is rather endemic in arguments in favour of organisational conflict management and in the bullying and harassment literature i.e. the assumption employers are engaged, reflective and supportive. The reasons for distrusting this assumption were introduced in the previous chapter and will be explored in more detail below³⁶.

The purpose of highlighting these barriers is not to argue against the importance of recognising arguments of privatisation and to outline the limits of legal processes with a view to saying the concerns are overstated, far from it. The importance of law for demonstrating what is considered as a necessary value worthy of protection in a fair society was accepted above and is, as has been and will further be, argued invaluable in serving as a public point of reference for determining how standards of reasonableness should be set. What a consideration of the barriers does is to begin to highlight how the law and legal process alone is not sufficient. This is glaringly obvious in the simple acknowledgement of the persistence of stereotypical and structural barriers despite the existence of anti-discrimination legislation on the statute books for more than 40 years (Foster, 2004; Fredman, 2011). One may also extend these arguments to the potential "empty shell" character of organisational policies (Hoque and Noon, 2004).

The point then is not to argue for an abandonment or circumvention of the legal system but rather for a greater attention to the detail and implications of the relationship between the privatisation arguments and pre-legal measures. Even if one were to exclude harassment from the discussion, the precarious and complicated legal position relating to bullying justifies this extension.

³⁶ See p89-90

The scope of privatisation: wider than law

In addition to the insufficiency of law arguments, the need to broaden the focus is arguably necessitated by two further reasons. The first relates to the categorisation and aspirations of workplace mediation as an alternative to legal remedies, thus seeking to divorce the use of mediation from legal discourses. The second concerns the scope of mediation to address issues for which legal remedy is insufficient, unavailable (Latreille, Buscha and Conte, 2012:596) or extremely difficult to substantively pursue. The two are related and will therefore be dealt with together.

If the pursuit of legal routes is rife with barriers and inflexibility, proponents of mediation would argue that mediation can potentially offer unmitigated flexibility, or rather flexibility in outcome. This distinction is necessary as despite its frequent label as an informal approach, the process can be quite structured (Latreille, 2011:6). Facilitative mediation is not concerned with providing proof or evidence or framing disputes in legal terms and therefore is not concerned with rights (Hippensteele, 2006-2007:62) and because of this, parties are free to talk about the underlying issues. This benefit over the ET system is concisely summed up in this quote by a (then) Industrial Tribunal chair: 'People often have a generalised sense of injustice...They find it hard to appreciate that we are not concerned with a generalised sense of injustice...It may be important to the applicant but it is not important to us. We are in the business of applying the facts to the law' (Genn, 1993:403) (see also Goldberg and Shaw, 2010:242). At the risk of oversimplifying the issue, this potentially offers an insight into the reasons why even those who are successful in an ET adversarial process are not necessarily satisfied (Clark, Contrpois and Jefferys, 2012:562).

A further benefit of mediation is therefore not only its flexibility in scope but also its flexibility in outcome. The hope is the two parties are able to reach a mutually agreed solution which is not constrained by those available through formal and legal routes (Lieberman and Henry, 1986). It thus allows parties to tailor the outcome to the specific circumstances of their dispute (Stipanowich, 2004:846).

Satisfaction and success rates for mediation are routinely heralded as good (Bingham, 2004). The question however of what counts as success in mediation is again a potential minefield of ambiguity. A number of possible criteria may be considered and include: whether a resolution is reached (in writing or otherwise); whether parties are satisfied with the process and/or the outcome; whether the parties can continue to work together or perhaps whether the parties are 'transformed' (Bingham, 2004; Boon, Urwin and Karuk, 2011; Latreille, 2011; Saundry et al, 2013:7). Understanding how success is defined and whether it is defined uniformly by mediators, organisations and parties is therefore also an important part of understanding whether the use of mediation is fair.

With these characteristics the discussion again returns to the question of personal perceptions and standards of reasonableness. It seems that a departure from established standards and remedies

shifts the balance between the personal and impersonal standpoints much further towards a prioritisation of former. Given the emphasis placed on the importance of the impersonal in this research, this shift is a little uncomfortable. The assumption of plurality and the dismissal of one "right" way to order priorities however necessitate a consideration of why this may be seen as beneficial.

5.5 MEDIATION: A BENEFICIAL SHIFT TOWARDS THE PERSONAL?

A rejection of labels and the importance of perception, intention and confidentiality

Perhaps the most obvious benefit lies in the complexity involved in defining and labelling behaviour as bullying and/or harassment. The difficulties involved in this were considered in the previous chapter where it was seen that the need for evidence and objective determinations can be risky as it relies on the (not always fair) motives of third party decision makers.

The value of using labels such as bullying and harassment is doubted in mediation (Irvine, 2014) and may again be related to the importance of understanding the appropriate timing for mediation. It is interesting to explore the difference labels can make where mediation is used at different points: for example, either early in a dispute or where it is used following or in conjunction with formal processes where one party may have already been vindicated either to confirm or deny the application the label of bully (Saundry et al, 2013:17). In mediation, instead of seeking to endorse the un/reasonableness of the attributed labels, the emphasis is on understanding the meanings attached to the experiences (Jenkins, 2011). In discussing this one must return to the significance of perceptions and intention in bullying and harassment.

Mediation potentially provides a forum for parties to directly state their perceptions of the behaviour of the other party and of the intentions to the alleged perpetrator. The alleged perpetrator is then provided an equal opportunity to share their own perceptions and perhaps offer insight to their intention. Through a discussion (facilitated by the mediator) parties may then reach a joint understanding and can work towards an outcome that is mutually acceptable to them. Indeed, it is in a (rather ambiguous) distinction between 'actual' and 'perceived' bullying that one may find classifications drifting towards misunderstandings or personality clashes (Latreille, 2011:25). The emphasis here is on seeking a way forward with a view to hopefully preserving a continuing relationship (Gibbons, 2007). In such discussions, one can see how the dynamics of empowerment may operate. One can also clearly see why mediation is seen as particularly appropriate for addressing a situation where it is not clear whether the behaviour amounts to bullying (Jenkins, 2011). Crucially for this research it enables the parties themselves to personally determine what they consider to be reasonable conduct and a fair resolution.

There are also consequences which flow from participation or association with formal bullying and harassment processes. These include the stigma or reputational damage which potentially attaches

to the accused perpetrator and the alleged victim: a confidential and private process can operate to mitigate public knowledge of parties' involvement (Hippensteele, 2006-2007; Harkavy, 1999). Another relates to the need to perhaps disclose private personal details in an effort to demonstrate the strength and credibility of a case. An example may be feeling like it is necessary to disclose sexual orientation to pursue a complaint about homophobic behaviour. The confidential nature is therefore 'crucial...for parties to be willing to discuss matters openly' (Latreille, 2011:35).

Being able to discuss matters in an open and honest way is important for helping the parties to rebuild trust into their relationship (Lieberman and Henry, 1986:428). Further, even though it is not necessarily exclusive to mediation, a private resolution potentially prevents any consequences which arise beyond the end of a claim, for example an impact on job prospects (Drinkwater, Latreille and Knight, 2011).

Outcome: A concern for fairness but not justice?

From a fairness perspective these aspects seem consistent with the definitions of fairness provided in chapter 3. Similarly, from a procedural justice point of view (here procedural justice includes interactional justice) it is also attractive, not only from a subjective personal perspective but also in objective sense too. However, depending on the outcome, the extent to which it may be seen to be achieving substantive justice in an impersonal sense may be more difficult to reconcile. This may be particularly problematic where the outcome chosen is one which is less than that which would have been available through formal mechanisms.

Here one must return to the distinction between fairness and justice and a situation in which an individual may be concerned with fairness but not justice, or at least not substantive justice. This is arguably tied up with the motivations in challenging the behaviour. For example, if one is concerned with assigning blame and punishment (as organisational justice is), an apology and a promise to not repeat the actions may not be seen as a just outcome since it does not meet the expectations of the individual. If, however, the aim is to get the behaviour to stop (Bond, 1996-1997) then an outcome which achieves that may be seen to deliver some form of substantive justice. Such substantive justice however would not necessarily conform to the collective values of social justice (through distributive justice for example). Green (2005) would not see this lack of conformity as particularly problematic since justice in mediation depends on the subjective views of the parties involved. Green argues that mediation can be used to deliver social justice in the context of equality (employment discrimination), but that social justice should only be of relevance where it is a concern for the parties involved and required for their self-actualisation (2005:351). For him, public and societal concerns will still be addressed because 'there will be enough disputes that parties cannot resolve in mediation' (2005:351).

This conclusion again begs the question of what the purpose of mediation is. To answer this one must recall the statement above that facilitative mediation strives to be something entirely different

in nature and purpose to adversarial processes. Acknowledging this further begs the question of whether justice (or least anything beyond procedural justice) is the appropriate criteria to apply to mediation (Bennett, 2013:204; Bingham, Hallberlin, Walker and Chung, 2009; Saundry et al, 2013:20).

Certainly in respect of the privatisation of justice arguments one may accept that the objection arises not because ADR (and mediation specifically) was designed to be an exact substitute for the court process but because mediation is intended as an alternative, and therefore different approach³⁷. It may then be not that justice *per se* is inappropriate or irrelevant but rather forms which are traditionally associated with adversarial procedures. This is perhaps illustrated by the clear parallels in arguments over the benefits and disadvantages in the use of restorative justice methods and those in ADR more broadly, for example a concern over privatisation and the acceptance of outcomes lesser than those imposed by law (for example see Menkel-Meadow, 2007 for a good overview of restorative justice).

However, one may make an interesting distinction between restorative justice methods and the use of mediation in the circumstances envisioned above over the role of blame and punishment. In restorative justice the perpetrator (offender) admits fault and there is a punitive component and a concern with both blame and forgiveness (Bradfield and Aquino, 1999) whereas this is not necessarily the case in workplace mediation. Mediation is at least not concerned with blame and punishment and at worst actively rejects its language (Keashly and Nowell, 2011; Saam, 2010:55). The comparison between restorative justice and mediation is therefore not perfect but it does nevertheless support the need to acknowledge the existence of multiple forms of justice argued for in chapter 3.

The unclear role of justice notwithstanding, the question still remains as to whether or not an argument can be made for accepting a resolution or outcome as fair on the basis that the parties involved perceive it as fair, even if such outcome falls short of what may objectively be considered fair.

The answer perhaps lies in a deeper understanding of the nature and process dynamics of mediation and in the relationship between workplace mediation, formal procedures and the influence of employment law. Although it may seem inconsistent with arguments that mediation is to be seen as something different and not concerned with rights, it is arguably a practical necessity that it be retained since it provides the boundaries within which organisations should operate. This is both a conceptual and a practical compromise. It is a position which is supported (albeit usually without the explicit collective and societal element) by many who argue for multi-pronged approaches to dealing with workplace conflict.

³⁷ For a process designed to be a substitute see Dolder (2004) on Acas Arbitration

The need for organisations to adopt multiple approaches is reflected across disciplines, for example see Lipsky and Avgar (2008-2009) and Bendersky (2007) (organisational conflict management), Saam, (2010) and Hunt, Davidson, Fielden and Hoel (2010) (bullying and harassment). In accepting this it is also important to acknowledge a characteristic of mediation which has the potential to dampen objections to the use of mediation (or at least workplace mediation), the voluntary, non-binding nature means that mediation is not an either/or alternative since attempting mediation does not bar the pursuit of other options (Bennett, 2013).

Having reached this point, the remainder of the chapter will now turn to address the need to gain a greater understanding of the mechanics of mediation. It will be argued that it is only through increasing knowledge of the use of mediation in practice that one can begin to better understand how to answer the question as to whether mediation is to be seen as both feasible and fair for bullying and harassment. Finally, it will return to the arguments of privatisation and the idea of transformation and consider how this may feed into arguments of the need to more explicitly consider the operation and impact of privatising dispute resolution at the organisational level.

5.6 MEDIATION IN PRACTICE

A voluntary process?

At present the decision to try mediation is a voluntary one. Unlike Gibbons (who rejected the need), the 2011 BIS consultation did not consider the question of mandatory mediation, focusing instead on early conciliation.

This voluntary nature of workplace mediation provides a hurdle for arguing about any unfairness arising from a prioritisation of personal perceptions. For example, if a person is willing to try mediation if it will offer the opportunity of a quicker resolution and the chance to keep their job, it is perhaps difficult to reasonably criticise or challenge this decision. This stands even where they may otherwise have had a legitimate formal complaint. Where that individual has genuinely chosen to try mediation, it may be difficult to object on grounds other than the fact one may not agree with their choice. Indeed this is the premise upon which Ridley-Duff and Bennett (2011) and Bennett (2013) argue for the radical potential of mediation.

For them, individual choice frees parties from having to conform to 'pre-agreed' standards which are set by 'an unchallenged elite' (Bennett, 2013:193-194). This is grounded in a participatory sense of democracy rather than the representative sense underpinning Rawls. Their approach therefore takes a very different starting point to the argument advanced here and is another reason why an alternative framework is necessary.

Ridley-Duff and Bennett's stance notwithstanding, a reasonable objection from within the argument advanced here may arise in the form of questioning how voluntary the decision to try mediation really is (Saundry et al, 2013). Figures from Acas found that whilst 75% of participants in Acas

delivered mediations (2011-2012) had felt their decision to participate was voluntary (in the sense they could have declined to participate), 19% had felt they could not say no and a further 6% were given no choice (Acas, 2012:4). In this one must again consider the factors which may influence an individual's decision.

Many of these influences have been considered in the preceding chapters and may be related to personal choices and options, for example a sense of job insecurity. They may also come from other pressures such as organisational endorsement (through a formal policy or otherwise) of mediation (Latreille, 2011:33; Saundry and Wibberley, 2012:31). Understanding these pressures and influences and how they are realised through the way in which mediation is promoted and deployed in practice is necessary for assessing feasibility and fairness.

It follows from this that a further, related point, is the matter of whose decision it is to proceed to mediation. In answering this question one may actually find support for the need to have an evaluation not solely based on individual choice and perception. In internal schemes, for example, this function may be served by a gatekeeper who initially decides whether a case is suitable to proceed to mediation (Bennett, 2013). Such a decision may be made after it has been determined no legal duty of care issue is involved (Latreille, 2011; Saundry et al, 2013). It is therefore again necessary to consider the role an organisation plays in the mediation process. If organisations are acting as gatekeepers, it is important to ensure they have a greater understanding of when mediation is appropriate and when it is not. It is to be hoped that an ultimate gatekeeping role will be performed by the selected mediator but much in this hope is pinned on the skill and integrity of the mediator. Given the lack of regulation, one may question the extent to which mediators are sufficiently trained to make such decisions, especially where they involve an assessment of the parties' capacity to participate (Crawford, Dabney, Filner and Maida, 2003; Goldberg and Shaw, 2010).

Allowing a party to proceed to mediation without understanding the pressures that individuals may be under should be a concern of all involved in the mediation process and may be of particular concern where a party is in a vulnerable position. Accounting for the vulnerability of parties is of great concern in situations of bullying and harassment.

(Un)problematic power imbalances?

A number of the arguments in favour of the use of mediation for bullying and harassment were considered above, e.g. mediation allowing parties to assign their own meaning to the complex experiences. In so doing it passes the control to the parties involved. Harkavy (1999) argues that in cases of sexual harassment this is mediation's biggest advantage since 'for victims of sexual harassment, the prospect of controlling a situation instead of being controlled by it may be critical to recovering self-esteem, continuing employment and stabilising personal situations' (:160-161). This is an approach also favoured by Gazeley (1997) who argued that the flexibility permitted by

mediation can result in 'cathartic and creative solutions' which are more 'meaningful' to the victim than those available through other processes (:634).

The arguments against the use of mediation, however, frame the situation in a far less positive light. Instead of seeing mediation as an opportunity for empowerment and shared understanding and development, it may be seen as a potentially dangerous process which can serve to further disadvantage or harm a vulnerable person (Keashly and Nowell, 2003). Here the objection focuses around the apparent inconsistency between the power imbalances in bullying and the assumptions of equal power in mediation (Dolder, 2004).

According to Keashly and Nowell (2011), the problem arises because victims of bullying and harassment 'are often diminished and disempowered as a result of the experience, undermining their abilities to be assertive in dealing directly with the actor' (:438). This view contrasts quite starkly with that expressed by Harkavy above. One can certainly see the logic (and indeed danger) in Keashly and Nowell's point, and failure to acknowledge and account for power imbalances may have implications for the extent to which mediation may be seen as fair in any sense. This is a (related) addition to privatisation arguments.

Here one must return to the different sources of power considered in Chapter 4, e.g. vertical relationships and social sources of power. Although the research in the UK has not advanced to consider the matter (or at least not in the workplace), there is an indication from other countries that mediation may operate to the disadvantage of minority groups (Delgado, Dunn, Brown, Lee and Hubbert, 1985; Rack, 1996) and women (Charkoudian and Wayne, 2010; Grillo, 1991). When one recalls the stereotypes (and cultural influences) associated with certain characteristics and response strategies in the previous chapter, this is perhaps not surprising. Additional sources of power imbalance may arise from a discrepancy in communication or language skills (Bush and Folger, 2012).

Whereas there is potential for this to be mitigated in formal procedures by the use of representatives, the attitude towards (and prevalence of) the use of representatives in mediation is not really consistent on the information available: for example see Saundry et al, 2013:23 which indicates it is not the norm and may actually be considered a negative contrasted with Unwin et al (2011) who found the presence of representatives to be high, albeit in the context of judicial mediation. That the use of representatives in mediation would not necessarily be encouraged is not surprising as their presence would potentially provide a source of tension in arguments over the importance of individual control, empowerment and self-determination (Latreille, 2011:2).

Acknowledging the importance of power therefore requires attention to be paid to the characteristics and the relative positions of the parties in a dispute (Wiseman and Poitras, 2002). In particular, given the dominance of downwards bullying in the UK, understanding the dynamics surrounding the balancing of power in mediation and how this is then transposed back into the

workplace is an unavoidable enquiry if one is to address the question of the feasibility and fairness of using mediation. This is important given the fact a mediator is unable to 'change the fundamental power relationship that exists between parties' (Sherman, 2003:46); and especially since figures from Acas indicate that '70% of mediations involved a dispute where one party had authority over the counterparty' (Acas, 2012:1). Whilst the motivations and solutions for addressing power imbalance differ, this research is in agreement with Ridley-Duff and Bennett (2011) over the importance of accounting for the inherent nature of the employment relationship in any discussion of the appropriateness of mediation.

Having accepted the central importance of power imbalance, one must return to the nature of the mediation process and what it holds for dealing with such imbalances.

Mediator Role: Balancing power imbalances

Those who argue for the use of mediation in bullying and harassment counter these arguments by reference to the safeguards built in to the mediation process and this is arguably where an unhelpful gap between academic arguments and practitioner practice (and rhetoric) exists. Broad appeals are made to the meaning of impartiality and the significance of the mediator role in "levelling the playing field" (Van Gramberg, 2006). This is, however, perhaps more easily said than done and one may question how realistic it is for a mediator to be genuinely neutral (Sherman, 2003) and how compatible balancing power in neutral facilitative mediation is (Dolder, 2004; Lande, 2000). Techniques used by mediators in pursuit of this neutrality-and crucially the way they are perceived by the parties-are an important part of judging whether mediation is fair (and possibly also just)³⁸.

Although mediators in his research were confident mediation could sufficiently deal with power imbalance, Bennett (2013) gives little insight into how. Possible mediator techniques were identified in a practice noted by Jenkins (2011) who argues mediators must support both parties, ensure they are familiar with the mediation process, reality test options and hold individual sessions (:32). She also states a mediator should ensure 'both parties are aware of their rights' (:32). This is particularly interesting considering the assumption above that facilitative mediation is not about rights. The singling out of individual meetings is also potentially important as there is arguably a tendency (adhered to thus far here) to talk about mediation as a process without distinguishing between the stages of that process or considering the potentially differing roles individual and joint meetings can play in allowing a mediator to control the process and manage the parties (Acas/CIPD, 2013).

A greater presence of mediator voice and experience in UK work would therefore be very beneficial. It is argued that the key to an increased understanding of the arguments for the

³⁸ Chapter 3, pp42-43

repeated call of the appropriateness of mediation for bullying lies in a greater practical understanding of the techniques used by mediators in practice.

Mediator Influence and Power

In accepting the importance of the role of the mediator, one must therefore also ensure attention is paid to the power and the influence of the mediator in the mediation process (Bush and Folger, 2012; Dolder, 2004; Honoroff and Opatow, 2007). Coben (2001; 2004) is particularly sceptical of the techniques used by mediators to influence the parties and the mediation process. He argues that the rhetoric of empowerment (self-determination) and of mediator neutrality, together with the lack of transparency, provides scope for inevitable 'mediator manipulation and deception' (Coben, 2004:66). The different roles a mediator may adopt were outlined above³⁹ but if one is to acknowledge the significance of the role of the mediator in the process it is necessary to adopt a critical approach.

An important element of this critical approach is to understand the relationship between mediator and the organisation (Jenkins, 2011). Indeed, in addition (but related) to the need for organisations to retain their responsibility for upholding standards, this is a further reason to reject Nabatchi et al's (2007) limiting of the relationships in mediation to the parties and the mediator. It also begs the question as to the extent to which mediators are aware of the influence they may have over the parties and, where they are aware, what they do to try and manage that influence (a question asked but not answered by Herrman, Hollett, Eaker and Gale, 2003). Indeed, Coben (2001) views mediator self-regulation and self-restraint 'a fragile safety net', especially when faced with pressure to reach a resolution (:6).

One may argue that, given the cost and efficiency emphasis in mediation rhetoric and the crowded supply side of mediation providers, the motives of mediators may be perceived (perhaps correctly) as lying not with the interests of the parties but rather with those of the organisation or with themselves and a desire for repeat business (Dolder, 2004; Van Gramberg, 2006). If an employer pays for an external mediator their neutrality may be doubted (Dolder, 2004; Harris et al, 2012:618). It would therefore be useful to understand not only how participants perceive mediators but also to learn more about the techniques used by mediators to demonstrate their impartiality to parties.

A further concern in this is the need to return to the question of how success in mediation is determined and indeed whether the goal lies with short term solutions (to indicate value for money) or the pursuit of a sustainable outcome (Dickens, 2012b:32). Saundry et al (2013) found a number of participants 'did not feel that the underlying issues were explored and that the mediator was directing the parties to a solution that was fundamentally unsustainable' (2013:24). This was

³⁹ p69

also not helped by the short time period involved (sometimes only one or two days for both individual and joint meetings) which meant parties felt they did not have time to reflect during the process (Saundry et al, 2013:26). It was further felt that continued support through follow up contact with the mediator would have been beneficial (and aided sustainability of outcome) but where an external mediator was used this option was not provided (2013:37). These observations were related to the resources (read money) organisations were willing to commit to the process (2013:27) and demonstrate how the use of mediation may easily be seen as transactional, rather than transformational.

This last statement leads the discussion onto its final points, a consideration of the transformational nature of mediation and the chances of this being realised in practice.

The scope of impact and the incompatibility of confidential and transformation

Just as there seemed to be an inherent incompatibility between the assumptions about power in bullying and those in mediation, there is an apparent inconsistency in seeing how cultural change and transformation can arise from a process which is, at its core, private and confidential. Here one must make a brief distinction between the transformational nature of mediation on an individual basis (i.e. a change in participant attitudes) and transformation in a wider sense (i.e. to drive organisational and cultural change). The two are related but arguably have rather different prospects of being realised.

As was stated above, this transformation supposedly arises from the empowering nature of mediation and from equipping those who participate with a new way of approaching future conflict and of understanding others (Bush and Folger, 2012). Although there is limited evidence to demonstrate that this is an inevitable consequence of (party) engagement with the mediation process, such changes do occur (Saundry et al, 2013:28-29). Hoskins and Stolz (2003) argue however that the change may not be immediate but rather become apparent over time. There are signs however that a greater impact is felt by those who receive mediation training (as part of an internal scheme) (Saundry and Wibberley, 2014).

Where mediation is used to challenge behaviour grounded in or associated with protected characteristics, particularly if it arises from a stereotypical assumption or cultural misunderstanding, one may ask whether it is appropriate and sufficient to rely on changing attitudes one at a time in the hope the individuals in the parties involved then take that change forward. Even if one is satisfied the parties voluntarily chose and participated in mediation and that the mediation was conducted in a fair way, it is still perhaps difficult to accept transformation in this sense is sufficient.

To justify this conclusion a return to understanding how an organisation can be understood to be and used as an institution of society, charged with ensuring standards of reasonableness are

upheld is necessary. To return to the idea of Rawls's society being both reasonable and rational, one may argue that employers may see the use of mediation as rationally sound. This, however, does not mean it is also a reasonable decision and in a conflict between reason and rationality, the former should win (Rawls, 2001:82). Although it was argued all should support principles of dignity, here it is important to remember organisations (and managers) have different responsibilities to individuals in this regard, and, as has been argued, this should be reflected in mediation discourses.

The key to accommodating this greater role in reconciling personal and impersonal standards of reasonableness and fairness may be found in a greater understanding of what confidentiality in mediation means and how it operates in practice. Crucially, Jenkins (2011) comments that 'confidentiality in mediation is never absolute' (:33). There is currently little evidence available on what this means but brief insights into this non-absolute sense can be found from the Acas/CIPD (2013:10) who note it may be broken where a 'potentially unlawful act' is involved and also from Saundry et al (2013): 'whether the outcome or details of the mediation are revealed to managers and colleagues is a matter for the parties' (:6) (see also Latreille, 2011:365-37). Interestingly given the focus of this research, the participants in Bennett's (2013) research indicated mediation was inappropriate when a public outcome is needed. Unfortunately, however, there is no expansion on this point.

Throughout this chapter, a great emphasis has been placed on the private and confidential nature of mediation or perhaps a naïve conception of it. Cynically (or maybe realistically) some, such as Honeyman and McAdoo (2000) and Lande (2000) question how far it can be ensured that what is said in a mediation actually "stays in the room" and is not deliberately or inadvertently revealed or exposed to others. One may suggest that the answer to such a criticism again lies in learning more about the way confidentiality operates in practice.

Leaving this criticism aside, one may reiterate that shifting of responsibility for disclosure towards individuals is insufficient and particularly worrying where the behaviour involved is indicative of wider organisational (and even societal) behaviour which breaches standards of reasonableness e.g. sexist or racist stereotypes. Again, the privatisation of justice arguments play an important role here.

Whilst the possibility of changing attitudes on an incremental basis, at a 'micro-level' rather than 'macro-level' (Bush and Folger, 2012:45) (i.e. one mediation at a time) is not to be dismissed, a private mediation process deprives other members of the organisation from assessing and understanding the permitted standards of behaviour. It also allows an organisation to potentially abdicate or avoid accountability for their role in the situation (Saam, 2010).

The role organisational culture can play in perpetuating and sustaining negative behaviours was considered in the previous chapter. These consequences reflect the observations of Acker (2006)

who argued that by failing to visibly address inequalities, prejudices and stereotypes, these can be legitimised through the informal interactions of an organisation.

Where this is the case it arguably becomes increasingly difficult for anyone to challenge the behaviour without recourse to formal or even legal procedures (see chapter 4). In such a circumstance, where confidential mediation is used, it becomes difficult to argue that individuals can have any trust in the organisation since witnesses 'receive little or no information regarding the dispensation of the case [and] may contribute to their sense that the organisation tolerates these behaviours, a sense that would hence reduce their likelihood of reporting bullying' (Keashly and Nowell, 2011:438).

It is (optimistically) argued however that these consequences do not necessarily have to follow from the use of mediation in the workplace. Seeking to explore the ways in which confidentiality can be adapted in practice may provide ways of compromising between the individual choice and collective interests at stake in mediation. Ensuring that the organisational role and responsibility is not forgotten in this is absolutely crucial. Here however the argument finds itself having to deal with the familiar problem of the assumption that organisations are supportive environments, ready and willing to question and evaluate their own cultures and actions. Indeed, success of mediation may depend on "buy-in" from both senior management (Latreille, 2011:3) and line managers (Saundry and Wibberley, 2012) and on high levels of trust in the employment relationship (Saundry and Wibberley, 2014). The many reasons why this is not the case have been considered in this and the previous two chapters. It is on that rather pessimistic note that the discussion reaches its conclusion.

5.7 CONCLUSION: FINISHING THE MAP

Through the use of Rawls's thought experiment, tailored by reference to Nagel and appropriated and adapted through an interdisciplinary lens, chapters 2-5 have sought to present a contextualised discussion of the factors which may influence perceptions of bullying and harassment and the appropriateness of mediation, why they may be considered important and how they may relate to one another. They sought to justify the need to consider and discuss questions about the appropriateness of the use of mediation to address workplace bullying and harassment against the backdrop of a concern for fairness.

A distinction was drawn between fairness and justice. It was argued that whilst fairness should always be a concern, this is not the case with justice. Justice (in a number of forms) may often be a concern but this may not necessarily be true when one is talking about mediation.

It was argued that in addressing the appropriateness question, one must carefully consider whether prominence should be given to personal perceptions of what is reasonable or to collective, objective (impersonal) standards of reasonableness. Where bullying and harassment are

concerned, it was argued that their grounding in dignity necessitated a prioritising of the impersonal. It was accepted however that this would not be universally supported and may even be somewhat incompatible with many views on mediation and its emphasis on individual choice and empowerment. In facilitating a potential compromise between the two positions, a greater role for organisations in mediation was suggested, although the feasibility of this was doubted.

A call was made for the need to gain a greater understanding of the way in which individuals think about and understand bullying and harassment and for the need to seek insights into the way in which mediation operates in practice. In so doing, it is hoped that one may be better placed to understand the dynamics between bullying and harassment and workplace mediation.

The review of the literature began by stating the need to be open and transparent about assumptions made and how these feed into the arguments presented. It has been accepted and argued throughout that the approach presenting this research represents one view which may be taken. To return to Riskin's analogy, what these chapters have therefore sought to do 'is to inform and remind travellers of choices and decisions that can enrich their journeys' (2003:33).

CHAPTER 6. METHODOLOGY

6.1 INTRODUCTION

In the previous section the conceptual and theoretical arguments guiding this research were explored and the gaps for further inquiry were identified. This chapter will consider the methodological approach adopted by the research: critical realism. It will outline what critical realism is and how it has informed the preceding discussion before moving on to discuss how this has guided the research design deployed to explore the gaps identified in the previous chapters. A mixed method design comprising an initial qualitative case study pilot, followed by a questionnaire, semi-structured interviews and focus groups was undertaken. The reasons for adopting a mixed method approach will be discussed and the choice justified against the potential problems (particularly in respect of how to evaluate the quality of the research and choices for analysis). Although each stage of the research will then be discussed sequentially, it will be argued that the most appropriate way to evaluate the research is to consider it as a whole i.e. the integrated sum of the parts.

Given the potentially novel methodological approach and research design, it is necessary to consider each aspect in a greater depth than would perhaps be the case had the approach adopted been more "typical". The discussion in this chapter seeks to establish how the assumptions and arguments presented above and throughout are consistent with critical realism and the research design, lending an internal coherency to the thesis.

First however it is useful to restate the research questions.

6.2 RESEARCH QUESTIONS

The overarching question is: To what extent is workplace mediation appropriate for dealing with workplace bullying and harassment?

In order to explore this question, a number of further questions are relevant.

1. What factors influence whether a situation is perceived as bullying and/or harassment?
2. What factors influence whether mediation is perceived as appropriate?
3. Why are certain factors considered to be influential in determining perceptions of bullying and/or harassment?
4. Why are certain factors considered to be influential in determining whether mediation is perceived as appropriate?
5. How do the factors associated with perceptions of bullying and/or harassment and those associated with the appropriateness of mediation relate to each other?

6.3 THE INFLUENCE OF CRITICAL REALISM

In the most basic of terms, critical realism accepts that there is a 'mind-independent reality' that 'exists independent of our concepts and knowledge of it' (Danermark, Ekstrom, Jakobsen and Karlsson, 2002:20) but that our knowledge of that reality is both socially defined and socially produced (Danermark et al, 2002:5). It therefore argues for an objective ontology but a subjective epistemology. For critical realists, reality is divided into three ontological domains: the real, the actual and the empirical (Bhaskar, 1978:56). Realists seek to understand the real through the empirical and actual (Danermark et al, 2002:21). Critical realism accepts that society is structured and that these structures (e.g. the employment relationship) guide and constrain individual actions (Sayer, 2000:11; Danermark et al, 2002:56). However, since these structures are not visible or directly observable one can only observe their effects (Sayer, 2000:11-12); further, merely observing an event can tell us little, if anything about what has caused the event or about its meaning (Bhaskar, 1998). So, in the current context for example, merely observing or recording an event of what may be described as bullying or harassments can tell us nothing about why those particular words or actions caused that particular person to react in a negative way and it provides no illumination as to why the whole situation may be considered as problematic at all.

It is therefore important to acknowledge that there is a need to distinguish between an event or an experience and what caused it (Danermark et al, 2002:5). An important component in this is seeking to understand why, in those circumstances, an event manifested and was experienced in a particular way. In critical realism, causes behind an event are to be found in generative mechanisms which 'combine to generate the flux of the phenomena that constitute the actual states and happenings of the world' (Bhaskar, 1998:34). At any given time there are multiple generative mechanisms in existence, sometimes acting to 'reinforce one another' and sometimes to 'frustrate the manifestations of each other' (Danermark et al, 2002:56). There are circumstances where generative mechanisms may be triggered by a particular action and others where that same action would trigger different mechanisms, or where the same mechanism would be triggered but would be outweighed or counteracted by another (Danermark et al, 2002:58). Because of this it is necessary to accept that society is an open system making 'predicting social events and processes...problematic' (Danermark et al, 2002:68). Further, it is therefore not possible to presuppose a single causal power or a single generative mechanism which would provide a definitive explanation for a particular social phenomenon (Bhaskar and Lawson, 1998:15).

These characteristics have an important consequence which reflects the assumptions outlined in chapter 2 and centre around the acceptance that the aim of the research is not and cannot be to provide a single, prescriptive and predictive framework. Instead, it potentially provides a way of explaining how an individual, for example a woman, may experience and choose to respond to inappropriate and potentially sexist behaviour in a different way to a man. In such a case, the structures and generative mechanisms at play (those surrounding sexism, workplace structure,

fairness for example) interact and are triggered (or not triggered) in different ways to produce differing results. The causal explanation and meaning exists in the real and actual domains and can only be accessed through a context-dependent (Sayer, 1992:40) and subjective interpretation of the observed events which result from the triggering of certain mechanisms. The aim for the framework is therefore to try and uncover what mechanisms (factors) *may* be present and to understand the ways these *may* be triggered and *may* interact and in which circumstances.

It is important to note that whilst individual choice as to the relative importance of different mechanisms in any given circumstance is a factor, it is not the sole determinant and operates within the broader societal structures and shared knowledge of what is considered as valuable and important to society. This is characterised in critical realism by arguing that reality is not only structured but it is also stratified (Bhaskar, 1978). The strata are hierarchically ordered and in higher strata, certain powers operate to create a 'pseudo-closed system' (Danermark et al, 2002:68). Examples of pseudo-closed systems include the legal system and 'the organisation of working life...[and] are the result of a conscious striving to make society...more controllable in relation to peoples' different aims' (Danermark et al, 2002:68). This attempt, however, is somewhat contrived since society is constantly changing, although change may be slow. An important (and relevant) example of this is the introduction of anti-discrimination legislation and persistence of racism. Despite a shift in societal attitudes and the introduction of specific interventions, change or transformation may be a gradual process due to the impact of past generations and residual generative mechanisms and structures (e.g. institutional racism) (Archer, 1998:363-366). This again has important implications for the research under discussion. The first is that whilst it is accepted that there is no single predictive ordering or path to be sought, the structure offered by the pseudo-closed systems provides a means for prioritising and recommending certain explanations and preferred choices. The second is that it highlights the need to understand how individuals interpret and make sense of certain situations, as this is a way of accessing the generative mechanisms and structures which operate and are reproduced through individual and collective action. This second implication returns the discussion to the opening assertion that knowledge is socially defined and socially determined. A key component of this is accepting the worth in accessing "common sense" meanings assigned to concepts, at least as a starting point. It is through the 'intersubjectivity' of a shared language that concepts derive meaning (Danermark et al, 2002:29; Sayer, 1992:22). This intersubjectivity of meaning can form the basis upon which social science can begin to both understand and question societal construction of meaning (Sayer, 1992:39). For this reason focus groups are very appropriate for this research.

The critical realist perspective is therefore embedded in the theoretical assumptions and arguments offered throughout this thesis and necessarily guided the construction of the research design.

6.4 JUSTIFYING MIXED METHODS

Adopting an approach informed by critical realism does not automatically necessitate the use of a particular research design (Van der Ven, 2007:63). The complex and stratified nature of reality accepts that different methods and different disciplines can offer explanations of the same phenomena and in doing so it sees a value in multidisciplinary research (Sayer, 1992). In accepting our knowledge can only ever be partial, any information which may help provide an explanation is to be welcomed. Critical realism therefore acknowledges the value which can be offered by a mixed method design (Modell, 2009; Zachariadis, Scott and Barrett, 2013). The mixed method approach adopted here seeks to combine quantitative methods with qualitative methods.

Whilst it is possible to say that critical realism does not necessitate the use of a particular research design, there is an argument that, given its assumptions about the nature of society and the nature of knowledge-and indeed what it is important to know-qualitative methods offer a more comfortable "fit" than quantitative ones (Sayer, 1992; Danermark et al, 2002; Mingers, 2004). There is an ongoing debate about how to reconcile or at least accommodate quantitative and qualitative methods in a mixed design, much of which is focused around the (apparently) necessarily conflicting positions of positivism (quantitative) and interpretivism (qualitative) (Modell, 2009; Bryman, 2007; Maxwell and Loomis, 2003; Tashakkori and Teddlie, 1998). For present purposes this debate is largely unhelpful.

The use of both quantitative and qualitative methods here seeks to divorce the methods from their traditional paradigmatic associations but in contrast to the pragmatist approach favoured by some mixed method advocates (notably Tashakkori and Teddlie) it does not seek to divorce it from methodological considerations altogether (Danermark et al, 2002:152).

Here the aim was to utilise quantitative and qualitative methods in a way which is consistent with a critical realist approach. In critical realism the guiding force is the objects of study (here bullying, harassment, mediation and fairness) with this driving force a 'critical methodological pluralism' is permitted (Danermark et al, 2002:152). The relationship between the different methods is dictated by the adopted methodology, research question(s) (Tashakkori and Creswell, 2007; Zachariadis et al, 2013) and the purpose for which a mixed method approach is deployed (Bryman, 2006a; Howe, 2012). Here the purpose for using mixed methods was to aid with the development of theory (Danermark et al, 2002:153). The different methods were chosen since they would provide a way of identifying and accessing the varying perspectives of the different actors and provide a way of navigating through the complexity of workplace bullying/harassment. Combining the findings from the different stages allows the research to offer an integrated framework to help explain and facilitate understanding of workplace bullying and harassment and mediation (Hammersley, 2008). It was therefore necessary to utilise a combination of methods to 'achieve a kaleidoscopic or prismatic view' since this offers a greater opportunity to capture the nuances and complexity of the

inquiry in a way that individual methods alone would not (Sandelwoski, 2003:329; Cowie et al, 2002).

The overall structure of the research design is given in figure 2. As each stage was designed to inform the next, the design was sequential (Creswell, Plano Clark and Garrett, 2008:69). Whilst there is a mix of both quantitative and qualitative methods (both within and between stages) and all have been integrated into the final framework, there is a greater number of qualitative methods and this is reflected in the emphasis placed on accessing a deeper understanding and on retaining context inherent in the critical realist design. This is not to say that the questionnaire stage and the quantitative data is being treated as inferior, rather whilst it is utilised in pursuit of the same question and is integrated in the final framework, the role of statistics here is limited to that of description, rather than prediction or explanation. This role is consistent with the positioning of statistics in critical realism (Ackroyd, 2004; Danermark et al, 2002; Mingers, 2004; Sayer, 1992) and therefore placing an equal emphasis on quantitative and qualitative data was not appropriate in the present design.

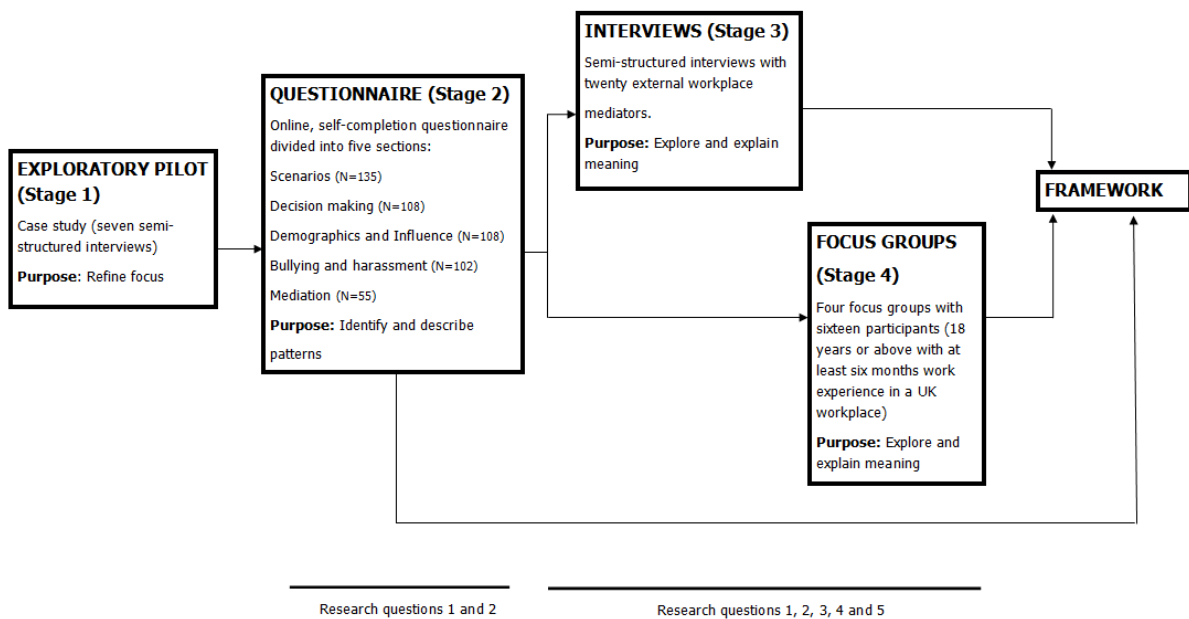


Figure 2. Overview of mixed method research design

This emphasis, together with the fact the stages were not designed or intended to serve as discrete, stand-alone empirical contributions, but to be used in a symbiotic way to aid the development of theory has important implications for assessing the quality of the research.

Although options have been presented in the literature (for example Tashakkorri and Teddlie, 2008; Onwuegbuzie and Johnson, 2006), there is no established or agreed approach as to how mixed methods research should be evaluated (Bryman, 2006b; Ihantola and Kihn, 2011). For

present purposes the dilemma is to find an approach which is consistent with critical realism, which, arguably the current frameworks are not. This is particularly difficult given the emphasis placed on context and complexity in critical realism and the implications this has for the way the use of quantitative data is characterised.

Limiting the use of statistics to description makes conformity to many of the accepted validity and reliability criteria difficult or inappropriate (Danermark et al, 2002; Mingers, 2004; Modell, 2009). As critical realism values a divergence of results, internal validity criteria, for example, are difficult to reconcile in a coherent way (Modell, 2009). The centrality of context-dependency also makes the pursuit of generalisation somewhat misguided, since any appeals to generalisation (to the extent to this is possible in an open system) should be applied to the underlying qualitative mechanisms and structures and not 'to a wider population of unobserved data' (Mingers, 2004:156; Sayer, 1992). Whilst it is accepted that certain standards and criteria for ensuring that the design of the instrument is of a sufficient quality are important and have thus been retained, the evaluation of the statistical results alone is to be guided by their purpose.

The purpose of the questionnaire was to allow for the possibility of uncovering regularities in the identification of possible mechanisms and trigger factors which can help structure and focus further (qualitative) explanation (Zachariadis et al, 2013:878). The instrument and the resultant data were therefore not designed to measure and develop replicable scales and results that can be generalised. The quality of their contribution is to be considered in light of their use in the resultant analytic and theoretical conclusions (Modell, 2009).

Similarly, whilst the interview and focus group stages were designed to conform with conventions for generating quality qualitative data (i.e. trustworthiness: credibility, transferability, dependability and confirmability (Guba and Lincoln, 1994; Lincoln and Guba, 1985)), the emphasis for evaluating the extent to which this translated into quality research is to be determined by reference to output i.e. the framework developed (Modell, 2009). This is arguably consistent with the purpose of theory development and with the process of retrodution in critical realism which seeks to allow for the offering of theory which, though being informed by the empirical findings is also informed by the theoretical abstraction of concepts (Mingers, 2004; Zachriadis et al, 2013). As Danermark et al state '[r]etrodution is about advancing from one thing (empirical observation of events) and arriving at something different (a conceptualisation of transfactual conditions)' (2002:96). It is therefore argued that it is the quality and rigour of the transfactual conclusions embodied in the framework which are to be evaluated⁴⁰.

The aim here is therefore not to demonstrate that a complete and exhaustive theoretical framework has been produced, not least because this is inconsistent with the partial and fallible nature of knowledge inherent in critical realism. Claiming a mature theory on the basis of the

⁴⁰ Chapter 10.

research conducted and without its debate and consideration by the academic (and possibly practitioner) communities would also be naïve (Modell, 2009: 215). The purpose throughout the thesis is to demonstrate that the framework has some utility and sufficient grounding in the empirical findings without being entirely constrained by them. This utility and grounding can, however, be strengthened by reference to the quality of the research process.

In accordance with the criteria outlined by Leitch, Hill and Harrison (2010:75-76), the discussion and supporting documents presented in this thesis demonstrate how the process of the empirical research can be validated. Validation is provided in relation to the research design and data collection process by the explicit presentation of assumptions and methodology underpinning the research, for example see chapter 2 and section 6.3 above. It is also aided by providing a clear description of the research design process. This description is given in the remainder of this chapter and, where relevant, documents such as recruitment posters or invitations are provided to increase transparency.

Further validation is provided in respect of the analysis and interpretation of the findings. Here, transparency is vital and accordingly the coding frames for the qualitative analyses have been included in the Appendices. The continual relating of the findings to the literature in chapters 7-9 helps to demonstrate how the conclusions presented in chapter 10 have been reached. Finally, the inclusion of the reflexive author's statement in chapter 1 and the recognition of researcher proximity as a limitation of the research (see chapter 10) also help to justify and validate the steps taken and the conclusions made.

Having discussed the methodological assumptions and reasons for using mixed methods, the discussion will now turn to the detail of the methods undertaken.

6.5 RESEARCH DESIGN

In accordance with figure 2 above, there were four, integrated stages of data collection: an exploratory pilot (Stage 1), followed by a questionnaire (Stage 2), semi-structured interviews (Stage 3) and finally focus groups (Stage 4).

Sample

Although the sample composition varied between the data collection stages, the overall strategy adopted was purposive. The rejection of the ability to generalise results, and an acceptance of the need to seek to accommodate multiple, potentially divergent views, meant the sampling strategy was not concerned with seeking representativeness. This desire for breadth but not representativeness meant non-probability, purposive sampling was appropriate. Theoretical sampling was used as this allowed for the targeting of groups who are potentially of theoretical relevance and importance (Bryman, 2008:415).

Given the positioning of public understandings of workplace bullying, harassment and resolution choices, a key group of theoretical relevance was any individual over the age of eighteen years old with at least six months work experience in a UK workplace. The decision to focus on individuals, rather than industries or organisational sectors, sought to allow for the potential identification of broad, cross-sectional factors. This sample group was used for both the questionnaire and the focus group stages. In addition to this, answering the question of the extent to which mediation can be seen as an appropriate way of addressing workplace mediation, it was important to access informed and specialist accounts. These accounts were collected through interviews with external workplace mediators. This specialist element was also incorporated - albeit it to a lesser extent - with the targeting of mediators and lawyers in the questionnaire sample. Further details of, and justification for, the sampling choices are offered below in relation to the individual data collection stages.

Each data collection stage will now be considered in turn. Where a previous stage has informed the next or subsequent stages, these 'points of interface' (Guest, 2012) will be identified.

6.5.1 STAGE 1: Exploratory pilot

An initial qualitative exploratory pilot case study was conducted. Seven semi-structured interviews were conducted with those who were involved with the decision to introduce an internal mediation scheme at the University of Manchester and/or with its administration and operation. The aim of the pilot was to identify the extent to which the potential mechanisms and causes identified from the extant literature were reflected in a practical arena. This helped to build a greater degree of clarity and focus into the research⁴¹.

6.5.2 STAGE 2: Questionnaire

The purpose of the questionnaire was to identify the extent to which certain mechanisms may be deemed to be present and relevant to understandings of bullying and harassment and response to them. The aim was not to explore the relationship between these various factors or to seek explanation but rather help to guide the way in which the later data collection stages and ultimately the framework are structured. Therefore the questionnaire was concerned only with research questions one and two.

Pilot

Given these aims a new instrument was designed and constructed in Qualtrics. The detail will be considered shortly but, briefly, it utilised vignettes to provide context and anchor participants' responses in concrete examples, rather than abstract or de-contextualised statements. Other sections also asked about workplace experience of bullying/harassment and what would influence

⁴¹ See Appendix 1 for Pilot Report.

respondents if they were in a bullying situation. There was also a final section on mediation for those who indicated they had experience of and/or training in workplace mediation.

Prior to launching the questionnaire, a small pilot was conducted with twenty participants who qualified for the sample and who were speculatively contacted and asked to take part. Seventeen completed an online version and three completed pen and paper copies. The aim of the pilot was to confirm the questionnaire had face validity and was to try and address any issues that may cause method bias (MacKenzie and Podsakoff, 2012). Whilst the impact of method bias on the relationship among the variables was less of a concern (given the questionnaire was not seeking to uncover relationships), addressing possible bias was important to try and mitigate the chances of participants misunderstanding or misinterpreting the questions (MacKenzie and Podsakoff, 2012). Participants were asked at the end of the questionnaire to complete a short set of questions which asked them to provide feedback on a number of features e.g. length and clarity of questions. Participants were also asked to provide any other feedback.

Following the pilot a number of changes were made to address feedback. The changes were primarily concerned with reducing the length of the questionnaire and in this respect a number of qualitative, open questions seeking explanation were removed. The number of vignettes was also reduced from four to three. In addition to this, changes were made to address concern expressed by a minority (two of the participants) over their capacity and knowledge. In response it was made clear in the initial introduction and at various other relevant points that there were no right or wrong answers and that the research was interested in what they thought and not in testing what they know. By providing such information it was hoped that the purpose of the research would be clear to respondents, as in the circumstances, there was no reason for this not to be explicit (DeVillis, 2003:57-58; MacKenzie and Podsakoff, 2012:550).

Participants and procedure

The sample size varied for the different sections and, unsurprisingly decreased towards the end of the questionnaire (Table 1).

Section	N
Scenarios	135
Decision making	108
Demographic and Influence	108
Bullying and harassment	102
Mediation	55

Table 1. Questionnaire sample sizes

The research sought to include a cross-sectional and heterogeneous sample to identify patterns that apply across the different and varied cases (Patton, 2002:234-235), which is important for identifying the existence, if not activation of relevant factors. The concern was therefore not with sample size but rather with sample composition. The overarching qualification was: eighteen years old or over with at least six months work experience in a UK workplace. Table 2 shows the sample demographics.

GENDER	Women	69%
	Men	30%
AGE	18-25	11%
	26-34	19%
	35-46	17%
	47-54	29%
	55-64	22%
	65 or over	1%
ETHNICITY	White (British or Irish)	79%
	White (Other)	10%
	Mixed	5%
	Asian	5%
SEXUAL ORIENTATION	Heterosexual	85%
	Gay/Lesbian	10%
	Bisexual	3%
TRADE UNION MEMBERSHIP	Member (current or former)	24%
	Non-member	78%
SECTOR	Private	56%
	Public	35%
	Third	9%
ET INVOLVEMENT	Involvement	31%
	No Involvement	69%
EXPERIENCE OF BULLYING/HARASSMENT	Yes	64%
	No	36%
MEDIATION EXPERIENCE AND/OR TRAINING	Yes	56.2
	No	43.8

Table 2. Questionnaire sample demographics

An 'unrestricted sample' approach (Van Selm and Jankowski, 2006:440) was adopted, with a brief description of the research and a tinyurl link (tinyurl.com/wpbullying) to the questionnaire being

posted on Twitter and Facebook. This link was then subsequently retweeted or shared by others. Recruiting participants in this way has received little attention and whilst it is acknowledged that this may pose some problems (e.g. multiple responses) in this instance, these were outweighed by the potential benefits, not least in terms of accessing a geographically and otherwise diverse population (Gosling, Vazire, Srivastava and John, 2004; Fox, Murray and Warm, 2003; Kapp and Peters, 2013). Although only those with access to a computer could complete the questionnaire, flyers advertising the questionnaire were also produced and distributed to try and reach a broader range of people (i.e. those who may not have, or not have seen it via social media) (Appendix 2).

Within this broad scope, however, certain theoretically-driven groups were also targeted, namely, mediation providers, employment solicitors and trade unions. Lists of potential participants were identified through an internet search using terms such as "workplace mediators uk" and "solicitors bullying at work". A speculative email invitation to complete the survey was then sent to those who qualified (Appendix 3).

In order to try and include both those who had experienced bullying and harassment in the workplace and those who had not in the sample, participants were also recruited via certain online groups on LinkedIn (e.g. Workplace bullying, harassment, discrimination UK and Workplace bullying) (Fox and Warm, 2003; Van Selm and Jankowski, 2006).

To encourage participation, participants were offered an incentive for completing the questionnaire: the chance to enter a prize draw to win a £100 Amazon voucher. Although participants were aware of the prize draw in the introduction to the questionnaire, the incentive was offered as a 'post-incentive'. Participants were asked if they would like to be entered into the draw only once they had completed the questionnaire (Sanchez-Fernandez, Munoz-Leiva, Montoro-Rios and Ibanez-Zapata, 2010). The winner was selected at random.

The use of an online, self-completion questionnaire provided a number of benefits, both in terms of cost and speed of administration (Fox et al, 2003) and in respect of the potential mitigation of social desirability bias afforded by the relative anonymity (MacKenzie and Podsakoff, 2012). The first aspect was particularly important given the intensification of time pressures involved in undertaking sequential mixed methods research (Creswell et al, 2008:80). Although the depersonalisation offered by the use of vignettes may have also helped (Schoenberg and Ravdal, 2000) given the sensitive and potentially offensive nature of the research topic, the relative detachment of the participant from the research in online questionnaires is a beneficial characteristic (Ritter and Sue, 2007:8).

Structure and measures

The questionnaire was split into five sections (see Appendix 4 for a copy of the questionnaire).

Scenarios

The first section contained three scenarios in the form of vignettes. Vignettes were used to help focus participant thinking: giving them concrete examples to consider rather than asking them to identify or consider complex issues in an abstract way (Schoenberg and Ravdal, 2000; MacKenzie and Podsakoff, 2012:545). The use of vignettes sits comfortably with critical realism in the sense it facilitates the identification of mechanisms and structures whilst retaining the importance of context.

Although they were presented as hypothetical scenarios, the vignettes were composites of real life examples (Spalding and Phillips, 2007). Here the examples were drawn from existing UK case law. Choosing to base the scenarios on behaviour which had been deemed to be unlawful by the legal system provides an interesting foundation to discussions over striking the balance between individual standards and societal ones. Cases were selected on the basis of the criteria given in Table 3.

Criteria	Dimension
Frequency	One off Sporadic Persistent
Unwanted	Mutual Initially mutual Unwanted
Protected characteristic	Race Sex Sexual Orientation
Perception	Reasonable Too sensitive Vexatious/retaliatory
Intent	Joke/banter Misunderstanding Deliberate
Relationships (Party)	Vertical Horizontal Group to individual
Power	Equal

	Changeable
	Unequal

Table 3. Case qualification criteria

Twelve vignettes of 150-200 words were prepared (Appendix 5). From those twelve, four scenarios were initially chosen, with this being reduced to three following the pilot. The final selection was determined according to whether or not the scenario was plausible (Jenkins, Bloor, Fischer, Berney and Neale, 2010:187) and sufficiently nuanced and open to discussion but not ambiguous (Spalding and Phillips, 2007): for example one scenario was rejected due to potential ambiguity around the term "batty boy". Although the qualitative explanation question was removed following the pilot, its initial inclusion provided confirmation that participants were able to identify the chosen variables (e.g. power relationship) in the given scenarios. The chosen scenarios are given in table 4.

<p>Scenario 1: Sexual Orientation⁴²</p> <p>Mike Nkumbwa is an electrician and general maintenance man at the Leopold Hotel, a family owned company with 45 members of staff. The owner of the hotel is John Fisher who is gay and his employees are aware of this. On two occasions John overheard Mike talking about him to his colleagues. On the first occasion he had referred to him as "that poof John" and commented that "if it were the 1960s he would be locked up". On the second occasion Mike again referred to John as a "poof" and said that he didn't want to go into his office "after the poofs had been in there" as it "would need a thorough clean first". John is angry and upset. Mike doesn't deny making the comments but says that he doesn't consider "poof" to be a derogatory term as that's how everyone his age refers to gay men. He said if John had mentioned it at the time he would have apologised.</p>
<p>Scenario 2: Sex⁴³</p> <p>Katrina and Philip are both probation officers. They work together in an environment where there is a lot of banter which sometimes includes sexual innuendo. Both frequently participate in this. They were initially the same grade but Philip has since been promoted and is now Katrina's line manager. Neither of them say this has affected the level of banter between them. Katrina gives examples of Philip tying her scarf around her face when she is typing, making comments about her appearance and, on at least three occasions having made remarks about her "being on the game". Until recently Katrina had never complained about the behaviour to Philip or to anyone else. She is now off work with stress and is saying she wants the behaviour to stop. Philip is shocked to hear that she has said she feels harassed and bullied as he thought she had happily participated. He doesn't deny any of it but said the comments about her being a prostitute were in response to Katrina's statement to her colleagues that "in an ideal world she would like to be the madam of a high class brothel". Their colleagues are also surprised as they say Katrina is "no shrinking violet".</p>

⁴² Reeves v The Royal Hotel (12 July 2012) Case no. 1700573/2012 ET

⁴³ Loosley v Moulton and Another [2005] UKEAT/0468/04/DA EAT

Scenario 3: Race⁴⁴

Sarah and Charlie work together in a commercial kitchen. She is an Assistant Chef and he is her manager. She is black and he is white. They have worked together without any problems for almost three years. However, recently they were both working in the kitchen with their backs to each other, chatting as they worked. Because of the noise of the kitchen, they could not always hear what the other was saying. At some point however Sarah heard Charlie use the words "golliwog" and "golliwog jam" and became upset. Charlie said he was sorry she had got upset but that the words were not directed at her but rather that he had been talking about the change to the label of Robertson's jam. At the time Sarah seemed to accept the apology but has brought the incident up weeks later after Charlie accused her of taking cakes from the kitchen.

Table 4. Questionnaire vignettes

After each scenario participants were asked a set of questions asking them to indicate how they would describe the scenario and how appropriate (on six-point scale: Very Inappropriate to Very Appropriate) they thought each of twelve potential options would be for dealing with the situation. As it was anticipated that many participants may not be familiar with the terminology, short descriptions of each of the options were provided to enable them to make more informed choices (MacKenzie and Podsakoff, 2012:545).

Rather than indicate on a scale the degree to which they would agree (or disagree) that the behaviour could be described as bullying and harassment, participants were asked to choose a statement which made a judgement as to the appropriateness of the behaviour. The intention here was that the use of more concrete statements rather than abstract evaluations would help engage participants and more closely reflect the types of assessment they make in their day-to-day lives.

No definitions of bullying or harassment were given. This was driven by a desire to identify the mechanisms/characteristics associated with the phenomena in everyday, common sense meanings.

Participants then were asked to indicate on a six-point scale how strongly they agreed or disagreed with each of six statements which asked whether they would describe the scenario as an example of racism/homophobia/sexism and then whether they think "some people" would describe it as an example of racism/homophobia/sexism. Again, no definitions were given of racism, sexism or homophobia. This was intended to identify whether a participant thought that others would evaluate the situation in a different way and begin to explore the abstract ideas of the personal/impersonal.

⁴⁴ London School of Economics and Political Science v Lindsay [2012] UKEAT/0440/11/JOJ EAT

Decision making factors

The purpose of the second section was to clarify the influence of a number of variables (potential mechanisms and triggers) on the decisions participants had made in the previous section. This was divided into two: those considered when deciding whether or not the scenarios were bullying and/or harassment (25 Behaviour variables) and those considered when deciding how appropriate each of the resolution choices were (40 Resolution variables). These were identified through the discussion in chapters 2-5 and the exploratory pilot.

Given the complexity of the research focus and the relatively exploratory purpose of the questionnaire, the number of variables is high. They included those related to or associated with formal definitions of bullying and harassment (e.g. "How many times the behaviour happened"), with the impact of bullying and harassment (e.g. "Impact on colleagues"), with the characteristics of mediation (e.g. "Opportunity for shared understanding") and with fairness and dignity ("Violation of the alleged target's dignity"). As outlined in the previous chapter there is potentially an overlap (i.e. the same factors influence both, although not necessarily in the same way) and therefore some variables were included in both lists. A glossary of potentially ambiguous or unfamiliar terms was provided to try and aid understanding and clarity (Podsakoff, MacKenzie and Podsakoff, 2012:561-562). Participants were also asked to provide details of any other factors they had taken into account. This was important as the list provided was not (and cannot) be assumed to be exhaustive.

Importance was measured on a six-point scale, ranging from Not at all important to Extremely Important. Due to the length of the respective lists, the response options were repeated at several points to remind participants of the scale.

Demographic details and Personal Influence

This section collected demographic details about the participants, together with details about their employment situation, trade union membership and experience (if any) of Employment Tribunals.

In a shift from the hypothetical scenarios involving others in the first section, participants were asked to imagine that they were being bullied at work and asked to indicate on a four-point scale ("None" to A "Lot") the influence each of nineteen different variables would have on the way they chose to deal with it. These were stated in brief and clear terms and included those related to their personal characteristics (e.g. "Your gender"), employment position (e.g. "Your chances of getting another job"), relationship with others (e.g. "Your family"); as well as to a resolution itself (e.g. "How quickly the situation could be resolved"). Together with two or three follow up questions (depending on their responses), this question provides a further way of accessing the various mechanisms that may be triggered in a situation of bullying and harassment.

Bullying and harassment

Participants were asked to indicate whether they had ever experienced workplace bullying or harassment. Those who indicated they had were asked to answer two to four follow up questions (depending on their response) about their role and their response to the bullying.

Participants were asked to define bullying and then to define harassment in their own words. To try and ensure responses were given in accordance with participant's own definitions, the following reminder was included: "You are not necessarily expected to know a formal or "proper" definition of bullying. Please answer according to what you mean when you think about bullying". Asking for qualitative responses provides a further insight into meaning assigned to the labels "bullying" and "harassment" since it allows for a comparison not only of the common language associated with them but also adds a further level of understanding in respect of the assessments made in the scenario stage.

A series of eight items was then presented reflecting a number of the key themes of the questionnaire (e.g. "Bullying and harassment are different things"), as well as a number of those which were to be considered more explicitly in the later data collection stages (e.g. "Bullying and harassment is worse when it involves racism, sexism or homophobia"). Responses were presented on a six-point Likert scale from Strongly Disagree to Strongly Agree. No neutral option was offered to seek to mitigate satisficing by encouraging a cognitive effort (MacKenzie and Podsakoff, 2012:55) and in doing so discourage 'unwanted equivocation' (DeVellis, 2003:77).

Mediation

All participants were asked if they knew what mediation was. Those who indicated they did not were directed to the end of the questionnaire. Those who selected "Yes" were asked how they would define mediation (in a similar format to the previous definition questions). Participants were then asked to indicate whether they had any training and/or experience of workplace mediation. Those who had neither were directed to the end of the questionnaire.

Participants who qualified for the final section were asked to indicate the extent to which they agreed or disagreed with 37 items about the characteristics of mediation and its use both generally and in respect of bullying and harassment. A six-point Likert scale was used ranging from Strongly disagree to Strongly agree. Although the number of items was large (at this stage perhaps necessarily so (DeVellis, 2003:65)), each item was kept as clear and short as possible and care was taken to ensure they were not double-barrelled (DeVellis, 2003:68).

Analysis

Given the sample size and the aims of the research and the purpose of the questionnaire, the use of analytical statistics such as regression and factor analysis was not seen as the right choice here

(Olsen and Morgan, 2005). The use of vignettes to focus the responses has many benefits but because of context-dependency, just because a variable was not considered as important in those particular circumstances, it does not necessarily follow that it will always be the case. It is argued therefore that the qualitative stages of the research design provide a greater degree of flexibility to explore the implications of context on the existence and influence of, and behaviour and relationships between factors, than statistical methods (Mingers, 2004). The quantitative data was therefore only analysed to produce frequencies and percentages. The qualitative responses provided were initially analysed using content analysis to count the frequency of the use of certain terms (Bryman, 2008:280-281)⁴⁵. Following completion of the interviews and focus groups the definitions were additionally integrated and coded into the template used for analysing the later stages.

6.5.3 STAGE 3: Interviews

The aim of the interview stage was to confirm/further address the “what” questions (research questions 1 and 2) and begin uncover explanation for and assign meaning to the questionnaire results (and therefore also address the remaining research questions). Given the integrated approach it is important to note that in this regard the use of interviews is more than merely data triangulation in the sense it is often used in mixed methods research (see for example Hammersley, 2008). Any divergent results for example would not be treated as a problem to be reconciled but rather are, given the inherent subjectivity, entirely anticipated and a potentially important source of insight (Modell, 2009).

The interviews also provided an opportunity to directly engage with the overarching research question: To what extent is mediation appropriate for dealing with workplace bullying and harassment?

Participants and Procedure

Semi-structured interviews were conducted with twenty external workplace mediators. As noted previously, much of the research conducted on the use of mediation in the UK has focused on organisational perspectives and experiences or more recently on participant experience. What is lacking, certainly in the academic arena, is the voice of workplace mediators, especially external mediators.

The relative lack of exposure to mediation of most organisations means that the inclusion of the mediator explanation and understanding of mediation is vital. Mediators are almost uniquely placed in the mediation context since they are arguably both the creators of the rhetoric surrounding mediation and potentially responsible for that rhetoric failing to translate into reality. A possible consequence of this is that mediators have a vested interest in presenting mediation in a positive

⁴⁵ For coding frame see Appendix 6.

light and this may be reflected in their interview responses (Collins, Shatell and Thomas, 2005). However, the nature of the semi-structured interview provided the flexibility to probe answers in an attempt to go beyond the rhetoric (for example, by asking for examples where a promised benefit had been realised in practice). In this regard, mediators are an important source for helping to develop conceptual understanding of mediation by providing an insight into the practice of mediation, something that is arguably the key to explaining how some apparently manage reconcile the nature of bullying and harassment with that of mediation.

Mediators are also ideally placed to reflect on their experiences of both organisational and participant experiences of mediation, as well as their own. Granted this will be filtered through their own perceptions, understanding and experience but it nevertheless potentially provides access to a wealth of information about the existence of and relative importance and interaction of the various factors in practice. This characteristic was a key driver for interviewing external mediators rather than internal mediators as it was anticipated that external mediators would have a greater number and breadth of experiences. The participant mediators came from a range of backgrounds, including teaching, policing, publishing, TU representation, HR and law.

Potential participants were recruited in a number of different ways. Four mediators who had been speculatively contacted at the questionnaire stage and who had subsequently emailed expressing their interest in the research were contacted and asked if they would be willing to be interviewed. The remaining participants were recruited either through the use of a speculative letter of invitation⁴⁶ or were recommended by other interviewees in a snowball manner. It is interesting to note that on the whole recruiting participants was relatively easy as the majority of the mediators contacted were enthusiastic and eager for more research to be conducted on mediation. Many saw the generation and dissemination of information about mediation as a vital step in increasing understanding of what it is and when it is and is not appropriate. It is again important to acknowledge the possibility that this attitude towards the research may have biased participant's responses.

It is not easily possible to identify the total number of external mediators currently practising in the UK but again, the purpose of the interviews was not to provide an account that is representative of all mediators. The twenty interviews were arguably sufficient to provide saturation on the key themes covered by the framework (Guest, Bunce and Johnson, 2006).

Interviews were conducted either face-to-face (N=6), via Skype (N=8) or over the telephone (N=6). This mixed approach served to open the geographical reach of potential participants and also helped to keep the costs of this stage of data collection to a minimum. Interviews ranged from 30 minutes to 75 minutes (average time of 55 minutes). Whilst the telephone interviews certainly posed problems which were not present in the face-to-face or Skype interviews, primarily in

⁴⁶ Appendix 7

respect of not being able to read non-verbal cues or judge pauses in response as easily, there was no notable difference in the length of the interviews (across all mediums this was often determined by the participant's availability above all), or in the quality of the responses (Irvine, Drew and Sainsbury, 2012; Sturges and Hanrahan, 2004).

All interviews were recorded using a digital recorder. Additional notes were also taken during the interviews and key points or themes were recorded after each interview.

Semi-structured interviews were chosen as they provide both the structure to ensure that the relevant themes identified from existing theory and the previous data collection stage are addressed whilst also allowing for other to emerge. This flexibility plays an important role in terms of allowing the participants' own meanings and explanations to be explored (King, 2004a). From a critical realist perspective it is through such flexibility and in-depth enquiry that one can begin to understand and explain the phenomenon in question (Sayer, 1992).

Interview Schedule

An interview schedule was prepared⁴⁷ and was used as a guide in each of the interviews. The schedule took the form of full questions as this helped to ensure a degree of consistency across the interviews and also made sure that the questions were clear and well structured, for example not asking multiple or overly complicated questions (Horrocks and King, 2010:39, 51). As the aim was to access the participant's own understanding and experience it was also necessary to try and avoid closed or leading questions, for example, asking "How relevant is determining up-front whether there is a power imbalance between the parties to the decision as to whether mediation is suitable?" rather than "The existence of a power imbalance is often said to be the reason mediation is not appropriate for mediation, do you agree?".

Opening questions about their interest in mediation and how they became a mediator were used to try and relax the participant. This also provided a conversational segue into the questions about what mediation is and to the role of the mediator. These questions provided access to the language the mediator's use to describe mediation and their role within that process. Again, understanding the meaning behind the words used is important and therefore clarification of meaning was often sought through follow up questions, for example: "You said mediation provides a safe environment, could you please say more about what you mean by that?" This was also a vital checkpoint for trustworthiness to try and ensure that participant's meaning was accurately represented and interpreted in analysis and framework construction (Bryman, 2008:377) and was done throughout each interview.

Participants were then directly asked about the extent to which they thought mediation was an appropriate way of dealing with bullying and harassment. They were also asked to give specific

⁴⁷ Appendix 8

examples to illustrate their answers which helped to provide context to their responses. This overarching question allowed for the emergence of relevant themes without prompt from the questions. Where this was the case, the order or the questions was changed to provide for a greater flow to the interview. A number of specific follow-up questions were included on the schedule to ensure key points that did not arise unprompted were covered. These concerned the ease and use of distinguishing between bullying and harassment, the relevance of power imbalance and of intentions and perceptions, and the difference, if any, a racist, sexist or homophobic element would make. In each of the questions there was an intention to try and access information on both the nature of mediation and of its practical application. In respect of the latter, where mediators had identified potential problems associated with power imbalance they were asked for techniques they used to mitigate these problems.

Questions then turned to the potential impact of mediation on the parties, on an organisation and on society more broadly. This, together with a question about the role of employment law (and the question on protected characteristics) were aimed at addressing the rhetoric of the transformational aspect of mediation and its relationship with the privatisation of justice concerns.

Participants were then explicitly asked about mediation and fairness and mediation and justice. No definition of either fairness or justice was provided since again, it was important to understand what meaning the mediator assigned to those words and to understand how they are positioned within the mediation discourse.

Finally, an additional set of questions was included that considered organisational and party attitudes towards, and apprehensions about, the use of mediation. In all but two cases the topics covered in these questions had been explored earlier in the interview.

To close the interview, each participant was asked whether there was anything else they wanted to say about mediation that they felt they had not had the chance to say. In a number of cases (N=12) the mediators used this question as an opportunity to reflect on the content of the interview and on how it had made them address and think about certain issues they had either previously not really considered (particularly the justice aspect) or had not thought about in some time. This question therefore (somewhat unintentionally) turned into an interesting illustration of the 'critical' nature of research whereby participating in the research had altered, or at least impacted, the way in which the participant themselves thought about the topic in question (Sayer, 1992).

Analysis

Transcripts were produced from the recordings of each interview. Each transcript was checked for accuracy by listening back through the original recording. The transcripts were then analysed using template analysis, a form of thematic analysis. This was considered to be the most appropriate

form of analysis as it provided a structure to focus the analysis which is consistent with the sequential mixed method design but it also provided sufficient flexibility to accommodate emergent or unanticipated themes (King, 2004b:426).

An initial template was developed using *a priori* themes arising from the questionnaire and from notes made throughout the interviews. The template retained the distinction between behaviour and resolution present in the questionnaire.

Each transcript was analysed in turn and coded in NVivo according to the template. Throughout this process the template evolved to reflect the addition, saturation or redundancy of various dimensions and the different themes (King, 2004b). The template was amended accordingly⁴⁸.

Many of the themes were integrative and where this was the case these connections were noted and are addressed in the findings and discussion. In addition to analysis between the interview data, the data were also analysed in respect of the questionnaire findings. Both convergent and divergent findings were identified, which, given the complexity and context-dependency, is both necessary and unsurprising.

1.5.4 STAGE 4: Focus groups

The final stage of data collection was focus groups. The purpose of the focus groups reflects that of the interviews, namely the pursuit of meaning and explanation. Here the focus shifts away from mediation specifically and more towards uncovering both individual and group understandings and perceptions of bullying and harassment and the general principles guiding how they should be dealt with. The focus groups provided an invaluable opportunity to explore the relevance of a number of the philosophical and/or abstract ideas such as dignity.

Participants and Procedure

The sample for the focus groups echoed that of the questionnaire, with the qualifying criteria ('control characteristic') being those who are eighteen years old or older with at least six months work experience in a UK workplace (Knodel, 1993:39). Again, the purpose behind this broad characteristic was to try and include a diverse, cross-sectional and potentially heterogeneous set of perspectives. It is important to make a distinction between heterogeneity of characteristics and heterogeneity of perspectives: a diversity of opinion is sought in focus groups (Krueger and Casey, 2000) but accessing those opinions in a free and comfortable way is facilitated by homogeneously composed focus groups (Knodel, 1993:40; Krueger and Casey, 2000:70-72). Within the control characteristic it is possible to identify a greater level of homogeneity within groups by applying a 'break characteristic' (Knodel, 1993:39). Such a decision should be informed by the substantive purpose of the study (Knodel, 1993). Here, a number of possible options were available. Arguably

⁴⁸ For final template see Appendix 9.

the two most pertinent ones were those who had experienced bullying and those who had not, and those which singled out a demographic group (i.e. on the basis of a protected characteristic).

The first option posed a number of practical and ethical problems, not least in respect of the question as to how obvious the homogeneous characteristic must be to other group members. Because of these difficulties the latter option was chosen. Given the time constraints and geographical restrictions involved in this stage of data collection, the characteristic chosen was gender. The homogenous nature of such groups would also be self-evident. This was also to reflect not only the emphasis on bullying and harassment which may involve a protected characteristic (including sexism) but also indications that bullying is a gendered phenomenon (Salin and Hoel, 2013; Salin, 2011). Gendered groups may also help facilitate discussion on views which may otherwise be considered 'taboo' or socially undesirable in a mixed group (Kitzinger, 1994; Knodel, 1993:41).

Participants were again recruited via social media. The focus groups were also advertised via posters around the University campus and surrounding areas⁴⁹. Initially the posters and advertisements were targeted at both male and female participants. There was a greater difficulty in recruiting male participants, so once a sufficient number of female participants had been found the advertising became more tailored (i.e. to make it clear that male participants were wanted). Participants were offered a £10 Amazon voucher for their participation.

Four focus groups (two male and two female), each lasting an hour were conducted. Although there is no rule dictating a minimum number of focus groups, it is accepted that, depending on the purpose, three to four can be a sufficient number to allow for theoretical saturation (Krueger and Casey, 2000:26). Here therefore whilst conclusions to theory may be made on the basis of the overarching homogeneous quality (i.e. eighteen years old or over with at least six months in a UK workplace), caution should be exercised in respect of any conclusion attributed to gender differences (Knodel, 1993:42).

The total number of sixteen participants attended the groups: eight males and eight females. The demographic details are shown in table 5.

⁴⁹ Appendix 10

AGE	18-25	2	INDUSTRY EXPERIENCE	Agriculture, Animals and Environment	1
	26-34	10		Automotive, Driving and Transport	1
	35-46	3		Banking, Finance and Insurance	2
	47-54	1		Catering and Hospitality	4
SEXUAL ORIENTATION	Heterosexual	14		Charity	4
	Gay/Lesbian	1		Construction and Skilled Trades	2
	Undisclosed	1		Customer Service and Call Centre	7
ETHNICITY	White-British	9		Distribution and Warehouse	1
	White-Irish	2		Education and Teaching	10
	Italian	1		Engineering, Freight and Logistics	1
	South African	1		Health, Nursing and Social Services	1
	White North African	1		HR	2
	Mixed White European (British/German)	1		IT	1
	Asian/Asian British-Bangladeshi	1		Legal	3
				Management	4
RELIGION OR BELIEF	No religion	9		Manufacturing	1
	Christian	5		Media/New Media	1
	Buddhist	1		Recruitment	3
	Muslim	1		Retail and Sales	6
MANAGERIAL RESPONSIBILITY	Yes	4		Scientific and Pharmaceutical	2
	No	11	Secretarial, Administration and PA	2	
SECTOR	Private sector	5	Security and Defence	1	
	Public sector	10	Travel and Leisure	1	
	Third sector	1			
ET INVOLVEMENT	Yes	3	EXPERIENCE OF BULLYING/HARASSMENT	Yes	7
	No	13		No	9
EXPERIENCE AND/OR TRAINING OF MEDIATION	Yes	4			
	No	12			

Table 5. Focus group sample demographics

The number in each focus group varied from three to five participants. Although the size of the groups is smaller than is often recommended (Krueger and Casey, 2000:74), given the depth of discussion desired this was deemed necessary to allow sufficient time for each participant to share their opinion. In addition to this, whilst the focus groups are useful for uncovering individual views and attitudes, given the importance of the intersubjectivity of language assumed here, it was also important to provide sufficient time and opportunity for participants to interact with each other as

this can be important for developing their personal and collective voice (Smithson, 2000; Morgan and Krueger, 1993:16-17). It is this interactive and collaborative element that recommends focus groups for the present purpose above alternatives, for example individual interviews with qualifying individuals (Kitzinger, 1994; Albrecht, Johnson and Walther, 1993).

Although attempts were made to try and arrange focus groups where participants did not have a prior relationship, this was not always possible. The argument against the use of pre-existing groups centres on the possibility it may hinder the extent to which they feel the need to explain their underlying reasoning (Krueger and Casey, 2000:11). Here, however, it was beneficial as where there was a pre-existing relationship those individuals were able to provide context for their opinions and jointly construct for them what is acceptable and what was not (Kitzinger, 1994).

All focus groups were held at the University and at times to try and facilitate participation for those who worked "9am-5pm" in other parts of Manchester (for each category a lunchtime and an evening group were held). Biscuits and bottled water were also provided to help make the environment more comfortable.

All focus groups were digitally recorded and key points and themes were noted throughout and following each group.

Focus Group Guide

The structure of the focus group broadly followed the structure of the questionnaire with the discussion being anchored in a scenario. Drawing on the themes having emerged from the analysis of the previous stages a focus group guide was constructed (Appendix 11).

The scenario used was the sexism example from the questionnaire⁵⁰. This was selected firstly because the sexism element resonated with the gendered composition of the focus groups and secondly because the detail and circumstances easily lent themselves to exploration and variation in a focus group environment. This ability to systematically vary the circumstances of the scenario provides an opportunity which was not offered with the questionnaire and allows for an identification of not only the underlying mechanisms but also the potential triggers and consequences (O'Dell, Crafter, de Abreu and Cline, 2012).

The use of the vignette also provided a common point of reference for participants which is of use not only in analysis (Kitzinger, 1994) but through the depersonalisation also helps to encourage participants to share their views on the sensitive issues without having to make personal and/or potentially undesirable disclosures (Schoenberg and Ravdal, 2000).

⁵⁰ Scenario 2 in Table 4 (p104 above)

Prior to the focus group

Participants were provided with a copy of the scenario. Providing a copy of the scenario in advance not only served a practical purpose (i.e. freeing up time in the actual focus group) it also gave participants time to process their response and begin to consider their understanding and interpretation of the situation. As the focus group was concerned with accessing deeper understanding and meaning, giving participants this extra time was seen as beneficial (Zeller, 1993:168).

Participants were also asked to complete a short demographic questionnaire in Qualtrics.

In the focus group

A brief introduction to the purpose of the focus group was given and, as with the questionnaire, it was made clear that there was no right or wrong answer and that what was sought was their opinion. They were informed that differing views were anticipated and encouraged but should be respected. In order to promote the benefit of discussion participants were also encouraged to respond to each other and not just to the facilitator, for example, if they disagreed with or did not understand what another person had said. This was important not only for laying ground rules but also for providing an additional opportunity for clarification of meaning.

Before commencing the discussion participants were asked to individually complete a brief set of questions about the scenario⁵¹. These questions were taken directly from the questionnaire. Asking for individual assessment prior to any discussion provided a means of tracking the extent to which an individual may (knowingly or otherwise) change their opinion throughout the focus group (Viscek, 2007).

The discussion around the scenario was intended to be semi-structured. As with the interviews, this provided a direction and structure whilst allowing a considerable degree of flexibility. There were five main guiding questions, concerned with the meaning of bullying and harassment, the distinction between the two, the meaning and justifications for protected characteristics and what was necessary for a fair resolution. Within each of these questions key themes and variations in circumstances were identified (e.g. change in power relationship). It was hoped (and was often the case) that these points would arise in the participant's own explanations, without the need for prompting. Again, however, where clarification on a particular statement or point was needed to help with accuracy in analysis and interpretation and which did not arise through discussion between participants, participants were probed to clarify or expand on a point (Krueger and Casey, 2000:201-203). For example, in a response about the timing of the complaint a participant expressed a need to know when the complaint had been made and was asked what difference that would make to their answer.

⁵¹ Appendix 12

It became apparent in the first focus group that it would be beneficial to explicitly ask participants where they drew the meaning for the concepts they were discussing from. After an acknowledgement in the first group that they did not know what the definitions of bullying or harassment were, yet they were able to make judgements as to whether or not they thought something was bullying/harassment, a further guiding question was added, asking participants to consider what they were basing their assessments on.

Inspired by the comments of the mediators in the closing question of the interviews, the focus group finished by asking participants to reflect on whether or not they felt participating in the focus group had changed the way they thought about bullying and harassment. The purpose behind this was not only to explore the critical nature of the research but also to potentially begin to evaluate the value in providing individuals with a forum and structure to discuss these matters, which, of course, is what the resultant framework hopes to facilitate.

Analysis

The process of analysing the focus groups echoed that of the interviews. Transcripts were prepared and their accuracy checked. Template analysis was again used, with the *a priori* codes being drawn from the template for the interviews. This made it easier to compare and integrate the findings within the themes and across the methods. Again, this template was modified throughout the analytical process⁵². Comparisons were made both within and across groups (Knodel, 1993). Any possible relationships or connections within the focus group data, as well as between those arising from the previous data collection stages were noted to be drawn out in subsequent stages of interpretation and framework construction.

An additional level of complexity was involved in coding the focus group data, namely whether to analyse the data at the individual or group level or both (Onwuegbuzie, Dickinson, Leech and Zoran, 2009). Here both the individual and the group level were of interest. Given the importance assigned to the intersubjectivity of meaning and the emphasis on the interactive element in the focus group method, the group level was prioritised. Accordingly it was necessary to code sections of dialogue, rather than individual quotes. The individual level was also tracked to determine any changes in individual responses. The individual questionnaire was used as the benchmark for this process. This distinction is also important given the need identified in the previous chapters to identify points of departure between an individual's own standards and those collectively valued.

A further issue arises from the use of vignettes in the focus groups. In analysis, one must be aware of distinguishing between the various ways in which a participant may interpret the scenario. In addition to the individual and group dynamics, a participant may shift between interpreting the vignette from their perspective of the hypothetical parties, to making judgements and statements

⁵² For final template see Appendix 13.

based on their own experience and characteristics (O'Dell et al, 2012). Providing one is conscious of this possibility it is not necessarily problematic but rather can be an interesting source of insight into the way individuals position themselves in respect to others (Hermans, 2001). There were examples where the participants themselves would make this distinction which, together with directly asking participants what was driving their responses, arguably made it easier to track any changes in a position or interpretation.

6.6 ETHICS

Ethical approval for this project was obtained through the prescribed ethical procedure for the completion of PhD research within Manchester Business School.

Potential participants were provided with information sheets which corresponded to the data collection stage⁵³. An email address was provided for potential participants to contact the researcher for more information or to ask questions before they chose to participate. Consent was obtained from each participant before they took part in the research: for the questionnaire this took the form of qualifying consent questions online, for interviews this was either obtained in person or via email and for the focus groups participants were asked to sign a consent form at the beginning of the group.

Those completing the questionnaire who did not wish to enter the prize draw could do so anonymously. The details of those who provided email addresses were kept confidential and not used in analysis. Details of participants in the qualitative stages were also kept confidential and every attempt has been made to minimise participants being identified from the descriptions given here. For example names of focus group participants have been changed.

In addition to those related to conducting research in general (e.g. consent) the nature of the topic posed some potential ethical problems.

Bullying and harassment is an inherently sensitive topic. The aim in this research however, to access understandings of bullying and harassment in general, rather than to uncover personal experiences of bullying and harassment, meant that many of the potential dangers involved in researching this area could (hopefully) be mitigated. It was made clear in information provided about the research to potential participants that, whilst they would be asked whether or not they had experienced bullying/harassment, they would not be asked to share details about it. It is accepted, however, that merely thinking or talking about the topic may be sufficient to trigger negative emotions and there were times in the focus groups where participants chose to share their experience. Where this was (or may have been the case) and it was apparent to the researcher, for example because a direct email had been received saying they had or were

⁵³ See Appendix 14.

experiencing bullying at work, participants (or potential participants) were referred to external groups should they need support and/or advice.

The addition of a racist, sexist or homophobic element posed a further level of complexity. The nature of the scenarios used was made clear to participants by the use of a prominent disclaimer.

6.7 CONCLUSION

This chapter has outlined and discussed the methodological approach and research design adopted by this research. It sought to establish how critical realism provides a useful way of accessing and enhancing understanding and explanation of the concepts at the heart of this research. Adopting such an approach had important implications for the research design and the extent to which quantitative and qualitative methods could be utilised and combined. A mixed method approach was designed to help achieve the aim of developing a theoretical framework that reflects the complexity involved in understanding bullying and harassment and how it should be dealt with. It was argued that the robustness of the research should be determined by the integrated output, i.e. the quality of the resultant framework. This determination is driven by the findings and the way in which they are related back to existing theory, and in this instance, how that is then utilised to develop new theory: with this in mind, it is to the presentation of the findings which the thesis will now turn.

Chapters 7 to 9 will present findings from the three main data collection stages. Although the findings for each stage will be presented separately, common themes and areas of convergence or divergence will be identified to help indicate how the different data may be related to each other.

Themes such as the differences between bullying and harassment, indications of the personal/impersonal dynamic, the fairness and feasibility of mediation in bullying and harassment will be highlighted.

Given the importance assigned in this chapter to the need to demonstrate clearly how the new theory is developed and justified through its relation back to existing knowledge, the discussion will indicate how the findings can be positioned within the literature presented in chapters 2 to 5 before the new, empirically-informed framework is presented in chapter 10.

CHAPTER 7. FINDINGS 1: QUESTIONNAIRE

7.1 INTRODUCTION

The presentation of the questionnaire findings will follow the structure of the questionnaire itself and, for the reasons given above, will focus on descriptive statistics and the patterns which emerge from them⁵⁴. The chapter will also seek to indicate how the questionnaire findings can be related back to the thesis and literature presented above. However, given the importance of contextualised understandings, such references here will be brief with substantive discussion being offered in relation to the qualitative findings in chapters 8 and 9. The aim of the chapter is therefore to further (and empirically) identify the factors which influence whether a situation is perceived as bullying and/or harassment and those which may be perceived as influencing whether mediation is perceived as appropriate.

The questionnaire findings indicate a foundational support for the arguments that individuals may see bullying and harassment as different things and that the difference may (but not necessarily) be determined by the presence of a protected characteristic. A consideration of the behaviour variables and qualitative definitions are used to identify possible defining features and the severity of the behaviour, target perception, perpetrator intent and violation of dignity are seen as being of particular importance to the first research question.

Through a recognition that individuals indicate their judgement would differ to that of others and the positioning of decision making variables such 'Behaviour was inherently wrong or offensive' and the ranking of the nature of behaviour (e.g. involved race) over the personal characteristics of the parties involved, the findings also provide a basis in which the abstract argument over the operation of the personal/impersonal dynamic and the prioritisation of impersonally reasonable standards can be empirically grounded.

The top ranking positions of resolution variables (related to research question 2) such as 'Opportunity for shared understanding' and 'Opportunity for alleged target/perpetrator to explain' and the low ranking of 'Need for outcome to be public', together with appropriate response results and findings from the mediation statements, also provide a strong indication that mediation is seen as an appropriate way of dealing with workplace bullying and harassment.

7.2 SCENARIO ASSESSMENTS

Bullying

The assessments for each of the scenarios in respect of bullying are shown in table 6.

Statement	Scenario 1 (SO)	Scenario 2 (Sex)	Scenario 3 (Race)
It's inappropriate and it's definitely bullying	31.1	11.9	4.5
It's inappropriate and it might be bullying	26.7	36.6	24.2
It's inappropriate but it's not bullying	38.5	46.3	47.7
It's appropriate and it's definitely not bullying	3.7	5.2	23.5

(N=135) **Table 6. Percentage Assessments: Bullying**

Although there is an apparent consensus that the best way to describe each scenario was statement 3, indicating the behaviour was inappropriate but not bullying, that there are responses for each statement means one can immediately identify potential support for the proposition of a spectrum of behaviour (chapter 4) and that different individuals assign different labels or interpretations to the behaviour.

Harassment

Table 7 sets out the responses in respect of harassment. Again, it is clear to see a difference in the assessments. Here however there is no single statement with the highest percentage for each scenario as there was with bullying. With the exception of scenario 3, a higher percentage of responses indicated the behaviour is either definitely harassment or might be harassment than thought it was definitely bullying or might be bullying.

Statement	Scenario 1 (SO)	Scenario 2 (Sex)	Scenario 3 (Race)
It's inappropriate and it's definitely harassment (1)	42.2	13.5	6.1
It's inappropriate and it might be harassment (2)	34.1	54.9	28.2
It's inappropriate but it's not harassment (3)	22.2	27.8	44.3
It's appropriate and it's definitely not harassment (4)	1.5	3.8	21.4

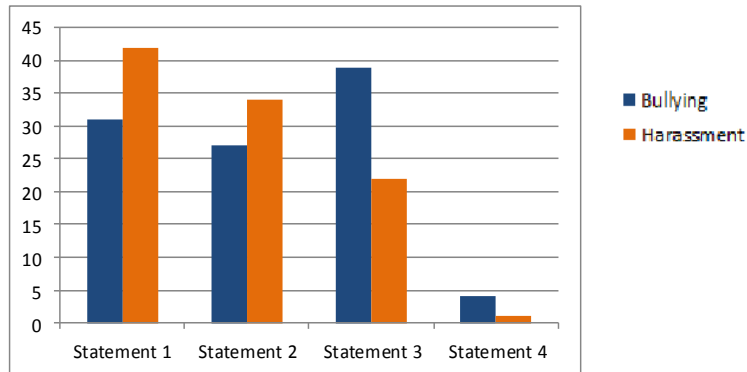
(N=135) **Table 7. Percentage Assessments: Harassment**

Bullying and harassment

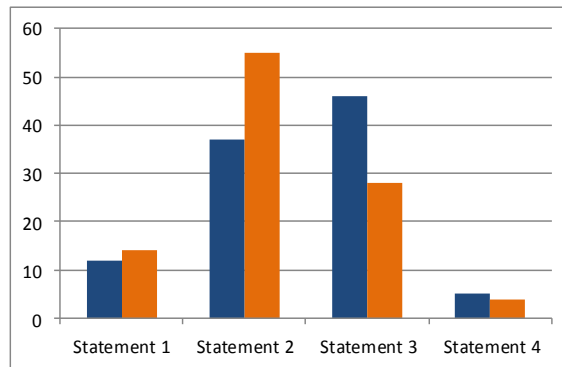
When compared, there is a clear indication the participants make a distinction between bullying and harassment. The relative percentage responses for bullying and harassment for each scenario are shown in graphs 1-3 below.

Given the preceding sections it is not surprising that where either statements 1 or 2 were selected, a higher percentage indicated the behaviour was either definitely or might be harassment rather than either definitely or might be bullying. With the exception of scenario 3, it is also clear that even though many thought the behaviour across the scenarios was not bullying or harassment, it was nevertheless inappropriate. Again this potentially provides support for the recognition of different standards of appropriateness/reasonableness and the argument that some distinction is

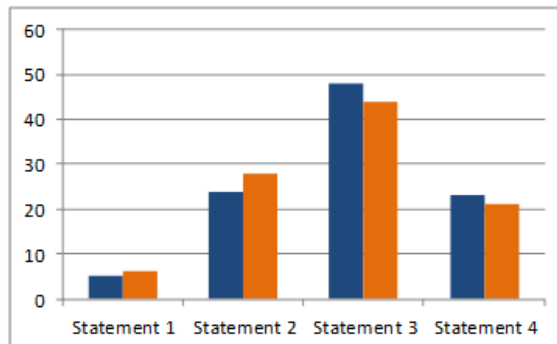
made between bullying and harassment, albeit with the acceptance there may be uncertainty as to how that distinction is made (thus echoing Branch, 2008).



Graph 1. Scenario 1 (Sexual Orientation)



Graph 2. Scenario 2 (Sex)

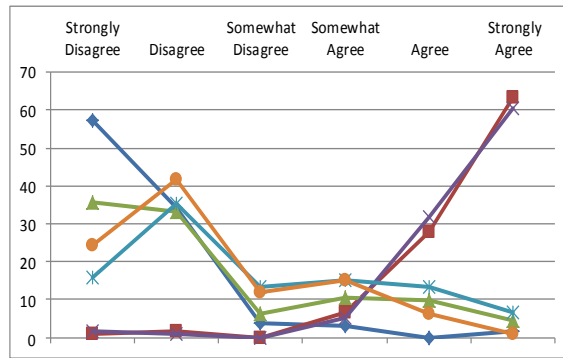


Graph 3. Scenario 3 (Race)

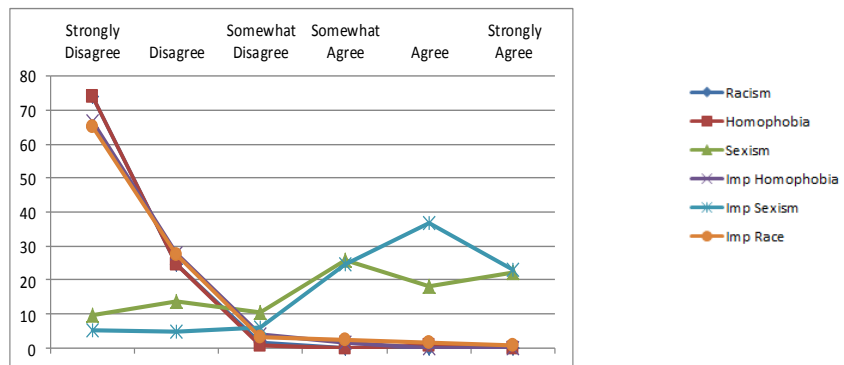
Possible insight into the way in which a distinction between bullying and harassment was made may be found in a consideration of the results from the question relating to the potential sexist/racist/homophobic nature of the behaviour.

Personal and Impersonal Assessments of Homophobia, Sexism and Racism

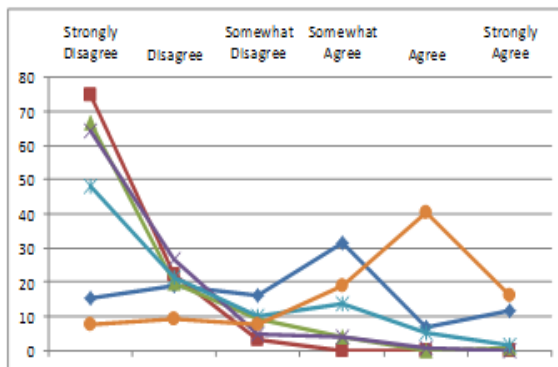
Graphs 4 to 6 show how the responses to the 'ism' statements were rated for each scenario (%).



Graph 4. Scenario 1



Graph 5. Scenario 2

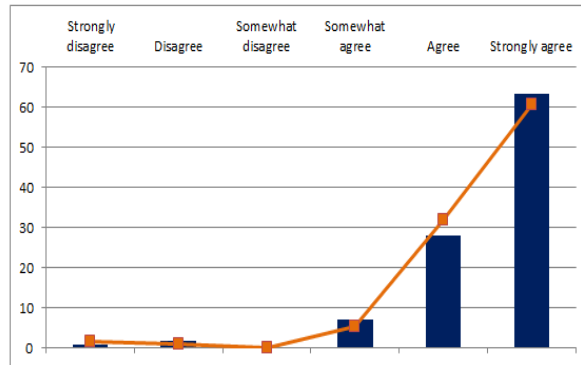


Graph 6. Scenario 3

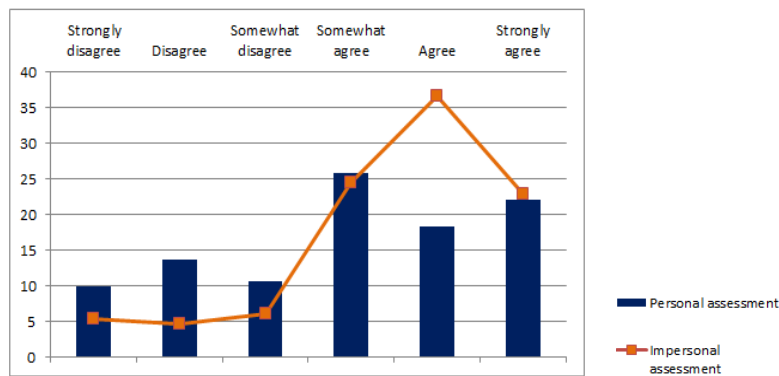
The recognition that multiple characteristics may be involved (albeit it at low levels), may indicate a possible recognition of the existence of multiple, if not intersectional grounds (Holvino, 2010; Hudson, 2012). It is useful however to present the results for the single characteristic each scenario was designed to explore (see graphs 7-9 below). In so doing, one can see 63.2% strongly agreed they would describe scenario 1 as an example of homophobia; 22% strongly agreeing they would describe scenario 2 as an example of sexism and finally only 11.5% strongly agreeing they would describe scenario 3 as an example of racism.

Again, in recognition that individual assessments would vary (using Nagel, 1991), the graphs also demonstrate that the respondents were aware others may have a different opinion to their own. These differences are particularly apparent in scenarios 2 and 3 with the percentages of those

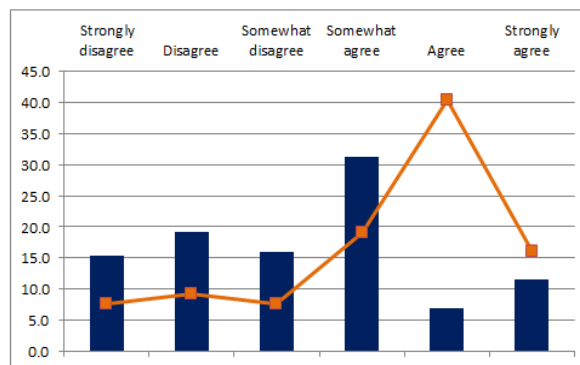
agreeing other people would describe the scenarios as examples of sexism and racism (respectively) being higher than those who agreed that they themselves would describe the scenarios in that way. Here one may suggest an area for further (qualitative) enquiry as to the reasons for these differing views and the extent to which it may be seen as a reflection of the personal/impersonal dynamic.



Graph 7. Scenario 1 (Homophobia)



Graph 8. Scenario 2 (Sexism)



Graph 9. Scenario 3 (Racism)

Appropriate Responses to Scenarios

Table 8 shows the ranking for the most appropriate responses for each of the scenarios. The ranking is determined by the percentages rating the response 'very appropriate'.

Given the use of vignettes (and therefore the necessarily limited detail), the high figures for the need for further investigation are not surprising. Whilst this may be seen as consistent with the requirements of formal procedural justice (Genn, 2010; Roberts and Palmer, 2005) and with the focus group results, the temptation to argue these results across the different stages therefore have the same meaning and importance must be tempered by the possible limitation of the method.

Response	Scenario 1	Scenario 2	Scenario 3
Informal word	36.6	34.6	38.8
Further investigation	34.6	35.9	38.5
Grievance	18	8.4	7.7
Disciplinary	23.5	5.3	7
Mediation (Individual)	24.6	30	22.9
Mediation (Joint)	22.6	33.6	31.3
Equality & Diversity	51.1	30	30.2
Resign (Target)	1.5	0	0
Resign (Perpetrator)	4.5	1.5	1.5
Legal Claim	1.5	1.5	2.3
Do nothing	3	1.6	3.1
Confrontation	4.5	12.6	8.7

(% Very Appropriate, (N=133))

Table 8. Appropriate Response to Scenarios.

Of greater surprise is perhaps the positioning of an informal word, especially as the majority of the responses saw the behaviour as bullying/harassment or at least as inappropriate. Of those who thought scenario 1 was inappropriate and definitely bullying, 40% indicated an informal word was very appropriate with only 7.5% thinking it was an inappropriate response. With the exception of scenario 1, formal responses such as grievance and disciplinary were seen as very appropriate by a relatively small percentage of responses. Against the argument of a reliance on or rush to law (BIS, 2011a) the low ranking of the legal claim is to be noted. The highest percentage for any response (and across all scenarios) was in favour of equality and diversity training for scenario 1.

Mediation

Of course, for present purposes the positioning of mediation is important. In scenario 1 mediation (joint meetings) were seen as appropriate or very appropriate by 57.9%, by 68.7% in scenario 2 and 62.6% in scenario 3.

	S1				S2				S3			
	Individual		Joint		Individual		Joint		Individual		Joint	
	B	H	B	H	B	H	B	H	B	H	B	H
Appropriate or very appropriate (%)	56.4	62.9	51.2	57.1	66.7	64.7	53.4	64.7	83.3	62.5	66.7	50.0
Inappropriate or very inappropriate (%)	15.4	11.2	17.1	12.5	13.3	11.8	20.0	11.8	16.7	25.0	33.4	37.5

Table 9: It's inappropriate and it's definitely bullying (B)/harassment (H): Mediation

Tables 9 and 10 show a breakdown of the appropriateness of mediation according to whether the behaviour was considered to either be definitely bullying/harassment or possibly bullying/harassment.

	S1				S2				S3			
	Individual		Joint		Individual		Joint		Individual		Joint	
	B	H	B	H	B	H	B	H	B	H	B	H
Appropriate or very appropriate (%)	57.1	57.8	61.1	67.4	83.6	67.1	79.6	68.5	58.1	69.4	58.1	72.2
Inappropriate or very inappropriate (%)	0.0	4.4	5.6	2.2	2	4.1	4	8.2	9.7	0.0	9.7	0.0

Table 10: It's inappropriate and it might be bullying (B)/harassment (H): Mediation

From the tables it is clear to see that even where the behaviour is seen as definitely bullying/harassment, mediation-individual and joint meetings-were seen as either appropriate or very appropriate by a majority. Particularly in respect of the joint meetings, it is interesting (and possibly not surprising) to note the percentages are higher where there is less certainty as to the nature of the behaviour. Mediation was also seen as either appropriate or very appropriate by 59% (individual) and 59% (joint) of those who strongly agreed they would describe scenario 1 as an example of homophobia; 75.8% (individual) and 72.4% (joint) for those who strongly agreed scenario 2 could be described as an example of sexism; and 57.1% (for both individual and joint) of those who strongly agreed they would describe scenario 3 as an example of racism.

7.3 DECISION MAKING VARIABLES

Tables 11 and 12 present the rankings of the given decision making variables (relating to the first two research questions: factors influencing bullying/harassment and the appropriateness of mediation respectively). The table is ranked according to a combined percentage for those who thought the variable was extremely or very important.

7.3.1 Behaviour

Table 11. Decision making variables for assessing behaviour

Behaviour Variable	Extremely/ Very Important (%)	Not at all Important (%)
How severe the behaviour was	81.3	1.9
Violation of the alleged target's dignity	75.3	1.8
The alleged target's perception	73.9	1.9
Behaviour was inherently wrong or offensive	72.9	3.7
The alleged perpetrator's intention	68.2	1.9
Involved sexual orientation	59.3	4.6
Impact of the behaviour on the alleged target's health, career and life	59.2	0.9
Reasonableness of the alleged target's perception	57	1.9
Involved race and/or ethnicity	57	4.7
Involved gender and/or sexual behaviour	55.5	4.6
How often the behaviour happened	53.3	3.7
How many times the behaviour happened	52.3	3.7
Impact on colleagues	44.8	5.6
Impact on organisation	44.8	9.3
Acas or employer definition(s)	43	4.7
Legal definition(s)	41.6	4.6
Violation of the alleged perpetrator's dignity	41.1	4.7
Personal characteristics of the alleged target	37.7	15.1
Impact of the behaviour on the alleged perpetrator's health, career and life	36.1	8.3
Level of power imbalance between the parties	36.1	15.7
Culture of the workplace	32.4	15.7
Personal characteristics of the alleged perpetrator	24.1	17.6
Seniority/level in organisation of the alleged perpetrator	22.3	25.9
Seniority/level in organisation of the alleged target	18.6	31.5
Size of the organisation	4.6	49.5

The top five characteristics offer an interesting mix of what may be considered as impersonal factors (for example 'Behaviour was inherently wrong or offensive') and personal factors (e.g. 'The alleged target's perception').

Given the importance assigned to dignity in this research, it is useful to note the positioning of dignity both overall and of the relative positioning of the importance of dignity for the target and for the perpetrator. This is perhaps indicative of the prioritisation of the alleged target in bullying and harassment and in this respect it is also important to note the positioning of perception and of intention.

The ranking of the target's perception above the perpetrator's intention is consistent with the arguments of Einarsen et al, 2011⁵⁵. However, the high ranking of intention and the relatively small percentage difference between it and perception (5.7%) is potentially interesting from a definitional perspective. Intention here of course does not allow for the distinction to be made between intention to do the act and intention to cause the effect (Einarsen et al, 2003). This was, however, explored in the qualitative stages⁵⁶.

Consistent with arguments of the personal/impersonal, the positioning of 'Behaviour was inherently wrong or offensive' is helpful for arguing in favour of the recognition of an impersonal standpoint, especially when viewed in light of the (target's) dignity ranking. The relative importance assigned to the reasonableness of the perception is also interesting (perception 3rd, reasonableness of perception 8th) since this may potentially support the need for an objective check and would seem to be consistent with the emphasis on the importance of investigation in the focus groups⁵⁷. Further support may be found if one looks at the relative positions of those factors related to the behaviour involving a protected characteristic compared with that related to the protected characteristics of the individuals involved. The former are assigned greater importance than the latter: sexual orientation 59.3%, gender and/or sexual behaviour 55.5% and race and/or ethnicity 57% compared with personal characteristics of the target (37.7%) and of the perpetrator (24.1%). One may relate this distinction to the implications drawn from Fredman's (2011) conception of dignity in chapter 4, namely that an individual does not need to possess a particular characteristic for behaviour to be seen as offensive or objectionable. This is consistent with the conclusions of the focus group participants, although, as is seen in chapter 9, their treatment of protected characteristics is not always coherent with this.

The relatively low importance of legal (41.6%) and Acas/employer (43%) definitions should be noted, although perhaps here one should be aware that the responses may be related to knowledge and awareness of such definitions, rather than importance *per se*. Again, the later stages allow for a clarification of this and indeed the focus groups indicate knowledge of such definitions may be low.

A consideration of the five factors deemed to be least important (Not at all important) raises some interesting points for further consideration. The positioning of organisational size and culture might reflect the argument that it is the behaviour not the organisation that is important in assessing the behaviour. Caution needs to be exercised, however, in making this connection as it may be a consequence of the vignette design, especially where there is, regrettably, little explicit description of size. Although size is not considered, organisational culture was given a great deal of attention

⁵⁵ Also with the focus group findings, p180.

⁵⁶ See for example pp158-159 and p183.

⁵⁷ pp186-188

in the focus groups but reflecting these results, it was seen as being of little relevance when defining the behaviour⁵⁸.

Given the arguments over the importance of recognising the hierarchical positions in relationships and the prevalence of vertical bullying in the UK (Beale and Hoel, 2010), the presence of the seniority factors in the bottom five is potentially problematic. It may, however, perhaps be because a hierarchical relationship (as opposed to power imbalance) is not seen as important in assessing behaviour. The importance assigned to the explicit power imbalance factor, however, does not really rectify this suspicion with only 36.1% indicating it was extremely or very important.

Fortunately the mixed method design helps to counter these concerns and potential deficiencies by providing opportunities for later clarification. The relevance of power and of power imbalances, related to formal and informal forms of power (Einarsen et al, 2003; Einarsen et al, 2009; Holvino, 2010) were considered in detail in the mediator interviews in relation to the appropriateness of mediation⁵⁹ and in the focus groups in relation to changes in vertical relationships between the parties involved⁶⁰.

Additional Variables

In addition to the options provided, a number of additional variables were offered (N=29). These fell into two themes related to the unwanted nature of the behaviour. The first theme was the past relationship between the parties e.g. 'whether or not the target had themselves participated' and the second theme concerned whether the perpetrator was aware the behaviour was unwanted by the target, e.g. 'whether the alleged target had already told the perpetrator to stop'.

7.3.2 Resolution

Resolution Variables	Extremely/ Very Impt (%)	Not at all Impt (%)
Opportunity for alleged perpetrator to explain	89.8	0
Opportunity for the alleged target to explain	89.8	0.9
Opportunity for shared understanding	88.9	0
Opportunity for flexible outcome	80.5	0.9
How severe the behaviour was	77.5	0.9
What was fair to the alleged target	75.7	1.9
Behaviour was inherently wrong or offensive	73.2	2.8
Opportunity for the parties to take control	73.1	2.8
Opportunity for private resolution	70.4	1.9

⁵⁸ E.g. see p182

⁵⁹ 8.7, p162

⁶⁰ p183

Impact of the behaviour on the alleged target's health, career and life	68.5	1.9
What was fair to the alleged perpetrator	66.6	1.9
The alleged target's perception	65.4	0.9
The alleged perpetrator's intention	65.4	0.9
Speed of resolution	63.3	5.5
Whether the parties still had to work together	62	1.9
Reasonableness of the alleged target's perception	61.7	0.9
Zero tolerance for that type of behaviour	57.8	4.6
Involved sexual orientation	57	5.6
Involved race and/or ethnicity	56.5	5.6
Involved gender and/or sexual behaviour	56	5.6
How often the behaviour happened	49.6	1.9
Impact on colleagues	48.1	4.6
Legal obligation	46.3	8.3
Level of power imbalance between the parties	43.5	11.1
How many times the behaviour happened	43	4.7
Impact of the behaviour on the alleged perpetrator's health, career and life	40.7	3.7
Impact on organisation	39.2	11.2
Personal characteristics of the alleged target	34.5	9.3
Seniority/level in organisation of the alleged perpetrator	32.7	17.8
Culture of the workplace	31.8	6.5
Seniority/level in organisation of the alleged target	24.3	20.6
Personal characteristics of the alleged perpetrator	23.4	10.3
Cost of resolution to the parties	21.3	12
Cost of resolution to the organisation	19.7	15
Need for a right or wrong answer	18.5	15.7
The alleged perpetrator deserved to be punished	16.6	10.2
The alleged target deserves compensation	12	13.9
Opportunity for public vindication	10.2	16.7
Need for outcome to be public	7.5	16.7
Size of the organisation	6.6	27.4

Table 12. Resolution variables

The results at each end of the rankings for what was considered important when deciding on the appropriateness of the resolution options are extremely interesting. The top four clearly correspond with the characteristics and opportunities purportedly offered by facilitative mediation (Ridley-Duff and Bennett, 2011; Riskin, 2003) whilst the factors deemed to be the least important (aside from size) are those argued to be associated with adversarial methods. The positioning of 'Need for a public outcome' as second to last is somewhat problematic as it perhaps makes arguing against the

privatisation of justice in line with Fiss (1984) and Mulcahy's (2013) objections more difficult. This position is compounded by the high importance of an opportunity for a private resolution (70.4%). In this regard it is also interesting to note the low importance attached to punishment (16.6%) and public vindication (10.2%). Indeed ideas of blame, punishment and vindication (as may be anticipated by Fairness Theory (Folger and Cropanzano, 2001) and restorative justice (Menkell-Meadow, 2007)) are given little consideration throughout qualitative stages.

Severity is again ranked highly, although lower than when assessments about the behaviour were being made: 77.5% and 81.3% respectively. This arguably indicates that one must consider the relationship between the behaviour and the appropriate response (Edwards, 1986). This is also potentially supported by the positioning of the nature of the behaviour (i.e. involving a protected characteristic) and the importance assigned to a sense of inherent wrongness (72.3%), reasonableness (61.7%) and to a recognition of zero tolerance (57.8%). Again, the importance attached to these may indicate support for the valuing of an impersonal set of standards and the need to pursue a sense of social justice (Edwards, 1986; Rawls, 2001). The role of law in this, however, is unclear given the relatively low importance attached to legal obligation (46.3%).

The variables explicitly asking about fairness are perhaps not ranked as highly as the argument presented in this research would suggest: What was fair to the target (75.7%) and to the perpetrator (66.6%). But this is arguably not detrimental to the argument over the importance of fairness since, as was seen in the literature review chapters, many of the other variables (for example opportunity to explain or to take control) may be assigned to and understood as important contributors to understanding fairness (Genn, 2010; Nabatchi et al, 2007). The limiting of the analysis to descriptive statistics does not allow this conclusion to be drawn on the basis of the questionnaire; however, such arguments can (and will) be continued through the interview and focus group data⁶¹.

Again, in respect of fairness one can see an apparent prioritisation of the target over the perpetrator. When one compares fairness with dignity, the figures for the target are similar (0.4% difference) but in respect of fairness for the perpetrator the difference is greater: 41.1% for dignity, 66.6% for fairness. Of course the argument presented here (chapter 4) assumes dignity as a requirement of fairness, so it is useful to try and understand these differences.

Intention and perception appear to be seen as equally important in resolution (65.4%) but less important than when determining what an appropriate response is than when assessing the behaviour. When compared with the mediator responses this is particularly interesting since for

⁶¹ Chapters 8 and 9

them, intention and perception in relation to dealing with the dispute were seen as being of greater relevance than perception/intention in relation to the behaviour⁶².

The power imbalance between the parties was seen by a greater percentage as being extremely or very important in determining the appropriate response than in assessing the behaviour: 43.5% and 36.1% respectively. The position of the parties within the organisation was also seen as being more important for resolution, particularly that of the perpetrator (32.7% resolution and 22.3% behaviour). Relatively, however, power and seniority are not assigned a great deal of importance. This is perhaps surprising since they were assigned a great deal of significance in the later data stages. However, here one may need to make a distinction between their relevance for choosing an appropriate response (questionnaire) and the influence they exert over the extent to which a target may be able to pursue that appropriate response, which was the focus in the qualitative stages. Here again one finds the need to have a contextualised understanding of the findings in order to answer the remaining research questions (why influential and relationships between the factors).

The importance attached to the variables reflecting the twin pillars of cost/efficiency and empowerment do not necessarily reflect the balance evident in the rhetoric around mediation (i.e. emphasis on the former) (BIS, 2011a; CIPD, 2011). Those presented above as associated with empowerment, 73.1% and 88.9% (for example, respectively control and understanding) are ranked as highly important whilst considerations of cost are assigned far less importance: cost to parties (21.3%) and to organisation (19.7%). Speed (efficiency) was however deemed to be of greater importance than cost (63.3%). These are consistent with the results from the mediation statements⁶³ and indeed also with the interview findings.

Additional variables

Although contributions were offered for additional response considerations, these took the form of qualitative expansion on choices given or comments related to the vignette approach, rather than additions.

7.4 INFLUENCES

Table 13 shows the results from the hypothetical question where participants were asked to imagine what would influence their response decision if they were the victim in a situation of bullying/harassment.

⁶² pp152-153

⁶³ p140

Influence Variable	A Lot	Some	Little	None
How quickly the situation could be resolved	49.1	33.3	13	4.6
Your job security	44.9	36.4	11.2	7.5
Your mental health	47.7	32.7	12.1	7.5
How much you like your job	42.1	37.4	15.9	4.7
The culture of your organisation	41.5	35.8	13.2	9.4
Your chances of getting another job	39.3	36.4	13.1	11.2
Your line manager	29.0	41.1	18.7	11.2
Your physical health	41.1	28.0	15.9	15
Your family members	22.4	46.7	16.8	14
Your colleagues	19.6	46.7	29	4.7
How much it would cost you to achieve a resolution	32.7	32.7	25.2	9.3
Whether you had to face the other party yourself	28.0	33.6	23.4	15
Your financial position	23.4	28.0	25.2	23.4
Your gender	12.1	23.4	26.2	38.3
Your age	14.2	19.8	31.1	34.9
Your trade union representative	10.2	19.4	12	58.3
Your sexual orientation	8.4	17.8	27.1	46.7
Your religion or belief	11.2	14.0	16.8	57.9
Your ethnic origin	6.5	14.0	31.8	47.7

Table 13. Influence variables

It is immediately apparent that speed of resolution seems to be the greatest potential influence. This does, of course, resonate with the mediation arguments and the ordering of speed above cost is consistent with their relative importance in choice of resolution for the scenarios. Against the importance assigned above to the opportunity to explain and understand, the positioning of 'Whether you had to face the other party yourself' is interesting. Although not tested for significance, a gender difference is apparent in respect of this influence with 65.3% of women indicating it would have some or a lot of influence, compared with 45.8% of men. It is important (as it is admittedly with all the influences) to understand the extent to which this characteristic would encourage them to try a certain resolution or whether it would dissuade them from doing so. If it is a hesitance to face the party themselves it would be interesting to explore the degree this could be related to stereotypical assumptions about appropriate responses (as may be anticipated by Salin and Hoel, 2013 and Salin, 2011).

It is interesting to note the ranking of those influences relating to the organisation and the individual's position and attitude towards their job, for example, job security. Given the arguments about the role and influence of the organisation apparent in the literature, the positioning of line manager (70.1%) and of organisational culture (77.3%) is unsurprising. These are also consistent with the focus group findings where a great deal of emphasis was placed on the relational and

contextual factors within organisation culture in relation to resolution options⁶⁴. Given the nature and individual impact of bullying (Einarsen et al, 2003), the relatively high influence of mental health (80.4%) could have been anticipated.

Again it is possible to identify an apparent difference in the importance attached to an individual's own characteristics and to the involvement of race/sex/orientation. When asked whether their responses would change if the behaviour was racist/sexist/homophobic, only 31.5% said it would (N=34). Of that 31.5%, 68.6% said their own personal characteristics would be more important in such a case. The relationship between the possession of protected characteristics and the nature of the behaviour is considered in greater detail in chapter 9.

7.5 DEFINITIONS

Characteristic	Bullying	Harassment	Examples
Persistency	21	20	ongoing; continued; relentless; constantly; persistent; sustained
Power	20	3	power trip; abuse of power; power imbalance; exploitation of weakness
Impact on target	41	27	belittle or denigrate the recipient; make another person uncomfortable; reduce [a person's] skills and ability; deterioration of the victim's physical or mental health
Intention (deliberate act and consequence)	42	19	saying or doing something to hurt a particular person; targeted; singling out; goading of one person...in a malicious manner
Intended or unintended	3	7	perpetrator may not be aware of the effect of his/her actions but which cause distress nevertheless; unwelcome behaviour intended to or demean another person or having that effect
Target perception	12	17	when you feel someone is behaving in a way that undermines, insults, or frightens you; where one or more persons act in a way another person sees as a threat; a subjective perception; anything you personally find humiliating is bullying

⁶⁴ See for example pp181-183

Protected characteristics	6	27	treating someone differently because of one of their characteristics; any of the isms
Dignity	16	17	making people feel small and worthless; undermines an individual's dignity; violates an individual's dignity; when I am targeted for who I am

Table 14. Content analysis: Bullying and Harassment Definitions

Table 14 highlights a number of features in the definitions of bullying and of harassment provided (N=100). Although some (N=15) used bullying and harassment interchangeably or stated they did not see a difference, the table indicates different features were highlighted in bullying than in harassment.

Given the statutory definition of harassment, that persistency was seen as a feature of both bullying and harassment is interesting. Only two definitions of harassment (and none of bullying) made a reference to a single act or 'just a couple of times'.

Intention, and particularly a sense the act and the consequence need be intended, was apparent in a relatively high number of definitions whilst reference to target perception was relatively lacking. In light of the problematic inclusion of intention in definitions of bullying and the importance of perception considered above, this is perhaps surprising and may indicate intention is given a greater precedence in lay understandings of bullying (this is supported by the focus group findings). Whilst perceptions may not have been evident, a sense that bullying and harassment has some kind of negative impact on the target was quite prevalent. A sense of how this impact was to be determined was, however, absent.

There was nevertheless an indication of a role for impersonal standards and an acceptance that bullying of itself objectionable (Hoel and Beale, 2006) as words/phrases such as 'reasonable', 'unreasonable', 'inappropriate' and '[behaviour] that disrespects acceptable boundaries'.

The relative mentions of power for bullying and harassment seemingly reflect the understanding and positioning of power in the definitions considered above but not necessarily its positioning in the decision making responses. A number of different forms of power were identified and included hierarchical, social and experiential (Einarsen et al, 2003; Einarsen et al, 2009; Holvino, 2010). The greater number of references to protected characteristics in harassment definitions also arguably conforms to the distinction made in chapters 4, if not with the ambiguous situation arising from the scenario section results. It is interesting to note that a broader range of characteristics was identified in a number of definitions: 'gender, sexuality, ethnicity, religion, appearance, health issues or ability' and 'because of not only a protected characteristic but any personal feature, e.g. a

big nose, being fat, walking funny...'. This resonates with the lookism arguments (Davis, 2008; Desir, 2010) and is something that receives varying degrees of support in the focus groups⁶⁵.

There were also a small number (N=5) of references to bullying/harassment being 'unfair'. In the context of the argument being presented here over its use as a unifying concept, the number of references to dignity-for both bullying and harassment-is noteworthy.

7.6 BULLYING AND HARASSMENT STATEMENTS

Statement	Strongly disagree	Disagree	Somewhat disagree	Somewhat Agree	Agree	Strongly Agree
Racism, sexism and homophobia should be treated as equally serious (S1).	0	1	1	2.9	33.3	61.8
Bullying and harassment are bad for equality (S2).	2.9	2	0	19.6	33.3	42.2
Bullying and harassment are different things (S3).	6.9	6.9	15.8	31.7	24.8	13.9
Bullying and harassment is more complicated when it involves racism, sexism or homophobia (S4).	9.8	12.7	10.8	19.6	26.5	20.6
Bullying and harassment should be treated differently from other workplace disputes (S5).	8.8	15.7	12.7	22.5	20.6	19.6
Bullying and harassment is worse when it involves racism, sexism or homophobia (S6).	15.8	17.8	13.9	26.7	12.9	12.9
A situation must be labelled (for example as bullying or not) before the decision how to deal with it can be made (S7).	16.8	26.7	18.8	22.8	9.9	5
Racism and sexism are more serious than homophobia (S8).	63.4	28.7	5.9	2	0	0

Table 15. Bullying and harassment statements

The results of the statements in table 15 reflect a number of those presented above.

The level of agreement with the statement relating to the possibility of distinguishing bullying from harassment (S3) is consistent with the responses presented above demonstrating that a distinction is made between bullying and harassment. There is also agreement with the proposition that bullying and harassment should be treated differently from other workplace disputes (S5), perhaps again indicating broad support for the recognition of different levels of reasonableness. There is also a clear indication that bullying and harassment could be harmful to equality (S2). Whilst it

⁶⁵ p195

seems apparent racism, sexism and homophobia should be treated as equally serious (S1/S8) (therefore potentially contradicting Colgan and Wright's (2011) hierarchy) and that their presence may make a situation more complicated (S4), the mixed responses for S6 make it difficult to strongly support a conclusion that 'Bullying and harassment is worse when it involves racism, sexism or homophobia'. Again, the relevance of and the relationship between the protected characteristics is considered in greater detail in the focus groups.

As the chapter now moves on to consider mediation, it is useful to note the responses that seem to disagree with the need to label a dispute in order to determine how it should be dealt with (S7).

7.7 MEDIATION

7.7.1 Definition

Characteristic	Count
Informal	6
Joint meeting	12
Legal	8
Mutual outcome	17
Neutral third party	33
Parties control outcome	6
Opportunity for shared understanding	24
Repair relationship	10
Resolution	22
Training	5
Voluntary	5

(N=100)

Table 16. Content Analysis: Mediation Definitions

The definitions provided overwhelmingly reflected the features of facilitative mediation above other forms (Ridley-Duff and Bennett, 2011; Riskin, 2003). By contrast, however, the relatively low number mentioning the voluntary nature is surprising given the emphasis placed on this feature by the mediators⁶⁶. Although relatively few in number, those referring to a trained individual is interesting as sufficient training was seen as important by both the mediators and the focus group participants⁶⁷.

Although there were no definitions explicitly using the term 'empowerment', the numbers referring to a characteristic which was associated with it in chapter 5 were relatively high. The figures for shared understanding and mutual outcome are particularly noteworthy.

⁶⁶ pp150-153

⁶⁷ pp146-147 and p196

How these various features are related to each other and to the potential advantages/disadvantages of mediation will become apparent in the findings offered in the remainder of this chapter and those in the next chapter.

7.7.2 Mediation Tables

The responses for all the mediation statements are given in tables 17-20. It is useful to recall that only those with mediation training and/or experience completed this section.

Policy, culture change and transformation

Statement	Strongly disagree	Disagree	Somewhat disagree	Somewhat agree	Agree	Strongly agree
The use of mediation will only increase if both employers and employee knowledge and awareness are improved.	0	1.8	5.5	16.4	38.2	38.2
Mediation is an effective way of reducing the number of disputes being formalised in an organisation.	0	5.5	3.6	21.8	38.2	30.9
Mediation is an effective way of reducing the number of Employment Tribunal Claims.	1.8	5.5	1.8	25.5	36.4	29.1
The use of mediation will have a significant impact on the way workplace disputes are resolved in the UK.	0	1.8	10.9	29.1	30.9	27.3
Mediation is an effective way of reducing legal costs associated with workplace disputes.	0	1.8	3.6	30.9	30.9	32.7
Mediation should be compulsory for all workplace disputes.	23.6	10.9	21.8	25.5	10.9	7.3
The use of mediation has a negative impact on the development of employment law.	23.6	38.2	25.5	5.5	3.6	3.6
Mediation can be a useful tool for promoting diversity and cultural understanding in an organisation.	0	9.1	9.1	21.8	34.5	25.5
The use of mediation can have a positive impact on tackling inequality.	0	5.5	14.5	20	45.5	14.5

Mediation can be a useful tool for promoting diversity and cultural understanding in society.	0	9.3	13	24.1	29.6	24.1
The use of mediation can be harmful to equality.	21.8	47.3	12.7	7.3	9.1	1.8
Mediation can be an effective tool for changing workplace culture.	0	3.6	12.7	20	38.2	25.5
Mediation allows employers to avoid dealing with problems by sweeping problems under the carpet.	18.2	32.7	9.1	16.4	12.7	10.9

Table 17: Mediation Statements 1: Policy, culture change and transformation

The statements in table 17 seem to support the arguments of the 'docket-clearing' function (Goldberg and Shaw, 2010) and the cost rhetoric surrounding mediation and therefore also arguably offer support for the proposition (doubted in this research) that mediation can have a macro transformative effect on the way in which disputes are resolved in the workplace (Bush and Folger, 2012).

They also seem to counter the arguments associated with the privatisation of justice that the use of mediation may be harmful to the development of law (Dolder, 2004; Mulcahy, 2013) or to equality (for example, through disaggregation of claims, Nader, 1979). It is clear there is agreement that mediation could actually be a useful mechanism for increasing understanding and even in tackling inequality. It is interesting to note, however, that agreement over the potential of mediation in this respect is not unanimous with 10.9% agreeing or strongly agreeing it could be harmful to equality and 5.5% disagreeing the use of mediation could have a positive impact on tackling inequality. The reasons why this may be the case are perhaps related to the way in which organisations may use mediation to personalise more systemic problems⁶⁸. It is also interesting to note the difference in the figures for the potential of mediation to promote understanding in an organisation (60%) and in society (53.7%). When compared with the interview data, these are at least consistent or even perhaps a little high which has implications for the transformation claims (BIS, 2011a; Saundry et al, 2014).

The figures for the last statement in the table (sweeping problems under the carpet) are also noteworthy, especially when it is recalled that responses in this section are informed by experience of and/or training in mediation. When considered in light of the later data collection stages, one may argue these figures reflect the role assigned to (or adopted by) the organisation in the mediation process.

⁶⁸ p169-170

Cost and efficiency

Statement	Strongly disagree	Disagree	Somewhat disagree	Somewhat agree	Agree	Strongly agree
The confidential nature of mediation can encourage the disclosure of sensitive information in a way that formal procedures cannot.	0	1.8	3.6	25.5	41.8	27.3
The speed with which disputes can be settled using mediation is what makes mediation attractive to employers.	0	3.6	3.6	32.7	45.5	14.5
The speed with which disputes can be settled using mediation is what makes mediation attractive to employees in a dispute.	0	3.6	9.1	36.4	36.4	14.5
The opportunity to take control of a situation and reach their own outcome in a dispute is what makes mediation attractive to employees in a dispute.	0	1.8	7.3	40	41.8	9.1
The opportunity for employees to take control of a situation and reach their own outcome in a dispute is what makes mediation attractive to employers.	0	7.3	9.1	40	34.5	9.1
The financial savings associated with mediation are what make mediation attractive to employers.	0	11.1	9.3	38.9	25.9	14.8
The financial savings associated with mediation are what make mediation attractive to employees in a dispute.	3.6	9.1	32.7	25.5	18.2	10.9

Table 18: Mediation Statements 2: Cost, efficiency and the nature of mediation

The statements in table 18 relate to cost and efficiency arguments and to the nature of mediation. Here it is clear to see a relatively high percentage agreeing or strongly agreeing with the argument that the confidential nature of mediation offers something to the parties formal procedures do not (thus reflecting Gazeley (1997) and Latreille (2011)).

Consistent with the apparent importance of speed of resolution over cost evident in the decision making factors, a higher percentage agreed or strongly agreed with the attraction of speed of resolution to employers (60%) than the cost (financial savings, 40.7%). A comparison of the responses relating to the attractiveness of features mediation for employers and employees potentially offers tentative support for the argument mediation is attractive for different reasons which again fall along the cost/efficiency (employer) and empowerment (employee) lines: for example financial savings (40.7%/29.1%) and opportunity to take control (43.6%/50.9%). Although not as high as the figure for employers, the feature with the greatest percentage indicating attractiveness for employees is speed (50.9%) which is arguably consistent with the ranking of speed of resolution in the influence question above.

Mediation timing and process.

Statement	Strongly disagree	Disagree	Somewhat disagree	Somewhat agree	Agree	Strongly agree
There is a greater potential for mediation to be successful where the parties are co-workers.	5.5	12.7	29.1	30.9	12.7	9.1
There is a greater potential for mediation to be successful where the parties are a line manager and a subordinate.	18.2	25.5	38.2	10.9	3.6	3.6
Mediation is most appropriate when the parties still need to work together.	0	0	5.5	34.5	43.6	16.4
Employers should be able to use the fact that mediation was attempted in their defence in a later tribunal claim.	9.1	10.9	12.7	14.5	38.2	14.5
The discussions and outcome of a mediation should never be used in a later formal procedure.	7.3	5.5	21.8	12.7	25.5	27.3
Mediation is most effective if it is used early in a dispute.	1.8	3.6	5.5	29.1	29.1	30.9
If one or both parties have doubts about mediation they should be encouraged to have individual meetings.	0	0	7.3	27.3	38.2	27.3
Mediation must include both individual and joint meetings to have a positive impact on the parties.	1.8	3.6	30.9	25.5	25.5	12.7
Mediation can have a positive impact on the parties if they have individual meetings with a mediator but not a joint meeting.	3.6	5.5	27.3	34.5	23.6	5.5

Table 19: Mediation Statements 3: Mediation Timing and Process

The statements in table 19 relate to the relative positions of the parties in a mediation, the stages of the process and the relationship between mediation and other procedures. Interestingly, there is no polarised opinion on the first statement with a relatively low percentage strongly agreeing or agreeing (21.8%) or strongly disagreeing/disagreeing (18.2%) that there is greater potential for mediation to be successful where the parties are co-workers. A difference is more apparent in respect of the second statement, however, with 43.7% strongly agreeing or disagreeing with regard to a hierarchical relationship. Possible explanations for these positions have been hinted at above and can be found in the mediator responses in the next chapter.

While it is not surprising that there is relatively high agreement with the statement 'Mediation is most appropriate when the parties still need to work together' the emphasis in the rhetoric placed on mediation's ability to preserve relationships would perhaps suggest that one would expect this figure to be higher (Gibbons, 2007; BIS, 2011a). Similarly, given its promotion as an early intervention technique, one might expect the figure for the early use of mediation to be higher than 60%.

The figures for the relationship between mediation and other procedures is interesting, not least because there appear to be relatively high percentages for both the disagree and the agree options. For example, 52.7% strongly agreeing or agreeing '[e]mployers should be able to use the fact mediation was attempted in their defence in a later tribunal claim' and 20% disagreeing or strongly disagreeing. A similar number agreed or strongly agreed, however, with the statement '[t]he discussions and outcome of a mediation should never be used in a later formal procedure' (52.8%), here a smaller percentage disagreed/strongly disagreed (12.8%). Albeit not in the context of later formal procedures, discussion in the focus groups on a need to distinguish between the specific detail of and the general principles involved in a specific dispute may offer an insight into these two potentially conflicting statements⁶⁹. The relationship of mediation to other procedures was explored in the mediator interviews and the findings seem to agree with the positions that distinguish between the fact mediation has been conducted and the specific details and/or outcome.

Although only 18.2% agreed or strongly agreed mediation should be compulsory for all workplace disputes (table 16), 65.5% agreed or strongly agreed with the statement: 'If one or both of the parties have doubts about mediation they should be encouraged to have individual meetings'. As will be seen in chapter 8, this distinction was also echoed in the interview responses. Given the emphasis placed on the transformative effect arising from shared understanding and mutual agreement⁷⁰, the figures for the individual/joint meetings are perhaps not surprising; although again, one may have expected a higher figure agreeing or strongly agreeing that a positive impact flows from attending both individual and joint meetings. Again, the mediator interviews potentially provide an explanation for this lower figure.

Mediation, bullying and harassment and mediator role

Statement	Strongly disagree	Disagree	Somewhat disagree	Somewhat agree	Agree	Strongly agree
Mediation is appropriate in bullying and harassment if there is an allegation of racism, sexism and/or homophobia.	0	0	14.5	20	45.5	20
The nature of bullying and harassment make the use of mediation particularly appropriate.	3.6	7.3	9.1	14.5	40	25.5
Mediation is appropriate where there is an imbalance of power between the parties.	7.4	1.9	7.4	24.1	37	22.2
A mediator must only take a facilitative role.	1.9	3.7	22.2	11.1	44.4	16.7

⁶⁹ 9.7, p198

⁷⁰ E.g. p148

The presence of a directive mediator is sufficient to mitigate an imbalance of power between the parties.	14.5	21.8	25.5	18.2	16.4	3.6
The presence of an impartial mediator is sufficient to mitigate an imbalance of power between the parties in bullying and harassment.	9.1	5.5	18.2	36.4	20	10.9
A mediator should be able to make suggestions and take a more directive role.	7.4	14.8	22.2	31.5	18.5	5.6

Table 20: Mediation Statements 4: Mediation, bullying and harassment and mediator role

The final table (table 20) concerns the use of mediation for bullying and harassment and the mediator role. It is interesting to note that 0% strongly disagreed or disagreed with the first statement, whilst 65.5% agreed or strongly agreed. From the interview responses, the key to understanding these figures may be the presence of the word 'allegation'⁷¹. Whilst the figure is high relative to that of other statements, one may arguably have anticipated the strongly/agree percentage for the statement 'The nature of bullying and harassment make the use of mediation particularly appropriate' to be higher. It is also important to note 10.9% either disagreed or strongly disagreed with that statement since this indicates there is no unanimity on the appropriateness of mediation for bullying and harassment.

It is also clear the presence of a power imbalance would not render mediation inappropriate (9.3% disagreeing/strongly disagreeing it would be appropriate), a figure that may worry Keashly and Nowell (2003). The figures in the table indicate that the mediator role favoured is the dominant facilitative one (Latreille, 2011) and that a higher percentage either agreed or strongly agreed that the presence of an impartial mediator is sufficient to mitigate power imbalance than agree or strongly agree a directive mediator is sufficient. Again, potential reasons for this are offered in the qualitative interviews.

7.8 CONCLUSION

From the questionnaire results one finds support for the argument there is no uniform assessment of the behaviour and that, whilst there may be a difference between bullying and harassment, there is no indication where the line is to be drawn, or how far understandings of harassment are equated with sexism/racism/homophobia or by association with protected characteristics.

Through all the various sections there are also grounds for the need to explore the personal/impersonal dynamic with possible tensions between private, personal judgements and public outcomes and standards of reasonableness being identified throughout.

Finally there is also an indication that mediation is seen as appropriate for dealing with bullying and harassment.

⁷¹ p151

Areas of ambiguity and possible conflict were identified and the role of the qualitative stages in helping to explain these was also highlighted. It is to the detail of the qualitative stages that the discussion will now turn.

CHAPTER 8. FINDINGS 2: MEDIATOR INTERVIEWS

8.1 INTRODUCTION

The previous chapter outlined the findings from the questionnaire which potentially help to answer the first two research questions (i.e. what factors influence whether a situation is perceived as bullying/harassment/whether mediation is perceived as appropriate). It also identified a number of potential characteristics and perceived benefits of mediation. This chapter seeks to use responses from the twenty mediator interviews to explore these characteristics further. It will do this by contextualising the questionnaire results and seeking to understand the meaning behind them. It is through this qualitative data that the third, fourth and fifth research questions can also be addressed: why are those factors considered to have an influence and how do they relate to each other. Again, as part of the theory-building process, this chapter positions the findings within the existing literature.

It will be seen that the findings arguably offer credible support for a number of the factors and potential relationships and justifications previously identified and that there is evidence of the anticipated tension between the representative argument favoured here and that of direct democracy and participation offered by Ridley-Duff and Bennett (2011). At the outset it is also interesting to note that of the "twin pillars" identified in chapter 5, there was a dominance of empowerment arguments, with issues of cost and efficiency arising only tangentially in relation to organisational attitudes towards mediation.

This chapter will begin by outlining the responses of the interviewees to the direct question: To what extent do you think mediation is appropriate for dealing with workplace bullying? It will then move to explore the reasons for these responses, for example through understanding what mediation is, what bullying and harassment are, the relevance of intention and perception and the role of power. As chapter 5 suggested, theoretical and conceptual understanding can (and must) be informed by an understanding of how mediation operates in practice. Insights offered by the responses which help to bridge the gaps between potential conceptual tensions in mediation and bullying/harassment are highlighted to demonstrate that for the participant mediators the use of mediation is often (though not always) both feasible and fair.

8.2 MEDIATION: APPROPRIATE AND SUCCESSFUL?

In line with the questionnaire findings, all twenty mediators were in agreement that mediation was an appropriate way of addressing bullying (and harassment) in the workplace. Given the policy and practitioner literature outlined previously this is not surprising. There were differences, however, in the extent to which mediation was seen as being appropriate.

One mediator took what may be considered as a relatively radical approach, stating that:

I think it's the only true way of addressing issues of workplace bullying. (Mediator 15)

The other responses, however, indicated that whilst they thought mediation was often the appropriate option for dealing with bullying and harassment, it was nevertheless just one option:

I think it's incredibly significant, my experience tells me that, well nearly probably 80, 90%, 80 85% of accusations of bullying can be worked out in mediation, and of course, there are going to be situations where the formal procedures are absolutely necessary...but I would say it's absolutely integral to deal with workplace bullying. (Mediator 14)

Appreciating that mediation should be seen as one possible option is consistent with the findings of Bennett (2013). It is also important for understanding how mediation should be positioned with other procedures and approaches⁷².

Though support was unanimous, it did come with two key caveats. The first is that above: it is only an option. The second relates to the skill and motives of the mediator and was stated passionately by Mediator 7:

I do think now...whether it's [bullying and harassment] or whether it's something else, mediation sounds lovely, and obviously it's intention is benign and really quite transformative but it's like any tool in the wrong hands or unskilled hands...it does worry me that the world is trotting out lots of mediators...I...absolutely do worry that things could get worse in the room, because after all, the mediator is being paid by the organisation and you know you have to manage and self-manage your own sense of bullying and harassment...and if the senior person is close to who is paying you your money, you know, you could get caught up in all of that. The mediator is not a Teflon human.

These concerns notwithstanding, all the mediators were able to provide examples of situations where they had felt mediation had not only been appropriate but also successful. These included misinterpretations of or complaints over management style, incompatible communication styles and complaints of racial and sexual harassment.

There was some discussion over the way in which success can be, and is, defined. There was strong agreement that the parties deciding they could (or could not) work together in the future and the terms for that future was an essential marker (albeit one difficult to track in the long term).

A difference of opinion was apparent over whether producing a written settlement or any settlement was the benchmark for success. Those who thought it was did so on the basis it provides the parties with a point of reference in the future and there was an indication that a settlement was expected by organisations. Others however felt that a written settlement is not always what the parties' desire and that insisting on one may undermine the empowering benefits of mediation:

⁷² See below 8.4, p153

...if I go in thinking what I've got to get to is a piece of paper, I'm not really listening to the parties involved. I'm not doing what they want. I'm kind of following my own agenda...It's resolution in the eyes of the parties that's the holy grail because that means that they've created it and it works for them. (Mediator 18)

In this one may begin to see how organisational and mediator agendas could be influential (Coben, 2001, 2004; Dolder, 2004; Van Gramberg, 2006) and informs the argument for the need to expand the classification of parties to mediation beyond the parties and the mediator (which Nabatchi et al, 2007 fail to do).

A number of the participants also reflected the concerns of parties in Saundry et al's (2013) study about the extent to which an initially successful outcome may be sustainable in the longer term. Some of the mediators offered follow up contact after the initial 1-2 day process but consistent with Saundry et al's (2013) this was not necessarily the norm.

The short timeframe and lack of follow up is one of a number of concerns raised by the mediators over the appropriateness of mediation that are not necessarily related to the structure or nature of mediation itself but rather to the way it is, and may be, used in practice. There was a strong sense that much of the current practice was driven by the high levels of competition between mediators and organisational attitudes towards mediation:

I don't think the market product serves the process very well...mediation still isn't very well known...[organisations] are still not very wise buyers. So where do they get their information from to become more discerning? So if they're getting their information from mediators who are selling the mediation product, then having a more time consuming product in the marketplace is probably not going to be very attractive when they've got multiple other providers who just do a one day model. (Mediator 5)

Without further information, however, the confirmation that the mediators thought (and had found) mediation to be appropriate does not advance understanding as to why this is the case. It is to the detail behind these opinions that the findings will now turn.

8.3 UNDERSTANDING WHY MEDIATION IS SEEN AS APPROPRIATE

Favouring facilitative mediation

The first step in understanding why mediation is seen as appropriate returns the discussion to the question of what mediation is. All interviewees were asked what mediation means to them and in their responses it is possible to identify the features offered in Ridley-Duff and Bennett's (2011) definition of facilitative mediation adopted above⁷³. The responses also reflected those in the content analysis of the definitions provided in the questionnaire:

Attempting to resolve a dispute between one or more parties...in a way that they can, in a format that they can deal with. (Mediator 9)

⁷³ p68

[The mediator role is] to facilitate the conversation and communication. So to be there to facilitate them having the conversation that hopefully brings about greater understanding in how they've got to where they are and helps them think through creatively, and honestly, how they can move forwards. So very much the impartial facilitator. I'm not an evaluative mediator. I'm not directive at all so I feel very strongly, well my style is very much about empowering the parties to make their own decisions. (Mediator 10)

The last quote typified the responses to the question of how they saw their role as a mediator. There was a favouring of the facilitative model (thus reflecting Latreille (2011) that it is the most commonly used form). There was an emphasis on the need for mediator impartiality and their responsibility for creating an environment which was safe and encouraged trust. This environment plays an important role in positioning mediation as appropriate⁷⁴.

From a definitional perspective, concerns reflecting those of Dickens (2012) and Dolder (2004), and the findings of Saundry and Wibberley (2012), were expressed over the misuse or loose application of the term mediation. There was recognition that awareness of mediation is generally low but growing:

You know there are a lot of political...initiatives pulling in favour of mediation, I think for good, economic reasons, and I think also you know the senior judiciary is promoting it which puts a lot of welly there. I think it is a bit like watching the coins go off the thing at the fairground, you know. You wait for the pennies to fall off the belt and they are taking a long time to get to the edge (Mediator 11)

It was felt however that a lack of clarity over what mediation is, together with a lack of quality control in training standards, had the potential to confuse organisations and/or parties and that it may dissuade them from trying a structured mediation process in the future.

Mediation: Something different

Part of this potential confusion also lay in the presentation of mediation as something "different": a theme evident in the interviews:

I've always been interested in understanding why people get engaged in conflict and understanding why people specifically are unable to get out of conflict in an adult way, and mediation offers a very powerful tool to cut through conflict and part of it that interests me the most is the journey that the individual makes to emerge from that conflict. So that's really what for me mediation is. It's more than just the process. It's the journey for the individual on both sides really to mature and to gain a better understanding and therefore more control over their lives. (Mediator 3)

[I]t may just be for them [the accused] to hear it for the first time. Maybe hear it from the person themselves, not second hand through HR, not second hand through a grievance which is written down but directly from the person themselves...part of what we do is we encourage people to actually come together, and actually sit together, and actually talk together, and that's the whole person talking. So when they can hear the tone and the emotion and the impact and actually see reactions in people, all of that, we think contributes to potentially helping to solve the problem. (Mediator 6)

⁷⁴ For example see pp164-165

Here one can see how the empowerment pillar is dominant. The opportunity offered by mediation to provide a way for the parties to better understand themselves and each other is presented as the characteristic which sets mediation apart from other options and underpins the sense mediation can result in individual transformation.

Although a discourse analysis was not undertaken, it is interesting to note the kind of language used to describe and differentiate mediation. Positioning mediation in the context of dignity as this research seeks to do, the use of words such as 'whole person' is interesting. On the basis of the responses, however, one may argue that dignity here is related to a sense of empowerment and is therefore used in a more individualistic sense than was argued in chapter 4. This stance seems to accord more strongly with the participatory one favoured by Ridley-Duff and Bennett (2011), rather than the representative one based on impersonal recognition favoured here. Indeed, social conventions and structures were seen as inhibiting or at least dissuading parties from having the type of conversations necessary to deliver empowerment:

[W]e're so isolated in our own thoughts and feelings and we're so prohibited from being genuine with people. There's so many kind of social constructions that formalise how we talk to each other and I find those exhausting and I find them limiting and and meaningless, and when you're mediating you're actually in a space where people are really working hard to not collude with those social constructions. So if you have a manager and a member of staff in a mediation and you're doing the right thing as a mediator, you've got a reasonable chance that they will have a meaningful conversation where they are being human and real (Mediator 6)

Within these views that mediation is something different, there was a strong theme that the opportunity for the parties to take control was seen as an important element of empowerment. The significance of control, however, is not noticeably assigned greater importance for one party above the other i.e. for the alleged target as Harkavy, 1999 argued. This may not necessarily serve to counter or undermine Harkavy's position but may instead be seen as reflecting the hesitance of the mediators to assign clear and defined labels to the behaviour and to the parties⁷⁵. Control over the outcome for both parties was seen as important to secure commitment to the otherwise non-binding agreement reached.

This non-binding nature of mediation is again something which sets mediation apart as different from other dispute resolution processes. The strength in an agreement in mediation comes from the involvement of the parties in reaching that agreement and therefore feeling a sense of ownership over it. There was an acknowledgement that though mediation affords the parties a great deal of flexibility in the agreement reached, the options are not unlimited and must be workable outside of the mediation process:

A mediator has got to be very good at doing the return to work stuff: "ok that's what you're saying here, what do you mean by that tomorrow when you're back at your desks or back out in your industry working?". (Mediator 12)

⁷⁵ p158

As this section demonstrates there was a clear agreement across all participants that mediation can be empowering for the parties and provide them with a sense of control over the reaching of and the continued adherence to an agreement through a potentially transformed approach to understanding. This potential for empowerment however does not necessarily automatically flow from simple attendance to and participation in mediation, a number of conditions must be met.

The first for consideration is the extent to which participation in mediation needs to be voluntary and, if yes, how voluntary is to be understood and determined (and by whom) (Bennett, 2013; Saundry, Bennett and Wibberley, 2013).

The importance of voluntary participation

There was a strong (although not unanimous) sense of support among the mediators that mediation should be a voluntary process.

...the model we deliver...is something which relies very much on peoples' commitment to it...we never force someone to go down to mediation. So people wanting to do it is our foundation level. (Mediator 1)

As will be seen below the reasons for insisting on voluntariness are explicitly related to the empowering potential of mediation and to a sense of fairness in the process of mediation⁷⁶.

There was a majority opinion that a move to make mediation mandatory may serve to undermine its potential and lead to it being seen as simply another stage in a formal process. However, whilst mandatory participation in mediation was seen as undesirable, two of the mediators felt that meeting with a mediator should be mandatory. The opinion that parties should be encouraged to meet with a mediator is consistent with the support (65.5% agreement) for the similar statement in the questionnaire⁷⁷:

I would make it compulsory that they need to consider mediation and get some advice of what mediation is and talk to the mediator basically. After they know what it is, I think that they then have the choice. (Mediator 20)

Influences

Where one is talking about encouragement to meet with a mediator, even where it is not mandatory, it is important to return to a need to acknowledge the possible influences that may lead a party to feel compelled to try mediation, rather than be genuinely willingly to attend. In addressing this there is a need to look at what happens when the parties meet with the mediator individually and how the decision to proceed to mediation is taken. In the interviews it was acknowledged that a number of factors may serve to influence this decision including the nature of the dispute, organisational pressure and attitude, mediator motives and skill and the personal capabilities of the parties.

⁷⁶ 8.9, p170

⁷⁷ p142

Nature of the dispute: a secondary concern?

The relevance of the nature of the dispute to the question of appropriateness will be considered in greater detail below but in the context of influence and the voluntary characteristic of mediation it appeared to have little relevance. From a mediator perspective, the nature of the issues involved were not necessarily of great significance. What mattered was that the parties are willing to try mediation. This was the case even where there were allegations of sexism, racism or homophobia:

I think it's on a case by case basis. If that's just the very fact that there's allegations of this type, [it] doesn't mean that mediation isn't suitable, because again, they're allegations and they're labels of behaviour that just need to be understood and talked about, so again, it comes back to the willingness of people to have that conversation (Mediator 10).

There was an awareness, however, that the perspectives of a mediator and of an employer may differ. In line with Saundry et al (2013) there was an evident recognition that employer responsibilities and duties of care may mean that certain types of behaviour should not be seen as appropriate for mediation and therefore the question of party voluntariness may never arise. For example:

Well an employer has got a duty under the Equality Act, under all of the protected characteristics to ensure that it's compliant with that legislation. If someone's acted in a racist or sexist way or a homophobic way and so on...the employer has got to deal with that, just full stop. The employer has got to deal with it. (Mediator 8)

That certain types of behaviour may also effectively (though not necessarily) be removed from the possible reach of mediation also potentially triggers references back to the recognition of different standards of reasonableness in behaviour and of levels of responsibility for upholding them⁷⁸.

It flows from this recognition that the positioning of mediation with other procedures is important. If an organisation is to decide, it might not become a question of the nature of the behaviour per se but rather of managerial attitude toward that behaviour. This may lead a party to feel that mediation is their only option and indeed the mediators had encountered situations where this had been the case:

...I speak to people on the phone and I say "well you do know this is voluntary?" and they say "well I've been told I've got to". We'll take a step back and I'll tell you a bit about it...so you can then make that choice as to whether you do actually want to go through it. (Mediator 1)

However, even where it became apparent there was organisational pressure to mediate this would not automatically bar the mediation from proceeding further. As the above quote illustrates, a mediator may seek to explore this sense of pressure and in doing so seek to determine whether it was possible to nevertheless secure voluntary attendance.

⁷⁸ Chapters 2-5

Voluntary: More than just turning up

Whilst the willingness to attend mediation voluntarily (any possible influence notwithstanding) was seen as necessary, it is by itself not sufficient. For the benefits of empowerment to be realised willingness to actively participate and “engage properly” (Mediator 3) in the mediation process is vital. This proper engagement includes willingness by both parties to listen to each other and to be open to hearing about the impact of their behaviour and to the possibility of change:

I think a key aspect of whether mediation is suitable is peoples’... ability to come to the table with a degree of openness to hearing what the other person has to say and thinking that I might need to change as a result of this process...I might need to do something different. (Mediator 17)

It may be this characteristic that led the participants in Saundry et al’s (2013) research to feel that they had to accept a degree of blame. This was not expressly considered or raised in the mediator responses but may potentially be inferred from the repetition of statements such as ‘take responsibility for their actions’. However, as the responses in relation to labelling situations and the rejection of the relevance of blame for mediation set out below will show, the mediators may refute this inference.

Resolution and the importance of intention toward and perception of mediation

When participants were asked about the relevance of intention and perception when determining whether mediation is appropriate, the question was concerned with intention and perception in respect of the behaviour complained of. However, the responses to the question in the first interviews indicated the need to ask an additional question. The responses had related not to the behaviour but to the parties’ intentions towards and perception of the mediation process, the mediator and the other party.

There was an indication that where certain party motives and expectations could not be met by mediation it would be seen as inappropriate. Interestingly, against the context of restorative justice and organisational justice an intention to allocate blame or pursue punishment were seen as inappropriate within mediation⁷⁹.

This again leads to the recurring theme that whilst mediation is (and offers) something different, and should be encouraged as an option, it will not always be appropriate. All the mediators were of the opinion, however, that the existence of potentially inappropriate intentions or perceptions of mediation at the outset would not automatically bring the possibility of mediation to an end. These can be explored in the initial meetings:

I’d have to understand if somebody didn’t want to mediate, what it was that they’re frightened of or what was it that they wanted to achieve that wasn’t going to be served by mediation, and often it’s retribution, and mediation does not provide retribution. It’s restorative and maybe

⁷⁹ pp41-42

they don't want to restore, maybe they want to stick the knife in...so it's not what the presenting symptoms are that determine whether mediation is [appropriate], it's actually...the desired outcome. (Mediator 5)

The majority felt that given a sufficiently skilled mediator and an appropriate amount of time, willing individuals could be "prepared" for mediation. However, one mediator was less certain that anyone could be prepared for mediation, instead viewing personal traits as an important precondition:

...only the people who are minded to engage in mediation will contemplate it. So you're already working with a subset of people who believe that talking can be useful...so you know, you're calling from a fairly narrow range of people, and that's a big secret most people won't tell you (Mediator 5)

Whilst personality was not explicitly acknowledged by the other mediators, an appreciation of the health and the potential vulnerability of the parties was seen as important. In the context of the health implications of bullying/harassment and the potential erosion of a party's coping resources, (Einarsen et al, 2009) vulnerability is an important consideration.

In making such assessments (willingness/capability) one again encounters the gatekeeping role of a mediator and the potential influence a mediator may exert over the parties' decisions. In understanding the significance of mediator influence it is necessary to consider the skill and integrity of the mediator. As indicated in the quote above that mediators are not 'Teflon', there were a number of indications that though the organisation may influence and exert pressure on the parties, the mediators themselves may also be subject to organisational pressure to proceed to mediation (which may then influence the mediator-party relationship).

Thus, in respect of the question of who makes the decision to mediate, it was clear that whilst the mediator (and also to a certain extent the organisation) acted as gatekeepers, the decision to mediate must be led by voluntarily willing parties. This is well supported by the existing research (for example Bennett, 2013). Voluntariness may be subject to a number of influences but, in the view of the mediators, provided those influences are made explicit and explored (between each party and the mediator through the initial contact and individual meetings) they do not necessarily make mediation inappropriate. In the absence of such explicit exploration, however, there was acceptance of the risks and dangers for exploitation raised by Coben (2004) and Van Gramberg (2006) may arise.

8.4 TIMING AND RELATIONSHIP WITH OTHER PROCEDURES

There was support for the use of mediation as an early intervention technique. The comments of the mediators reflected those of Gibbons (2007), with recurrent themes of the chance to avoid escalation or entrenchment by 'nipping [them] in the bud' (Mediator 15).

Contrary to the promotion of mediation as an early intervention technique however, in the experience of the sample it was not often used as one. The mediators were brought in at various

points within a resolution process. One may argue that the later involvement of the mediators is down to their external position but this experience is consistent with the operation of internal mediation (Latreille, 2011).

Given the importance in this research assigned to balancing the personal/impersonal standpoints, it is interesting to note the relationship between mediation and investigation processes. Here it was apparent from the mediator responses there was disconnect between organisational practice and the mediator perspective on the worth of investigations in mediation.

Mediation and Investigation

It was common for organisations to have conducted investigations prior to contacting a mediator. For the mediators, however, conducting investigations prior to mediation was unhelpful. There was again a positioning of mediation as something different to adversarial procedures. There was an exclusion of the relevance of facts and evidence-gathering in mediation. The emphasis instead was on the non-judgemental nature of mediation (Purcell, 2010) and the subjective experiences and expectations of the parties involved:

[W]e're not really interested in facts. Facts are for investigators. We're just interested in what people have got to say for themselves [and] how they do it in relation to the party they are in dispute with. (Mediator 4)

I would strongly recommend that people try when it's appropriate, even when it does include something like sexism and racism. The important thing though is that you do not, in [mediation], need evidence whether someone is racist or not. You do need to reframe the conversation towards "Ok. What do you want to do about this in the future?". (Mediator 12)

The rejection of the need to gather evidence and make judgements sits uncomfortably with the view advanced here that behaviour should be determined by reference to an objective standard of reasonableness. However, it does seem to avoid the problems associated with the need to develop a credible case (Rosenthal and Budjanovcanin, 2011) or, as Harrington et al (2012) found, the need to rely on biased organisational decision makers to determine an outcome. That investigations are seen as inappropriate prior to mediation by the mediators contrasts with the findings from the focus groups where the need for some initial fact-finding process in addressing bullying/harassment was a strong theme.

A focus on investigation provides a slightly different lens through which to view the relationship between mediation and other formal procedures such as grievance and disciplinary (i.e. beyond entrenchment). Timing and entrenchment are, however, relevant and are necessarily closely related to any discussion on the role of investigation, especially where the outcome of the investigation (and resultant grievance/disciplinary decision) are not seen as the end of the matter i.e. continued animosity regardless of the investigation outcome where the parties still work together. In the mediator responses there was a clear positioning of mediation as a way, or indeed the only way, of rebuilding relationships and/or facilitating a continued relationship.

The ability of mediation to repair relationships is another of its argued benefits (Gibbons, 2007). What is noteworthy was recognition not only that it will not always be possible to repair a relationship but also that the post-mediated relationship need only be civil and nothing more. Against the language of empowerment and transformation such results may seem a little lacklustre and indeed one mediator did comment that such outcomes, particularly the former (no repair) do not necessarily conform to employer expectations.

Here again one finds the need to understand the relationship between an employer and a mediator and the need for a mediator to potentially manage employer expectations.

Distinguishing workplace and employment mediation

It was in the need to appreciate whether the employment relationship (rather than the relationship between the parties involved) would continue that one of a number of distinctions between workplace and employment mediation was drawn:

[W]orkplace very much you're envisioning people working together afterwards...whereas with employment...it's already gone a bit more serious. There's already tribunal proceedings, so you may be talking about actual figures and money (Mediator 2)

The other distinctions relate to the relevance of employment law. In employment mediation the parties are more directly engaging with employment law and the need to appreciate their legal positions prior to mediation. Here the objections on the grounds of privatisation of justice advanced by Fiss (1984) and Mulcahy (2013) are of particular concern since the outcome of employment mediation can be binding in the form of private settlements. However, the relationship between workplace mediation and employment law is not clear.

Law

When asked what the role of employment law was in mediation the responses fell into one of two themes. The first related to procedural considerations and the second to the substance of employment law.

Procedure

The responses in the first category were consistent with the findings of Harris et al (2012) and Saundry and Wibberley (2014) that employers were wary of litigation. The mediators saw this as a potential barrier to increasing the use of mediation:

I talk to lawyers, I talk to mediators and it's still really unclear...I think some real clarity around the relationship between mediation, its contents and its outputs and any subsequent legal action that might take place some kind of clarity around that and reassurance...would be very helpful for people (Mediator 10)

When considering the relationship between law and workplace mediation, timing again becomes important. Timing here, however, is given a different relevance than that considered in the

previous sub-section. Timing is not of concern in respect of the ability of mediation to rebuild relationships and counter-entrenchment but is rather seen in relation to the satisfaction of employer duties and the operation of limitation periods.

Substance

Those in the second theme serve to illuminate the arguments preferred in this thesis further since they relate to the limited relevance of the standards of reasonableness contained in legal (and organisational) instruments. They also firmly steer the discussion to the crux of understanding why mediation is considered as appropriate for bullying and harassment.

The responses here again sought to position mediation as something different. Although employment law provided the context in which mediation operates, the mediators saw it as having little direct relevance within the workplace mediation process:

Well I suppose it's useful...in framing the world in which relationships at work now have to happen, but on the whole, I think it needs to be in the background not the foreground...I think as for the detailed law, my experience tells me this, more of a problem than a help because harassment and bullying are not things where you want to get into black letter law. It doesn't matter if it was my little finger rather than my whole hand. I only brushed against her once or something, and you know it's not that kind of minute analysis of the evidence. It's much more important to come out and see what's going on overall (Mediator 12)

Here there are echoes of Hippensteele's (2006-2007) comment that facilitative mediation is not about rights: indeed many of the mediators disclosed that they had little knowledge of employment law. They did not see this as problematic, however, as provision of legal advice was not part of their role as a non-judgemental facilitative mediator. If parties require legal advice before proceeding to mediation they should seek it elsewhere. A clear division of responsibility for advising about rights was thus drawn: seemingly conflicting with Jenkin's (2011) suggestion a mediator should advise of rights. The voluntary and non-binding nature of workplace mediation was stressed and there was again recognition that whilst mediation offered something different, it should only be seen as a possible option:

[I]t's an option. It doesn't diminish anybody's rights to be able to turn around later on and say this hasn't worked but I still don't like what you are doing and grieve through formal processes. (Mediator 1)

When one moves to consider the reasons why the mediators viewed mediation as appropriate for bullying and harassment the reason for the exclusion of legal rights from mediation is illuminated. At the risk of oversimplifying the responses the position may be crudely summed up thusly: mediation is appropriate for bullying but not *actual* bullying.

8.5 THE DIFFICULTY IN DEFINING BULLYING AND HARASSMENT

With the exception of one mediator who saw current disciplinary/grievance processes as being fundamentally flawed, it was apparent from the responses that there was and should be a place for

formal policies and processes. This was reflected in the view that mediation should not be used to allow someone to 'escape the consequences of bullying' (Mediator 12).

Consistent with the arguments of Foster and Harris (2005) in the managing diversity literature, however, the arguments in favour of such policies were dominated by references to employer obligations and concerns of cost, rather than recognition of any inherent value in prohibiting bullying/harassment. This notwithstanding, although they do not explicitly engage with the arguments of dignity and the relevance of disadvantage, an inference could be made from a minority of the comments that the reasons for the policies are grounded in impersonal standards and that this influenced the way prejudice could be challenged:

...in most workplaces there's a set of isms. It's a difficulty that comes to the attention of particularly senior managers or HR, people are just kept apart...[there's] this fear of addressing it, because it might pick up this label of prejudice in some way, and then everything gets kind of very polarised in the way it gets discussed (Mediator18)

It is interesting to note that the few comments relating to societal values arose in relation to the appropriateness of mediation for potentially racist/sexist/homophobic behaviour, rather than bullying.

Definitions: bullying but not actual bullying

Reflecting the results of the other data collection stages and definitional issues in the bullying literature considered in chapter 4, when asked whether mediation was appropriate for dealing with workplace bullying the responses frequently noted that bullying and harassment are difficult to define:

I think probably most mediations that I do, there will be an element of one person, if not both people, sometimes saying that they are being bullied by the other and it's the old cliché isn't it? One person's bullying behaviour is someone else's assertive management and bullying means many things to many people (Mediator 10)

The responses thus favoured a subjective understanding of bullying. Echoing the findings of organisational approaches to labelling (Ferris, 2004; Latreille, 2011), they also seek to distinguish miscommunication, misunderstandings or interpersonal problems from 'actual', 'genuine' or 'high-level' bullying or harassment. Mediation is seen as appropriate for the former descriptions but not the latter, or rather if "actual", mediation should not be used as the only response:

...my view in terms of addressing the issues of racism and discrimination in our society is through education and through greater understanding and empathy, and you cannot get that through a law court, through adjudication process. You can only get that by coming face to face and bringing the perpetrators and victim face to face. So, even in the most serious cases of bullying and harassment, where the organisation has taken a very clear line they may or may not dismiss, they should always consider the opportunity for learning and growth through dialogue. (Mediator 15)

How the behaviour involved should be allocated to actual or not is difficult to discern, although there seemed to be an agreement there is a role for policies in determining this benchmark. This

arguably relates to the comments above in the context of the voluntary nature relating to the responsibility of employers to act as gatekeepers. There was a strong theme, however, that behaviour, though labelled as bullying and/or harassment was rarely actually found to be (through investigation) or be considered as such once the behaviour was unpicked.

A rejection of labels

There was a rejection of the value of labels for mediation. Consistent with Irvine's (2014) reflections it was felt that labels were closely associated with adversarialism and operated to constrain understanding and empowerment. There was also an important acknowledgment of the role labels play in influencing power dynamics⁸⁰.

Rather than seeking to label the behaviours, the mediators are concerned with understanding what has led the parties to apply that label. Here the emphasis is not therefore on fitting the experience into predetermined categories or evaluating them against objectively reasonable standards but rather on exploring the subjective experience of the parties:

[B]ullying is very often about people's perceptions of who is strong and who is weak, and again, they're very often misconceptions and I think also, the very exploration of what's happened in front of or with a third party can really create change...I think it's probably much more effective than the ordinary disciplinary process which puts people into a defensive position to start from. (Mediator 13)

We talk a lot about words like bullying being used as labels, and what you need to do is to peel that label back and to understand what it is underneath that label are lots of real examples of what people have said, done or perceived to have said or done. I think those things can be talked about. (Mediator 1)

The rejection of labels was consistent with the view shared by the sample that, for the purposes of mediation, there was little, if any, value in seeking to distinguish bullying from harassment.

The concern is instead with the perception, intention and the impact on the parties. This serves to illustrate Ridley-Duff and Bennett's (2011) argument for direct democracy (see also Bennett, 2013) and shift the emphasis in decision making firmly to a prioritisation of the personal standpoint:

Mediation is a short hand for sitting down and having a managed, constructive, adult conversation, where I can describe the impact of your behaviour on me and you can tell me what you intended your behaviour to be. You can then make choices about how you behave tomorrow because you've looked me in the eye and you've seen the distress and the harm that you've caused me, and it's about giving people choices. (Mediator 15)

⁸⁰ p163

8.6 MEDIATION AND THE LESSER RELEVANCE OF INTENTION AND PERCEPTION

Intention: a difference of opinion

When asked about the relevance of a distinction between an intention on the part of the accused bully/harasser to do the act and an intention to cause the harm/impact in determining the appropriateness of mediation, there was a reiteration of the point made above that intentions toward mediation were of greater importance than the intention behind the behaviour. Even if the behaviour had been intentional, mediation would not necessarily be seen as inappropriate: what would be important was the willingness to change. Again, however, there was an indication of circumstances where mediator and employer views may differ.

I think if people are genuinely bullying then they have no intention to change and their behaviour is diminishing the other person, I don't think that mediation is the appropriate way to deal with it...certainly those cases exist and I suppose it's a bit hard for me to know because my work as an external mediator...I think what that means is that probably the serious cases of bullying and harassment don't ever come my way. (Mediator 17)

[T]here are many allegations of bullying where the bullying per se has been completely unintentional and I think the accused has been both shocked and mortified to hear that that's how their behaviour has been interpreted. So I think mediation can offer a really helpful space for behaviours to be discussed and understood in the context of what is the intention sitting behind those behaviours. (Mediator 10)

Here again there is the apparent tendency to classify disputes as misunderstandings, rather than as being motivated by malice or ill-intent. Thus whilst intention to cause harm may be of some relevance to the appropriateness question, intention to do the act has little relevance. Intention in both forms, however, is arguably significant within the mediation process in understanding, if not defining, the behaviour.

The emphasis on perception and intention support their positions in the ranking importance of the behaviour variables in the questionnaire⁸¹.

Recognising a role for both intention and perception necessitates a return to a consideration of the balancing of objective/subjective determinations of reasonableness.

The contextual role of impersonal standards of reasonableness

Despite the limited role assigned to objective standards within the mediation process, in some of the examples given by the mediators there was an indication that individuals drew on impersonal standards and shared labels to contextualise their experiences. Bullying was viewed as a 'very inflammatory' label (Mediator 10) meaning:

⁸¹ pp125-126

...as soon as somebody is given any clue that they might be being bullied, it changes the landscape for them...they will feel that they now have permission to access a load of commentary about their situation that they wouldn't have otherwise accessed (Mediator 6)

This appeared to be strongest where a protected characteristic was involved since this allowed parties to draw on a societally shared sense of injustice:

I think they [bullying and bullying with an allegation of racism etc.] probably are different in a mediation because it's hard. It's hugely more complicated. It is. It is because you're now not talking about people, you're talking about norms and people's perception of other...the stakes feel very, very high to people because the person who is on the receiving end will feel like they're not just defending themselves or speaking on their own account, but on behalf of all women or all lesbians. (Mediator 6)

In light of the argument made in this research of the importance of understanding and appreciating the historical and social development and consensus over values and standards, this recognition of the social context by the parties is interesting. Given the differences drawn between the possible underlying rationales and distinguishing elements between behaviour involving a protected characteristic and that without (Fredman, 2011; Solanke, 2011), it is noteworthy that either label (bullying or an ism) was seen as allowing individuals to access a sense of a breach of collective unreasonableness but that these discourses are not necessarily the same.

Here the mediators are reporting/reflecting on the experiences of the parties, rather than expressing their own views so one must be careful about placing too much weight on this alone. However, the recognition is consistent with the positioning of the impersonal variables such as 'Behaviour was inherently wrong or offensive' and the importance assigned to the involvement of protected characteristics in the questionnaire findings⁸². As will be seen shortly, reference to socially-held and, from a Rawlsian perspective, publically knowable standards played an important role in constructing the understanding of bullying and harassment by (and between) the focus group participants⁸³.

It is important to recall here, however, that whilst individual parties may draw on these impersonal standards to understand or explain their behaviour and experiences, there is no objective "check" to ensure that their personal perception of the application of the impersonal standard is of itself reasonable. This was rationalised by the mediators by reference to the voluntary nature of mediation and the choice of the parties, even where, for example, they (the alleged target) felt the behaviour was racist/homophobic/sexist:

...as long as the people in the room are not feeling they've been told they've got to come, because that would be completely inappropriate...and the person says "well yeah, you know if it gives me the chance to say what I feel is happening and to address this, yes I am [willing]" and the other person is also willing, then sure, mediation is entirely appropriate because both, rather than looking to some outside authority to enforce it, when it may be very difficult to

⁸² pp125-126; pp129-130

⁸³ pp188-189

prove, it's actually allowing the person who's experienced it to explain why they're seeing it that way (Mediator 18)

There was agreement in the responses that what may be labelled as racist/sexist/homophobic is often the result of a misunderstanding or lack of cultural understanding, rather than overt and deliberate prejudice. Where this was the case, mediation was seen as very useful and the responses therefore reflected the level of agreement with the statements in the questionnaire about the ability of mediation to improve tolerance and cultural understanding⁸⁴.

Although there was strong agreement mediation could benefit the education and understanding of equality and diversity issues between the parties, a number of reservations were raised about its limitations in this regard. Again, these relate less to any inherent flaw or problem with the mediation process itself but rather to the way it may be used or conducted.

The first relates to mediator training and knowledge in equality and diversity issues and understandings of bias. It was suggested that though this may (and should) be considered as crucial knowledge for mediators, it was not always a part of mediator training. Although caution is exercised in making the link on the information available, it is potentially possible to see how this lack of knowledge may lead to the treatment of racist/sexist/homophobic behaviour as an interpersonal dispute.

Support for this may be found in the second reservation that has significant resonance for this thesis and relates to the shifting of responsibility onto the parties to explain and educate each other. This objection was, however, only explicitly stated by one mediator. The objection arose out of a reflection where the mediator had misjudged a situation and had the more articulate (black) woman educate a less articulate (white) woman:

[W]hy should a black woman not only have to tolerate racist behaviour...⁸⁵systemically from the employer...and then sit for two hours and try and educate her about racism? (Mediator 6)

This may illustrate the individualisation of broader organisational and/or societal problems.

In respect of reasonableness, the interviews provided a further variable that had not necessarily been contemplated previously. In addition to the previous relationship between the parties (identified in the questionnaire and given weight in the focus groups), a number of examples given exposed the impact previous experience of the parties with others (both in and outside of the workplace) could have on the way the behaviour was perceived by the alleged target. Examples were given by two mediators independently where the past experience of sexual harassment or sexual abuse of alleged female targets had led them to perceive behaviour by male colleagues in a way others may not have done.

⁸⁴ pp138-139

⁸⁵ In this case the black woman's complaint had not been upheld through formal processes.

In both cases, the mediators felt the parties had thought that mediation had resolved the situation and had even helped the women involved to confront their feelings about the past experiences. These situations may be seen as providing support for the proposition the confidential nature of mediation encourages/allows individuals to disclose information they would not disclose in another setting (Latreille, 2011).

The rejection of labels and the positioning of objectively reasonable standards as informing but not constraining the discussions in mediation has important implications for the question of the balancing of personal and impersonal standards, and as anticipated, at the request of the parties, subordinates the latter to the former. In doing so, however, one begins to potentially encounter the objections related to the privatisation of justice. Before moving on to consider confidentiality, it is useful to address how balances of power are understood and how the treatment of power in mediation may facilitate or frustrate the findings outlined thus far.

8.7 MEDIATION AND POWER DYNAMICS

It was evident that perceptions of power were closely tied with perceptions of bullying and of harassment. There was an appreciation that power may arise from a number of different sources and manifest in many different ways (formal/informal) (Einarsen et al, 2003; Holvino, 2010). Examples such as race (black/white), gender, levels of experience, value (financial) to the company and managerial hierarchy were provided.

Whilst there was an apparent consensus on the centrality of power in discourses of mediation, there was a difference of opinion as to the extent to which perceptions of where the balance lay were relevant or helpful when determining how appropriate mediation was. The recognition of the relevance of power but not necessarily of power imbalance may help to explain the positioning of power imbalance in the questionnaire. The differences in the mediator responses ranged from the view that recognition of a power imbalance is of little relevance on the one hand, to seeing power imbalances as being of the upmost importance on the other.

Despite the differences, all sought to accommodate their position on power within the facilitative role, allowing the mediator to seek to retain their neutrality and to treat both parties equally. The techniques used to do this will be considered shortly but first it is important to understand how each stance was justified.

The limited relevance of power in mediation

This is the approach most closely aligned with Keashly and Nowell's (2011) concern over the assumption of equality between the parties in a bullying situation within mediation. At first glance their objection in relation to power may be seen as well-founded. The rejection of the relevance of power imbalance in mediation is however more nuanced. A distinction was drawn between the

relevance of perceptions of power imbalances to the parties in understanding their experiences and the relevance of perceptions of power imbalances to the mediator in their neutral, facilitative role:

I would want to understand what that person means by power imbalance. Of course structurally we have, unfortunately, hierarchal organisations that mean that it makes it very easy for some people in positions, in higher positions, to use that power in harmful ways, and in those instances, what we would want in the mediation is for that person to become conscious that that's how they're using their power...so I would want to empower the person that felt like there was a power imbalance to communicate that and find a way to receive more power themselves in relation to the person they feel has more power. (Mediator 14)

I'm not particularly concerned with [power] because I'm providing two people with the space to have a discussion. I'm not looking at who's more powerful than who. I'm not taking steps in trying to address that because that would mean me taking sides...I'm only concerned with are they both treated equally within the mediation. (Mediator 18)

With further explanation of this position one returns to the mediator objections to the power that attaches to the labels of target and perpetrator when the label of bullying is applied. There was also support for Jenkins et al's (2012) claims that power dynamics are not static and that there may be no clearly defined target and perpetrator.

Who's to say what the relevant power imbalance is? Someone can see things, the victim in the situation but also the victim has a lot of the attention and the drama and actually creates the power in the dispute whereas the alleged aggressor [who may have] more power in the organisation may be feeling vulnerable because of the situation...so who's the victim? Who's the aggressor and who's got the power? (Mediator 16)

The importance of power in mediation

In contrast to this approach, a (smaller) number of mediators were of the opinion that an understanding of power was paramount. This approach potentially counters Keashly and Nowell's objection since it seeks to directly uncover and address the impact a power imbalance may have on the individuals if they participate in mediation. In the following quote the relevance of understanding mediation as a process is highlighted:

Oh I think that's really important because I mean, some mediators don't think about it, and yet, if you've got people in the room and there's a power imbalance of any kind, you have to be incredibly sensitive to that because, particularly joint sessions, is somebody going to be able to talk honestly about their anger with their boss if their job is on the line? So I think it's something that has to be addressed in the private sessions and be very clear how you're going to handle that...I do think mediators have to be very sensitive to power dynamics, and also be careful not to make assumptions about where the power lies because it may not be where you expect it to be. (Mediator 13)

Again, however, it is important to be aware of the nuances in this position and in the latter sentence there is clear overlap with the alternative view on power. It is necessary to note that whilst power imbalance may be seen as relevant for the appropriateness question, this relevance refers to its importance in choosing a response and not in defining whether the behaviour is bullying/harassment (i.e. of relevance to research question 2 rather than 1).

Managing power and neutrality: the importance of understanding mediation as a process

In both positions there was a recognition that whilst perceptions of power imbalance in relation to the behaviour/events in question may be problematic, where the parties involved are in a hierarchical relationship there are certain actual, rather than perceived, power imbalances which flow from this:

I think a lot of openness and honesty goes a long way. Mediation does not take away the fact you are going to have to tell the chief executive that they said something you didn't like and that is hard. It's difficult, and what we might do is talk honestly about what are your options? Well, you can put up with it. What are your options? Well, you can grieve against it. Well, you know, and ask people to reflect on what is going to happen about that and I think we have to live in the real world (Mediator 1)

This acknowledges one of the realities of the employment relationship and in doing so reflects calls of both Ridley-Duff and Bennett (2011) and Beale and Hoel (2010) to recognise the operation of managerial prerogative. This also seems to confirm Sherman's (2003) position that a mediator is unable to 'change the fundamental power relationship that exists between parties' (:43). It is therefore important to understand how the line between balance in mediation and imbalance - both in and outside of mediation - is navigated. Although the stances differ, there seemed to be little difference in the way mediators conducted the mediation and as the above quote indicated, being open and honest and acknowledging its existence is fundamental. The mediators provided examples of techniques they use to try and retain their neutrality.

Different techniques were used in the individual meetings than in the joint meetings and thus it is necessary to return to the idea that discussions of mediation should distinguish between the different stages in the process.

The importance of preparing the parties for mediation in the individual meetings was considered above where it was noted they may play an important role in filtering appropriate behaviour and determining whether a party is willing and able to proceed to the joint meetings. The individual meetings were also where the initial exploration of perceptions of the behaviour were explored. Although the individual meetings must be seen as an important part of the process, one mediator saw their purpose in functional terms:

The individual meetings can have a variety of roles but it boils down to...no, it can be carried out in a variety of ways, but the purpose of them boils down to one thing, which is to ready the party for the joint meeting. (Mediator 6)

What is required to ready the parties may vary from the simple provision of information about the mediation process to prepping them mentally (potentially through something akin to coaching) to be able to meet the other party face to face.

This preparation process was also strongly related to the need for mediators to seek to establish their neutrality and set out how that may operate throughout the mediation. This was seen as crucial for building trust and rapport with the parties. Here a number of the features Nabatchi et al (2007) assigned to procedural justice are evident, as are those suggested by Jenkins (2011): for example setting ground rules and how the mediator may act to monitor them and listening to each party (and for an equal amount of time).

There was also an explicit recognition of the need for a mediator to be aware of the ways in which parties may try and influence them (therefore agreeing with Klein and Martin, (2011) in the HRM context) and for mediators to ensure that mediation is not used as an opportunity to further bully/harass someone (as Keashly and Nowell (2003), fear):

...as mediators you can stop the mediation at any point, and I think in circumstances where it seemed like there was bullying going on in the mediation, for example, you would call it to an end as that would not be appropriate (Mediator 2)

There was an acknowledgement of the potential validity in the type of criticism raised by Sherman (2003) and Dolder (2004) over the ability of a facilitative mediator to remain neutral in the presence of a power imbalance. This could be mitigated, however, by the mediator exercising self-awareness not only in their actions but also in their perceptions. An example of this may be the mediator ensuring they do not always address the party with managerial status or greater communication skills first. A number of mediators stated an awareness of the fact they were only human and that therefore it was necessary for them to constantly check their own behaviour.

Given the acceptance power can be dynamic throughout the process and an acceptance that mediation can be a difficult process a number of techniques for managing parties who were struggling were identified. Whilst these may conform to the aim of equal treatment, they were not used for the equal benefit of the parties:

We may identify that one person needs a break, but we won't turn around and say "oh you need a break". We'd say "we need a break". But then we might go and have a quiet word with that person and say "how are you?". Because what we're doing there is, we want them to continue, but then we'd also go and see the other person and say "how are you?", even though we know that person doesn't need that reassurance. We're still trying to create that sense of our impartiality (Mediator 1)

Whilst the interviews provide little insight into the extent to which power imbalance can be seen as a defining characteristic of bullying or harassment, they helped to facilitate understanding of how power, if not power imbalances, can be seen as important when determining the appropriate response. The examples of the techniques used by the mediators provide possible responses to a number of the critics of mediation in both bullying and legal literature and demonstrate how knowledge of mediation in practice can inform theoretical understanding. This insight from practice was also invaluable in understanding how to address the criticisms associated with confidentiality.

8.8 MEDIATION, CONFIDENTIALITY AND PRIVATISATION

In light of the potential benefits there was a consensus that the confidential nature of mediation is something which should be preserved. Ensuring the parties understood what confidentiality meant and ensuring it was preserved in accordance with this understanding was seen as a key mediator role and was closely aligned with securing the willingness of the parties not only to attend mediation but to fully participate in the way outlined above:

I think confidentiality is probably one of the most fundamental things...I think one of the problems why things don't get resolved in a HR context is because it always has an impact. If HR knows, they're going to have a judgement about you, it's going to impact other things, so to be able to be completely open and honest, I think it has to be someone who is confidentially not going to tell someone else. (Mediator 2)

The mediators gave examples where what may be considered as very sensitive information was disclosed (e.g. previous experience of sexual harassment/abuse). There was, however, a limit to what could be disclosed and remain between the parties and the mediator. The insight into the boundaries of confidentiality in practice was illuminating and, as anticipated, provides the key to potentially reconciling privatisation concerns and the use of workplace mediation.

The scope of confidentiality

In understanding the scope of confidentiality it is necessary to return to the relationship between mediation and substantive legal provisions and to the role and responsibilities of the employer in the mediation process. In this respect the first thing to note is that confidentiality is something that is explicitly discussed between the mediator and the organisation before any steps to mediate are taken. Here mediators and employers begin to define the nature and the extent of their relationship and it is an important step in managing the expectations of the employer and the way they should position mediation with other procedures, for example investigation:

Mediation and investigation are two parts of a continuum of a system if you like...they're both options. So you need to be very clear about first of all, when can you do mediation? Where an investigation is either scheduled, or it's happened, and you can't combine the two, so people need to sign up if they're going to do mediation to a confidentiality agreement in which allegations aren't going to be, information isn't going to be passed from mediation to the investigation, unless of course, it's the type of information that you can't keep secret. So there's a [corporately agreed] confidentiality clause. (Mediator 12)

Examples of reasons where confidentiality could be broken included those relating to acts of illegal or unlawful behaviour and concerns over party vulnerability and health.

A number of the mediators stated they explicitly viewed the organisation as a party to the mediation and that therefore mediation could be used as a learning opportunity:

I think when I started as a mediator, I went in thinking right, thank you very much HR director, manager whoever, I'll go in and work with these two people and it very quickly became clear to me that there's a third party in the room which is the organisational style and culture...I do feed back as part of the closing process, specific messages that the people have agreed that

I feed back. Maybe we'll do it directly. We may all do it in a room together, whatever. But I definitely, as I'm going through the process, and I'm liaising with the organisation, certainly at the end feeding back to them about things they may want to consider doing differently and sometimes...changes can happen. (Mediator 7)

There was an acknowledgment, however, that this was not necessarily consistent with organisational motivations for using mediation and does perhaps rely on the assumption questioned in chapter 5 that organisations are sufficiently engaged:

The problem, I guess, is where you have organisations who aren't really conflict savvy. They just use mediation as a, "oh blimey we can't deal with this one, let's just send it off to the mediators and they can sort it out". But they're not a very conflict aware organisation, and it's much more of a tick box thing, and maybe making sure they're doing what they need to do in case it goes further and they have to show they've been a good employer. So yeah, mediation has massive potential to influence organisations culturally but those organisations, I suppose, need to be open to the influence. (Mediator 10)

Leaving aside these qualifications (temporarily), the involvement of the organisation is, of course, an element which is strongly supported in this research and this encouragement for the organisation to learn and develop is an important insight that is largely missing from the rhetoric on mediation. There seems to be a logical disconnect between arguments that mediation is a confidential process yet it can lead to cultural change which could not easily be remedied on the information currently available. That this transformative effect may be realised through the use of external mediators was particularly puzzling, especially as evidence that such change has occurred with internal schemes is limited (Saundry and Wibberley, 2014).

In terms of understanding the relationship dynamics (mediator-parties-organisations) it is important to note that though the organisation may ask the mediator for feedback from the parties on specific issues, the decision as to what is disclosed to anyone (including the organisation) outside the mediation lies with the parties. Thus whilst there is the potential for mediation to allow for a flow of conversation between the parties and the organisation, any desired learning hinges on the parties' willingness to disclose information:

Sometimes when I'm mediating for organisations, in the sense that they have called me in to mediate, I have a contract, an agreement with the parties in mediation that everything that they're telling me is confidential but that if there is anything that I feel is about an organisational issue, which there often is, can I have their permission to feed that back up to the organisation, so they can change that practice?...generally they have been very pleased do to that, in fact, I've never known them not be. But in the end, I'm very clear what it is that I've got permission to take back to the organisation. (Mediator 13)

Well, say it's two colleagues, it may be they decide that the manager needs to do something to make the environment more conducive...in fact there was one mediation I did where they, both the parties, wanted to have a chat with the chairman, and they also wanted to have some policy change, and they also wanted to have notices to go out to put up on the work boards. So they are just examples of how the parties together worked to create an environment within which they could work together better but also, kind of, accelerate a cultural shift. (Mediator 5)

The last quote may perhaps be seen as an example of what Ridley-Duff and Bennett (and Bennett, 2013) saw as the radical possibility of mediation, i.e. to challenge the standards/set the standards

which constrain them. In respect of the thesis advanced here the chance for this flow of information is pivotal for understanding how individual parties to mediation may challenge organisational standards.

Before moving to privatisation, it is also important to address the possible incompatibility in the acknowledgement of spill-over effect of conflict and the confidential/interpersonal nature of mediation questioned by Honeyman and McAdoo (2001). Again this is rectified by a greater understanding of how confidentiality operates. Just as the parties may choose to share information with their employer, part of the agreement reached in mediation may include what they want to say to their colleagues when they return to work:

I will help them consider when they go back, how can they make sure they don't breach confidentiality but have something to say to their colleagues that they both agree...what words shall we use to say "oh are you still not getting on with Louise". Help them rehearse some phrases and some scenarios that they might need some, you know, prepared scripts for. (Mediator 5)

Scope of impact: Individual transformation but little more?

So if there is a possibility to share information, is privatisation no longer a concern? If it could be said with any confidence that relevant information would always be shared and the employer would respond accordingly then perhaps. On the evidence currently available, however, confidence levels that this is the case are low. Although there was overwhelming support for the proposition that mediation can deliver transformative effects for individuals who participate in it, for the reasons relating to organisational role considered above, there was less support it could result in transformation beyond the parties.

This hesitation to extend the chances of increasing understanding and tolerance to the organisation stands in contrast to the support for this feature in the results of the questionnaire⁸⁶ and with the way in which mediation is frequently promoted (BIS, 2011a). The responses when asked about the extent to which mediation had the possibility to increase tolerance and understanding in society more broadly were mixed.

Some saw it as occurring on an incremental basis:

...what I believe, is that the world changes one person at a time, and that we never change, can't change, other people...the only person we can change is ourselves, and the more people who take responsibility for their behaviour, the more opportunities that the change that it will have on the world...I think that, culturally, can have reverberations all over the place. (Mediator 16)

Others however were more cynical:

That's very altruistic. The optimist side of me says yes, they have learnt something by going through the process. The pessimist says no, most people just want it to stop hurting and that's

⁸⁶ pp138-139

it. It depends which side of, whether you[r]...glass is half full or half empty as far as human nature is concerned. Probably somewhere in the middle is the reality. It would be nice to be altruistic but I think mediation just gets people over a difficult hurdle, and what they do after that is entirely up to them. (Mediator 9)

Though many felt that simply using mediation was unlikely to deliver benefits beyond the parties immediately involved, in support of Saundry and Wibberley's findings (2014), there was a greater confidence that those who had undertaken mediator training would benefit in the long term.

Mediation: Challenging culture and norms

The problems of challenging social norms and standards within mediation was considered above in the context of reasonableness. It was concluded that the decision as to what is appropriate and important was up to the parties. Whilst this is objectionable from a stance which favours collective standards, it supports Bush and Folger's (2012) assertion that change may occur on a micro level, challenging attitudes and stereotypes on an individual basis. For those who favour a more individualistic approach (for example the government) this is potentially attractive. The sufficiency of this micro change may however be questioned, especially where organisational attitude or culture is not conducive to it:

I've seen bullying and [sexual] harassment at work [in a HR role] where a complicating issue is, I mean it's not only the power imbalance in the situation, it's also the power imbalance in terms of the position that the alleged perpetrator feels they have to protect, or indeed the increased value the organisation perceives they have against a victim who is less important...it means that there can be all the policies in the world, and all the procedures in the world, and everybody can try very hard to make those work and make a mediation work, but in the end, you've got someone who's vital to the next deal and someone who isn't, and in the end, however...unsophisticated it is, it's very hard for the organisation to let the commercially valuable person go. (Mediator 11)

Mediation and the danger of privatisation through personalisation

The latter quote embodies the reasoning for the amended privatisation arguments. The responses provided evidence to warrant the argument that concerns over the privatisation of justice can be extended to the pre-legal organisational context. This was true in respect of the potential for workplace mediation to challenge and provoke broader organisational debate on/influence standard setting and allow employees to model behaviour in accordance with publically known standards (Rawls, 2001). Justifying the concerns of Keashly and Nowell (2011), there is doubt over the ability of mediation to enable individuals to hold organisations to account for persistent or systemic problems which were embedded in or which characterised the culture of the organisation. In a rather frank quote about the limited power of mediation to drive cultural change without organisational support, one mediator summed the situation up:

...where mediation is being used to personalise something that is corporate. So people will, yeah, rather than looking at the structural sexism in their organisation, they'll say, "oh Janet

and John can't work together"...I'll tell you now, there's something really crap about putting in a load of support and investing in your employee base, whilst still allowing your senior management to behave like shits, because what you're doing is, you're saying, you're going to create an organisation that's fundamentally naff but we're going to support you in putting up with it, and that's horrible. That's horrible. There's got to be integrity in an organisation (Mediator 6)

Another reflected this, noting the use of mediation in such a case may be beneficial for a mediator but not for employees:

Well that's just an income stream for mediators if the culture is, I call them toxic workplaces, if they're reinforcing intolerant behaviours, then obviously, you're just going to get a revolving door. One will go and another one will come in. (Mediator 5)

Here one can see how the categorisation of disputes as interpersonal problems such as misunderstandings risks personalising issues rather than recognising them as problems of bullying and/or harassment. This runs the risk of legitimating and perpetuating breaches of what may be considered as impersonally unreasonable standards (Acker, 2006) and leaves individuals with limited scope for challenging this behaviour or for changing the culture (Leskinen et al, 2011; Samuels, 2004). In agreement with Latreille (2011) and Saundry and Wibberley (2012), the need for organisational commitment and trust is therefore crucial.

Thus, whilst an understanding that confidentiality in mediation does provide some scope for addressing the privatisation concerns, without organisational and party willingness to use mediation as a learning process, it has limited potential to challenge and/or change prevailing standards and practices. This may be particularly worrying if organisations use mediation to personalise disputes which are indicative of organisational (or societal) problems.

8.9 FAIRNESS AND JUSTICE

There was an interesting distinction made between the relevance of the objective recognition of fairness in respect to the procedural aspects and process of mediation and a near absolute prioritisation of personal perceptions in relation to the outcome.

The importance of procedure and the impersonal

There was a unanimous agreement that - provided mediation was conducted properly - it could be seen as an extremely fair process:

I think it's very fair. I think it's set up to be that. It depends, I think, how good the mediator is... (Mediator 11)

I would say that the whole premise of mediation is based on equality, and addressing each parties' needs and feelings as equally important as the other, and one of the key factors that the mediator displays is multi partiality, where you embrace both people equally, and what you think and feel their needs are equally valid. So I would say that without fairness, mediation wouldn't be able to exist. (Mediator 14)

These quotes reflect many of the characteristics seen as relevant to procedural justice across the various literatures. The opportunity for both parties to be heard was a strong theme. However, the opportunity here was for the parties to be heard by each other and the mediator (Nabatchi et al, 2007) and not a decision making third party (Genn, 2010). The rejection of the relevance of evidence seems, however, inconsistent with legal conceptualisations (Genn, 2010); although the experience that investigations are often conducted prior to mediation does not necessarily render evidence entirely irrelevant.

Given the emphasis on empowerment in the responses, it is perhaps not surprising that there was a corresponding emphasis on those characteristics which the organisational justice literature might assign to interactional (Reb et al, 2006) or interpersonal (Nabatchi et al, 2007) justice, for example, treating the parties with respect and sensitivity. In light of the importance attached to mediator neutrality in respect of both those characteristics relating to information/process aspects and also to the interpersonal aspects, the qualitative explanations of the mediator views on fairness still arguably make the distinctions drawn by organisational justice difficult to separate both conceptually and practically. So, whilst it seems it is not possible to fully apply legal (formal) understandings of procedural justice to mediation, it is also difficult to accurately apply psychological understandings. What may be needed therefore is an adapted understanding of procedural considerations which draws on features of both (see chapter 10).

Substantive outcome: the prioritisation of the personal

The sense that there is a need for others to also see the process as fair did not seem to apply to perceptions over the fairness of the outcome. Here, reflecting Green (2005), the balance lay firmly with the personal views of the parties as to what is acceptable in the circumstances. No questions of substantive fairness arise:

...if I'm doing my job as a mediator, and not losing my impartiality, then it has to be their judgement about what's fair and just in their situation...So yeah, on the basis that the parties involved are determining the outcomes, and they are deciding what works for them, I don't see myself as having the authority to say that is or isn't just. (Mediator 17)

The reasoning behind this seems to follow a similar logic to Rawls's idea of procedural background justice i.e. the idea that provided the decision has been reached using a procedure which had been collectively deemed to be just in a fair society the outcome would be fair. Thus, provided parties had voluntarily agreed to participate in mediation and the mediator had acted in a neutral and fair way, any agreement deemed acceptable to the parties should not be challenged on the basis it is not what others may see as fair:

I mean, I guess, you could look at fair within the process, but also fair from outside, and I think for me, the only way it might be possible mediation is unfair from outside would be if someone felt they were forced to have it, or that they had to have it in order to then allow a further thing to happen...rather than because they actually want to try to resolve things (Mediator 18)

This characteristic of course stands at odds with the view favoured here that there should be an objective evaluation and the extent to which the two may be reconciled (through the potential tailoring of confidentiality) will be considered in chapter 10.

Justice

Although some used the terms interchangeably, many of the mediators found it easier to answer the questions about fairness than about justice. The responses in relation to justice potentially provide support for the argument that it is not only possible but also important to make a distinction between justice and fairness when addressing the question of the appropriateness of mediation.

Questions on justice provided a mixed response and indeed it was in respect of the relevance of justice that a number of the mediators revealed it was something they felt they had not really thought about before. There were nevertheless a number of different opinions expressed over the relevance of justice to mediation. These focused around two themes: that mediation was not about justice, or that it was about justice but a different kind of justice than that delivered by adversarial approaches. These positions resonate with the argument that mediation is something different.

Mediation: Not about justice

This view can be related to the parties' motives for participating in mediation and what their desired outcome is and reflects the idea that mediation should only be seen as one possible option:

I don't think it's a word that fits. I don't think justice, it's the wrong kind of language, and it's not a word I would use to describe mediation. (Mediator 10)

Justice. What a massive word. No, I don't think so. They deal with retribution or punishment. Mediation is concerned with the way forward, not to allot blame or punishment on anyone really. (Mediator 4)

Mediation: A different kind of justice

This alternative stance is aligned with many of the features of restorative justice and also perhaps fits most easily with the emphasis on personal empowerment. Here, through collaboration, mediation provides the parties with the opportunity to jointly address and determine what is for them, a just outcome. Here the point of reference is not adversarial ideas of justice but personal judgement:

For me, mediation provides one of the most radical opportunities to redefine our notions of justice that we've ever seen...it is a revolution that we're experiencing, is the notion of sitting down communicating with each other, with the assistance of a skilled third party, giving the parties a chance to feel that they have a say, a stake in the outcome, and the outcome achieves that need to fulfil a sense of justice and fairness that they have. It delivers justice in a way that a court, in my view, never can. (Mediator 15)

I don't think mediation should be lined up with justice in its sort of definition within the legal umbrella, because the solution is determined by the parties, so it's not determined by whether

it's right according to law or whether it's right according to how all organisations should work or right in terms of being in the advertising industry you know. It's so bespoke it can't be benchmarked against that kind of wall. (Mediator 5)

How these differing approaches to justice may be reconciled with each other and/or with fairness as an overriding concern will be set out in chapter 10.

8.10 CONCLUSION

The interviews provided valuable insights into the way mediation operates in practice and which can be used to expand on and explain a number of the conceptual and theoretical questions identified in chapters 2-5.

In respect of the appropriateness question, the use of mediation in bullying and harassment was seen as both feasible and fair, but not in every, and all situations. The distinction drawn between "actual" and other types of behaviour potentially perceived as bullying/harassment lends support to the need to recognise how the appropriateness of mediation varies according to the severity of the behaviour and where it falls on the spectrum offered in chapter 4 (and developed in chapter 10).

Objections to the use of mediation in bullying/harassment were addressed. Although many were not entirely dismissed on the basis of the evidence presented, possible ways of reconciling concerns over power imbalances were considered. Understanding mediation as a process and that confidentiality is not absolute are key to this.

In their responses the mediators arguably demonstrated an awareness of their power and influence (an awareness questioned by Herrman et al, 2003) and also indicated that whilst they classified themselves as facilitative, their role was not as passive as Dolder (2004) concluded.

The argument that understanding the appropriateness of mediation necessitates the inclusion of the organisation as a party was again presented and evidence to substantiate this argument was offered.

Finally, whilst there was a role for impersonal standards, these were largely positioned outside of the mediation process in favour of an embracing of the personally determined and perceived standards of reasonableness, fairness and justice.

The next chapter will consider how far these are reflected in the focus group findings.

CHAPTER 9. FINDINGS 3: FOCUS GROUPS

9.1 INTRODUCTION

This chapter will present the findings from the four focus groups. As stated in chapter 6, the focus groups used one of the vignettes from the questionnaire to explore understandings of bullying and harassment and how it should be dealt with. The use of the vignette also acted as a stimulus for exploring some of the more abstract ideas surrounding dignity and the relevance of protected characteristics that was not possible in the previous stages.

The discussion in the focus group concentrated on a number of themes and this is reflected in the way the findings are reported in this chapter. It will begin by reporting discrepancies between individual quantitative and qualitative responses before moving on to explore how these were justified in their qualitative responses. It will then explore whether the presence of a protected characteristic changes the situation and the extent to which the singling out of certain characteristics for protection can be justified and/or sustained. Finally, it will address the question of what a fair response to the situation in the scenario would be.

In contrast to the concluding position in the previous chapter of the prioritisation of the personal, the focus group findings suggest the need for a much greater weight to be attached to impersonal standards and objective ways of determining these i.e. investigation. There was a great emphasis on the importance of contextual and relational factors. There was a strong sense that whilst mediation may have benefits for the parties involved, employers should play a central role in publically determining and upholding standards of appropriateness in the workplace.

Scenario reminder

Before proceeding it is useful to provide a reminder of the scenario used:

Katrina and Philip are both probation officers. They work together in an environment where there is a lot of banter which sometimes includes sexual innuendo. Both frequently participate in this. They were initially the same grade but Philip has since been promoted and is now Katrina's line manager. Neither of them say this has affected the level of banter between them. Katrina gives examples of Philip tying her scarf around her face when she is typing, making comments about her appearance and, on at least three occasions having made remarks about her "being on the game". Until recently Katrina had never complained about the behaviour to Philip or to anyone else. She is now off work with stress and is saying she wants the behaviour to stop. Philip is shocked to hear that she has said she feels harassed and bullied as he thought she had happily participated. He doesn't deny any of it but said the comments about her being a prostitute were in response to Katrina's statement to her colleagues that "in an ideal world she would like to be the madam of a high class brothel". Their colleagues are also surprised as they say Katrina is "no shrinking violet".

9.2 SCENARIO ASSESSMENTS

As the purpose of the focus groups was to try and provide qualitative and contextualised potential explanations for the questionnaire results, rather than to provide quantitative confirmation of the assessments, little attention will be given to the individual quantitative responses to the scenario⁸⁷. As the reasons behind them will be set out below, it is sufficient to note that assessments varied within groups and also slightly between groups (and between genders).

When the quantitative responses were compared with the qualitative responses given by each individual participant, for a number of participants there was a discrepancy between the two. These discrepancies were often explicitly acknowledged by the participants but were otherwise evident only in comparative analysis.

In both cases the shift occurred after hearing the views and justifications of at least one other participant. One must be aware of the influence of the group dynamics and pressure in focus groups in assigning meaning to these changes (particularly where the change was not explicitly acknowledged) (O'Dell et al, 2012), but where those who explicitly acknowledged they had changed their view it was not necessarily to bring it into agreement with other participants. For example a shift from inappropriate but not harassment to inappropriate and might be harassment where the majority of the group thought it was definitely harassment. In all but one instance (where the male participant who strongly agreed it was an example of sexism began to question that assessment), changes were made to revise the decision up in terms of severity.

The reasons given for these changes throughout the discussion and in the closing reflections arguably demonstrate the value in providing a forum and structure for discussing bullying and harassment and exploring individual and collective understandings. This aspect will be returned to at the end of this chapter.

9.3 UNDERSTANDING AND CONSTRUCTING BULLYING AND HARASSMENT

The focus group responses indicated the importance of contextual and relational features in identifying and understanding the relevant decision making characteristics and the conditions or factors that may influence their weight in a situation. Together with the previous chapter, this arguably justifies not only the need for all five research questions but also demonstrates the importance of the qualitative contextualisation of quantitative results argued for⁸⁸.

⁸⁷ A detailed breakdown of the quantitative results can be found in Appendix 17

⁸⁸ 6.4, p95

Assessing the behaviour

It should be recalled⁸⁹ that the focus group participants were not given a list of possible decision making factors prior to the focus groups. They were instead asked open questions with the aim of exploring, in an unprompted way, the elements in the scenario they viewed as important. The thematic analysis of the focus group transcripts did however result in the identification of the majority of the factors previously identified in the questionnaire⁹⁰: although the discussion was concentrated only on a limited number of factors. These included: target perception, perpetrator intention, the nature of the behaviour (severity and whether it was inappropriate) and impact on the target. These reflect those ranked as being the top five most important in the questionnaire results, as well as those given explicit attention in the mediator interviews.

These five were however not the only dominant themes. As could perhaps be anticipated by the prevalence of definitions referring to the continuous nature or pattern of behaviour in the questionnaire, the persistency of the behaviour was seen to be important.

Against the consideration of how the factors may relate to each other it is important to note that these, and other factors considered were not seen as discrete or easily divorced from the context in which they are being applied.

In the behavioural assessments, context and relationships are relevant on a number of levels: the individual level (i.e. the interpersonal relationship between the parties), the organisational relationship (i.e. hierarchical or vertical relationship between the parties and the relationship of each with their colleagues and others in the organisation) and finally societal relationship (i.e. organisational reputation; group membership/non-membership; collectively determined and known standards). These may be seen as broadly reflecting the relationships identified in chapter 3 as characterising Rawls's fair society: individuals in their associational capacity, individual associations within the institutions and individuals acting as a collective body socially co-operating in accordance with public rules and reason. How these can be understood and applied should become apparent as the discussion progresses.

Bullying and harassment: different things?

Usefulness of a distinction

Whilst all participants were able to make an assessment in accordance with one of the options provided, responses were frequently qualified by statements indicating they were unaware of the definitions of bullying or harassment and therefore of what the difference between them was.

⁸⁹ From 6.5, p111

⁹⁰ Size of organisation and cost were not considered.

There was a difference of opinion between the participants both within and across groups over the worth or need to be able to distinguish between bullying and harassment. This difference was polarised. At one end there was support for the need to make a distinction between the two, both for ensuring the behaviour is appropriately addressed and for the purposes of clarity of discussion:

Vicky (G1): ...I think it's really important because, in this case, it's probably bullying. I don't know if it is, but it's probably bullying, but actually, from my own, sort of my own perspective, it's harassment and it probably is bullying. But to have a definition is really important to distinguish between the two. If you were a manager, you would need to know the distinction to move on from that, I think, to show what he's done.

Betty (G1): I agree. It's absolutely essential in my opinion to have a definition, because if you don't have a definition, no one knows what you're talking about. So how are you supposed to talk about it?

This position reflects that adopted in chapter 4.

The alternative position favoured the view that making a distinction was unnecessary. Indeed, some felt that it would be difficult to define one without reference to the other:

Oliver (G4): I think for me, if I looked up in a thesaurus they'd come side by side in definitions. I do take your point, but my own personal view of bullied has a level of persistence to it as well.

Michael (G4): Exactly. We're almost in a circular definition.

Oliver: Yeah.

Michael: I mean you can't really define harassment...without using the word bully.

Oliver: Yeah, yeah, yeah.

Instead, for one of these participants, attention should be paid to whether or not the behaviour was inappropriate. Once it had been established that a threshold had been breached, concentrating efforts on whether it was then bullying or harassment was unnecessary:

I'm not sure it does any good to define necessarily. I'm not a lawyer, but it's inappropriate. That's what's important: it shouldn't happen. Whether they define it as harassment or bullying, either way it doesn't make a difference... (Oliver (G4))

Though on the face of it this latter view may be seen as consistent with the views of the mediators' over the lack of the need to assign labels, this is not the case. The mediator stance is more radical, calling for a rejection of labels to focus on the meanings behind the behaviour. The focus group comments, however, do not necessarily support a rejection of labels altogether but rather see little value in diverting energy assigning a further label once that of inappropriate had been satisfied.

Their view about the worth of distinguishing between bullying and harassment notwithstanding, when an analysis of their individual responses was considered, a number of these participants were nevertheless able to suggest possible, if not certain, differences between bullying and harassment. This lack of certainty however was by no means restricted to this group of participants.

Making distinctions

A number of suggested distinctions will be briefly outlined in this section but will be explored in greater detail below in the context they arose.

Protected characteristic

Whilst many of the dominant factors outlined above were seen as common to both bullying and harassment, the presence of a protected characteristic was limited to discussions of the latter. Thus, when asked whether they thought the behaviour was harassment, a number of the responses reflected the distinction made in this research i.e. the involvement of a protected characteristic (EA 2010, chapter 4):

I thought so, yeah. I thought it was much more clearly harassment and that's to do with it's sexual harassment, she's a women, he's a man, and that seems to make it, almost by definition. There's obviously much more to it, but that's why I said it seemed to be harassment. (Maria (G2))

Returning to arguments about the relevance of personal characteristics for interpreting behaviour, it is interesting to note that the gender of the parties in the scenario and the sexual/gendered nature of the behaviour were referenced in the responses of a number of women participants in the evaluation of whether the behaviour was harassment. For the majority of the male participants, however, the gender of the parties and implications this had for the behaviour was brought up only after they were asked whether they thought Philip was treating Katrina in a sexist way. Although her concern was with bullying alone, that women emphasised target characteristics more than men differs from Salin's (2011) findings.

Other responses however also reflected what Branch (2008) referred to as 'general harassment' (see below, e.g. in relation to intent). These findings reflect those of the questionnaire that participants do draw a distinction between bullying and harassment but that this is not necessarily associated with the presence of a protected characteristic.

Deliberate (Intent to harm)

The view that bullying is understood as being something deliberate and intentional whilst this is not necessarily the case with harassment was evident in the responses of a number of participants, for example:

I'd say harassment can be a lot more than bullying. Basically, you get lots of different types and levels of harassment, and I would say that harassment, like can be intentional, unintentional. It could be sexual harassment. It could be verbal. It could be psychological. A whole range of things, where I think bullying is basically, you're intentionally trying to make someone feel bad. Possibly ganging up with others to do it, but if it's harassment, it's harassment because she feels harassed. (Anthony (G3))

It is interesting to note however that whilst intention is seen as a defining characteristic of bullying by some (reflecting a number of the definitions in the questionnaire), others saw it as a relevant factor, though not necessarily defining one⁹¹.

Persistency

There was a limited indication that persistency may be seen as important for bullying but not harassment. The dominant view however was that harassment also involved a certain degree of persistency:

Matt (G3): Harassment is like a wasp isn't it. Buzzing round. You just can't get away. Actually that's a terrible analogy isn't it?

John (G3): Yeah I think...the continuous focus from him on her, making her feel uncomfortable. I think if it was continuous, if it was every hour, or every day, I think that's harassment but if he is intentionally trying to make her upset or drive her out, I think that would be bullying.

Ian (G3): I think bullying is like a sustained persistent like series of things, whereas harassment can just be you feel harassed by something. There might just be a one off that isn't part of anything else and that person isn't doing it deliberately, you just feel harassed.

The importance assigned to persistency in both bullying and harassment is consistent with the definitions in the questionnaire findings, if not with its ranking in the decision making factors. That persistency is seen as a defining characteristic for bullying seemingly reflects Branch's (2008) arguments. However, the meaning assigned to persistency does not necessarily conform to that in the quantitative bullying measures (i.e. a prescribed frequency over a specified period, Einarsen et al, 2009):

Oliver (G4): I think we certainly need to know about timeframe...but I think time frame in terms of my understanding of bullying means something more persistent, over a period of time and a need to know how long it lasted for.

...

Michael (G4): It might not necessarily be a time-led thing. It should be a change in behaviour-led thing. So, if this could have been going on for a week between the promotion and her going off, it could have been going on for three weeks. I don't think time is necessarily the important thing here. It's her participation within that time frame.

The fact the acts may be considered as persistent, however, was not enough to lead to a conclusion they amounted to bullying or harassment. As the last quote indicated, the importance allocated to persistency was tempered by a consideration of the extent to which that behaviour could be seen as unwanted.

The unwanted character of the behaviour was determined by reference to the degree to which participation in the behaviour was mutual. The mutuality of the behaviour was related to the intention and the perceptions of the parties involved; the parties' relationship

⁹¹ See below, p180

(personal/associational and organisational) and the target's reaction to the behaviour. This returns the discussion to the importance of understanding context when identifying what factors are important, and why and how they are related.

The contextualisation will begin by considering the role of perception and intent.

The relative importance of perception and intention

The positioning of target perception and perpetrator intention as important factors in assessing behaviour is supported across all three data collection stages. Whilst perpetrator intention was given a relatively large amount of attention in the discussion in all the groups, when asked whether perception or intention was of greater importance in determining whether the behaviour was bullying/harassment, it was agreed by all participants that target perception should be given priority:

Maria (G2): ...it's interesting. If somebody is being bullied, it's up to them to say that isn't it...I think it's to do with the individual defining it, isn't it? Because what else have you got to go on really, it has to be that how that person is made to feel by somebody else's behaviour or comments.

...

Carol (G2): I think it's probably more important than any other one factor, but it's not the only thing that you would take into account...but how she feels about it is very significant I think.

Samantha (G1): I think it's, it's hard to say, because when you think of someone harassing and bullying, you do think of them doing it deliberately, intending to put somebody down, intending to hurt them, and the fact that he's shocked, and the fact that he thought she's always happily participating but then, at the same time, you would say someone was harassing someone in the office if they were making inappropriate comments "ooh yeah...you're quite fit" but they might not mean that, they might not mean to hurt someone by doing that, but it is going to make someone feel uncomfortable.

Betty (G1): Although I would say, in my opinion, whether it really matters that much whether he knew...because I also know people that if I say to them, for instance, "I think that was bullying behaviour you just exhibited" that they would be really shocked but that doesn't mean that they didn't mean to do it, and they may not have meant it, but for example, in one instance, their social skills are so low, they wouldn't be able to realise that's what they were doing or intend to, but they're still doing it.

[agreement]

Gemma (G1): I think, could you sort of, almost the opposite, that he might think that I'm telling her she's an attractive woman or but if it's just perceived by her as something inappropriate and that makes her feel uncomfortable, I would still think it's ok to say it's harassment.

These latter comments provide an insight into why intention should not be considered as a defining feature of bullying but is nevertheless not irrelevant. This is explored in greater detail below. This ordering and the reasoning behind it is consistent with the view of Einarsen et al (2011) and, as

will be seen, is also important for leading the decision as to what was seen as a fair way of dealing with the situation⁹².

Target perceptions, relationships and organisational influences

Though perception was given priority, it was clear from the discussion that interpreting target perception was not easy. The integrity of Katrina's perception was questioned. In order to determine whether the behaviour could be considered as unwanted (and therefore correctly perceived as bullying/harassment) the participants felt they needed more information about the way Katrina had responded to the behaviour throughout the relationship and about the way and extent to which she had participated:

Matt (G3): The statement says they both frequently participate in this but we don't get any examples of what she said, of what Katrina has said to Philip. What [she's] done, because without that, you can't really put it into context. He's wrapped a scarf around her face, which I don't think is appropriate, but at the same time, what's she done? What banter and what has she said to him in the past. Where do you draw the line with that? (Matt (G3))

John (G3): What's her reaction been to that? We're not getting her reaction. We're getting her reaction down the line, but not her instant reaction, so that when he does say that she's on the game or she's a prostitute, we don't see what her response is.

It is interesting that the target response, and the timing of that response, were considered important, as this is consistent with Rosenthal and Budjanovcanin's (2011) findings in relation to the treatment of sexual harassment cases. In line with the emphasis Keashly and Nowell (2003; 2011) placed on the ability to retaliate or defend in a conflict (but not bullying), there was an assumption Katrina should have spoken up sooner: 'It's interesting...because it says she's no shrinking violet because I imagine that somebody [who] is being bullied might shrink' (Maria (G2)). Indeed Katrina's motives for not responding in a way that make her objection clear prior to her going off with stress were viewed by some in a cynical light:

Marco (G4): But I...think it's important to understand whether she called sick before telling him.

Michael (G4): Yeah.

...

Oliver (G4): Potentially, if you want to be really pessimistic about it, she may have done it on purpose that way, so it made him look worse. Possibly, if she went off on stress, that would make him look even worse, potentially. If it's gone that sour...

This cynicism was however balanced by the recognition that the assumption while she should have been able to respond in a way that made the unwanted nature clearer at an earlier point, there may have been reasons preventing her from doing so. These reasons reflect a number of those

⁹² 9.6, p196 below

anticipated in chapter 4⁹³ and included organisation culture, continuous exposure and the change in relationship.

Organisational culture:

Anthony (G3): I think it's probably an organisational problem then, because it clearly isn't a culture where she's comfortable complaining to anyone else that it's inappropriate in her opinion, and obviously, they have a culture where that kind of banter is, at least assumed to be, normal by Philip, which, in the end, did make people feel uncomfortable. So, I mean there's clearly something wrong generally with the attitude people have, and there is obviously no way for her to express that she was uncomfortable with that until she got to the point where she is off work with stress.

Ian (G3): But I suppose it says until recently she's never complained, but you don't know whether she had a problem with it beforehand, before he was promoted and even then, that she didn't feel comfortable, because it might just because she's never complained before, doesn't mean that she's, just because she's engaged with it, might be that she feels under pressure to kind of fit in with colleagues, so she gets engaged in banter with colleagues she's not comfortable with, maybe.

The influence of organisational culture was seen as relevant in relation to a number and factors and will be explored throughout this chapter. But it is important to note that, as will be seen, organisational culture is seen as influencing the extent to which an individual may challenge the behaviour and set the benchmark for what is acceptable in a particular workplace but this does not determine what may be seen as objectively reasonable at the societal level.

Continuous exposure:

Vicky (G1): I think it's hard, because I think no matter what, you know, if she at some point, obviously, you can change over time. Sometimes you might think something is acceptable and sometimes you might change as a person and think actually, I don't really like that. So obviously, things can change. Whether or not the power dynamic, but I think that probably was the cause that changed rather than anything else.

Samantha (G1): Yeah.

...

Betty (G1): But I think at this stage, on the same level, like you were saying, it could have a cumulative effect; to say it once or twice is one thing but if you know...if it becomes so persistent it could be a cumulative effect.

[agreement]

Betty (G1): I think you could consider it bullying after some time.

Here it is interesting to note that there is recognition that the behaviour does not need to have been perceived as unwanted from the outset but may become unwanted over time. This may not have resulted from an escalation in the nature or persistency of the behaviour (Einarsen et al, 2003) but rather from sustained exposure the same type of behaviour.

⁹³ p60

Although the change in relationship was seen as significant, participants indicated that, as the last quote suggested, the absence of a hierarchical relationship would not prevent the behaviour from ever being considered as bullying. The change in relationship did, however, trigger the need to apply a stricter level of reasonableness to the behaviour and had implications for the significance of perceptions of power (im)balances.

Change in relationship

The change in relationship and resultant shift in power was seen as potentially having an influence over the degree to which Katrina felt she could challenge the behaviour:

...now maybe that he's been promoted, he's sort of his team leader, she thinks "who do I go to if I have a problem?" So she feels even more vulnerable. (Rose (G2))

Well it's a power relationship then, because it's harder for the employee to go, to say to her manager, "actually, I disapprove of the way you behave" and in that situation, you almost cut off your employee voice. (Michael (G4))

These problems could also be compounded by the possible influence of a poor organisational culture. Nevertheless, there was an acknowledgement that the onus for challenging the behaviour should not solely lie with Katrina to overtly object, there was an indication that her objections could have been subtle and should have been recognised by others, for example managers. The need to acknowledge organisational responsibility for allowing the existence and persistence of inappropriate behaviour in the workplace is important. The discussion will return to this point again shortly but first it is important to briefly further consider intent.

Perpetrator intention and motives

The initial cynicism around Katrina's perception was not matched with a similar degree of doubting of Philip's intention. There was little questioning that he had genuinely perceived the behaviour to be mutual and therefore, whilst he had intended to say what he had said and do what he did, it had not been his intention to offend Katrina or cause her distress.

Indeed there was a certain sense of sympathy felt for Philip apparent across all the groups:

I think I'm trying to work as a manager between the two people as well, because obviously, you feel sympathy for her because she obviously feels stress, and obviously felt bad about it, but at the same time I feel bad for him because they did have this history, and when did it change? Did he misread her signals? (Vicky (G1))

Philip's response to Katrina's complaint however was not entirely uncriticised, and the extent to which he was genuinely unaware of the impact it was having on her was questioned:

Because it does say that Philip is shocked to hear that she feels harassed and bullied, so for him, it sounds superficially like this is the first time he has heard of this and I have heard managers...plead ignorance but actually they have been [aware] so it...there's two ways of her notifying him. She can do it verbally, or by her lack of participation or withdrawal. (Michael (G4))

There was also agreement within and across the groups that if at any point Philip was made or became aware that Katrina found the behaviour inappropriate but chose to continue his behaviour that would impact the participants' perception of the situation. Continuance in the knowledge that the behaviour was having a negative impact on the target crossed a line between unintentional and misunderstanding to intentional and deliberate and would therefore certainly be considered as bullying.

This has interesting consequences for the argument about the possibility of distinguishing between the intent to engage in the behaviour and the intent to cause the harm arising from that behaviour. From the focus group responses there is an indication that the former is of less significance when determining whether something should be considered as bullying than where intent in both forms is evident.

A number of responses suggested that demonstration of this intent was not to come from Philip alone but is to be inferred from an investigation which included the views of colleagues as to whether or not Philip had been or should have been aware that the behaviour was unwanted (Einarsen et al, 2011). This view (the need for objective determination of intent) stands in contrast to those of the participant mediators discussed in chapter 8. Though there was no explicit use of terms like blame and punishment as one may have anticipated (particularly from an organisational justice/fairness theory perspective (Folger and Cropanzano, 2001)⁹⁴, there was nevertheless agreement that a shift from misunderstanding to knowing act was important when determining what a fair response to the situation was⁹⁵.

Thus, as with the previous findings chapters, perception and intent are seen as important - though not necessarily equally important - factors in relation to both the determination of behaviour and what may be seen as an appropriate response. Contextual factors such as the relationship between the parties and the organisational culture were suggested as possible factors which may influence the weight to be attached to claims of perception and intent and the extent to which an appropriate response may be pursued in practice. There was a strong endorsement of the idea that these claims should be subject to some third party scrutiny.

9.4 REASONABLENESS AND RESPONSIBILITY: AN IMPERSONAL CONCERN

Organisational Responsibility

Even where participants were willing to accept Philip's statement he thought Katrina was a willing participant, the change in the relationship was again seen as a relevant factor in assessing the appropriateness of the behaviour. This change reflects the shift from the individual (associational)

⁹⁴ Albeit this may be due to the conclusion that it was likely Philip's actions toward Katrina were not deliberate.

⁹⁵ 9.6, p196

relationship to the organisational and societal levels and it is here where the organisational responsibility again becomes relevant.

There was agreement that when Philip became Katrina's manager he should have been aware that his behaviour was inappropriate. There was agreement this would be the case regardless of whether the behaviour was genuinely well-intentioned and perceived by Katrina as appropriate:

Vicky (G1): I still think a manager should know better though. You can kind of get away with a bit of sexual innuendo in the workplace but I think as soon as you become a manager, if it was me, you'd start to think "I need to become a bit more professional".

[agreement]

Vicky (G1): You know that really isn't appropriate, even if it was happening. Even if she liked it or not, I still don't think as a manager. You've just got to be more.

Gemma (G1): I think, as you said he had no bad intentions but he should be savvy of when he's suddenly the manager that they may have been doing this before but it's a completely different thing now he's the manager.

This potentially serves to support the argument presented above⁹⁶ that there is a spectrum of reasonableness, determined by context, relationships and by levels of responsibility for setting and upholding standards. It also reflects the perspective of Hoel et al (2003) that the expectations for manager's behaviour are stricter than for those without managerial responsibility. The importance of context and responsibility were recurring themes throughout the groups. There was agreement across all groups that a certain level of banter was inevitable and necessary in a workplace to facilitate good relationships between colleagues and a number of participants gave examples of their own personal experiences.

In the examples provided there was an indication of participants exercising a personal responsibility to make judgements as to what others may find appropriate or inappropriate. For example:

I work with a lot of women and I wouldn't call them prostitutes, even in a jokey way because that, in my opinion, [is] probably a little bit strong for a joke. (Anthony (G3))

There was an indication that no matter how strong personal relationships were certain behaviour which may be permissible outside of the workplace (e.g. in personal associational relationships) could never be seen as appropriate in a workplace context:

Ian (G3): ...certain characteristics being protected doesn't change the way I am with people. It's just when you get to know people it changes. My best friend, I say massively offensive things to her and she says massively offensive things to me and it's really funny because it's so inappropriate and that's what makes it funny, but I wouldn't in a million years, like the way I greet my friend, I would never greet somebody that way in work, ever.

This quote is interesting as it demonstrates that whilst context may determine appropriateness to a certain extent, some behaviour/language by its nature will be offensive. There was an

⁹⁶ Chapters 2-5, e.g. p58

acknowledgement, however, that such behaviour and language would clearly always be inappropriate in the workplace, there were plenty of 'grey areas' (Michael (G4)) and determining what may be reasonable behaviour in the opinion of another person was very difficult:

...if you know, it's just a zero tolerance type of thing, and no one sort of gets into this banter. Everyone knows where the line is, but as soon as you sort of start moving what is acceptable, it's quite easy for somebody to not know where someone else's boundaries are. (Carol (G2))

This was seen as particularly problematic where the boundaries of reasonableness may be skewed in environments where the gender or racial composition of the workforce is highly unbalanced. For example:

...my ex-boyfriend is a police officer and obviously he works in a very male environment...and he said, you know he's found sometimes female officers, he's found incredibly vulgar...but he's said his perception has been that, actually they're being like that because they're with males and they want to fit in. (Rose (G2))

Accordingly, whilst personal evaluations can be made, it was felt the responsibility for clarifying what falls on either side of the line of reasonableness lies with the employer (therefore supporting the arguments favoured by those such as Acker (2006) and the argument advanced here concerning the role of the organisation as a social institution).

These comments return the discussion to the need to acknowledge both personal and impersonal standards of reasonableness and the argument that viewing complaints solely as a matter of individual perception and determination (as the (mis)use of mediation may do) is inadequate.

The importance of an objective investigation

In contrast to the approach favoured by the mediators (but consistent with the questionnaire findings), there was unanimity across the four groups and all participants of the need for an investigation to determine what had happened. An investigation was seen as a key precondition for enabling a fair response to be determined:

Vicky (G1): You need objective facts. You'd have to have an investigation to see the facts from both sides, and obviously to map onto whether it's bullying and harassment the definitions, I think.

Samantha (G1): Yeah, I agree definitely.

...

Vicky (G1): There's also the fairness as well, on both sides, if you did a full investigation with someone objective. You know, whether it was Katrina or Philip, they might not feel it was dealt with fairly and you're likely to go all the way to court...I just think you probably need that to prevent it going all the way because, if it was me, and I was Katrina, and there wasn't that and then I was told sort it out with him, you might just think "well no".

The problems associated with investigations notwithstanding, in these quotes the language of 'facts' and 'objectivity' associated with formal procedures that were lacking in the claims for legal

procedural justice (Genn, 2010) in the previous chapter is clearly evident. In this fact-finding process, isolating the inquiry to the parties involved was seen as insufficient and colleagues were seen as an important source of information for determining what had happened (and therefore the reasonableness of the target perception):

...if this was me at work and someone phoned up, if Katrina phoned up and said "I'd like to raise a grievance" because until she [does that], we can't look into it; and so, if she puts it in writing to us, and raises it as a grievance, then we can investigate it. See what's happened, speak to them, speak to witnesses try and get to the bottom of it really, get her side of the story and get Philip's side of the story, and try and try and sort it out for her.⁹⁷ (Samantha (G1))

I think yeah, definitely the colleagues should be asked to provide their perceptions of what has been going on. (Marco (G4))

However, there was a recognition that relying on the involvement of others was not without its problems. This was viewed as especially problematic where the culture is one where the behaviour complained of is rife, or where the target is in a weak position of power:

Lauren (G2): Well, I would probably go for a thorough investigation as I would want to get a picture of the workplace environment that they work in, who else they work with, any kind of witnesses to exchanges, not just between them but maybe just gathering a picture of the environment itself...

Carol (G2): It might be something where there's like a training need really, because it doesn't seem, on the face of it, like it's been a malicious thing on Philip's part. So it's kind of like, well does he need a bit of training in terms of what's acceptable, and actually so does everyone who is in that environment, because if everyone has been at it, you know, is it something where they kind of need to be told what's acceptable in the workplace and what isn't?

...

Lauren (G2):...I also think the difficulty with that is, if Philip is this horrible bully, you know, and there's this-he's got a group of mates, that they could also all say that, they could have the same story...so it's just kind of, it would have to be very thorough wouldn't it?

This returns the discussion to the importance of organisational culture and support. The last comment potentially engages with the findings of Harrington et al (2012) that organisations may favour managers and downplay the significance of the complaint.

The possible response options available will be considered below⁹⁸, but for present purposes it is sufficient to acknowledge that regardless of the potential problems, there was strong support for the need for some objective, third party intervention to deal with the situation. This favouring of an investigation provides support for the argument favoured here.⁹⁹

Participants were asked about the possibility of parties being able to define the boundaries of reasonableness and resolve it between themselves, and though some saw an appeal in this, there

⁹⁷ This participant works in HR.

⁹⁸ 9.6, p196

⁹⁹ When considered in light of the mediator responses, it may be argued this is perhaps a reflection of the comfort and familiarity of the adversarial, formal system, rather than a fully informed choice.

was a consensus that this should only occur after an investigation. There was a strong feeling that where behaviour was alleged to be unreasonable there was a need to treat this not as an interpersonal issue but rather as an organisational one¹⁰⁰.

An exploration of why this objective element is seen as necessary again returns the discussion to the need to appreciate the reasons why bullying and harassment are considered as objectionable and how this may have influenced the participants' decisions.

9.5 REASONABLE STANDARDS OF BEHAVIOUR: PROTECTED CHARACTERISTICS

Attempts to explore the underlying reasons and understandings of why bullying and harassment should not be tolerated were made in two ways. The first was to ask participants what they were basing their judgements on and the second was to address the matter of protected characteristics (through a focus on sexism) and the distinction between protected and other characteristics.

Influences and values: Public values and the personal/impersonal evaluation

As stated above, the majority of the participants said they were unaware of the definitions of bullying or harassment but were nevertheless able to make assessments. Participants were therefore asked how they were making these. Some responses were related to experience and knowledge gained through social interaction and collectively available information such as that presented in the media or discourses on bullying in schools:

Vicky (G1): I think bullying, you just see it in the media bullying...just from the media. I don't know. I need to think about that one.

Gemma (G1): Maybe also trying to be empathetic. I've never had anything like this, but trying to think would I feel bullied. This, so it's quite an intangible sort of attaching it to emotional experience, would I feel like, is this something I would feel harassed, or would I sort of attaching to, sort of putting myself in the situation and attaching whatever I would feel if this happened to me, and from that deriving what my hypothetical emotions would be...

[laughter]

Gemma (G1): This is a really weird question to verbalise but also yeah, from thinking what has been in the media, what has been classed as bullying, or what sort of cases have been discussed as harassment and comparing it to features of cases that have been in, yeah, stories.

Others were related to their upbringing and prior experience in the workplace:

I guess people get their values and their attitudes from their experiences, basically the way they've been brought up. The location of where they've been brought up, places they've worked. (Oliver (G4))

What am I basing it on? What a good question. I'd like to think training and years of dealing with Acas and things that come up at work, so I think that has an influence in my mind somewhere when I'm looking at situations. Whether that judgement is absolutely correct in the legal definition, that's my personal view I guess. (Lauren (G2))

¹⁰⁰ 9.7, p198

From these responses, one may tentatively derive support for the argument of the value of publically known and debated standards, grounded in Rawls's (2001) concern with rules for social co-operation. Given the argument of the need to extend privatisation of justice arguments to the organisational setting in a context of workplace mediation, the inclusion of organisational influences is important.

As illustrated by Gemma (G1)'s response above, there were also references to the participants trying to place themselves in the position of the parties and determine how they would feel and what would be appropriate. Such an evaluation is not only characteristic of the use of vignettes (O'Dell et al, 2012) but also perhaps broadly begins to demonstrate the balancing process Nagel (1991) places at the centre of the personal/impersonal evaluation i.e. individuals putting themselves in the shoes of other people to determine what is important.

A discussion of whether or not Philip was treating Katrina in a sexist way led to the identification of a number of other factors participants saw as important in assessing the reasonableness of the behaviour. It is through a consideration of whether the behaviour amounted to sexism that understandings about protected characteristics and their relevance were accessed.

Sexism and protected characteristics: the behaviour or the parties?

It is in the identification of the behaviour in the scenario as sexism (or not) that the differences between the responses of the women and the men were most evident. As indicated above, when asked about harassment, the female participants were quicker to refer to the importance of the gender of the parties than the male participants.

The explanations of these assessments provide some interesting, although not entirely coherent, insights into the relevance of the parties' characteristics and the nature of the behaviour:

Vicky (G1): Definitely [sexist] because prostitute, by putting the scarf around her, there's lots of examples. It's all of a sexual nature, and the fact that she's a women, it definitely is sexual harassment which is probably why I thought it was sexual harassment rather than bullying. Now you mention that, yeah, I think it's degrading, and that's why it makes it worse, because the power difference already, because he's the manager. If it was two men and there's that banter, it might have been different *but because she's a woman*, it's almost like pushing her down even more.

Samantha (G1): Yeah. Now I would agree it is, because all of the banter and the jokes that he's making are related to *her* sex basically and to *her* gender, yeah. (emphasis added)

Marco (G4): I would say it is [sexism], yeah. I mean I'm pretty sure this is not the type of banter and behaviour that he could have done to a man, but I think there's definitely an element of sexism.

Oliver (G4): I try and flip everybody's sort of situation over, and if Philip turned out to be homosexual, he could then, therefore make the comments to another man, and it would be appropriate in the workplace.

Michael (G4): Could be.

Oliver: So, I don't think it is sexist, because you can flip all the roles of, whether they're homosexual, heterosexual, I don't think it's directed. Although it might be common for a man to say these things, I mean, I don't know the statistics, but I assume there are probably more female prostitutes than there are male prostitutes. I don't know, but maybe there are, so it might be more common for a man to say these things to a woman, but it could just as easily, well maybe not just as easily, but it could happen.

Marco: But it is, I think, the power relationships. There's a lot more, there's a subtle domination involved that is male towards female oriented. I mean, even in a homosexual relationship I think that this wouldn't have happened, the scarf and stuff like that, there's the subtle dominance.

From the above quotes there is an evident application of something akin to the comparator test applied in discrimination cases with the conclusion determined by reference to whether or not Philip would have also said and done the same things to a man. Where it was concluded that he would, there was an apparent excusing of the behaviour and therefore a potential endorsement of Clarke's (2006) idea of an 'equal opportunity harasser'. The attention given to the parties as well as the behaviour lends (indirect) support for the arguments that members of different protected groups may experience a different kind of treatment (Fielden et al, 2010; Healy et al, 2011a) and that they may interpret it in different ways (Salin, 2011).

In light of the relevance of protected characteristics there seems to be a potential contradiction with the questionnaire findings which saw the characteristics of the parties involved as being of lesser importance than whether the behaviour involved a protected characteristic. This was also reflected in the hypothetical personal influence results¹⁰¹.

This contradiction is not easily remedied when one compares the above responses with those where participants were directly asked whether it is the nature of the behaviour or the characteristics of the parties (i.e. whether one or both have a particular protected characteristic) involved that drives the assessment. The responses in this case were strongly in favour of the importance of the nature of the behaviour over the party characteristics.

Rose (G2): It doesn't make any difference whether it's a man or a woman.

[agreement]

Lauren (G2): I think when you're reading it, as face value, you do make a number of assumptions because you're looking at, and that's the danger isn't it? You've got to really try and avoid that, if you've got into the detail of it, and you were investigating. That's why you've got to just focus on ok, what's the facts, what's the behaviours?

Rose (G2): Yes, it should be...if they were called A and B you wouldn't know what they were, would you?

[agreement]

Rose (G2): So.

¹⁰¹ 7.4, p132

Maria (G2): Very interesting.

Rose (G2): So no, I don't think it makes any difference.

The potential resolution to this contradiction may lie firstly in the recognition that there was not unanimity in the view that the words, even said to a man, would not amount to sexism ('I would say it's sexist no matter what' (Betty (G1))). And secondly in an appreciation that whilst those who thought the behaviour was not sexism: they did nevertheless think the behaviour was inappropriate.

Thus, one may possibly argue that though the characteristics of the parties may be seen by some (the majority) as important in determining whether the behaviour was sexism, the characteristics of the parties was of less importance when the behaviour was seen as falling lower down the scale of reasonableness. As the responses demonstrate, it was the sexualised nature of the comments that was considered inappropriate¹⁰².

Accessing power through the prioritisation of group membership

Following from the relevance of personal characteristics, there were comments echoing those of the mediators as to the consequences which may flow from the labelling of behaviour as racism (for example). Such a label potentially allows an individual to access discourse and power related to group membership:

...if it's to do with say, your race or your gender, you've got from that history and you might have more of a supportive group...it's more power behind you, almost. Whereas, if it's you, as an individual, to do with the way you look or your personality, it's much more just you on your own, fighting this. (Maria (G2))

In relation to the positioning of sexism/racism/homophobia as a societal problem, rather than an individual one this is an important observation. However, in one of the groups, caution was expressed over the danger in rushing to label behaviour as racist/sexist/homophobic simply because of the parties or even because of the nature of the language involved:

Marco (G4): ...there's a distinction here, I think. I suppose if these kinds of situations can be made worse if certain conditions are present, like sex or race. At the same time, it can be mistaken, a situation like this can be mistaken to be [labelled] sexist or racist just because there's a woman or a person of another race involved, where it can be led back to the person who is committing the harassment or bullying being just inappropriate, regardless of race and sex. So I think sometimes, it's you know, using sex and race can be the easy way out. Yeah, he did it because he's racist, or he did it because he's sexist, but I think sometimes, it's just wrong behaviour, regardless of these conditions...

Oliver (G4): It can be certainly used as an excuse, as a way of labelling it, and putting it in a box. "That's what he did. It was sexist." When actually, that might have been an element of it, but it wasn't overtly that clear.

¹⁰² In respect of the sexual connotations of the comments, it is perhaps interesting to note that whilst the phrase in the scenario is 'madam of a high class brothel', the responses frequently refer to this as 'prostitute'.

Marco (G4): But I think also, from the other way from the other way, it can be used as a reinforcement for that accusation. He harassed me because I'm a woman, or he bullied me because I'm black, or he bullied me because I'm not white or whatever. So I think it can be used as a tool, also as a defensive tool by the person who suffers from this. So it can be, I don't know, used as a weapon.

Again there was agreement that an investigation was necessary to determine whether it was sexism or not. In so doing one participant suggested the priority should be to explore the reasons why that specific language was used:

...you have to get into Philip's mind about why, in particular, he used those terms to denigrate Katrina. What was your thinking behind those things, as well, and perhaps he either has a very benign approach or he could have something which is much more deeply engrained in his psychology about the treatment of women. (Michael (G4))

Such a view potentially risks elevating the importance of intention but also seems to resonate with the observations in the previous chapter that situations may often be the result of a misunderstanding or a lack of cultural awareness, rather than a knowingly offensive or prejudiced comment.

Protected characteristics: worthy of protection?

Each group was asked whether they felt a situation was more serious if a protected characteristic was involved. The responses generated some interesting insights into understandings of why certain characteristics were protected and others were not, and into the propriety of this.

A number of participants were quick to respond that the situation was legally worse as certain characteristics were protected by law. Further probing was required however to access responses as to why this was the case (i.e. why only specific characteristics had legal protection). Two possible reasons were identified, with one being far more dominant within and across the groups than the other.

The first, less dominant argument related to the difficulties and ambiguities involved in defining and delineating characteristics for protection:

I suppose it's partly about what you can actually police, but obviously, things like weight and stuff like that, there's such a broad spectrum on everything; whereas something like sex or race, it's kind of a very identifiable characteristic, so it's much easier to kind of legalise that. (Carol (G2))

The second, dominant reasons centred round the theme of historical oppression and resultant imbalances of power in society:

Maria (G2): ...and there's more history too isn't it, beyond bullying. There's a lot of history to those two groups [black and woman] specifically.

Rose (G2): Yes, that's right. "We're not giving you a job because you're a Catholic in Northern Ireland" or "we're not giving you a job because it's the 1970s and you've got a black face".

Gemma (G1): But also, into all the attachments, if someone gets harassed for their bad sense of fashion at work for just wearing hideous jumpers or something like that, there's not all this background on, I don't know, background of homophobia and racially motivated harassment. So it's not as, it doesn't fall into this bigger...

Betty (G1): Like debates.

Gemma (G1): Yeah, or bigger prejudice that is really within each of, yeah, I don't know. It's hard to actually describe it.

Samantha (G1): It's with, I suppose, with women having been "oppressed" for, you know, obviously, for years and years and like you say, it's that history to it. If you're making fun of someone for yeah, wearing a bad jumper, people with bad jumpers haven't been oppressed for years and years. Yeah I think it's about that.

These clearly reflect the rationales identified in the equality literature, for example by Fredman (2011) and Collins (2003)¹⁰³. Given the arguments favoured in the present research, this recognition by the participants arguably supports the need to position questions as to why certain groups are protected more explicitly when considering the appropriateness question.

Mixed support for a hierarchy of protected characteristics

Interestingly, there was doubt among a number of the participants that the arguments surrounding the oppression and disadvantaged treatment of women were as relevant now than they had been in the past since women's position in society had improved:

I think it's in the past. I mean, if you'd have set this scenario twenty, thirty years ago, it would have been straight away probably highly sexist but I think now, because more women have been coming, getting higher up in positions than ever before though, so I think [now we're] much more liberal minded... (Oliver (G4))

This is interesting since it highlights the fact that standards of reasonableness may change over time (Archer, 1998). Indeed, this shifting in socially-defined standards (not solely related to gender) was identified as a possible reason why misunderstandings may occur and was (arguably in line with the view of the participant mediators) seen as a situation where re-education was seen as the appropriate response:

Lauren (G2): I work in a male dominated industry and I would say, it's going to sound ageist and it's not meant to, but certainly people who have worked in the industry for a longer time, that are used to, what we would call the old days, pre as much employment legislation as we've got now, that used to have conversations that would now be deemed highly inappropriate. Sometimes, if they've carried on in that little bubble and worked their way up the ladder, and they really don't realise and I think you're absolutely right, I think maybe it has got to the point where this is the switch for him. That it's got to the point where "oh, I never thought of it like that". It could be as innocent as that couldn't it?

[agreement]

Lauren (G2): It could just be somebody being naïve to things.

¹⁰³ 4.4, p48

Rose (G2): and life was very different 30 years ago. Certainly the eighties, it was very different. I remember, I used to be chased around meeting rooms. It used to be seen as a laugh.

A number of those who had expressed the view that sexual harassment was no longer as serious a problem as it had been went on to describe what may be viewed as a hierarchy of characteristics. Here, however, there was contrast with Colgan and Wright (2011) since sexual orientation (along with race and disability) was placed higher in the hierarchy:

Vicky (G1): I almost think race is worse than the gender thing. I don't know why. I just, gender I think it might have changed. I think the race thing, disability is another one as well, homophobia are all really sensitive subjects with one person's, I just think that's worse. A white man with a black man, I just think that would be worse.

[Samantha (G1) and Gemma (G1): agreement]

Betty (G1): I don't agree. I don't think it's worse. I think it's just as bad. I think they're all bad, as bad as each other...that's also because, probably the gender issue is the only that affects me, like racism I suppose, usually if anything, I would probably from a more positive end, and also obviously like disability doesn't either, so maybe it's just that gender issues are the only ones that affect me but I don't think it's any better. I think they're as bad as each other.

Whilst these rankings are interesting, they were not unanimously supported within or across the focus groups, or indeed by the questionnaire findings (where 95.1% agreed or strongly agreed that racism, sexism and homophobia were equally serious). That the distinctions were made, however, is of potential relevance and interest in respect of the acknowledgement that different people prioritise different characteristics in different ways. It is also important to note that this indicates that personal interpretations of impersonal standards will differ. This is, of course, one of the reasons why those, such as the mediators interviewed, prefer responses that allow the individuals involved to determine this balance for themselves.

Protected or non-protected: the importance of dignity

The identification of a possible hierarchy by some participants aside, there was no objection raised to the inclusion of race, sex or sexual orientation as protected characteristics. To return to the question of whether the presence of these made a situation more serious, the responses fell along a spectrum where these were seen as worse than non-protected characteristics at the one end and those who felt that they were not worse at the other. Though the conclusions differed, the reasoning behind these positions was similar and focused on whether it could ever be fair to treat someone differently on the basis of an aspect of their person.

Here, although the word dignity was not often used, the ideas and understandings being expressed resonate with the notion of dignity set out in chapter 4, i.e. 'the value attached to individuals simply by virtue of their humanity' meaning 'that all are entitled to equal concern and respect' (Fredman, 2011:20). Some of the language used in the following quotes, for example 'denigrates' also reflects those given in the qualitative definitions of bullying and harassment and coded as dignity in chapter 7:

Michael (G4): Absolutely. If something is overtly an ism and specifically denigrates somebody on a nature of their own character and their being, then that becomes very serious for me. That's either racism or sexism or a phobia based around a characteristic of a person, be that race or ethnicity or religious belief that becomes a very, very serious issue.

Oliver (G4): Yeah, attacking somebody on the basis of who they are, of what they are, is fundamentally wrong.

Rose (G2): ...even if it's not legally, it does [make it more serious] because it's something very personal to you. So somebody is saying, oh you know, somebody is saying something you know, something and it's yes

Maria (G2): part of your identity

...

Maria (G2): Yeah. It's an interesting question isn't it? Is it more serious sort of, to say something to somebody who is overweight, and obviously that would really hurt somebody. Is that more hurtful or more serious than saying something is really kind of like racially offensive, as you, say legally it is.

Characteristics potentially seen as serious included weight, hair colour and height and reflected the 'lookism' arguments for an expansion of protected characteristics (Desir, 2010; Davis, 2008). The positioning of characteristics that attract stigma also seemingly supports Solanke's (2011) argument, although the link she draws with disadvantage is not drawn here. From the participant responses it seems that the impact to the individual's character is sufficient.

Care should be exercised however in the temptation to relate treating non-protected characteristics as equally important to protected characteristics with the position offered by managing diversity. The rationale in their responses differs from that adopted in the latter because the rationale because here the concerns are ethical and moral, and not for the business case (Dickens, 1999; Noon, 2007).

Those who found it more difficult to conclude all characteristics should be treated equally accepted the relevance of dignity but drew their conclusion on the basis of the inalienability of the protected characteristics. The recognition of the inalienability of a characteristic is closely related to the understandings of dignity accepted in this thesis and also underpins many of the structural and disadvantage arguments (Desir, 2010; Fredman, 2011):

I wonder also, if from what you've said, is what makes it even worse is because they are demographic things and not things you can change...because you can wear a better jumper, obviously, but you can't change these demographic things. (Betty (G1))

The findings presented in this portion of the chapter provide some interesting insights and empirical evidence for a number of the parts of the argument set out above that are largely based on abstract, non-empirical work. That there was confusion and a lack of consensus on many points is interesting and entirely expected since the issues involved are complex. In particular, the questions about the reasons for distinguishing between protected and non-protected characteristics

seemed to challenge the participants. The ways in which the various positions in respect of the relationship between the nature of the behaviour and the protected characteristics of the parties involved and of the differing views relating to the singling out of specific characteristics may be incorporated into the framework will be considered in the next chapter. The key, it will be argued, lies in the acknowledgement that the standards of reasonableness to be applied vary with the level of responsibility and the nature of the relationship (i.e. associational/organisational/societal).

9.6 FINDING A FAIR RESOLUTION

Despite the different views on whether or not the behaviour amounted to bullying, harassment or sexism, there was agreement that the behaviour was nevertheless inappropriate. There was also agreement that the choice as to how the situation should be dealt with lay with Katrina and what she wanted or needed from the response:

I think you'd have to talk to Katrina and speak to her to see how she sees it moving on. Does she see that she can ever go back to the workplace with him? Obviously speak to him to get his side, but I don't think that matters so much as her, seeing where she can go from here. (Vicky (G1))

Possible choices identified included both formal and informal options and included the potential use of mediation. It should be noted, however, that even where informal options were favoured it was felt that these must involve a third party who was sufficiently knowledgeable and skilled:

[M]y understanding is that mediation may work in that process but maybe a professional mediator, because if I am not that much skilled as a mediator, in that case I should not be handling that process. I should be hiring a professional mediator to come in. (Robert (G3))

I do think there needs to be another person who sits in the middle and I do think that person needs to be appropriately qualified and trained as well...in this kind of thing, how people are feeling. (Betty (G1))

The concern with skill reflects the views of the mediators set out in the previous chapter and, as was seen there, has potential implications for whether the chosen resolution option may be considered as fair. Although the comments about skills made in the focus group were not explored to confirm agreement with this, agreement may tentatively be inferred from the context in which the comments arose i.e. what would be a fair way to deal with the situation.

Reflecting the high rankings of the corresponding variables in the questionnaire results, there was a strong agreement that the option chosen should provide the parties involved with the opportunity to explain:

Rose (G2): Yes. Yes. I do, some sort of mediation where there's somebody there...she can say how she feels, he can say how he feels and they can help understand each other.

Lauren (G2): I'm not sure where I'd put that [mediation]. I might want to investigate the initial facts first, because there could be some real, there seems to be an inference that there is a breakdown in communication here somewhere, and to put them in a room...if she's going through something that's not obvious here, you wouldn't know that until you've asked the questions so...

...

Carol (G2): Yeah, I agree with that. I think the ideal outcome really, would be if you got to that stage. Spoke to them both, did the investigation and realised that it was just kind of a miscommunication or a lack of understanding, and then you could do the mediation and they're both like, "yeah, now I understand your point of view and I won't do it anymore". That is the best outcome you could hope for.

The focus group responses in this respect, however, offer an apparent difference to those provided by the mediators and that difference relates to the process through which these opportunities should be afforded. The mediators saw mediation as the appropriate mechanism to facilitate this but for the focus groups the initial opportunity to explain should arise in the context of an investigation. Here the explanation is being delivered to the third party investigator and not to the other party. As previously outlined, there was clear agreement amongst the focus group participants that explanations should be used to allow a third party to ascertain the 'facts' and the outcome of the investigation would determine what the next step should be. Therefore, even where an informal option was suggested, such a choice should be preceded by an investigation. This opinion was shared by all participants, including those who stated they had training and experience of workplace mediation. This is interesting since it seems to reflect the experience of the mediators reported in the interviews but does not reflect the opinion of the mediators themselves over the timing of investigations.

The support for the need for an investigation seems grounded in a sense that the scenario cannot just be characterised as an interpersonal dispute but that it should be seen as a potential organisational problem. As indicated above¹⁰⁴, there was a great deal of discussion about the role the culture of the organisation may have played in facilitating and/or failing to curtail the behaviour:

They did highlight [it] was a characteristic of the environment. That there was a lot of banter and sexual innuendo...I think organisationally they have to highlight...there has to be a way of allowing people to complain earlier in a safer way. If she felt like she couldn't complain or something, that would be an issue and you could, you'd have to ask her to find out if she felt she couldn't say anything, whether there was no process for her to complain about harassment before the situation got that bad. (Anthony (G3))

This stance provides support for the proposition that an organisation should be seen as a party to the dispute. This is not entirely inconsistent with the findings from the mediator interviews but seemingly casts the organisation in a far more proactive and directive role than envisioned in the previous chapter where the degree of organisational involvement was to be driven by the parties. This position has important implications for the privatisation arguments and will be considered shortly.

Although initial explanations should be given to a third party investigator, the focus group participants saw a value in providing the opportunity for the parties to explain their positions to

¹⁰⁴ p127; p134

each other directly and to seek the shared understanding which ranked so highly in the questionnaire (and was considered as central to the arguments of empowerment and the value of mediation). The focus group responses did not necessarily directly invoke the themes associated with empowerment (for example, there was no mention of control) but the chance to use the situation as a learning opportunity was evident. Reflecting the mediator stance, providing Katrina was willing, mediation was seen to be relevant regardless of whether or not the investigation had shown the situation to be a misunderstanding.

In relation to resolution, intent seemed to be of greater relevance than in the assessment of the behaviour. From the responses, an inference could be made that where it was found to be bullying/harassment *and* that it had been deliberate, mediation alone would not be seen as a fair response. Although the terms blame and punishment were not used, if the behaviour was seen as deliberate, fairness seemed to necessitate a stronger response. A potential role for learning and understanding in such a case was not automatically excluded but there seemed to be a view that here the responsibility should not necessarily fall on the parties involved but on the organisation:

Oliver (G4): ...from the company's point of view, more holistically some sort of memo needs to be sent around about appropriate behaviour and reminding people of policies that are in place.

Michael (G4): They also need to be re-inducted into the organisation as well. Whatever equal opportunities training is given to people as new recruits, they need to be taken back through as well.

Though the focus group comments offered in this section and the next may be used to support the theoretical arguments, they also demonstrate an acknowledgement that a public statement is also required by an appreciation of a practical reality of managing in an organisation. This again returns the discussion to the extent to which an organisation should be involved in dealing with the situation in a fair way. As has, and will be seen, one may derive an apparent support from the focus group findings against the personalisation and privatisation of disputes.

9.7 AN IMPERSONAL ISSUE: ORGANISATIONAL RESPONSIBILITY FOR SETTING STANDARDS OF REASONABLENESS

That an organisation should be responsible for setting and enforcing standards of reasonable behaviour was a strong theme throughout all the focus groups. There was a persistent questioning of the extent to which a problem between two individuals could ever be seen as just that. The influence and impact of the organisational attitude towards the behaviour and the parties was seen as an unavoidable contextual factor when assessing the behaviour and what would be seen as a fair way of dealing with it. Just as the involvement of colleagues in establishing what had happened was seen as necessary, that they were aware of the steps taken to deal with the situation was also seen as necessary:

I think the office should know. That they should be given a message how the problem has been solved so that they can see that it doesn't happen in the office again. Because, if I'm the boss, and I have to deal with these things quite often, I definitely too would be pissed off because rather than focusing on my job, I have to deal with this kind of behaviour all the time. (Robert (G3))

I think you have to give the example, and if a line manager doesn't give the example, I don't know. [You] could have fifteen, twenty employees, you might as well, if you don't stop it there, you may as well have the CEO doing things like that, and then the whole organisation might think "Well, it's acceptable. Everything is acceptable here." I'm just saying the higher up, the more you're under the spot light. The more you're exposed to certain public criticism and public investigation as well. (Marco (G4))

Thus, failure to be seen to address the problem may result in the 'revolving door' situation considered in the previous chapter.

Again, however, ensuring this information was relayed was not seen as the responsibility of the parties involved (as may be the case in mediation) but the responsibility of the organisation.

There was some debate however over what information it was necessary to disclose in order to satisfy this responsibility, especially where the parties involved wanted to keep information private:

Ian (G3): I think it's up to her. Up to Katrina if she wants it to be shared then, but if she wants it to be private, that's her decision...if there is a message that needs to be discussed with the office, then you can do it generally, without specifically mentioning like this case because she might not want people to know.

Anthony (G3): I think in an office situation, where there's a large problem and then silence, and then high management comes down and passes a new policy, without details it just makes rumours and speculation and [would] probably be a harder working environment after that.

...

John (G3): I don't think it should be kept private. I think the details should be kept private, but I think the outcome should be communicated to the wider team. So if it was, say there was, because we work with students, and in the past, we've had issues where a member of staff has said something inappropriate in front of a student and that member of staff has been taken in and spoken to about the inappropriateness of it, and then afterwards, an email goes out to say "just be aware that comments relating to this, this, this and this are inappropriate, especially in front of students or directed to students. So please be aware of the nature of your environment"...and I think that's reasonable. Obviously, when the email goes out everyone knew what it was about but not everyone knew the details of what actually happened, about what was said.

Anthony (G3): So you don't rewrite the insult twice basically.

The consensus within and across groups was, however, that there was no need to widely disclose the precise details of how the situation arose, the specific words and/or the actions leading to the complaint. Rather, it was felt that what was necessary was a strong reminder of organisational policies and intolerance of certain types of behaviour.

This reflects the importance of the need argued for here for organisations to provide publically knowable standards which conform to both organisational and societal impersonally determined standards of reasonableness. If standards are needed to aid people in knowing what the rules of

co-operation with others are, it follows these should be public (Rawls, 2001). Also possibly supporting the proposition that standards should be subject to a process of public deliberation through discussion in accordance with public reasons (Rawls, 2001), sending a strong message was also seen as an important part of creating a culture which encouraged individuals to challenge behaviour they see as unreasonable. This may also serve to encourage a discussion on appropriate language and conduct that may otherwise be constrained or discouraged by a lack of communication following a complaint:

Betty (G1): I think there needs to be some sort of demonstrable outcome...from a business point of view. It's impossible to sell something if people don't understand what comes out of it. If you say put money, time, whatever, and yourselves into a process, and no one ever sees anything come out of it, in the end you're never going to get that sold, and for future people that may want to use the process, if they then always see "oh look, those people. We don't know the details but it was resolved so..."

...

Vicky (G1): People feel able to talk about it more openly, and maybe she could have said earlier, I don't know.

Betty (G1): I agree. If you want to have a culture of a company that supports, or would not support, this kind of behaviour, you need to make it clear that this kind of behaviour occurred and was not put up with because it's not appropriate.

The organisational reinforcement may also include training, not only of the parties involved but also of colleagues, and importantly managers. In agreement with the mediators, as seen above, there was also a feeling the organisation could take the situation as an organisational learning opportunity¹⁰⁵.

That the possibility an organisation may use the opportunity to change its practices may be seen as a way of an organisation holding itself to account through the disciplining of wrongdoing or the retraining of those who may have allowed standards to slip.

The focus group ideas of what is necessary to deal with the situation in a fair way seem to provide a much greater degree of overt support for the arguments advanced in chapters 2-5 than the mediator responses. In particular, the insistence on an investigation and on organisational involvement at every step seems to prioritise notions of impersonally reasonable standards and responsibility over personal ones and thus arguably favours the representative (rather than direct) structures argued for here. The two sets of findings are, however, not necessarily incompatible and, as will be seen in the next chapter, may be integrated into the theoretical framework without too much trouble. And whilst fairness was considered, it is interesting to note that ideas of justice were far less apparent.

¹⁰⁵ See Anthony (G3) quote, p197.

9.8 THE RELEVANCE OF JUSTICE: IMPLIED BUT NOT EXPLICIT

As has been stated, there was also strong agreement both within groups and overall that a fair way of dealing with the situation required an investigation. The reasons why an investigation was seen as necessary seem to engage with concerns of both substance and procedure. It is important to note at the outset that whilst responses do refer to factors which may thematically be related to one or more of the forms of justice identified in chapter 3 (and most clearly procedural justice), there was only one explicit use of the word justice, which was a reference to restorative justice. The lack of direct comment on justice may perhaps counter the argument advanced that there is a need to distinguish between fairness and justice since it seems no such distinction is made here. Alternatively, however, the presence of factors potentially related to ideas of procedural justice may be seen to support the argument that whilst justice and fairness may be seen as different things, particularly in respect of procedure, it is likely both fairness and justice factors will be present.

The prioritising of impersonally reasonable standards and the need for organisations to take responsibility for enforcing those standards also perhaps reflects some of the characteristics of more substantive forms of justice and of social justice in particular i.e. the need to reinforce the idea that individuals should not be exposed to certain types of behaviour (those engaging with protected characteristics and/or dignity). That the parties involved perceive the outcome as fair was seen as necessary but not sufficient:

Yeah, find a way of managing the communications. So you've reached the decisions you've reached...you may not necessarily agree, but if the people involved are satisfied, and the actions taken are agreed by the organisation that they're the right actions, then I think that's just a matter of managing that communication piece to everybody else. (Lauren (G2))

Therefore, it was not necessary that every person would also think that the response was fair provided the basis on which the decision had been made was evident.

Again, this has echoes of ideas of procedural justice (e.g. transparency in process, Roberts and Palmer, 2005) and its importance for determining the extent to which an outcome may be considered as fair (or possibly just).

Therefore, though it may be argued that the participants did not expressly label their comments as relating to justice, many of the factors and conditions considered could thematically be related to notions of justice. However, participants were not expressly asked about justice (for time reasons) and the failure to qualify their statements as relating to justice make it difficult to draw any firm conclusions here in support of the distinction between fairness and justice.

9.9 REFLECTIONS

Finally, by way of seeking to demonstrate the worth in having theoretically informed discussions and in exposing people to other views and providing them with the opportunity to explore them to increase understanding, it is worth briefly noting the reflections of the participants on whether taking part had changed the way they thought about bullying and harassment. Responses largely fell into one of two categories. The first category stated it had made them reflect more on their own experiences. Responses in the second category related to understandings of bullying and harassment itself and referred to ways it had made them realise how complex it could be or how it had made them broaden their perspective and, for example, to think more about the victim or to view it as an organisational problem.

9.10 CONCLUSION

Although it is possible to identify a number of areas of agreement between the focus group findings and those of the mediator interviews, there is an evident difference in the importance attached to personal and impersonal standards in evaluating behaviour and also what a fair response would be. From the focus groups, personal perceptions and evaluations are to be tempered by impersonal and objectively determined standards through investigation and organisational involvement at every stage. On the face of it this may potentially lead one to conclude from the focus group findings that mediation is inappropriate for dealing with bullying and harassment. However, this is not a necessary consequence and in the recognition that mediation should be considered as one possible option, one may find a solution to reconciling the findings within the framework proposed here. This will be set out in the next chapter.

The emphasis placed on the organisational responsibility in ensuring disputes are dealt with in a fair way arguably favours of avoidance of the personalisation and inappropriate privatisation of problems. Again, however, as with the mediator responses, the faith placed in the extent to which an organisation may be sufficiently willing and able to accept and uphold its responsibility is not necessarily matched when the counter-productive or even prohibitive nature of the culture of many organisations is accepted.

Having now set out the findings from each data collection stage and sought to relate them back to the existing literature and to the arguments advanced in order to try and demonstrate how the quality of the research (as defined in chapter 6) may be determined, the next chapter will now explicitly address the research questions and present the final framework for consideration.

CHAPTER 10. DISCUSSION, KEY CONTRIBUTIONS AND CONCLUSION

10.1 INTRODUCTION

Given the extent of the discussion in the context of the existing literature in the preceding chapters, this chapter will focus on the theoretical contribution derived from the previous discussion in chapters 2-5 and chapters 7-9. As it has been argued that the aim is to offer a greater theoretical grounding for understanding workplace mediation in bullying and harassment cases through responding to the over-arching "appropriateness question", it is further argued that this necessitates a greater focus on the combined contributions of each research question within the theoretical framework offered, rather than on each question taken individually. It follows from this argument that the structure and content of this chapter may therefore differ from that which may otherwise be anticipated and thus, only brief attention will be given to the individual research questions (questions 1-5). The theoretical framework will therefore be offered as a response to the research questions in itself.

The framework is presented in two parts. The first is a theoretical model representing the guiding context of fairness and the balancing of the personal and impersonal standards of reasonableness to illustrate how different disputes may be positioned along a spectrum of standards of behaviour. The second takes the form of a flow diagram illustrating how the various factors and contextual features may influence the route a particular dispute may take. It is anticipated that the second component will have greater practical utility and speak more directly to matters of feasibility than the model. However, by incorporating elements of the theoretical model into the second part the connection between the often abstract concepts and arguments and the practical policy and organisational context is evident. The two parts seek to demonstrate the value in offering theoretically structured discussions on "the appropriateness question".

Thus, to return to the map analogy, the model represents the hypothetical park of fairness and the schematic represents the various paths and directions that may be followed to determine how feasible a certain path is and where in the park a dispute (and the parties involved) may end up.

The chapter will also identify a number of limitations of the research and offer suggestions for future research.

Finally, it will identify the key contributions of the research and offer a brief overall conclusion arguing that workplace mediation may be seen as appropriate for dealing with bullying and harassment but that this appropriateness is highly contingent.

10.2 RESEARCH QUESTIONS

The overarching question has been to what extent is workplace mediation appropriate for dealing with workplace bullying and harassment? This has been referred to throughout as “the appropriateness question”. In order to answer this, further questions were considered:

1. What factors influence whether a situation is perceived as bullying and/or harassment?
2. What factors influence whether mediation is perceived as appropriate?
3. Why are certain factors considered to be influential in determining perceptions of bullying and/or harassment?
4. Why are certain factors considered to be influential in determining whether mediation is perceived as appropriate?
5. How do the factors associated with perceptions of bullying and/or harassment and those associated with the appropriateness of mediation relate to each other?

The responses to the research questions are offered from within the methodological and theoretical assumptions adopted here and thus it is important to qualify that the conclusions drawn are not intended to be prescriptive and universal. They are offered as representing what may be seen as an overlapping consensus (Rawls, 2001) on the factors and influences which could, on the basis of the evidence presented (through the literature review and findings), answer the research questions.

Although a distinction will be made between factors seen as necessary and those seen as influential, this is not to be equated with a presentation of a single ordering of the factors. Rather, the conclusions drawn for the first two (“what”) research questions are qualified by the responses to the “why” and the “how” questions. The contextual and relational factors will therefore dictate the weight to be assigned to a particular factor on a case-by-case basis. This contextual and relational nature further necessitates the offering of the framework in combined response to the research questions.

10.3 IDENTIFYING THE ‘WHAT’ FACTORS

The discussion will begin by outlining the conclusions to the first two questions. The potential reasons for the importance of these factors have been identified throughout the preceding chapters and so in the interests of avoiding repetition and allowing for the focus on theoretical contribution outlined in the introduction, initial consideration of the first and second questions will largely take the form a list. However, further discussion of a number of the factors is offered below in relation to their potential operation within the proposed framework (see 10.5, p212).

10.3.1 Question 1. Behaviour: Bullying and harassment

In order to consider the factors arising from this research it is useful to return to the definitions of bullying and harassment adopted above (p47). Bullying was taken as 'persistently insulting, malicious, intimidating, exclusionary or violent behaviour which adopts a particular pattern and dynamic with escalation of the problem over a time period' (Beale and Hoel, 2010:101). Harassment was defined as it is in s26 (1) of the EA 2010: 'A person (A) harasses another (B) if- (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of- (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B'. Chapter 4 further identified a number of additional considerations including negative behaviour, perception, intention, persistency, power imbalance and escalation. All of these elements arose at some or multiple points throughout the data collection stages.

On the basis of the arguments presented in chapters 2-5 and the findings explored in chapters 7-9, the factors which may arguably be seen as necessary and/or influential in understanding what may lead to a situation being perceived as bullying and/or harassment can be identified. Although target perception was seen as the paramount factor, no single factor is sufficient. Multiple factors are required and include:

1. Perpetrator intention to do the act complained of (but not necessarily to cause harm-although this may be influential);
2. The behaviour is negative and unwanted;
3. Target perception that the behaviour is bullying/harassment is necessary and sufficient to trigger a presumption of bullying/harassment but it is not sufficient for a conclusion of bullying/harassment to be made. The presumption must be validated through an assessment of the reasonableness of the target perception, for example, through an objective investigation;
4. A degree of persistency (likely but not always necessary for harassment).

It was suggested that other factors may not be seen as necessary but may nevertheless influence the perception:

1. An escalation in the frequency or form of the behaviour;
2. Power imbalance(s) between the parties;
3. The parties' personal (protected) characteristics.

The classification of some factors as influential, rather than necessary, and the attention given to intention to cause harm (i.e. a malicious element) do not necessarily differ from Beale and Hoel's definition adopted above but do depart from Einarsen et al's (2003:22) characteristics of bullying. In addressing Keashly and Nowell's (2003; 2011) objections relating to a failure to adequately

account for power imbalances in bullying situations in mediation, the positioning of power should be noted. On the findings it is difficult to conclude a power imbalance was seen as a necessary factor. However, it is possible to argue evidence of a power imbalance may strengthen the conclusion that something is or is not bullying/harassment but it is not necessary for reaching that conclusion in the first place. On the basis that there was an acceptance in the qualitative stages that power is complicated and dynamic (Jenkins et al, 2012) and that the presence of certain imbalances, for example, a hierarchical relationship or male/female does not necessarily lead to bullying/harassment it is less problematic to argue on the data collected here that the existence of power imbalances *may* lead to or be the result of bullying/harassment. Understood in this way power (im)balances may be seen as more of a contextual factor, creating conditions that may allow bullying and/or harassment to arise and may therefore be of greater importance in determining how to deal with the situation and perhaps also in explaining why certain behaviour should not be tolerated¹⁰⁶.

Bullying and harassment: the same but different?

There was recognition across all three stages that bullying and harassment were different things but this was accompanied by a sense of confusion as to what the difference was.

Possible distinctions were drawn in relation to the involvement of a protected characteristic. This was often however not drawn on the basis of knowledge of employment law but rather through exposure to publically available information such as media reporting on cases of sexual or racial harassment. This had led to the association of the word harassment with a protected characteristic. Given the argument made in chapters 2-5 about the importance of a public forum to help facilitate collective understanding (as required in Rawls's fair society) this is interesting. It is particularly so in light of the comments about the media potentially being the primary way many will receive information about how the standards of reasonableness enacted in law are applied in practice¹⁰⁷. Although there were some apparent inconsistencies between the relative importance of the parties possessing certain characteristics and the nature of the behaviour, overall one may argue the balance fell in line with the legal position i.e. the latter¹⁰⁸.

Other possible distinctions were drawn over the relevance of a malicious intent or the requirement the behaviour was repeated. In both cases the questionnaire definitions and the focus groups saw these as more relevant to bullying than to harassment. They were not seen as entirely irrelevant to harassment (and therefore only partially support Branch's (2008) view).

Although they could not themselves necessarily make the distinction, when explicitly asked whether it was important to distinguish between bullying and harassment a minority (of both

¹⁰⁶ 10.5, p212

¹⁰⁷ p78; p188

¹⁰⁸ 4.4, p48; pp194-196

mediators and focus group participants) felt it was important to make a distinction between the two for the purposes of formal procedures. The majority of participants in the qualitative stages, however, supported the view that they are synonyms or subsets of each other and for many of the focus group participants it was sufficient to establish that the behaviour had breached some threshold of (impersonally) reasonable behaviour. This view is potentially inconsistent with their support of investigation and objective determinations of the situation. One may perhaps infer therefore that whilst they personally see it as unnecessary for their own understanding, distinguishing the two serves an organisational purpose.

The interview participants were, however, more explicit in their rejection of the need to distinguish between the two. For them what mattered was the perception of the parties and what had led them to apply those labels. This is, of course, consistent with the rejection of labels in mediation (Irvine, 2014) but has implications for the (public) shared understandings of reasonable behaviour favoured here¹⁰⁹.

Thus it is argued that whilst it is possible to make distinctions between bullying and harassment, for the majority of participants (in the last two stages) this did not appear to influence their personal assessment as to what they understood as bullying/harassment. The need to distinguish the two was however seen as important by the focus group participants (but not the mediators) in order to deal with a situation in a fair way.

10.3.2 Question 2. Resolution: The appropriateness of mediation

Before continuing it is important to reiterate the favouring of a facilitative model of mediation (confirmed through the interviews) and thus the conclusions drawn here are to be seen as reflecting assessments as to the appropriateness of facilitative mediation.

As with the previous section, factors for the second research question can be considered as either necessary and/or influential in understanding whether mediation may be considered as appropriate. Again, although voluntary full participation was seen as the paramount factor, no single factor is sufficient. Multiple factors are required and include:

1. Voluntary participation and intention to fully participate in the mediation process;
2. A consideration of the nature and severity of the behaviour (although possibly of greater importance to an employer than a mediator);
3. Party capability (health and possibly personality);
4. Organisational involvement in the mediation process (Organisation as a party);
5. Strong mediator skills and impartiality;
6. Confidentiality: negotiated and tailored, not absolute;
7. Opportunity to explain and seek shared understanding.

¹⁰⁹ For example see p217

Other factors may arguably not be seen as necessary but may nevertheless influence the response:

1. Power relationship;
2. Organisational attitude and culture;
3. Party (protected) characteristics.

It was seen above that the responses of the parties, a mediator and the employer may vary. The strong dominance of the empowerment factors, rather than the cost and efficiency ones should be noted. Beyond the questionnaire there was little consideration of the latter. This may, however, largely be a consequence of the sample composition as there was evidence through the mediator responses that organisations' concerns remain dominated by the latter.

The greatest contribution to understanding the appropriateness of mediation in relation to this question (and indeed overall) may be found in the expansion of the mediation relationship beyond that adopted by Nabatchi et al (2007) and indeed by Ridley-Duff and Bennett (2011) to include the organisation. That this is necessary was noted by Bennett (2013) in his application of Ridley-Duff and Bennett's framework to his interview findings but their framework is yet to be developed to reflect this. This contribution is strengthened by a greater insight into the way in which confidentiality operates in practice. Confidentiality as a barrier to the transformative effect of mediation has been noted (e.g. Latreille, 2011; Saam, 2010) but has not explored in the UK, either conceptually or empirically.

The factors and influences identified above which may lead to a fair and feasible use of mediation to address workplace bullying are highly contingent on context and relationships and thus the mere identification of the factors is not sufficient.

10.4 ADDRESSING THE 'WHY' AND 'HOW' QUESTIONS

In order to answer the remaining research questions it is necessary to finally move to the construction of the new framework since it is through this process that the conclusions as to the reasons why those factors are considered important and how they relate to each other are best demonstrated. In relation to the why question, the understandings of fairness, justice and dignity as explored in chapters 2-5 and related to the findings in chapters 7-9 are offered in response to research questions 3 and 4 and are used as key justifications for determining a fair response to the appropriateness question. These "why" factors will be structured according to the need to recognise the varying standards of reasonableness to be applied across the spectrum previously teased out¹¹⁰. In explaining these "why" factors it is also important to acknowledge the differing levels of responsibility that attach to different parties in their relationships with each other (associational, organisational, societal) (question 5).

¹¹⁰ Across all the preceding chapters.

The two parts of the framework (the theoretical model and schematic) can be seen in their complete forms on pages 213 and 223 respectively. The schematic will be dealt with briefly as its elements are more self-evident (on the basis of answers to the first two research questions and the discussion of the model). The theoretical model however requires more detailed explanation and most explicitly relates back to the abstract arguments and necessitates a return to Rawls's thought experiment for determining the terms of social co-operation in a fair society¹¹¹. The discussion of the model will take a step-by-step approach to its construction and seeks to demonstrate how fairness provides the grounding for the discussion and is presented with the purpose of indicating where disputes may "plotted" within the analogised "park of fairness".

10.4.1 Questions 3 and 4. Why: A respect for fairness, justice and dignity

The "why" questions were treated as thematically similar and therefore in response to both questions 3 and 4 one may tentatively offer empirical support for the theoretical argument that many of the factors identified in question 1 and 2 are seen as influential for reasons of fairness, justice and dignity, although the extent to which these were to be seen as personally or impersonally determined varied. Reasons of cost and efficiency were also evident but, on the data collected were arguably subordinate¹¹². This section will explore why fairness, justice and dignity are seen as important.

Fairness

Firstly, it is important to recall the understanding of Rawls's fairness favoured above: 'central [to the idea of fairness] must be a demand to avoid bias in our evaluations, taking note of the interests and concerns of others as well, in particular the need to avoid being influenced by our respective vested interests, or by our personal priorities or eccentricities or prejudices' (Sen, 2009:54). It is argued that there is sufficient evidence in an exploration of the literature and in the findings to establish fairness as a possible guiding concern in mediation or at the very least for providing a context within which the appropriateness question can be discussed. Indeed the factors identified above and the constant battle between the balancing of subjective and objective determinations highlight the relevance of this to the understanding presented here.

Support can be found both in relation to the questions explicitly asked about fairness in the mediator interviews and the faith placed that mediation, properly used and conducted, is necessarily fair. Support may also be found in other findings which explore how organisational, societal and/or individual priorities and pursuits may influence or bias evaluations of behaviour and the choice and operation of dealing with bullying and harassment in a fair way. These arguably serve to demonstrate the relevance of fairness and also help to illustrate how an abstract notion such as fairness may be applied in practice.

¹¹¹ Chapter 3

¹¹² This may be due to the sample, see p226

Justice

Similarly it is argued there are grounds to conclude that whilst justice will often be a relevant concern that may determine the way the above factors are weighted, this will not necessarily always be the case. Across the data collection stages there seemed to be a stronger consensus over the importance or relevance of objective standards for complying with procedural justice: although the form procedural justice may take arguably differed according to the resolution chosen¹¹³. There was a greater level of disagreement over the importance of objective judgements of the substantive outcome of the situation¹¹⁴. The interviews indicated that this had little or no role in mediation¹¹⁵. It is more difficult to offer a definite conclusion on the basis of the very limited direct comments about justice in the focus groups but given the themes of the theoretical argument offered here one may arguably infer tentative support for a collective form of substantive justice from the importance placed on organisational involvement and the need for a public demonstration of a commitment to shared standards of reasonableness¹¹⁶.

The positions are, however, not necessarily mutually exclusive. In the mediator interviews there was a clear positioning of mediation as something different and as something that potentially requires a different language and a different form of justice, that is, if justice is to be seen as relevant at all. Reconciliation in the different views may be found in an argument that not every element of procedural and/or substantive forms of justice must be satisfied in each and every case. What matters is that those factors that correspond with the resolution choice are met e.g. that a mediator is impartial and that parties participate voluntarily. Additionally, it will be seen shortly that the greater organisational involvement in mediation championed here provides the possibility of convergence between the differing focus group and mediator views since it potentially allows for personal and impersonal considerations of justice to be (at least partially) satisfied. At the very least the scope for difference in opinion highlights the need to have discussions over the relevance of justice to workplace mediation that are lacking in a UK context.

Dignity

Though the position in relation to justice is a little precarious at present, the support for dignity as a reason why the various factors considered above are seen as influential and why bullying and harassment are objectionable was stronger¹¹⁷. This was particularly evident in the discussions over the singling out of particular characteristics for protection. Here dignity was either explicitly or thematically demonstrated through an appreciation of an inherent need to respect an individual's intrinsic identity and worth (Fredman, 2011; p194-196). Whilst there was a difference of opinion

¹¹³ For example see 8.9, p170

¹¹⁴ E.g. 9.6, p196; 9.8, p20

¹¹⁵ As n.120

¹¹⁶ 9.8, p201

¹¹⁷ For example see pp192-196

over the propriety of selecting only certain characteristics, there was an acknowledgement of the historical and social reasons why this was the case (Fredman, 2011; Hepple, 2008; pp192-194). As will be seen below, this is reflected in the model through recognition of a spectrum of reasonableness¹¹⁸.

Dignity was also seen as relevant in the mediator interviews in relation not only to the behaviour but also to the possibility offered by mediation to help the parties take control of a situation and become personally empowered to determine what happens to them¹¹⁹. As was seen, this view seems to offer strong support for Ridley-Duff and Bennett's (2011) favouring of direct democracy and the radical potential of mediation (Bennett, 2013). It is, however, arguably insufficient to account for many of the complicating contextual factors which may hamper the appropriate use of mediation in practice, e.g. organisational culture or the sense of collective power and historical weight which potentially flows from allegations of racism, sexism and/or homophobia.

Balancing personal and impersonal standards of reasonableness

It is in relation to this aspect that the interview and focus group findings most notably differ. The assessments and justifications provided in the focus groups lend support to the extension of the use of public standards of reasonableness to individuals in their associational capacities, i.e. in their day to day dealings with each other and therefore support the need to adapt Rawls's thought experiment beyond a political society (p31; Nagel, 1991). Though there was recognition that impersonal standards of reasonableness may inform an individual's personal position, for the mediators, these had limited relevance to mediation where the subjective perception of the parties is paramount¹²⁰. However, in the focus groups there was a favouring of the impersonal. This was evidenced through the importance attached to investigation and also in the apparent (albeit inconsistently presented) conclusion that it is the fact behaviour may be racist or sexist and therefore offensive to those groups, rather than whether or not the parties involved possessed one or more of the relevant characteristics¹²¹. Understanding how mediation can be related to other procedures and adapted in practice helps to reconcile tensions between the balancing of the personal and impersonal in a way which supports the development and stability of the fair society argued for in chapters 2-5.

Therefore it is argued that fairness can be seen as the overarching construct and can be treated as separate, though necessarily related to notions of justice and of dignity. The central thesis offered is that fairness is something that a society (through institutions) and individuals do, or at least should always strive to achieve and/or uphold, and in the context of bullying and harassment the means by which fairness can be achieved is through respecting dignity and, where appropriate

¹¹⁸ 10.5.1, p212

¹¹⁹ pp148-149

¹²⁰ E.g. p150

¹²¹ 9.5, p188

pursuing justice.

10.4.2 Question 5. How: The importance of relationships and responsibility

The nature of the behaviour and of the relationship between the parties (i.e. associational, organisational and/or societal) and the relative levels of responsibility attached to the parties in those relationships were seen as determinative of the ways in which the various factors may be weighted in a given situation. An exploration of the dimensions of this question is best considered in the context of the construction of the framework and it is thus to this which the chapter will now turn.

10.5 APPROPRIATELY “PLOTTING” FOR FAIRNESS: BUILDING THE NEW FRAMEWORK

10.5.1 The Theoretical Model

The completed model is given in Figure 3 below.

Overview

Figures 3-7 and the accompanying explanations are intended to demonstrate how the conceptual model has been developed and how it operates against the arguments and data presented in the preceding chapters. The figures are thus presented as an incremental development of the components of the full conceptual model presented in figure 3. However, before presenting the explanation of the model in that way, it is useful to provide a brief overview of the elements of figure 3.

The black outline of the figure represents fairness and is intended to reflect the boundaries within which decisions about the fairness of a particular situation can be plotted. The shapes within this outline should be viewed as interrelated layers, relevant to the determination of fairness. The dimensions of justice are represented by the horizontal black boxes labelled 'Procedural' and 'Substantive'. The vertical blue boxes represent the personal and impersonal dimensions and are labelled respectively as 'Subjective' and 'Objective'. There are areas of overlap both within the dimensions of justice and the personal/impersonal dimensions, as well as areas of overlap between justice and the personal/impersonal levels. These reflect the arguments in chapter 3 and are presented in figure 4.

The lines on the left-hand side of the figure should be considered as a scale and represent the 'Spectrum of reasonableness' (see figure 5 and chapters 4 and 5). The levels towards the top of the figure correspond with assessments of behaviour requiring determination by reference an objective, impersonal standard, and engage with concerns of both procedural and substantive justice. Those towards the bottom of the figure are less concerned with objective determinations of reasonableness, and may, therefore, be more appropriately determined by reference to subjective

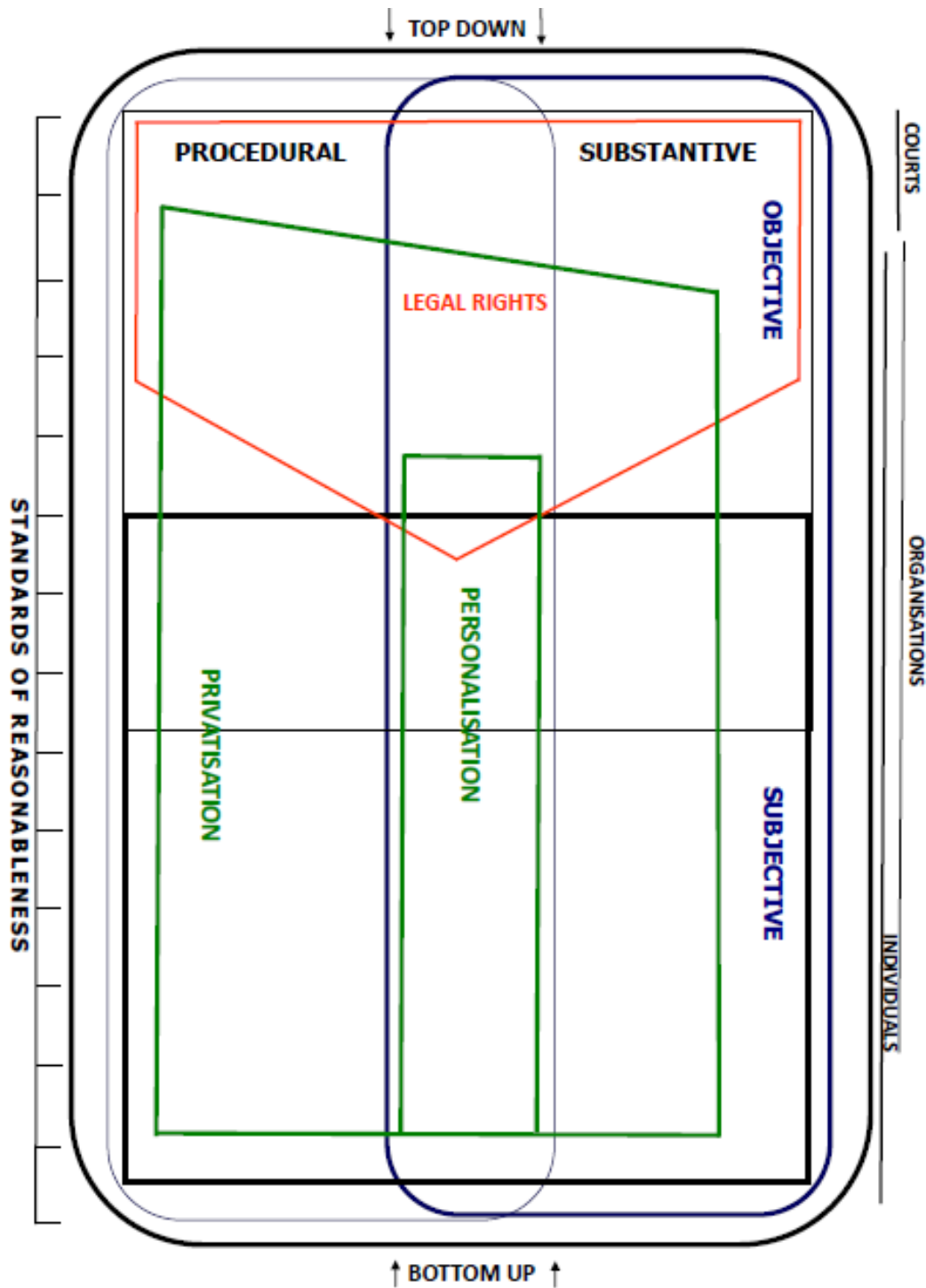


Figure 3. Theoretical Model

standards and notions of justice. The lines on the right-hand side correspond with the levels of responsibility assigned to the different institutions, i.e. courts and organisations and to individuals. The positioning of courts at the top of the figure represents their responsibility in relation to objective standards, and concerns of both procedural and substantive justice as defined in law. Their role in setting and enforcing standards is also represented by the arrows labelled 'Top down' at the very top of the diagram.

The scope of legal protection is represented by the red shape (see figure 6). Responsibility for upholding legal standards does not, however, fall solely to courts and this is represented by the extension of the lines for 'Organisations' and 'Individuals'. There is a high degree of overlap between the responsibilities of individuals and organisations, but it is important to note that, in relation to standards falling at the bottom end of the spectrum of reasonableness, there may be certain behaviour which is exclusively of individual, subjective concern (see figures 6 and 7). Where subjective, personal assessments dominate, this may be viewed as standard setting from the 'Bottom up', rather than the 'Top down'. This is represented by the arrows at the very bottom of the figure.

Finally, the green trapezium (labelled 'Privatisation') represents the boundaries of privatisation. The space within the shape indicates the high degree of instances where no public deliberation or outcome may occur (see chapter 5 and figure 7). Within these boundaries a further separation of cases is made to illustrate the personalisation of disputes considered in chapters 5, 8 and 9. This is represented by the green rectangle labelled 'Personalisation'. Particularly where this rectangle begins to overlap with legal protection and objective standards, personalisation through the use of mediation is considered to be particularly unfair (see figure 7).

Having outlined the various components, the discussion will now turn to consider these in greater detail.

Fairness and Justice

As seen in figure 3 fairness (represented by the outer, rounded black box) is divided into different sections: objective (impersonal) and subjective (personal) and procedural and substantive. These represent the key tensions in the debates on fairness (and in justice) i.e. whether it is a personal or impersonal judgement of reasonableness that is more important and whether a particular action or choice pursues and/or achieves a procedural or a substantive aim (e.g. procedural or distributive). As has been seen throughout the preceding chapters there is overlap between the various elements as it is not necessarily a case of either/or but is rather a case of how a balance should be struck between the various factors.

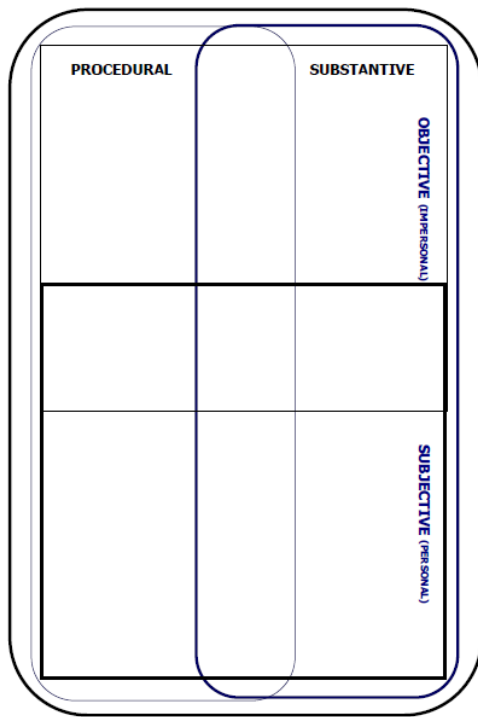


Figure 4. Model: Fairness

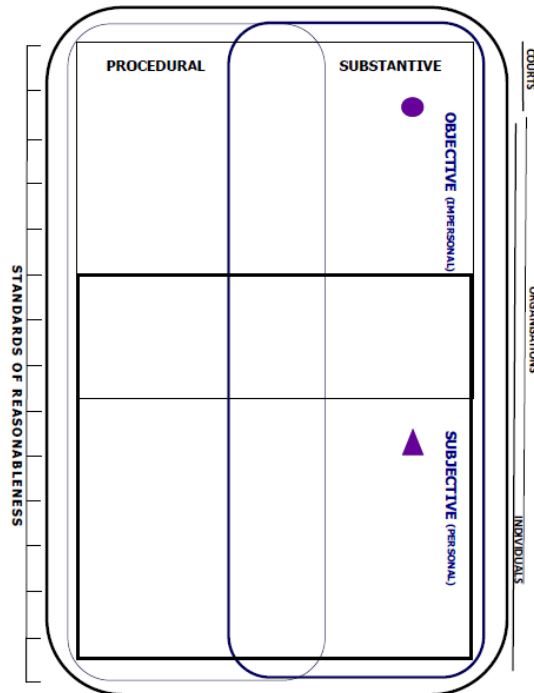


Figure 5. Model: Reasonableness and Responsibility

Spectrum of Reasonable Behaviour

One of the key determinants of where the balance should fall is the nature and the severity of the behaviour in question. It has been argued that there is a spectrum of standards of reasonableness (determined by the nature of behaviour) the seriousness of which (in this context) is derived from notions of dignity and translated into the concepts of bullying and harassment (i.e. bullying and harassment are ways of ensuring dignity is respected) (chapter 4; 4.5, p54). Certain types of bullying and harassment, namely “actual” bullying or that related to protected characteristics are seen to be more objectively severe since they possibly violate societally determined standards of reasonableness, standards that may have legislative protection. Where this is the case what is appropriate should not be determined solely by the personal judgement of the parties involved¹²². These situations would be plotted in the top half of the model (e.g. the circle in Fig. 5) since they are both substantively and objectively valued in society. Other types of behaviour are considered to be less severe (in the sense there is less of an impact on dignity and a lesser threat to societally held values) and therefore may be more suitably solely subjectively determined (e.g. the triangle in Fig. 5).

¹²² For example see p151

Relationships and levels of responsibility

As demonstrated through the focus groups, one can find support for the idea advanced by both Nagel (1991) and Rawls (2001) that individuals may uphold the objective standards in principle but judge their levels of acceptable behaviour differently in their day to day interactions¹²³. It is in this recognition of a potential disconnect between personal and impersonal standards that it becomes important to recognise the relational aspects and how these influence how the various factors can be related to each other. In any given situation there will be competing priorities and perspectives and for present purposes the key actors are individuals, organisations and the courts. Each of these has differing levels of responsibility. These are represented on the right hand side of the model. The freedom to make judgements on a subjective basis is greatest for individuals in their associational capacity and lowest for the courts who are to ensure decisions are taken in line with societal held standards of reasonableness (Genn, 1999; Mulcahy, 2013). It has been argued that an organisation in their position as a societal institution is charged with a greater responsibility than individuals but lesser than the courts since they do not have the same constitutional responsibility in a fair society (Rawls, 2001; p34; 9.4, p184).

It is necessary to reiterate however that the role of the courts is limited to a relatively small number of cases, both in respect of the percentage of workplace disputes which will make it to an Employment Tribunal (or beyond) and in respect of its jurisdiction (Latreille, 2011:15; p75). Whilst it is important to recognise the reasons why certain rights and standards have been enshrined in law (particularly in respect of discrimination law), it is also important to recognise that there are certain types of behaviour that may objectively be considered to be unacceptable by the majority but which is not protected by law (as indicated by the lighter shaded areas in Fig 5¹²⁴). This is particularly important given the legal position (or lack of) in respect of workplace bullying in the UK and the limiting of characteristics afforded protected status.

¹²³ For example see p185

¹²⁴ Shaded triangle areas

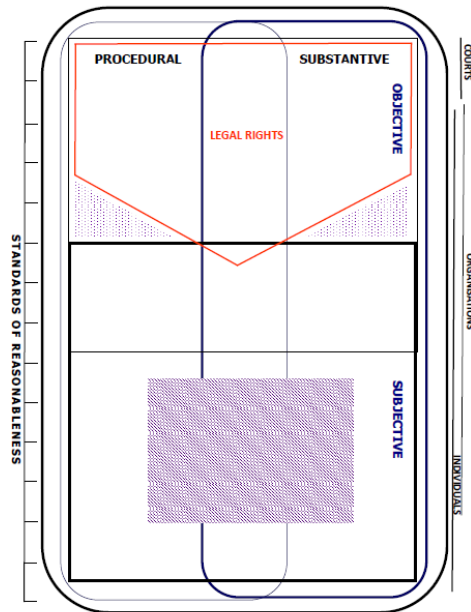


Figure 6. Model: Levels of institutional protection

Recognising these differing levels of responsibility and levels of protection allows for the consideration of the context of the workplace as there will be behaviour that may fall short of breaching legal levels of acceptability or, indeed, even of broader societal standards but which will nevertheless be considered as unacceptable or inappropriate in a workplace, for example fat jokes that may be personally acceptable but which arguably should not be a part of an organisation's culture.

Here it is important to acknowledge the relationship between personal, subjective assessments of what is appropriate and the standards permitted or perpetuated by organisational culture. Although not unanimously supported in all data collection stages, the need to conduct an investigation which prioritises a more objective assessment by the organisation over the subjective personal view of the parties was favoured. There is an important assumption here, however, that the view of the organisation will conform to those standards and laws protected and valued towards the more objective end of the spectrum. But where this is not the case this has important implications for how the situation may be resolved in a way which is deemed fair (certainly in any objective sense)¹²⁵.

Recognising the level of standards within this objective (impersonal)-subjective (personal) spectrum and further within the context of the workplace is important and accommodates those instances within an organisation which individuals label as bullying or harassment but which may be determined (either through investigation or more informal means) to fall short of the adopted definitions (indicated by darker shaded box in Fig. 6). Particularly where arguments of workplace

¹²⁵ E.g. see p218 below

mediation are concerned these seem to be an important group of cases¹²⁶.

Organisational Responsibility and Privatisation

The level of the standard involved is (or arguably should be) the determining factor as to what would be a fair way to deal with the situation (i.e. certain resolution paths should be disregarded in certain cases). This is where arguments of justice (in whichever form) come to the fore. It is important to position the discussion as to the appropriate resolution mechanism within the objective/subjective standard and as such it has been argued the reasons for the elevation and protection of certain types and classes of behaviour cannot be ignored¹²⁷. However, it is not the only consideration and the impact of the behaviour on the individuals involved, on the organisation and on society more broadly should also be considered: since all three are responsible for perpetuating and upholding social standards of reasonableness (albeit at differing levels).

Considering the impact of the behaviour on the individuals involved in bullying and harassment cases (particularly the impact on the alleged target) is important since objective assessments as to whether or not it was bullying and/or harassment notwithstanding, the impact on the individual's physical and mental health may be quite severe (see for example Hoel, Faragher and Cooper, 2004). This needs to be accounted for when determining what may be a fair way of dealing with the situation and the role the party will play in reaching the resolution. Given the high degree of personal involvement required by the process, this is particularly important when mediation is being considered as an option¹²⁸.

The impact on an organisation can be considered in a number of ways and was closely related to the organisational culture, in terms of the standards of behaviour it permits and its attitude to dispute resolution and conflict¹²⁹. Within the broader debate of maintaining a standard of behaviour which respects dignity (i.e. not permitting bullying and/harassment to take place), one must also consider the extent to which an organisation can and should be considered as a party to any dispute as has been championed here. This is important both in the sense the organisational culture may have been a source or a contributing factor (e.g. by permitting sexist banter, or aggressive management styles) and as a key player in resolving the dispute, and further, in their role as a social institution, in respect of upholding and enforcing acceptable standards more broadly. There is a potential mismatch between the former and the latter roles where an individual complaint is indicative of a broader organisational problem. It is on this point that the use of mediation arguably becomes particularly controversial.

¹²⁶ E.g. pp157-158

¹²⁷ 4.4, p48; 9.5, p188

¹²⁸ E.g. p134; p153

¹²⁹ See for example p89, p169 and p182

As the extension of the privatisation of justice arguments to an organisational context sought to demonstrate (in chapter 5 and through the findings), the confidential and private nature of mediation may provide an opportunity for organisations to personalise disputes that are actually indicators or the symptoms of wider organisational problems. Where this is the case, provided mediation is entered into willingly and conducted properly, it may provide an opportunity for individual empowerment and transformation and allow the parties to receive what they may consider a fair outcome¹³⁰. It will, however, likely have limited impact on changing, setting or enforcing standards within the organisation¹³¹. The only potential for change in this personalised scenario is that individual perspectives and understandings may have changed and the parties may carry this forward in the way they interact with others in the future, who in turn may also change the way they think and respond. In this way an incremental change may occur (Bush and Folger, 2012; p89; p168). The use of mediation in this way alone is unlikely to result in the culture change championed in the mediation rhetoric (BIS, 2011a; p70; p168).

A recognition of the need for a greater organisational awareness and involvement in mediation leads to the need to distinguish the potential for the personalisation of disputes from the privatisation of disputes. In answer to the privatisation objections, the findings confirmed it is important to understand how confidentiality in mediation operates in practice.

Tailored Privatisation

Confidentiality is not necessarily an absolute notion and as such is a potential key to reconciling many arguments of privatisation of justice objections. The use of mediation where the organisation is also considered to be a party potentially broadens the scope of the impact mediation may have not only on the individuals but also on organisational culture and practice. Here, whilst it is still only the individual parties in the mediation meetings, the organisation (via HR or a manager) is involved and willing to acknowledge and act on any contribution its culture may have played in causing or perpetuating the dispute¹³². The mediator plays an important intermediary role between the individual parties and the organisation. The information which is fed back to the organisation by the mediator (or in some cases directly by the parties) is determined by the parties in the mediation session.

Appreciating this capacity arguably necessitates a more nuanced approach to understanding what is meant by privatisation. Rather than viewing it as an absolute in all circumstances, it is helpful to think of this approach to confidentiality as offering "tailored privatisation" since it allows some relevant information to be shared, whilst keeping other details private. Aside from the cultural impact aspect, this also answers the practical question as to what information will be shared with

¹³⁰ 8.9, p170

¹³¹ E.g. p169

¹³² For example p166; 9.7, p198

colleagues (given the assumption that it is extremely rare only the parties directly involved will be aware of the dispute) (as per Sherman, 2003; p87; p164). Again, however, this approach requires a certain type of organisational attitude towards the behaviour involved and towards dispute resolution and this may stand in contrast to many organisations' understanding of and approach to the use of mediation (e.g. avoidance of litigation: Saundry and Wibberley, 2014; p155). Without this organisational engagement mediation provides no mechanism to address the accountability concerns of Mulcahy (2013) and Fiss (1984).

The Personalisation Threat

An unengaged organisation is likely to be more realistic¹³³ (and is more aligned with the personalisation approach). This personalised approach, if coupled with absolute confidentiality (and therefore absolute privatisation) is potentially where threats to fairness are most acute. It may be that there are some cases that may be correctly characterised solely as interpersonal disputes and in such instances the personalised approach may not be problematic. However, especially where bullying and harassment are concerned, even where cases are considered as misunderstandings (i.e. falling short of bullying and harassment as objectively defined) as, according to the mediators, it seems is commonly the case, personalisation is still a risky and arguably inappropriate approach. This is almost certainly the case where mediation is being used or conducted inappropriately.

The area of greatest concern however is where the boundaries between legal standards and organisational standards are unclear (circled on Fig. 7). Personalisation and absolute privatisation here sit uncomfortably with many (certainly objective) notions of fairness (and justice).

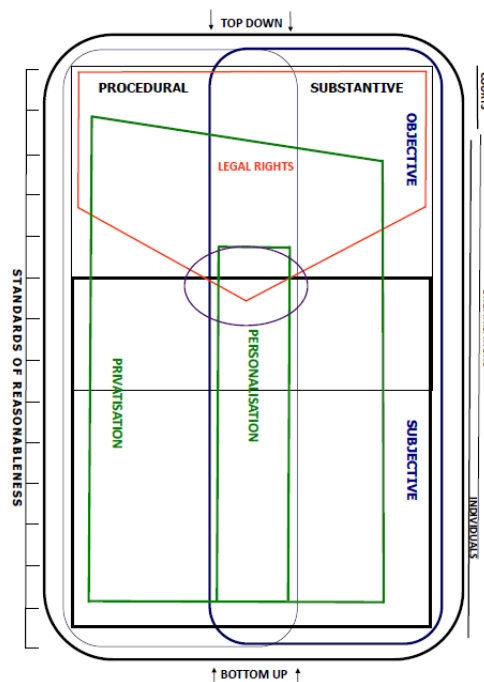


Figure 7. Model: Personalisation

¹³³ E.g. see p147

Legal rights and Privatisation

The use of mediation where legal rights are involved is controversial in itself (p73; Fiss, 1984) and leads back to the question as to whose responsibility it is to make decisions as to the assessment and enforcement of standards (considered above in relation to the balance between personal and impersonal judgements and in relation to the institutions in society¹³⁴). It is also important generally, but particularly in respect of these cases, to understand the relationship between mediation, organisational policies and legal processes. In the context of workplace mediation, much weight is placed on the fact that choosing to try mediation does not bar future formal or legal action since the outcomes are not legally binding: although, as indicated in the interviews, the boundaries between workplace mediation and the law are not yet firmly defined¹³⁵. It is important to recall however that where a legal agreement is to be reached through mediation, it probably falls under employment mediation and under the rules for settlement agreements parties must have independent legal advice (for example see s111A Employment Rights Act 1996).

Societal Impact and Public Reason

Whilst considering the question as to who should determine whether standards have been breached, two further issues arise. Beyond impact on the individual and on the organisation, if what is being dealt with breaches (or potentially breaches) what society may deem to be reasonable, the extent to which the chosen resolution must have an impact on society (i.e. in sending a message that these are the standards (e.g. racism is unacceptable) and breaching them has consequences) needs to be considered. The public nature of such an approach is important for the development and stability of a fair society (Rawls, 2001; p34). In considering this, attention should be given to the extent to which it is necessary for standards to be set and defined by the courts (as a social institution charged with that purpose (Genn, 1999; 5.2, p66)) and then communicated down to individuals and employers (i.e. 'Top Down' on the model). Or alternatively, whether there is value in the more incremental, individual approach described above (through micro-transformation) (i.e. 'Bottom Up' on the model).

Privatisation is again of both practical and conceptual relevance here. Given the complications of proving a legal claim for harassment (and the undefined status of bullying in law), together with other barriers to justice and the prevalence of private settlements¹³⁶, a relatively small number of cases will ever make it to a public forum or public knowledge in order for the 'Top Down' standard setting to occur (before even considering the lack of understanding and awareness of employment

¹³⁴ Chapters 3-5

¹³⁵ p155

¹³⁶ p76

law by many individuals and employers)¹³⁷. However, coupled with tailored privatisation, there is arguably greater scope for the 'Bottom Up' approach through mediation to make an impact, albeit over a much longer period of time (i.e. individuals change their outlook and approach towards others and that spreads); although this is perhaps an optimistic notion and contingent on a number of contextual factors.

Conclusion

Therefore, whilst the importance of 'Top Down' approaches for the production and enforcement of publically knowable and broadly supported (through an overlapping consensus) standards of reasonableness driven and facilitated by societal institutions (courts and organisations) have been strongly argued for here, it is accepted that the feasibility and fairness of this process is far from perfect. However, through recognition of the ability of mediation to be adapted and tailored, it potentially provides the opportunity for offering a complementary process which speaks to both personal standards and priorities and to impersonal ones.

Having set out the theoretical model the discussion will turn to a description of the second part of the framework which facilitates considerations of feasibility.

10.5.2 Theoretical Schematic: Combining theory and practice

The schematic is shown in Fig 7 and seeks to illustrate different options available in a situation and how they may be related to each other. As previously stated it is not intended to be prescriptive but rather a tool for facilitating discussion on the different options which may be available and what may influence the extent to which mediation may be appropriate. In order to demonstrate how the two parts of the framework may be seen as mutually reinforcing, aspects of the model have been mapped on to the schematic, e.g. the possible outcomes and corresponding level of privatisation and danger of personalisation.

Since the findings, responses to the first two research questions and the theoretical model have been presented at length, it is sufficient to consider the schematic only briefly as its contents should be relatively self-evident. Therefore the key stages and example corresponding factors are presented in table 21.

¹³⁷ pp77-78; pp176-177

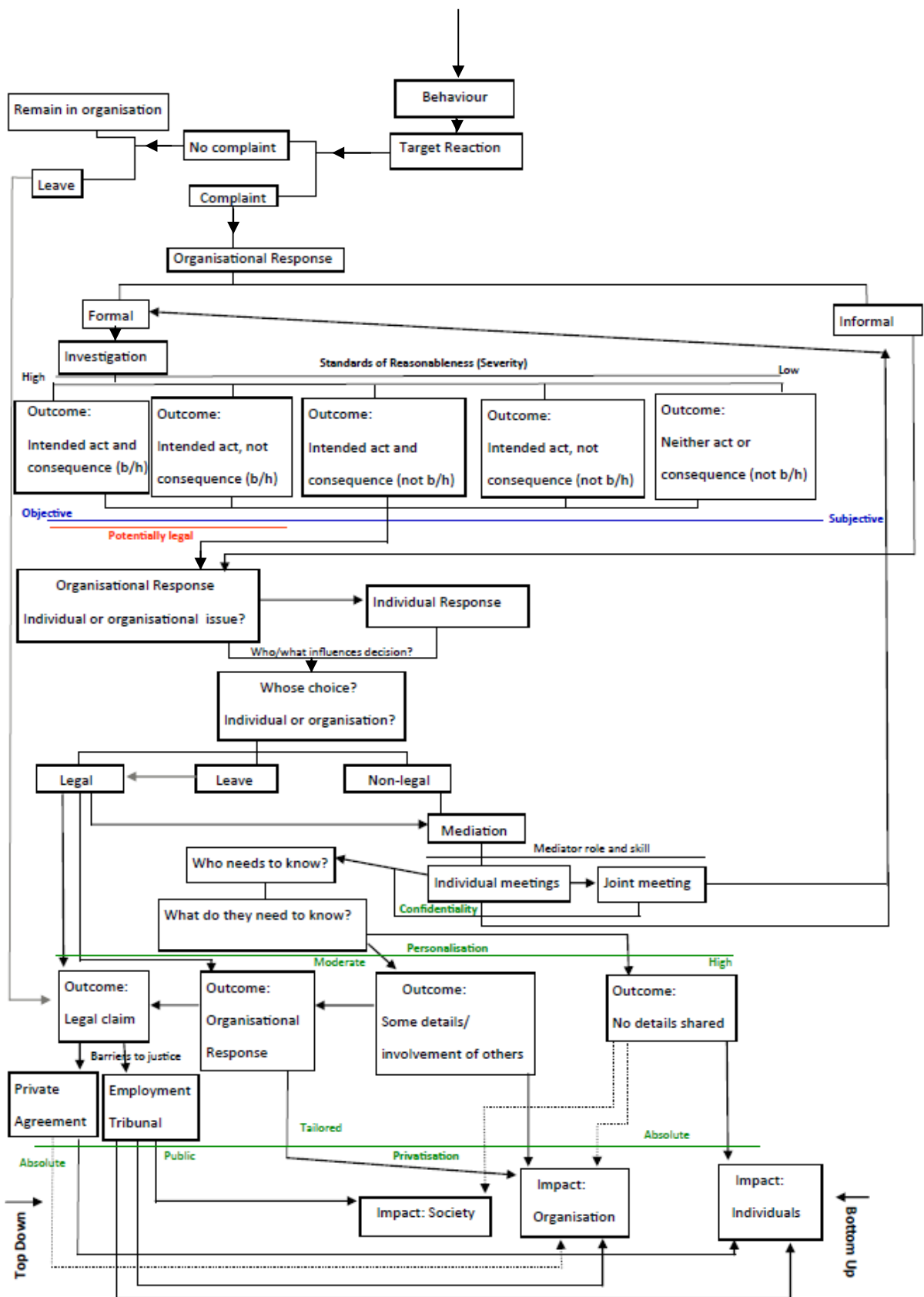


Figure 8. Theoretical framework: Schematic

Table 21. Theoretical framework: Schematic Notes

Stage	Description	Example possible considerations
Behaviour	The act or acts that trigger a response.	Nature of the behaviour Severity of the behaviour
Target Reaction	The individual (alleged target) chooses to complain or not.	Relative positions of power between the parties (formal/informal) Target perception Target characteristics (e.g. gender) Target health
Organisational Response	Where a complaint is made, a formal or informal route is adopted.	Priority of target perception Alleged nature and severity of the behaviour Organisational culture Organisational attitude towards the parties involved
Investigation	Where an investigation is favoured (and seen as necessary by the organisation) the nature and severity of the behaviour will be explored. Objective determination of the validity of the labels applied is undertaken and parties involved extends beyond the immediate parties involved (i.e. alleged target and alleged perpetrator).	Definitional characteristics of bullying and/or harassment. The discovery and weighing of facts and evidence Involvement of colleagues
Investigation Outcome	Should be determined by the conclusion of the investigation and process by the severity of the behaviour involved. Although not necessary for demonstrating that the behaviour amounts to bullying and/or harassment, the further identification of a malicious intent should influence what step is taken next and the nature of potential sanctions. The potential outcomes can be plotted along the spectrum of behaviour from the left-hand side of the theoretical model.	Reasonableness of the target perception Perpetrator intent: to do the act and/or to cause harm Relative positions of the parties in the organisation
Organisational	The conclusion of an investigation	Legal obligation and

Response	<p>should dictate the next response and should be determined by where on the spectrum the behaviour has been found to fall, for example whether the behaviour was potentially unlawful.</p> <p>An organisation may have a responsibility and/or duty to pursue to a particular path which removes the decision from the parties involved.</p>	<p>higher level of responsibility</p> <p>Cost and efficiency concerns</p> <p>Organisational culture</p>
Individual Response	<p>The conclusion of an investigation will potentially limit the options available to the alleged target.</p>	<p>Health</p> <p>Desired outcome e.g. to stay at the organisation</p> <p>Personal characteristics</p> <p>Nature of the behaviour</p> <p>Speed of resolution</p> <p>Organisational culture</p>
Mediation	<p>Mediation may be used either following an investigation (and potentially in the event of any of the above outcomes) or prior to an investigation. The latter is the approach likely favoured by mediators.</p> <p>The use of mediation does not necessarily bar a return to or the instigation of formal methods.</p>	<p>Party willingness to try and fully participate in mediation</p> <p>Level of organisational involvement</p> <p>Timing of mediation</p> <p>(Ir)relevance of labels</p> <p>Empowerment</p> <p>Subjective assessments</p> <p>Power imbalances</p> <p>Confidentiality</p> <p>Understanding mediation as a process</p>
Mediator Role Skill and Impartiality	<p>This refers to the relationship between the mediator and the organisation, the mediator and the parties and the ability of the mediator to define and manage the process and the various relationships. These include not only mediator-organisation and mediator-parties but also party-party and parties-organisation.</p>	<p>Level of organisational involvement</p> <p>Mediator motives</p> <p>Mediator self-awareness</p> <p>Organisational attitude toward mediation</p>

<p>Outcome and Impact</p>	<p>These relate to the concerns of privatisation, personalisation and the ability of mediation to influence and impact change. Impact here is concerned with three levels: the individual parties involved, organisational and societal.</p> <p>Four different options are suggested and are presented against two spectrums. The first relates to the level for potential personalisation of disputes and the second to the degree of the operation of the tailored privatisation identified above.</p> <p>The extent to which each of the options may be seen as impacting on each of the three levels is indicated. Only those allowing for some element of shared information are shown as having potential for a strong influence beyond the parties. These options are also positioned against the 'top-down' or 'bottom-up' standard-setting approach outlined in the theoretical model.</p>	<p>Public outcome needed</p> <p>Details or key message</p> <p>Individual choice</p> <p>Level of organisational involvement</p> <p>Transformation and culture change</p> <p>Individual empowerment</p> <p>Perpetuation of prejudicial or stereotypical behaviour</p> <p>Visibility of organisational practice and levels of accountability</p>
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10.6 FRAMEWORK SUMMARY

Through a consideration of the various research questions, a framework which helps to theoretically and practically structure discussions of the extremely complex question of the appropriateness of mediation for dealing with workplace bullying and harassment has been developed. It intended to illustrate that workplace mediation may be considered as both a fair and feasible choice but this feasibility and fairness is subject to a number of contextual constraints and dangers and therefore what is needed is a far greater degree of qualification in discussions of the use of workplace mediation in this context.

10.7 LIMITATIONS

The methodological and research design choices were set out and justified in chapter 6. Making those choices, however, involved trade-offs and therefore inevitably resulted in a number of potential limitations.

The first relates to the level at which the findings may be considered as generalisable or transferable. As stated above, the aim of the research was never to produce a framework which could be generalised or transferred to a specific or general population. The qualifying criteria for the questionnaire and focus group stages was anyone from the general population over 18 years old and with at least six months work experience but it was never the purpose of the research to

claim that the findings could be applied to all people who fit that criteria. This position also holds for the external mediators.

The use of vignettes may also be seen to limit transferability but this is not necessarily the case. Transferability here relates to the extent to which the abstracted factors and influences can be applied to existing understandings and how, in future, as the new theory matures, they are reinforced through further research (Modell, 2009). In the interests of transparency, attention has been paid to assessing existing understandings and evaluating how these may be developed and informed through the data collected here and how these have been abstracted and integrated into the framework offered above.

The second is connected to the first and relates to the size and composition of the sample. Again, as the concern was not with generalisability, the question of representative sample sizes did not arise. Rather the concern was to try and seek saturation on the analytical themes. A larger sample would undoubtedly have produced more insight into potential combinations and examples of how the themes may operate in practice but the themes themselves were sufficiently saturated with the sample size of this research (across the three stages). It is anticipated that a similar situation would result if the research was replicated, i.e. the same themes but different combinations.

A limitation arises from the disappointing lack of diversity in the sample in respect of the protected characteristics considered other than gender, i.e. race and sexual orientation. This meant that whilst tentative conclusions may be drawn from the focus group comments that characteristics or combinations of characteristics may influence the type of behaviour experienced and the way it is interpreted, it was not possible to explore sufficiently the intersectional dimension or to allow strong conclusions to be drawn about the intersection and influence of specific characteristics.

A potential limitation may also arise from the use of self-selecting participants. Again, however, because of the aim of the research and the goal of identifying and explaining possible themes and understandings, the fact participants chose to take part may perhaps indicate they are engaged with the issues and thus applied the cognitive effort to give honest and considered answers. Whilst it would be pure speculation that this was the case for the questionnaire and for the focus groups, the high levels of enthusiasm and engagement with the research displayed by the mediators interviewed indicate it is a reasonable conclusion to draw for that stage.

A further limitation in relation to the use of vignettes may lie with the level of emotional detachment relative to the actual experience of bullying/harassment (Collett and Childs, 2010). If the research was concerned with predicting possible responses in situations this would be a big limitation. However, as this is not the aim here, it is arguably sufficient that the participants (qualitative) identified that the emotions of the situation may operate as a contextual factor.

An additional limitation related to the choice of vignettes is the absence of an example with no protected characteristic. Not providing such a point of comparison prohibits clear conclusions to be made as to how distinctions between bullying and harassment are made and the role the presence of a protected characteristic plays in this. A related limitation refers to the structure of the questionnaire and asking participants to select the importance of the factors in making their decisions, without distinguishing between their relative importance for bullying and for harassment. This therefore did not allow for an analysis of whether different factors were rated differently in relation to assessments of bullying than harassment. There was, however, sufficient flexibility in the focus group discussions to address these limitations and explore the relative importance of multiple factors.

The final limitation is a reflexive one and relates to the researcher's relationship with the research and researcher prominence to the participants in the qualitative stages. Attempts have been made to offer justifications for any assumptions and how they have been informed explicit and where others disagree with those assumptions and the approach adopted, limitations will necessarily arise. The second aspect relates to the extent to which the researcher's presence and indeed identity may have influenced the responses of the participants in the interviews and the focus groups. For example, the presence of a female researcher in the male focus groups may have increased the degree to which they felt they had to provide socially desirable responses (O'Dell et al, 2012). There was, however, no evident reason to suspect this was the case.

10.8 FUTURE RESEARCH

Although it has been argued that, at this point, the framework is sufficiently developed to present a new theory, the need to see how the framework may be deployed to assist in its further development into a mature theory has been noted. This section will therefore briefly outline possible directions that development may take.

The first speaks directly to the demographic diversity limitation stated above. It would be helpful to conduct further focus groups that allowed for a greater exploration of the influence of the participants' own protected characteristics on the assessments made. The use of scenarios which engage with multiple characteristics would also help in this regard. Possible distinctions between the female and male assessments were identified above and it would be interesting to hold more gendered groups, as well as groups divided by race and sexual orientation. Due to the problems associated with recruiting members with certain characteristics (for example BME and LGB) recruiting sufficient numbers for such groups was, unfortunately, not possible for the current research.

Although they were included in the pilot and potentially in the questionnaire (and their views are indirectly represented through the qualitative stages), it would be useful to conduct focus groups with others who may influence the decision as to whether mediation is appropriate such as

organisations and trade unions to see whether the assessments and the weighting of the factors differ.

Finally, the focus in this research has been on mediation between two individuals. It became apparent through the interviews however that group mediations are not uncommon. Given the conclusion here that certain types of dispute should never be personalised and may be indicative of wider conditions, it would be interesting to see how the framework can be developed and/or adapted in a group mediation context. For example, it would be interesting to see how power dynamics and the individual empowerment arguments translate and what impact the group nature has on party willingness and capabilities to fully participate. Interviews with mediators specifically focusing on group mediation would be needed.

10.9 MAIN CONTRIBUTIONS

10.9.1 Methodology and Research Design

The strong theoretical and conceptual underpinnings of this research and the critical realist approach adopted offer a different way of exploring bullying and harassment and mediation. The bullying work is traditionally grounded in a more positivistic approach and that into mediation is arguably epistemologically ambiguous. In either case, however, the work is strongly empirically-orientated and grounded which is not the case here. In the case of workplace mediation especially this has led to an under-theorisation of the concept itself which the strong theoretical slant here has sought to address. Conversely, that there is an empirical element helps to ground the legal and philosophical work relied on which is almost exclusively based in ideal theory and/or analytical opinion (as is the tradition for those fields). Thus the approach adopted here and the mixed method design provided the opportunity to offer a framework informed by both abstract theory and by primary data. Though the data collected cannot speak to positivistic standards, this research does nevertheless potentially contribute to literature (including the bullying field) which values subjective contributions over the meaning of bullying and harassment and the potential of workplace mediation.

The use of vignettes to access understandings of bullying and harassment is not unprecedented but is relatively rare (Salin, 2011) and vignettes have not been used in any UK mediation studies. Their use here provided an invaluable way of accessing understandings about bullying, harassment and resolution which are necessarily context-bound. The use of vignettes for future/other research in this area would certainly be recommended.

10.9.2 Theoretical Discussion and Framework: Contributing to knowledge and practice

The theoretical discussion and resultant framework set out above is offered as the main contribution of this research. It provides a structure that differs in scope and perspective to the

sole theoretical ADR framework in a UK context (Ridley-Duff and Bennett, 2011). It extends Rawls (2001) and Nagel (1991) further into a workplace context, to harassment and (uniquely) to bullying and workplace mediation to offer a representative, rather than participatory perspective.

The positioning of concerns of fairness and dignity (including equality) as central to the question of the appropriateness of the use of mediation in workplace bullying and harassment and especially where this may involve or engage with protected characteristics seeks to facilitate debate that retains historical and social determinations of reasonableness. Such a positioning challenges the individualisation of workplace disputes which is arguably characteristic of mediation discourse both at the policy and academic level.

In such an unpopulated field (workplace mediation in the UK), offering an alternative perspective helps to broaden debate and thus hopefully strengthen understanding.

Offering a framework that also allows for the recognition of different understandings of bullying and harassment and corresponding different levels of responsibility (for individuals, organisations and society) discourages a blanket grouping of behaviours together under the same label. Asking for more refined references to what is meant by bullying and harassment in relation to mediation arguably contributes not only to the mediation and the bullying and harassment literatures (a consideration of different levels of bullying/harassment is lacking in both) but also potentially to organisational understanding of both bullying/harassment and the appropriate use of mediation in practice.

That the framework is empirically-informed further helps distinguish it from other ADR or mediation frameworks which are not (Ridley-Duff and Bennett, 2011; Riskin, 2003). The insights into the operation of mediation in practice provided by the interviews with the external mediators helped to identify a number of crucial findings which served to reconcile the apparent disconnect between a number of features of mediation and of bullying and harassment. These include understanding mediation as a process which has important implications for addressing the concerns over power imbalance expressed by Keashly and Nowell (2011) in the bullying literature. Understanding the way confidentiality operates in practice and the need to recognise organisational involvement and retention as a party helps to address the privatisation concerns expressed by Keashly and Nowell (2011) and also in the legal ADR literature (e.g. Fiss, 1984) and challenges the conceptualisation of mediation in organisational justice (Nabatchi et al, 2007). By giving the private nature of mediation greater attention than is otherwise afforded in the existing literature may also help to further explain why the transformation of cultures has not flowed from the use of mediation.

Finally, as indicated in the previous contributions, the framework also has the potential to inform policy and practice: although the contributions here do not necessarily sit comfortably with the current presentation and operation of mediation. This is particularly true in respect of the increased organisational role recommended. Through a combination of the use of vignettes and the

framework, focus groups and/or workshops could be developed to help structure discussions within organisations which challenge their understandings of bullying and harassment, why it is not to be tolerated and what an appropriate way of dealing with it is. In this way knowledge of mediation could be shared in a way which is not dominated by arguments of cost/efficiency and individual empowerment. Thus, a further contribution is the basis on which training and educational material could be developed.

In light of these contributions, it is possible to identify three key findings which help to inform and broaden the debate on the appropriateness of the use of mediation to address workplace bullying and harassment in the UK. These findings are set out as qualifications in the conclusion and may be offered in circumstances where it is not possible to present the full framework, for example in a research briefing.

10.10 THESIS CONCLUSION

This thesis has sought to present an interdisciplinary, empirically informed theoretical framework for facilitating understanding of and discussion on the extent to which workplace mediation is an appropriate way of dealing with bullying and harassment in UK workplaces. Through an exploration of often highly abstract concepts, it has aimed to explore understandings of bullying and harassment and to demonstrate how theoretical ideas and arguments can inform not only academic understanding but also potentially influence practical understanding and therefore the practice of workplace mediation.

It has found that the use of mediation may be both feasible and fair but that these are contingent on the operation of numerous contextual factors. These include the nature of the behaviour, the level of organisational involvement and the skill of the mediator and should be considered in against the key findings:

An appreciation of what bullying and harassment means *and why they should not be tolerated is needed*. Different levels of bullying and harassment require different responses and, depending on the severity, the responsibility for dealing with the situation varies and mediation is not always appropriate.

Organisations must be considered as a party in mediation. A threat to fairness is posed through the personalisation of disputes, rather than through the privatisation of disputes *per se*. Through a tailoring of privatisation ("Tailored privatisation") to suit the needs of the parties, amendments may be made to confidentiality which permits a negotiated flow of information allowing individuals to challenge the wider organisational culture. This however relies on both the willingness of the parties to share the information and on the organisation being willing to listen which may not always be the case.

Mediation needs to be understood as a non-linear process. When talking about the appropriateness of mediation for workplace bullying and harassment it is important to distinguish between the different stages and the role they play in assessing the situation, preparing the parties, facilitating the shared understanding and mitigating power imbalances or potential exploitation in the mediation process. Procedural safeguards exist in the structure of mediation and in mediator techniques but depend on the skill and integrity of the mediator.

It is hoped that encouraging a more nuanced understanding of mediation and when it is appropriate and when it is not will help to facilitate a maximisation of its benefits and the mitigation of its dangers. In so doing, it is further hoped this research can help to inform the question of the extent to which the desired organisational and policy shifts may be realised.

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Employment Equality (Sexual Orientation) Regulations 2003

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EU Charter of Fundamental Rights 2000

Protection from Harassment Act 1997

Bahl v The Law Society and Another [2004] IRLR 799 CA

English v Thomas Sanderson Ltd [2008] EWCA Civ 1421 CA

Grimshaw v Griffin Signs Ltd and Others [2008] EAT/0299/08 EAT

London School of Economics and Political Science v Lindsay [2012] UKEAT/0440/11/JOJ EAT

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Majrowski v Guys and St Thomas NHS Trust [2006] UKHL 34 HL

Reeves v The Royal Hotel (12 July 2012) Case no. 1700573/2012 ET

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APPENDIX 1 EXPLORATORY PILOT REPORT

EXPLORATORY PILOT REPORT

The research is seeking to offer a new framework to help facilitate discussion about the use of mediation in the UK workplace context, an area which is arguably still in its infancy conceptually and certainly empirically. Given this infancy, the novel element of equality and diversity, and the potential breadth of focus for the research, a pilot study was conducted between July and September 2012.

AIMS

The pilot was exploratory in nature and provided the opportunity to begin to consider and discuss the various conceptual elements identified from the extant literature in a practical arena. The overarching aim was to begin to build a greater degree of clarity and focus to the research topic and aid with the development of research questions. Enabling the research questions and the project to be informed by empirical data at this early stage was also important to help strengthen the desire for the resultant framework to be both conceptually and practically sound.

RESEARCH QUESTIONS

Accordingly the research questions were:

1. Why was mediation introduced at the University of Manchester (expectations of mediation)?
2. How has experience matched those expectations?
3. How is the appropriateness of mediation determined?

METHODOLOGY

Given the exploratory aims, the pilot adopted a case study methodology (Lee, 1999:41). It was accepted that even a single case can help achieve the desired aim of focusing the research and generating research questions for the subsequent study (Yin, 2003:5). Accordingly the expectations and experience of mediation within one organisation provided the context for the pilot.

The case.

The University of Manchester (UoM) introduced a university-wide internal mediation scheme in 2009 as part of its Dignity at Work and Study Policy; this was later broadened to a more general mediation service offered as an option more generally. The service is overseen by a mediation co-ordinator who is responsible for allocating mediators to disputes where appropriate and for the training and development of the mediators. Mediators were recruited from across the university and trained externally. The UoM currently has a pool of 13 trained mediators. Despite attempts to

publicise the service, take up has been low with only a relatively small number of cases having been mediated since 2009.

Sample

A purposive approach was used and accordingly those who had been involved in the decision to implement mediation and/or with the design of the service and/or those who were involved in its operation were targeted. These broad categories allowed for the inclusion of a number of different interested parties and included HR professionals, equality and diversity staff, the mediation coordinator, TU representatives from UCU and Unite and mediators. Trying to include these various and potentially varied voices was crucial to explore the contention that the framework needs to reflect the perspectives of multiple groups. In total seven interviews were conducted.

The interview

An interview guide was constructed using the 'primitive framework' (Hartley, 2004:324) developed through a review of the existing literature. Given the exploratory aims the questions were designed to be open in order to explore the issues already identified through the literature but also to allow for any others to arise. This was facilitated by adopting a semi-structured approach to the interviews. The questions allowed for the discussion of both the expectations of mediation in general and of the extent to which these were (or were not) reflected in experience at the UoM. Each interview lasted between 30 minutes and 1 hour and was recorded and transcribed verbatim.

Analysis

Template analysis was used. A priori codes were developed using the interview guide as a basis. Each transcript was analysed individually with revisions being made to the template where necessary as new themes or lower themes were identified. The flexibility in this approach suited the exploratory needs; allowing for analysis within the previously proposed structure whilst providing a means of expanding or exploring the various themes (King & Horrocks, 2010). Allowing for parallel coding was also important for demonstrating how the various themes were interconnected (King, 2003) which is crucial for achieving the multi-perspective yet integrated aim of this research.

FINDINGS AND DISCUSSION

The exploratory nature of the pilot meant that data were collected on a broad range of issues and given the small number of interviews a relatively large amount of rich data were collected. The data on the whole were invaluable in helping to increase understanding of mediation and of decision making factors in general. It was also useful to begin building a picture of the experience and barriers at the UoM. The discussion on the remainder of this chapter will focus on how the findings shaped the framework, which in turn, had implications for the design of the main research.

Understanding mediation

As a headline, the pilot confirmed that there was a desire-at least among those involved in mediation-for more information on how mediation is, and can be, used in the workplace.

It indicated that a lack of understanding of mediation may be the main barrier to the use of mediation, at least within the university.

This lack of understanding may be characterised in different ways. The first may arise where an individual has had no contact with mediation and doesn't know anything about it. Alternatively, it may take the form of a *mis*understanding. This may be the result of confusion over what is meant by the term mediation:

"managers people will talk about mediating and they'll talk about people in dispute and say like oh yeah I'm going to mediate this and this and they don't mean mediation they mean arbitration or they mean basically they're going to tell people what to do to sort it out...so the term is bandied around quite loosely which is probably a detriment to the other pure mediation we do through the service" (Development and mediator 1)

Or perhaps from perceptions about what mediation is or what it can do:

"I mean it has a bit of a sort of stigma attached to it which I think is unfair it's just like oh we'll just have a tea and biscuit and just chat and everything will be nice again but it isn't it's a bit more robust than that"(TU, Unite)

"one of the reasons the unions didn't trust [mediation] was if the university is providing the resource to provide a mediator they thought that the mediator would feel duty bound to side with the management so that's what makes me think that they don't understand mediation at all because they thought that the mediator had that power of decision making" (Development and mediator 1)

There was an indication that the lack of understanding was not unique to any particular group. Although levels of understanding were, unsurprisingly (and reassuringly) higher in those participants who were trained mediators, it was felt that there was always more that could be done to help improve their knowledge. There were suggestions that in order to increase understanding (and potentially therefore use) of mediation, a number of groups needed to be targeted. For the UoM these were TU representatives (particularly at branch level), line managers, employees and human resource personnel.

The sources of and reasons for the lack of understanding/misunderstanding may lead to conflicting views which potentially inhibits the progress of mediation. These conflicts may arise between groups, for example, one participant outlined what had, in her experience, been the differences between management and TU perspectives on mediation. They may also arise within groups, as was the case in differing attitudes between the two unions included.

The recognition that multiple groups are involved in the operation and progression of mediation in the workplace, coupled with the acceptance that these groups may have different opinions and perspectives, provides an important grounding justification for the need to adopt the multiparty approach embraced by this research.

The lack of understanding aspect however, particularly the misunderstanding element had further implications. It may perhaps be a little disingenuous to label all confusion of the term "mediation" as a misunderstanding. The UoM currently adopts a facilitative model of mediation (which was the one assumed in this research). However, fortuitously, at the time of the interviews, the UoM was exploring affirmative mediation. In discussing the implications of a change, it was clear that, for one participant in particular, moving to an affirmative model would erode the power of mediation:

"you've lost the mediation principles of it's all about them...it's blurring the boundaries between what HR do and what mediation is all about...we need to keep mediation quite safe and tight and different because it is different it is very different"(Development and mediator 1)

Whilst for that participant it would not be welcome, some of the others saw potential in a more directive mediator role and indeed there was an indication that this may be important for helping to redress an imbalance of power. The timing of this was useful because it highlighted the multitude of models offered by private firms and to illuminate how assuming the facilitative model may not be as easy as initially thought.

This posed a dilemma for the research as, although it does not seek to challenge the definition of mediation, it obviously needed to adopt a definition of mediation to present to the participants in the main research and to ground the framework. If there is a plethora of models out there, with broadly the same characteristics (save for the degree of direction by the mediator) which are evidently used in practice, could the research abandon the facilitative label and just go for a more generic one of 'mediation'?

The research aims to explore and understand the relationship between characteristics of mediation and decision making. Seeking to build a framework on generic foundations introduces a greater degree of ambiguity and may arguably undermine any claims ultimately made that what is needed is a nuanced understanding and appreciation of mediation.

The responses in the pilot were extremely illustrative and compelling in demonstrating why and how facilitative mediation should be utilised as the basis for the research. It is to that aspect which the discussion will now turn.

Characteristics of mediation

All participants in their discussion of mediation outlined the characteristics associated with facilitative mediation (and those given in the UoM mediation documentation): voluntary, confidential, informal, impartial and facilitated process.

From the responses, one may arguably begin to identify the way in which the various characteristics are interrelated; how they may be related to other decision making factors and/or indeed may be important decision making factors in themselves. This was invaluable in helping to structure the way mediation is characterised and utilised in the development of the framework.

An important consideration arose in respect of the characteristics of mediation, namely that mediation needs to be understood as a process. The participants seemed to draw a distinction about what was possible at each stage of the mediation process and indicated that decision making factors may vary and have a different level of importance, depending on the stage of the mediation process. This had a number of implications. Firstly it exposed the assumption and tendency, certainly in this research, when thinking about mediation, to jump straight to the implications of the joint meeting and to conflate them with the initial decision to mediate and with any influence the individual meetings may have on the decision to proceed further. This in turn means that the decision to mediate is not a one shot "now or never" decision. There are a number of opportunities for the various parties to make a decision. This clearly has important implications for the approach taken by this research and poses a methodological challenge, namely, how can this be reflected in data collection. Beyond simply perhaps offering options such as "try individual meetings", "try joint meetings" it may be difficult to represent this in the quantitative stage. However, the later focus groups may provide the opportunity to explore this characteristic and the ways in which the decision making process should not, or cannot be seen as static.

A related question is to ask is who is making the decision(s). The participants were unanimous in the belief that mediation is only appropriate where both parties voluntarily agree to it. There was some indication however that this voluntary decision may be the result of persuasion. Further, whilst party agreement may be necessary, it was clear that it was not sufficient. In the UoM access to mediation is controlled by a gatekeeper who may, notwithstanding the parties' apparent consent, decide that mediation is not appropriate. Beyond the gatekeeper, the ultimate decision as to whether or not mediation is appropriate lies with the mediator. Behind this, there may also be other individuals seeking to influence the decision, for example a TU representative, colleagues or

family members. Again, it demonstrates the need for all the various individuals to agree on the issue of appropriateness in a given situation.

A discussion of the characteristics was also vital for understanding how the benefits and disadvantages of mediation were perceived and realised. When asked what they thought the benefits of mediation were, the responses fell along the empowerment/cost and efficiency lines assumed in this research.

What was particularly interesting was that there seemed to be more discussion about the powers and pitfalls of the empowerment arguments. Indeed concerns about the potential for exploitation or misuse of mediation arguably overwhelming fell on this side. They appeared to be focused on the danger of an individual being exploited or manipulated through mediation. The participants were not aware of a situation where this had happened but accepted that it in some circumstances it may be real concern and would therefore impact the appropriateness question.

"I wouldn't like it to be done in a way particularly where a junior member of staff was put in a position where they felt that they were having to somehow understand or accept the bullying behaviour as a way of resolving it" (Development and TU, UCU)

Whilst it is important to include characteristics and benefits/disadvantages of mediation in the discussion, unsurprisingly, they do not represent the only decision making factors. There was a great deal of consideration in the interviews about the important role played by the behaviour at the heart of the dispute and how it is assessed.

Types of case

The participants were unanimous in the opinion that mediation should not and cannot be used as a blanket dispute resolution method. There was however a degree of difference as to the types of situation which may be appropriate for mediation and where the line should be drawn in making any such assessment.

Bullying and harassment?

An important issue in understanding how assessments are made is that of labelling. In this regard, one needs to consider not only how behaviour is labelled but also who does the labelling.

"I think really the complications are in terms of third parties whether they're union reps or managers or whatever they're really trying to get to grips with the problem" (TU, UCU)

In the pilot there was an acceptance about the subjectivity of the labelling behaviour and of the difficulties these present. However, one may reflect a view from the participants that formal definitions may be a hindrance where mediation is concerned.

For the UoM specifically it was suggested that originally annexing mediation to bullying and harassment and therefore requiring something to be labelled as bullying/ harassment in order to trigger mediation may have been a barrier:

"...we [the UoM] initially tried to monitor the type of case...but it became unmanageable because it was all about identifying what it was rather than them actually solving the issue...we felt it was more important to solve the issues between the staff" (Coordinator)

There was arguably therefore a sense that if possible, labelling the behaviour should be avoided. Or, in the alternative, where mediation was concerned, working towards a resolution may be facilitated through a willingness to allow for a more everyday self-labelling understanding of bullying and harassment.

"if we stick a label on it we term it something that makes it more or less serious depending on what it is and peoples' perceptions of bullying and it's for me to decide whether or not I think I'm being bullied because it's in the eye of the perceiver" (Development and mediator 1)

"...my head of department, I don't mean my head of department this is fictitious my head of department came in and told me my work was fucking crap and used those words I can see how a lot of people will say I've been bullied this morning well yeah they have and that's the reality of how you've got to deal with it" (TU, UCU 2)

These issues had a number of implications for the research. Given the practical as well as conceptual aspirations of the research, this notion that what is important in deciding whether mediation may be appropriate or not may be whether the various parties may label something as bullying or harassment according to *some* definition, then it is important to explore how these conclusions are reached. Presenting participants of the main research with examples of behaviour in a given situation is intended to help with understanding this.

It is, however, important to acknowledge that the use of mediation happens alongside the prospect for the use of formal procedures and potentially even a legal claim, and there was an indication, unsurprisingly, that with such procedures the formal definitions would have to apply. Further, obviously the research does seek to position itself within existing bullying and harassment work and the characteristics of the traditional academic definitions will be included in the questionnaire as descriptors alongside other options. The approach taken in the research of utilising existing definitions but not being constrained by them helps to straddle the practical and academic divide and the qualitative stages provide a greater opportunity to explore this issue of how and who decides where something is bullying and harassment for the purposes of deciding on a resolution path and what implication this has for the use of mediation and/or how bullying and harassment are understood more broadly.

It is clear that the issue of labelling is a tricky one. Whilst it is interesting to understand what may be labelled as bullying/harassment, there is an argument that in the determination of the question of appropriateness, it is the aspects of the behaviour and the situation which is crucial. Determining quite where the line of appropriateness falls in a situation however is a very complex endeavour.

Drawing the line

Bullying and harassment

All participants were explicitly asked whether they thought mediation was appropriate for bullying and harassment cases. The responses were varied:

"yeah I do yeah...because bullying and harassment is something that is very subjective in a way...it's quite difficult to be clear whether someone is or is not bullying or harassing somebody and so sort of trying to resolve those sorts of things by just trying to understand where each other is coming from is I think a good thing"(Development and mediator 2)

"[Sigh] Yes yes and no because it depends we've talked about shades of grey and I think a lot of this is shades of grey people get cross purposes"(Development and mediator 1)

"I think there are limits to its potential in the context of an anti-bullying or anti-harassment policy I'm not saying there's no place for it but I think it's limited in terms of its potential"(TU, UCU)

In these one begins to see a spectrum of attitudes towards the use of mediation in bullying and harassment: an embracing approach, a more cautionary one, through to a strong scepticism. One can see in these how what may be seen as bullying/harassment by some may be characterised as a 'misunderstanding' by others.

Equality

The responses were similarly fractured when protected characteristics were added to the equation. Some participants were of the opinion that an equality aspect could add an extra layer of complexity:

"I'm on unsafe ground here with this but I think even if somebody has said something that's gone to the root of somebody's gender sexuality race I wonder if there's still grounds to unpick that with them and for an explanation to be given...it's all very subtle but as employers we shouldn't go there and use anything like subtlety or motivation or meaning as an excuse because we have zero tolerance of that sort of thing because it's almost like a risk management" (Development and mediator 1)

"I don't know I guess is a mediator the correct route to go through...I don't know if there's a direct allegation something falls under that equality area it may have to be dealt with formally at some point anyway partly because there is a wider duty to all of its employees it wouldn't be enough to say we went to mediation and sorted it out"(Development and TU, UCU)

"if you accuse somebody of racism and then say sit down and talk to them it's very difficult because quite rightly it's a very serious thing"(TU, Unite)

The reasons identified reflect the concern for legal compliance and perhaps beyond that, reasons why there should be zero tolerance in such cases. In these, one finds tentative justification of the need to include equality and social justice considerations into the mix of decision making factors.

There were however also different responses to the question of whether protected characteristics would make a difference:

"No unless what they've done is a serious disciplinary matter" (Development and mediator 2).

"if it's a problem with language particularly in the university environment where you've got a range of different cultures with a range of different languages it's possible for people to say things which may be taken incorrectly or people might misunderstand facial expressions or emotions so it's possible in that case but I think they would still have to understand that what they said was not acceptable...I think some other cultures have differences in respect and some that might be perceived as intimidating and be entirely unintentional so you do have to be aware of those matters and it may just be a matter of sorting it out"(Development and TU, UCU)

Especially in the latter quote, one begins to get the impression that mediation could perhaps be utilised to promote and facilitate understanding of diversity. The characteristics which seemed to come up most frequently as examples were race, sex and sexual orientation.

What is particularly interesting in these varied responses is that they arguably echo the lines of distinction offered in equality versus managing diversity discourses.

On the issue of equality, it was possible to begin to argue that not only is there a case for equality to be expressly considered but that protected characteristics may be relevant for decision making in two ways: the first concerns the behaviour in question and the second the identity and characteristics of the parties. With this, the issue of not only why equality should be included but also how was moulded in to the framework.

With this, one begins to see the relationship between the behaviour in question, the appropriateness decision and the types of distinctions and rationale for those that might be relevant. Again, however, these arguably need to be reconciled with a number of further considerations which appear to have an influence on where the line should be drawn.

Common ground?

Even though there was a difference of opinion regarding the suitability of mediation for bullying and harassment cases and in the extent to which a protected characteristic changed the situation, there were arguably similarities in factors which would inform the decision.

Severity

The first and the one perhaps most explicitly reflective of the link between the behaviour and the appropriateness question can be described as severity. It was clear that some cases were considered more appropriate than others:

"mediation is not always an option so if one member of staff punched another and the member of staff who had been punched said I want to take out a grievance I don't think it would be appropriate for us to say "oh have you considered mediation "because I think there is a degree of management responsibility whereby certain kinds of events and certain kinds of issues require a formal response"(Mediator)

Gross misconduct and criminal conduct were examples given where mediation would definitely not be appropriate.

In severity one may also consider the impact that the behaviour had an on individual and the resultant state of mind:

"I think there are some extremes where you say look that person has been psychologically damaged by this, this isn't a simple dispute psychological damage has happened here and therefore we wouldn't mediate"(Development and mediator 1)

However, as the discussion above indicated, the more problematic issues arise in the potentially borderline cases and so the answer to the severity question is not always straightforward and/or sufficient. In such cases, one may again look to other factors.

Control over the outcome

One factor which is particularly aligned with the characteristics of mediation is whether or not the parties have control over the outcome of a dispute.

"I think it's got to be situations that have the potential for them to be able to sort it out between themselves...you've really got to identify what the problem is and whether it is something that they can just talk about and agree to change their behaviour or whether it's not really that sort of situation"(Development and mediator 2)

It may be that a formal option is the sole one available. However, a number of participants suggested that mediation may be used but that the outcome may draw on or be used in conjunction with formal mechanisms.

"you might get cases that are bullying but you've still got a relationship to repair but at the end of the day the manager has acted inappropriately and that shouldn't be left unchallenged in some way so I think you can still have mediation as part of a repair process but it doesn't necessarily mean that the story stops there"(Development and mediator 1)

In this the need to not consider mediation in isolation from other options becomes clear and accordingly, in data collection, after selecting what they consider to be the important factors respondents will be asked what they consider the appropriate path to be.

A further issue which may be considered here is that of the timing of mediation and the extent to which the parties' positions are entrenched:

"I think by the time it has come to me it has gone past the point where they're actually going to be able to sit down and sort it out amicably and it's got to the point where it needs to be resolved by other parties coming in and taking decisions...saying this is right or this is wrong"(Development and TU, UCU)

Perception and Intent

A further factor which arguably may be seen as central to the assessment of behaviour and even as a precursor to many of the other factors considered thus far is that of perception and intent. Addressing perception and intent is vital in a situation in order to decide whether or not mediation is appropriate.

"the target has really got to have some sense that it might not have been intended I can't really see how this [mediation] would work if the target wasn't convinced in any way that it wasn't intended" (TU, UCU 2)

"sometimes people just think they're being funny and it's not and they sometimes run roughshod over peoples' sensitivities and are probably a bit shocked when they find out what they have done has offended the other person...I think that's the most important thing, getting somebody to say sorry I've done wrong"(TU, Unite)

There was an acknowledgement of the complexities introduced by the inherent subjectivity of making these assessments. In the context of mediation however, some participants felt that perhaps the forum of mediation was a particularly good place to enable each party to explore/share their perceptions and intent and to allow the parties and/or the mediator to choose how to proceed from there.

This issue of perception and intent has again been important in shaping the framework and the way the various factors may be considered as interrelated, and data will be collected on whether the participants thought the behaviour in a given situation was intended or not; whether the perception was reasonable and whether intent is relevant if the behaviour where one of the equality factors is involved.

Parties and Power

The final factor involves a consideration of who the parties in a dispute are. Here there was a clear distinction made between behaviour which occurred between co-workers and that which arose out of an employer-employee relationship. The linchpin for this distinction appeared to be the level and potential source(s) of power in the situation.

Where co-workers were involved, there was an indication that power issues were less problematic and therefore mediation may have a greater potential for success. This potential was reduced when the parties involved were in a vertical relationship and the behaviour was top-down.

For one participant in particular there was a concern that the UoM and employers in general in their pursuit to use mediation, failed to properly understand the power imbalance in the employer-employee relationship and the problems this posed:

"I couldn't make my mind up that they weren't aware of that research [saying that majority of bullying in Britain is top-down] or they were aware of it but weren't really prepared to take on board the implications of it like a lot of employers" (TU, UCU 2)

And indeed a minority of the participants either did not mention power imbalance or didn't see it as a significant issue. However, the majority saw the power imbalance in such circumstances as potentially problematic:

"if you've got a situation where let's say a senior white member of staff has apparently said something abusive to a junior black member of staff, I think the power imbalance there might mean that mediation might appear to work on the surface but might not really be working because the junior party felt too kind of powerless relative to the other person so they might agree to things through mediation that are still oppressive and not in their best interest" (Mediator)

There was an indication that other sources of power may also be present in both scenarios and that this would make the situation more complicated. These other sources may be levels of job security, for example, or they may take the form of equality considerations, such as the sex or race of the parties.

The severity, control, perception/intent and party factors therefore have important implications both conceptually and practically. They also act as a useful foundation for beginning to understand

how behaviour may be assessed within the framework. Further, they provide the template for the characteristics the cases chosen to anchor the data collection need to display.

Before moving on to offer a summary and final overview of the pilot, it is important to briefly address the implications of using a case study approach, arguably the most important of which is the matter of the significance of workplace culture.

Workplace culture

All the participants made reference to the culture of the UoM specifically (particularly academic staff) and to that of higher education more generally. It was largely seen as a potential hindrance to the use of mediation because of the nature of the work, opinions of colleagues and attitudes towards workplace conflict, although there was a general feeling that the culture was changing in a way which may aid an increased understanding and use of mediation. It was clear from the pilot that, although the precise characteristics of the UoM will not apply in all situations, workplace culture certainly seems to have an influence on the way in which a decision to try mediation (or not) may be made. The question for the research therefore is how this can be reflected in the framework as it is not practically feasible to look into the nuanced characteristics of the workplace of each participant. However, one may argue that the structure of the research design, for example the choice of cases, may seek to describe aspects of the workplace culture which may then be represented in the decision making options and again the extent of the significance may be explored in the qualitative stages.

SUMMARY AND CONCLUSION

The pilot played an important role reaffirming the need for the research and for the mixed method design and was therefore pivotal in shaping the research and helping to formulate research questions:

1. What factors influence whether a situation is perceived as bullying and/or harassment?
2. What factors influence whether mediation is perceived as appropriate?
3. Why are those factors considered to have an influence?
4. How do the influencing factors relate to each other?

From the discussion above one may argue that there is a distinction between who *makes* decisions and who and what *influences* the decision on the appropriateness of mediation.

The who in the first instance is the parties to the dispute, the gatekeeper (if there is one) and the mediator. These are the people who have the power to instigate, make the decision to attend and to potentially terminate the mediation process. Since all need to agree that mediation is the appropriate path, it is vital to try and incorporate individuals, gatekeepers and mediators in the research.

The question in the latter instance is, however, arguably the big one and is essentially what the research is concerned with. It is difficult to separate the who and the what in the influence element, as one may argue that in many instances the what is manifested through the who, for example workplace culture through colleagues or religion or culture through family members. It is therefore necessary to explore how both the who and what manifest and how they are related.

Although the various factors are interrelated in complex ways, in order to try and understand and operationalise the ideas and arguments in this research it is helpful to perhaps approach the question of appropriateness in an almost sequential way:

1. Assess the behaviour
2. Assess how this may (or may not) fit with the characteristics of mediation
3. Assess who is influencing the individuals in the dispute
4. Assess the individuals in the dispute

TENTATIVE FRAMEWORK

<p>1. BEHAVIOUR</p> <ul style="list-style-type: none"> -Severity <ul style="list-style-type: none"> Legal obligation Duty of care Degrading Hostile Racist Sexist Homophobic Frequency Negative Intimidating Offensive Mutual -Control over outcome <ul style="list-style-type: none"> Entrenched Definitive answer needed Need visible outcome -Perception and intent <ul style="list-style-type: none"> Joke Banter Misunderstanding Cultural difference Personality difference Too sensitive Accept wrong Management style -Parties <ul style="list-style-type: none"> Co-workers Manager Power imbalance Continuing relationship Gender Race Sexual orientation 	<p>2. CHARACTERISTICS OF MEDIATION</p> <ul style="list-style-type: none"> -Voluntary -Confidential -Impartial mediator -Stages of mediation <ul style="list-style-type: none"> Individual meetings Joint meeting -Speed -Cost -Level of disruption -Reach own outcome -Continuing relationship
<p>3. INFLUENCES (WHO)</p> <ul style="list-style-type: none"> -Colleagues -Family -TU -Line manager -Management -HR 	<p>4. INDIVIDUALS</p> <ul style="list-style-type: none"> -Psychologically capable -Position in company -Relationship with the other party -Intentions <ul style="list-style-type: none"> Sort it out amicably Want retribution -Race -Gender -Sexual orientation

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WORKPLACE BULLYING, HARASSMENT, MEDIATION AND EQUALITY: WHAT DO YOU THINK?

*Are you over 18 years old?

*Do you have at least six months work
experience in a UK workplace?

If you answered **yes** to both questions you
could have the chance to enter a prize draw to
win a **£100 Amazon voucher!!**

All you have to do is complete a questionnaire
about what you think about bullying and har-
assment in the workplace and how you think it
should be dealt with.

For more information and to complete the ques-
tionnaire, please go to:

tinyurl.com/wpbullying

The questionnaire is part of my PhD research and your help
would be very much appreciated. If you have any questions or
queries please contact me at:

Ria.Deakin@postgrad.mbs.ac.uk



APPENDIX 3 QUESTIONNAIRE EMAIL INVITATION

Good morning/afternoon,

I'm a PhD student at Manchester Business School. My research is funded by the Economic and Social Research Council (ESRC) and aims to explore perceptions of workplace bullying and harassment and how it should be dealt with. I am particularly interested in the role of mediation.

I was wondering whether you would be willing to support my research by completing an online questionnaire? Anyone who is over 18 and has at least six months work experience in a UK workplace can take part. Participants will have the chance to enter a prize draw to win a £100 Amazon voucher.

You can find more information and complete the questionnaire at: <http://tinyurl.com/wpbullying>

If at all possible, I would be very grateful if you could please share this email with others you think may be interested in participating. The questionnaire will remain open for the next few weeks.

Any help you could provide would be very much appreciated.

Many thanks,

Ria

Ria Deakin, LLB (Hons), MSc, Assoc CIPD | Doctoral Researcher

People Management and Organisations (PMO) Division

Manchester Business School | The University of Manchester | Booth Street West, Manchester, M15 6PB, UK |

Original Thinking Applied

MBS Doctoral Programmes ranked No 1 in the world 2012, 2011, 2009 and 2008 (Financial Times)

APPENDIX 4 QUESTIONNAIRE



The University of Manchester
Manchester Business School



WORKPLACE BULLYING AND HARASSMENT, MEDIATION AND EQUALITY: WHAT DO YOU THINK?

Thank you for taking the time to help with this research.

The aim of the questionnaire is to explore how you perceive workplace bullying and harassment both generally and where there may be an issue of racism, sexism and/or homophobia. It hopes to look at what you think is important in deciding what is bullying and harassment and what influences how it should be dealt with. It also seeks to explore the role that mediation may play in this.

Anyone who is 18 years old or older with at least six months work experience in a UK workplace is invited to take part.

You do not necessarily have to have experienced bullying/harassment or have any prior knowledge of mediation. The questionnaire is not intended to test your knowledge of bullying and harassment and there are therefore no right or wrong answers. People may have very different opinions about the issues addressed. Please answer the questions according to what your views and opinions are.

Please be aware that the scenarios presented in the first section are based on real life events and you may find some of the details offensive, upsetting, uncomfortable, embarrassing or insulting. However they are not intended to degrade or diminish respect for any racial, ethnic, gender, age, religious or other groups. Please think about this possibility carefully before participating.

The questionnaire should take 20-25 minutes to complete.

Unless you choose to provide your contact information for the purposes of entering the prize draw you are not required to give your name or any contact information. If you wish to be entered into the prize draw to win a £100 Amazon voucher please leave your email address when asked at the end of the questionnaire. Any information provided will be confidentially stored and used only for the purpose of the draw.

If you require any further information please contact Ria Deakin (Ria.Deakin@postgrad.mbs.ac.uk , Manchester Business School, University of Manchester, Booth Street West M15 6PB).

I confirm that I am aware of the type of content of the scenarios and discussion and am happy to participate.

I understand that my participation in the study is voluntary and that I am free to withdraw at any time without giving a reason.

-
- I agree and am happy to complete the questionnaire
 I do not agree and do not wish to complete the questionnaire

I confirm that I am 18 years or older and have at least six months work experience in a UK workplace.

-
- Yes
 No

SCENARIOS

In this section you will be given examples of real life workplace scenarios and asked to make assessments based on each scenario. There are three scenarios in total.

You are not expected to know formal or "proper" definitions of bullying and harassment. Please answer the questions according to what bullying and harassment means to you.

Scenario 1

Mike Nkumbwa is an electrician and general maintenance man at the Leopold Hotel, a family owned company with 45 members of staff. The owner of the hotel is John Fisher who is gay and his employees are aware of this. On two occasions John overheard Mike talking about him to his colleagues. On the first occasion he had referred to him as "that poof John" and commented that "if it were the 1960s he would be locked up". On the second occasion Mike again referred to John as a "poof" and said that he didn't want to go into his office "after the poofs had been in there" as it "would need a thorough clean first". John is angry and upset. Mike doesn't deny making the comments but says that he doesn't consider "poof" to be a derogatory term as that's how everyone his age refers to gay men. He said if John had mentioned it at the time he would have apologised.

Which statement do you think best describes the situation in Scenario 1?

- It's inappropriate and it's definitely bullying
- It's inappropriate and it might be bullying
- It's inappropriate but it's not bullying
- It's appropriate and it's definitely not bullying

Which statement do you think best describes the situation in Scenario 1?

- It's inappropriate and it's definitely harassment
- It's inappropriate and it might be harassment
- It's inappropriate but it's not harassment
- It's appropriate and it's definitely not harassment

Please indicate how strongly you agree or disagree with each of the following statements:

	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree
I would describe Scenario 1 as an example of racism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe Scenario 1 as an example of homophobia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe Scenario 1 as an example of sexism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 1 as an example of homophobia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 1 as an example of sexism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 1 as an example of racism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please indicate how appropriate you think each of the following options would be for dealing with Scenario 1:

	Very Inappropriate	Inappropriate	Somewhat Inappropriate	Somewhat Appropriate	Appropriate	Very Appropriate
Informal word <i>Line manager has a word with those involved about the problem.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Further investigation <i>Need to find out more details about the situation.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Grievance procedure <i>A formal process where an employee makes a complaint to their employer about the way they have been treated at work.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disciplinary procedure <i>A formal process where the employer decides whether an employee needs to be disciplined for the way they have acted at work.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation (individual meetings) <i>Both people meet separately with a trained mediator to discuss the problem.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation (joint meeting) <i>The mediator and both people all meet at the same time to discuss the problems with each other to try and reach a jointly agreed outcome.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Equality and diversity training <i>Training to promote understanding of difference, the importance of treating everyone fairly and what is appropriate behaviour and language.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resignation (the alleged target) <i>The person who is complaining about the way they have been treated leaves their job and the company.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resignation (the alleged perpetrator) <i>The person who the alleged victim is complaining about leaves their job and the company.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal claim <i>Take the employer to an Employment Tribunal.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do nothing <i>Ignore the situation.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Confrontation <i>The person who thinks they have been treated badly confronts the person who is doing it directly.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scenario 2

Katrina and Philip are both probation officers. They work together in an environment where there is a lot of banter which sometimes includes sexual innuendo. Both frequently participate in this. They were initially the same grade but Philip has since been promoted and is now Katrina's line manager. Neither of them say this has affected the level of banter between them. Katrina gives examples of Philip tying her scarf around her face when she is typing, making comments about her appearance and, on at least three occasions having made remarks about her "being on the game". Until recently Katrina had never complained about the behaviour to Philip or to anyone else. She is now off work with stress and is saying she wants the behaviour to stop. Philip is shocked to hear that she has said she feels harassed and bullied as he thought she had happily participated. He doesn't deny any of it but said the comments about her being a prostitute were in response to Katrina's statement to her colleagues that "in an ideal world she would like to be the madam of a high class brothel". Their colleagues are also surprised as they say Katrina is "no shrinking violet".

Which statement do you think best describes the situation in Scenario 2?

- It's inappropriate and it's definitely bullying
- It's inappropriate and it might be bullying
- It's inappropriate but it's not bullying
- It's appropriate and it's definitely not bullying

Which statement do you think best describes the situation in Scenario 2?

- It's inappropriate and it's definitely harassment
- It's inappropriate and it might be harassment
- It's inappropriate but it's not harassment
- It's appropriate and it's definitely not harassment

Please indicate how strongly you agree or disagree with each of the following statements:

	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
I would describe Scenario 2 as an example of racism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe Scenario 2 as an example of homophobia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe Scenario 2 as an example of sexism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 2 as an example of homophobia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 2 as an example of sexism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 2 as an example of racism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please indicate how appropriate you think each of the following options would be for dealing with Scenario 2.

	Very Inappropriate	Inappropriate	Somewhat Inappropriate	Somewhat Appropriate	Appropriate	Very Appropriate
Informal word <i>Line manager has a word with those involved about the problem</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Further investigation <i>Need to find out more details about the situation.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Grievance procedure <i>A formal process where an employee makes a complaint to their employer about the way they have been treated at work.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disciplinary procedure <i>A formal process where the employer decides whether an employee needs to be disciplined for the way they have acted at work.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation (individual meetings) <i>Both people meet separately with a trained mediator to discuss the problem.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation (joint meeting) <i>The mediator and both people all meet at the same time to discuss the problems with each other to try and reach a jointly agreed outcome.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Equality and diversity training <i>Training to promote understanding of difference, the importance of treating everyone fairly and what is appropriate behaviour and language.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resignation (the alleged target) <i>The person who is complaining about the way they have been treated leaves their job and the company.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resignation (the alleged perpetrator) <i>The person who the alleged victim is complaining about leaves their job and the company.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal claim <i>Take the employer to an Employment Tribunal.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do nothing <i>Ignore the situation.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Confrontation <i>The person who thinks they have been treated badly confronts the person who is doing it directly.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scenario 3

Sarah and Charlie work together in a commercial kitchen. She is an Assistant Chef and he is her manager. She is black and he is white. They have worked together without any problems for almost three years. However, recently they were both working in the kitchen with their backs to each other, chatting as they worked. Because of the noise of the kitchen, they could not always hear what the other was saying. At some point however Sarah heard Charlie use the words "golliwog" and "golliwog jam" and became upset. Charlie said he was sorry she had got upset but that the words were not directed at her but rather that he had been talking about the change to the label of Robertson's jam. At the time Sarah seemed to accept the apology but has brought the incident up weeks later after Charlie accused her of taking cakes from the kitchen.

Which statement do you think best describes the situation in Scenario 3?

- It's inappropriate and it's definitely bullying
- It's inappropriate and it might be bullying
- It's inappropriate but it's not bullying
- It's appropriate and it's definitely not bullying

Which statement do you think best describes the situation in Scenario 3?

- It's inappropriate and it's definitely harassment
- It's inappropriate and it might be harassment
- It's inappropriate but it's not harassment
- It's appropriate and it's definitely not harassment

Please indicate how strongly you agree or disagree with each of the following statements:

	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
I would describe Scenario 3 as an example of racism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe Scenario 3 as an example of homophobia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe Scenario 3 as an example of sexism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 3 as an example of homophobia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 3 as an example of sexism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe Scenario 3 as an example of racism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please indicate how appropriate you think each of the following options would be for dealing with Scenario 3.

	Very Inappropriate	Inappropriate	Somewhat Inappropriate	Somewhat Appropriate	Appropriate	Very Appropriate
Informal word <i>Line manager has a word with those involved about the problem</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Further investigation <i>Need to find out more details about the situation.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Grievance procedure <i>A formal process where an employee makes a complaint to their employer about the way they have been treated at work.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disciplinary procedure <i>A formal process where the employer decides whether an employee needs to be disciplined for the way they have acted at work.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation (individual meetings) <i>Both people meet separately with a trained mediator to discuss the problem.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation (joint meeting) <i>The mediator and both people all meet at the same time to discuss the problems with each other to try and reach a jointly agreed outcome.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Equality and diversity training <i>Training to promote understanding of difference, the importance of treating everyone fairly and what is appropriate behaviour and language.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resignation (the alleged target) <i>The person who is complaining about the way they have been treated leaves their job and the company.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resignation (the alleged perpetrator) <i>The person who the alleged victim is complaining about leaves their job and the company.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal claim <i>Take the employer to an Employment Tribunal.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do nothing <i>Ignore the situation.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Confrontation <i>The person who thinks they have been treated badly confronts the person who is doing it directly.</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

DECISION MAKING

In this section you will be asked about the factors that influenced the decisions you made in the previous section.

The following definitions may help you understand the options:

The alleged target: *the person who was complaining about the way they were being treated and/or that they were being bullied/harassed.*

The alleged perpetrator: *the person who was being accused of treating others badly and/or of being a bully/harasser.*

The parties: *the alleged target and the alleged perpetrator.*

Personal characteristics: *a person's ethnicity, gender and sexual orientation.*

Behaviour: *the treatment/language complained of.*

Legal definition(s): *the legal formulations of harassment and/or breach of mutual trust and confidence or other relevant legal provision/concept.*

Acas or employer definition(s): *the definitions of bullying and harassment provided by Acas or given in your employer's policies.*

Please indicate how important each of the following factors were when you were deciding whether the scenarios in the first section were bullying and/or harassment or not.

	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
Seniority/level in organisation of the alleged target	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Seniority/level in organisation of the alleged perpetrator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Level of power imbalance between the parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal characteristics of the alleged target	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal characteristics of the alleged perpetrator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Culture of the workplace	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Size of the organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
How many times the behaviour happened	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How often the behaviour happened	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How severe the behaviour was	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged perpetrator's intention	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged target's perception	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonableness of the alleged target's perception	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Behaviour was inherently wrong or offensive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
Impact of the behaviour on the alleged target's health, career and life	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Impact of the behaviour on the alleged perpetrator's health, career and life	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Impact on organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Impact on colleagues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved gender and/or sexual behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved race and/or ethnicity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved sexual orientation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
Legal definition(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Acas or employer definition(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Violation of the alleged target's dignity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Violation of the alleged perpetrator's dignity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If there was something you considered important that isn't included in the list above, please write it here:

Please indicate how important each of the following factors were when you were deciding how appropriate the various ways of dealing with the scenarios were.

	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
Seniority/level in organisation of the alleged target	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Seniority/level in organisation of the alleged perpetrator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Level of power imbalance between the parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal characteristics of the alleged target	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal characteristics of the alleged perpetrator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Culture of the workplace	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Size of the organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How many times the behaviour happened	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
How often the behaviour happened	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How severe the behaviour was	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged perpetrator's intention	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged target's perception	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonableness of the alleged target's perception	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Behaviour was inherently wrong or offensive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Impact of the behaviour on the alleged target's health, career and life	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Impact of the behaviour on the alleged perpetrator's health, career and life	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
Impact on organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Impact on colleagues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved gender and/or sexual behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved race and/or ethnicity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved sexual orientation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of resolution to the parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of resolution to the organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speed of resolution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
Whether the parties still had to work together	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Opportunity for the alleged target to explain	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Opportunity for alleged perpetrator to explain	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Opportunity for shared understanding	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Opportunity for flexible outcome	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Opportunity for the parties to take control	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged target deserves compensation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged perpetrator deserved to be punished	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Not at all Important	Very Unimportant	Somewhat Unimportant	Somewhat Important	Very Important	Extremely Important
Opportunity for public vindication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Opportunity for private resolution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Need for outcome to be public	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal obligation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Need for a right or wrong answer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Zero tolerance for that type of behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
What was fair to the alleged target	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
What was fair to the alleged perpetrator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If there was something you considered important that isn't included in the list above, please write it here:

ABOUT YOU AND YOUR JOB

In this section you will be asked to complete questions about you, your job and your workplace experiences.

How would you describe your gender?

- Female
- Male
- Transgender
- Prefer not to say

How old are you?

- 18-25
- 26-34
- 35-46
- 47-54
- 55-64
- 65 or over
- Prefer not to say

How would you describe your ethnic background?

- | | |
|--|---|
| <ul style="list-style-type: none"><input type="radio"/> White-British<input type="radio"/> White-Irish<input type="radio"/> Any other white background (please state) <input type="text"/><input type="radio"/> Mixed-White and Black Caribbean<input type="radio"/> Mixed-White and Black African<input type="radio"/> Mixed-White and Asian<input type="radio"/> Any other mixed background (please state) <input type="text"/><input type="radio"/> Asian/Asian British-Indian<input type="radio"/> Asian/Asian British-Pakistani | <ul style="list-style-type: none"><input type="radio"/> Asian/Asian British-Bangladeshi<input type="radio"/> Asian/Asian British-Chinese <input type="text"/><input type="radio"/> Any other Asian background (please state) <input type="text"/><input type="radio"/> Black/Black British-Caribbean<input type="radio"/> Black/Black British-African<input type="radio"/> Any other Black background (please state) <input type="text"/><input type="radio"/> Any other ethnic group (please state) <input type="text"/><input type="radio"/> Prefer not to say |
|--|---|

How would you describe your sexual orientation?

- Heterosexual
- Gay/lesbian
- Bisexual
- Prefer not to say

What is your first language?

- English
- Other (please state)

What is your religion or belief?

- | | |
|---|--|
| <ul style="list-style-type: none"><input type="radio"/> No religion<input type="radio"/> Christian (including Church of England, Catholic, Protestant and all other Christian denominations)<input type="radio"/> Buddhist<input type="radio"/> Hindu<input type="radio"/> Jewish | <ul style="list-style-type: none"><input type="radio"/> Muslim<input type="radio"/> Sikh<input type="radio"/> Any other religion or belief (please state) <input type="text"/><input type="radio"/> Prefer not to say |
|---|--|

Would you describe yourself as disabled?

- Yes
- No
- Prefer not to say

Are you currently employed?

- Yes
- No

What is your current job? (If you are not currently employed please provide details of your last job).

Are you responsible for managing any employees? (If you are not currently employed please think about your last job).

- Yes (please state how many employees you manage)

- No

How many employees does your organisation have? (If you are not currently employed please think about your last job).

- Up to 9
- 10 to 49
- 50 to 250
- over 250

Does your organisation have the following: (If you are not currently employed please think about your last job).

	Yes	No	Don't know
Grievance and disciplinary policies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An anti-bullying and harassment policy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An equality and diversity policy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A policy for using external mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An internal mediation service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Which industry do you work in? (If you are not currently employed please provide details of your last job).

- | | |
|--|--|
| <input type="radio"/> Accountancy | <input type="radio"/> IT |
| <input type="radio"/> Agriculture, Animals and Environment | <input type="radio"/> Legal |
| <input type="radio"/> Automotive, Driving and Transport | <input type="radio"/> Management |
| <input type="radio"/> Banking, Finance and Insurance | <input type="radio"/> Manufacturing |
| <input type="radio"/> Catering and Hospitality | <input type="radio"/> Marketing, PR and Advertising |
| <input type="radio"/> Charity | <input type="radio"/> Media/New Media |
| <input type="radio"/> Construction and Skilled Trades | <input type="radio"/> Recruitment |
| <input type="radio"/> Customer Service and Call Centre | <input type="radio"/> Retail and Sales |
| <input type="radio"/> Distribution and Warehouse | <input type="radio"/> Scientific and Pharmaceutical |
| <input type="radio"/> Domestic | <input type="radio"/> Secretarial, Administration and PA |
| <input type="radio"/> Education and Teaching | <input type="radio"/> Security and Defence |
| <input type="radio"/> Engineering, Freight and Logistics | <input type="radio"/> Telecommunications |
| <input type="radio"/> Health, Nursing and Social Services | <input type="radio"/> Travel and Leisure |
| <input type="radio"/> HR | <input type="radio"/> Utilities |
| <input type="radio"/> Industrial | <input type="radio"/> Other (please state) |
| | <input type="text"/> |

Which sector do you work in? (If you are not currently employed please provide details of your last job).

- Private sector
- Public sector
- Third sector

Are you involved with a trade union?

- Yes I am trade union member (please state which union)
- Yes I hold a trade union position (please state what position you hold and which union)
- No
- Other (please state your involvement)

Please imagine that you are being bullied and harassed at work.

Please now indicate how much influence you think *each* of the following factors would have on the way you think you would choose to deal with the situation.

	None	Little	Some	A Lot
Your family members	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your religion or belief	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your colleagues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your trade union representative	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your line manager	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The culture of your organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your ethnic origin	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your gender	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your sexual orientation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your age	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your financial position	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your chances of getting another job	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your mental health	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your physical health	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How much you like your job	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your job security	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How quickly the situation could be resolved	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How much it would cost you to achieve a resolution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Whether you had to face the other party yourself	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Do you think that your responses would change if you were being accused of being a bully rather than the one being bullied?

- Yes
- No

Do you think that your responses would change if you thought the bullying was racist, sexist and/or homophobic?

- Yes
- No

If yes, do you think that your personal characteristics (your religion or belief, your ethnic origin, your gender and/or your sexual orientation) would have more of an influence on your decision?

- Yes
- No



Which sector do you work in? (If you are not currently employed please provide details of your last job).

- Private sector
- Public sector
- Third sector

Are you involved with a trade union?

- Yes I am trade union member (please state which union)
- Yes I hold a trade union position (please state what position you hold and which union)
- No
- Other (please state your involvement)

Please imagine that you are being bullied and harassed at work.

Please now indicate how much influence you think *each* of the following factors would have on the way you think you would choose to deal with the situation.

	None	Little	Some	A Lot
Your family members	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your religion or belief	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your colleagues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your trade union representative	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your line manager	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The culture of your organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your ethnic origin	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your gender	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your sexual orientation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your age	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your financial position	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your chances of getting another job	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your mental health	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your physical health	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How much you like your job	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your job security	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How quickly the situation could be resolved	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How much it would cost you to achieve a resolution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Whether you had to face the other party yourself	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Do you think that your responses would change if you were being accused of being a bully rather than the one being bullied?

- Yes
- No

Do you think that your responses would change if you thought the bullying was racist, sexist and/or homophobic?

- Yes
- No

If yes, do you think that your personal characteristics (your religion or belief, your ethnic origin, your gender and/or your sexual orientation) would have more of an influence on your decision?

- Yes
- No

How would you define bullying?

You are not necessarily expected to know a formal or "proper" definition of bullying. Please answer according to what you mean when you think about bullying.

How would you define harassment?

You are not necessarily expected to know a formal or "proper" definition of harassment. Please answer according to what you mean when you think about harassment.

Please indicate how strongly you agree or disagree with each of the following statements:

	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
Bullying and harassment should be treated differently from other workplace disputes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bullying and harassment is worse when it involves racism, sexism or homophobia.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bullying and harassment is more complicated when it involves racism, sexism or homophobia.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bullying and harassment are different things.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A situation must be labelled (for example as bullying or not) before the decision how to deal with it can be made.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bullying and harassment is bad for equality.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Racism, sexism and homophobia should be treated as equally serious.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Racism and sexism are more serious than homophobia.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Do you know what mediation is?

If your answer is No, please turn to the last page of the booklet.

- Yes
- No

How would you define mediation?

You are not necessarily expected to know a formal or "proper" definition of mediation. Please answer according to what you mean when you think about mediation.

Please select the statement that best describes your position:

If you select the last statement, please turn to the last page of the booklet.

- I have received training on workplace mediation but I have no experience of workplace mediation.
- I have received training on workplace mediation and I have experience of workplace mediation.
- I have not received any workplace mediation training but I have experience of workplace mediation.
- I have not received any workplace mediation training and I have no experience of workplace mediation.

Please briefly state what training on workplace mediation you have received.

Please select the capacity (or capacities) in which you have had experience of workplace mediation.

	Yes	No
External mediator	<input type="radio"/>	<input type="radio"/>
External mediator (Acas)	<input type="radio"/>	<input type="radio"/>
Internal mediator	<input type="radio"/>	<input type="radio"/>
Party	<input type="radio"/>	<input type="radio"/>
Mediation co-ordinator/gatekeeper	<input type="radio"/>	<input type="radio"/>
Other (please state) <input type="text"/>	<input type="radio"/>	<input type="radio"/>

MEDIATION

In this section you will be asked about your opinions of workplace mediation.

Please indicate how strongly you agree or disagree with each of the statements.

	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
The nature of bullying and harassment make the use of mediation particularly appropriate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation is appropriate in bullying and harassment if there is an allegation of racism, sexism and/or homophobia.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation is appropriate where there is an imbalance of power between the parties.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The presence of an impartial mediator is sufficient to mitigate an imbalance of power between the parties in bullying and harassment.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is a greater potential for mediation to be successful where the parties are a line manager and a subordinate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is a greater potential for mediation to be successful where the parties are co-workers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
A mediator must only take a facilitative role.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A mediator should be able to make suggestions and take a more directive role.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If one or both parties have doubts about mediation they should be encouraged to have individual meetings.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The presence of a directive mediator is sufficient to mitigate an imbalance of power between the parties.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation can have a positive impact on the parties if they have individual meetings with a mediator but not a joint meeting.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation must include both individual and joint meetings to have a positive impact on the parties.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
Mediation is an effective way of reducing the number of Employment Tribunal Claims.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation is an effective way of reducing the number of disputes being formalised in an organisation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation can be a useful tool for promoting diversity and cultural understanding in an organisation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The use of mediation will have a significant impact on the way workplace disputes are resolved in the UK.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation can be a useful tool for promoting diversity and cultural understanding in society.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If parties decide to try mediation all other formal procedures must be suspended.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please indicate how strongly you agree or disagree with each of the following statements:

	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
Mediation is an effective way of reducing legal costs associated with workplace disputes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Employers should be able to use the fact that mediation was attempted in their defence in a later tribunal claim.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation can be an effective tool for changing workplace culture.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The discussions and outcome of a mediation should never be used in a later formal procedure.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The financial savings associated with mediation are what makes mediation attractive to employers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The confidential nature of mediation can encourage the disclosure of sensitive information in a way that formal procedures cannot.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation should be compulsory for all workplace disputes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
Mediation is most effective if it is used early in a dispute.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The opportunity for employees to take control of a situation and reach their own outcome in a dispute is what makes mediation attractive to employers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The financial savings associated with mediation are what makes mediation attractive to employees in a dispute.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The opportunity to take control of a situation and reach their own outcome in a dispute is what makes mediation attractive to employees in a dispute.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The speed with which disputes can be settled using mediation is what makes mediation attractive to employers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The use of mediation has a negative impact on the development of employment law.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The use of mediation will only increase if both employers and employee knowledge and awareness is improved.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
The speed with which disputes can be settled using mediation is what makes mediation attractive to employees in a dispute.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The use of mediation can have a positive impact on tackling inequality.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation allows employers to avoid dealing with problems by "sweeping problems under the carpet".	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The use of mediation can be harmful to equality.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation is most appropriate when the parties still need to work together.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Just one last question, would you like to be entered into the prize draw to win a £100 Amazon voucher?

-
- Yes (The winner will be notified by email so please leave your address in the box below)
- No

THANK YOU.

Thank you again for taking the time to complete the questionnaire, your help is very much appreciated.

APPENDIX 5 ALTERNATIVE VIGNETTES

Priya is of Indian ethnic origin but is British and has always lived in England. She works as a Project Manager in a company which conducts clinical trials. She has worked there for five years and has always had a good relationship with her managers and with Dr Smith, a co-founder of the company. She recently announced she was thinking of getting another job. When she told Dr Smith, he accepted her decision and said "We will probably bump into each other in future, unless you are married off in India". Priya is very upset and offended by the remark. Dr Smith says that he said "unless you are married or in India" and not "unless you are married off in India". They had previously had conversations about how her parents wanted to see her married and about the possibility of her giving up work if she got married. Priya had also told Dr Smith that she would soon be going to India.

Hannah is a teacher at a large further education college. The principal of the college is a woman. The college has some management problems and there is often a bad atmosphere in the staff room. One day, in a meeting, Hannah was asked by a fellow teacher, Stuart, to stop talking as he couldn't hear what was being said by the principal. Hannah was outraged and said "how dare you". In a subsequent argument Stuart told her "not to be a drama queen". Hannah is now complaining that Stuart had previously made a number of sexist comments whilst she had been in the staff room but that he had not made them to her. She says he had made reference to "girlie chat" as well as making comments about female directors who "did nothing but look nice" and about "power dressed women". Stuart does not deny making the comments but says that they were single comments made over a few months and Hannah did not object at the time. He says she has only complained because she is annoyed after their argument.

James is the owner of a playground building company employing 20 to 25 people. Employees have received no diversity awareness training. In April 2012, the office manager, Lisa, spoke to James after she had received a complaint that some employees had shouted racist abuse at a man in the street. In response he said "I know I have dealt with it. The man is a fucking immigrant". In June 2012, Lisa was upset and offended by James. Although the comment wasn't directed at her, she overheard him asking the office "why is it that white girls like black men?" and laughing. Then, in July 2012, in a meeting between James, Lisa and another female employee, Stacey, Lisa says that James admitted that in the office "they often joked about why black men have big cocks". James does not deny making the immigrant comment or the comment in June but says he didn't say anything like that in the meeting. Stacey says she couldn't remember James mentioning "big cocks". Lisa was born in the UK but both her parents are from Jamaica and she describes herself as Afro Caribbean. She feels that James doesn't like people of different racial groups.

Hand and Cuffs LLP is a solicitors practice. In total it employs seven people including Kevin, a solicitor and Ian, a partner. Kevin is out at work and on work social occasions will wilfully discuss his sex life. Kevin and Ian had a coffee meeting to discuss business performance. During the meeting Ian joked to Kevin that "even if your strategy was to hang outside lavatories, if it develops work I would say it was the best strategy in the world". They both laughed. Ian said no offence had been intended and Kevin said none had been taken. A few weeks later, Kevin was searching through some archived files and found a note written by Ian. The note questioned Kevin's job performance and abilities and suggested that he only gave work to his "batty boy mate". Kevin was very shocked and was signed off work with stress and insomnia. Ian says it was a personal note that was never meant to be kept or to be seen by anyone, let alone Kevin. He says it was an isolated incident and that he doesn't have homophobic views. He is willing to apologise for any offence caused.

Jessica has been working as a teaching assistant at a special school for seven years. She says that the assistant head teacher Dominic has sexually abused her over a period of six years. She alleges he demanded sexual favours, sometimes up to three times a week for a number of months and that there were occasions where she felt compelled to participate in oral sex. She says he also made inappropriate remarks and requests about her sex life and frequently made comments about wanting to have sex with her. Dominic has denied it all, saying that he would not risk his career and relationships by behaving in that way. He says that she didn't complain about him once in six years and that she has only complained now because he had criticised her in a staff meeting. Jessica says that she didn't complain because she felt bullied and powerless to stop his advances. She feels that the way he spoke to her in the staff meeting was degrading and demeaning. Following the meeting, Jessica is now off work with work-related stress. *(This was initially used in the questionnaire but removed after the pilot)*

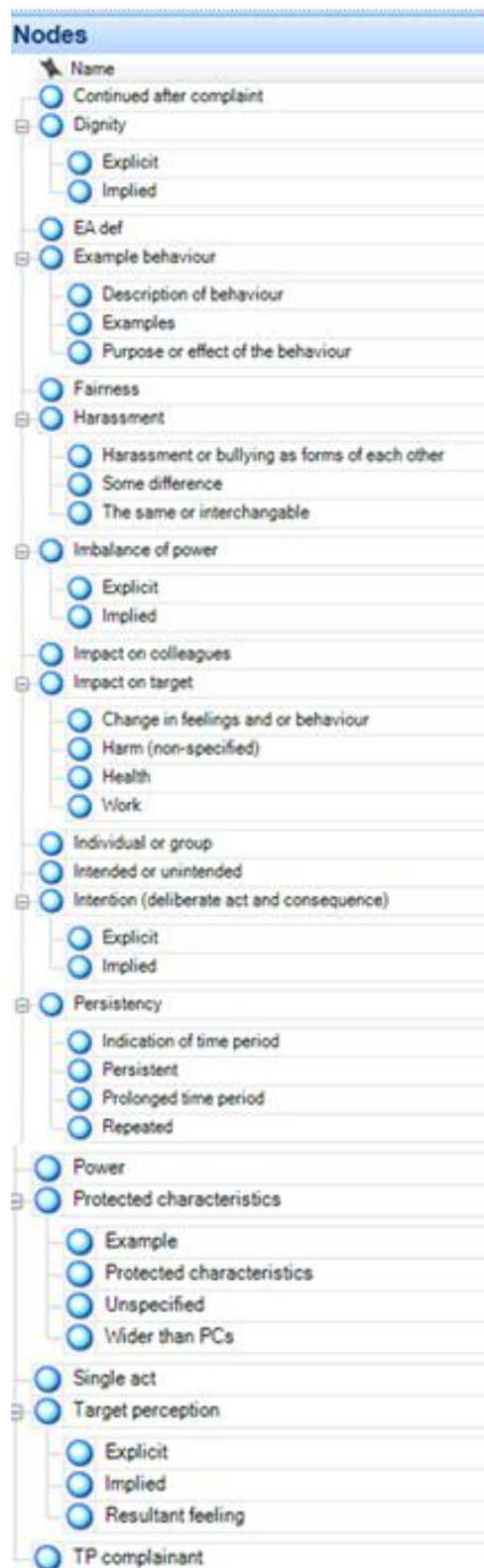
Nigel is a nurse at a care home for vulnerable elderly people. He has been working there for two years but has been having problems with his colleagues for most of that time. These problems include them making multiple complaints about his work. There were occasions where they didn't pass information on to him, including one instance where they didn't tell him that they were going to give a birthday cake to one of the residents whilst he was giving out medicines. To present the cake they turned the lights off without warning him, causing him to react angrily. He says that the behaviour is led by a fellow nurse Amanda and began seven months earlier when she called him a "chimp" and said "he was the most obnoxious being on the planet". Nigel says this behaviour displays a disregard of him as a human being and as a professional nurse. He is currently off work. Amanda can't remember whether she made the original comments because it was too long ago but says if she did make them it wasn't because Nigel is black.

Dennis owns a company which repairs household appliances. Amir works for Dennis as an engineer and has done for nine years. Both customers and other members of staff have complained that Amir was unprofessional and that he was often abusive and insulting. Despite all these complaints and a number of formal warnings, Dennis has ensured that Amir kept his job as he felt they were friends. When talking to him about yet another complaint, Dennis says that Amir lost his temper and shouted at him, saying "you fucking black bastard I am going to fuck your mother and your family up". Amir denies saying that and instead says that Dennis was going to dismiss him and said "you fucking Muslims are nothing but trouble fuck off back home". Dennis strongly denies having said this, saying "I abhor racism of all kinds, as a black person I understand what racism is".

Bennett's Signs Ltd is a family run business employing eight members of staff. All but one of the employees is male. There was a great deal of joking among some of the employees including references to "bums" and "anal sex". Leslie works at Bennett's Signs Ltd. When these comments were made, no one at work knew Leslie was gay. Leslie complained to the Director, Frank that the comments were getting on his nerves. He said it was on behalf of another colleague who was the target of the jokes. A notice that such jokes were not acceptable went out to all staff with their wage slip but the jokes didn't stop. Leslie then chose to come out to a colleague, Paul. Paul then told another colleague Carl that Leslie was gay. Last week, Carl shouted across the workshop to Paul saying "I can't believe you had a drink with a gay boy he was probably after your arse". Leslie heard this and is upset by it. In response Carl says "I'm not really bothered if botty bashers work here as long as the work gets done".

Adam works for a sheet metal business. At a work event he decided to come out to his colleagues. Two years later he is complaining of recent behaviour by one of his colleagues, Alex. He is complaining that on more than one occasion Alex has simulated oral sex on a banana in front of him. He also claims that Alex has pinched his bottom and asked him for a kiss on the lips as he got into a taxi after the firm's Christmas party. Adam thinks that the behaviour is inappropriate and discriminatory and wants to leave. Alex denies everything but some colleagues are willing to support Adam in his claims.

APPENDIX 7 QUESTIONNAIRE CODING FRAME



(Extract from NVivo 10)



The University of Manchester
Manchester Business School

Dear Sir/Madam

Invitation to participate in PhD research about workplace mediation

I'm a PhD student at Manchester Business School. My research is funded by the Economic and Social Research Council (ESRC) and aims to explore perceptions of workplace bullying and harassment and how it should be dealt with. I am particularly interested in the role of mediation and how appropriate it is for dealing with workplace bullying and harassment.

I am looking to interview mediators about their views on and experience of the use of mediation in the workplace, particularly in respect of its suitability for bullying and harassment. I was wondering whether anyone in your organisation would be interested in taking part? The interview would last about an hour and would be conducted either face-to-face, via Skype or over the telephone, depending on the circumstances (e.g. location, availability).

If you (or any of your colleagues) are willing to be interviewed and/or would like more information, please just let me know: ria.deakin@postgrad.mbs.ac.uk / 07832923888.

Please accept my apologies for this unsolicited contact.

I hope to hear from you soon.

Kind regards,

Ria Deakin, LLB (Hons), MSc, Assoc CIPD | Doctoral Researcher

People Management and Organisations (PMO) Division

C1 MBS East | Manchester Business School | The University of Manchester | Booth Street West,
Manchester, M15 6PB, UK |

APPENDIX 8 INTERVIEW SCHEDULE

1. How did you become interested in mediation?
2. What made you decide to become a mediator?
3. What does mediation mean to you?
4. How do you see your role as a mediator in the mediation process?
5. To what extent do you think mediation is appropriate for dealing with workplace bullying?
6. In your experience, how successful have mediations been in bullying situations? Can you provide any examples?
7. To what extent do you think mediation is an appropriate way of dealing with workplace harassment?
8. How far do you think it's possible to make a distinction between bullying and harassment?
9. How far do you think it is necessary to make a distinction between bullying and harassment?
10. How important is it for a situation to be labelled or given a name, for example as bullying, before mediation can take place?
11. How relevant is determining up-front whether there is a power imbalance between the parties to the decision as to whether mediation is suitable?
-Relevant: Why, what difference does it make
-Not relevant: Why not
12. How suitable do you think mediation is where there is an allegation of sexism, racism and/or homophobia?
-Why?
13. How relevant are the intentions and perceptions of the involved parties in determining whether mediation is suitable?
-Relevant: Why, what difference does it make?
-Not relevant: Why not
14. In what way do you think mediation has the potential to increase tolerance and understanding between parties/in an organisation/in society?
15. What is the role of employment law in mediation?
16. To what extent do you think mediation is fair?

-what ways (process, outcome, who for)

17. In your experience do you think the parties feel that mediation is fair?

-What makes you reach that conclusion?

18. Is fairness something that the parties are concerned with?

19. Do you think that mediation provides justice for the parties?

- If yes, how

- If no, why not

20. Is justice something the parties are concerned with?

21. In your experience what is it that the parties are most interested in when you meet them?

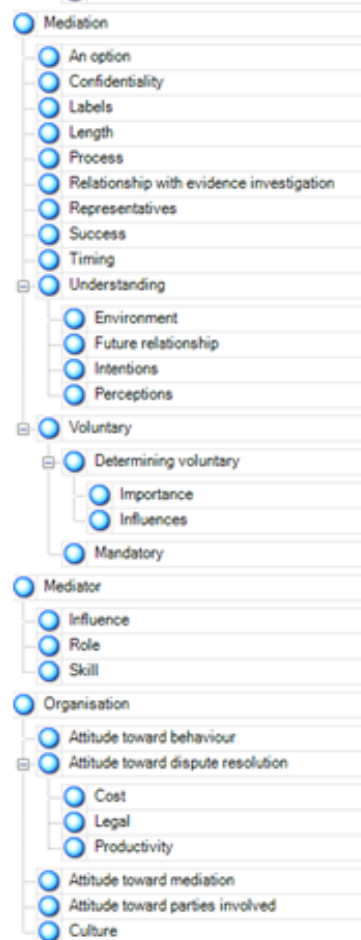
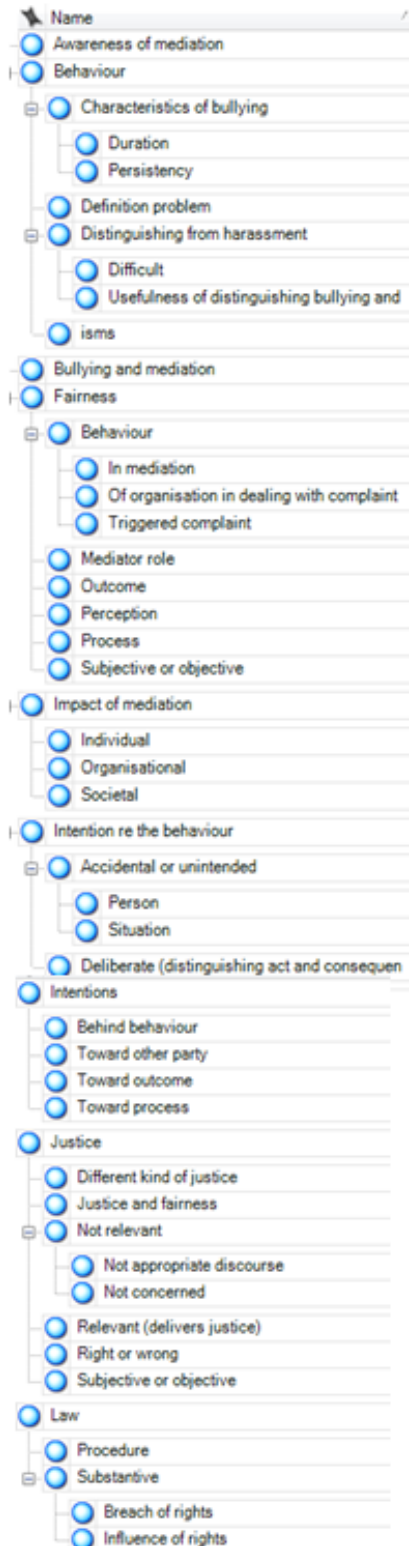
-What are their biggest concerns about trying mediation?

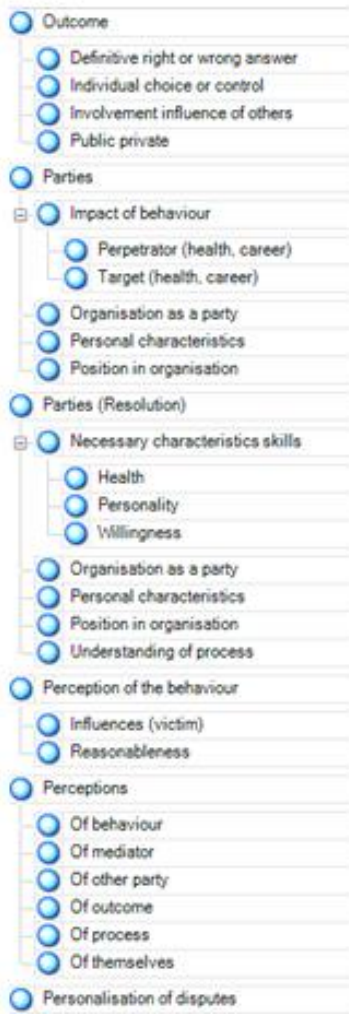
-What persuades them to try mediation?

22. In your experience what is that organisations are most interested in when they contact you?

-Do they have any reservations about trying mediation?

APPENDIX 9 INTERVIEW CODING TEMPLATE (FINAL)





(Extract from NVivo 10)



Male focus group participants needed!

WORKPLACE BULLYING AND HARASSMENT: WHAT DO YOU THINK?

I am looking for male participants to take part in a focus group for my PhD exploring perceptions of what bullying and harassment is and of how it should be dealt with.

Each group will last an hour and you will get a **£10 Amazon voucher** for taking part.

The groups are being held in MBS East (Oxford Road) on **Thursday 27th Feb 2014**

You don't need to have experienced workplace bullying or harassment, you just need to be over 18 with six months or more work experience in a UK workplace.

The group will be presented with an example of a real life scenario and asked to make and discuss assessments based on the details given

If you are interested in taking part and can come along at either **12-1pm** or **6-7pm** on Thursday 27th Feb, please contact me for more information: ria.deakin@postgrad.mbs.ac.uk

APPENDIX 11

FOCUS GROUP GUIDE

Outline:

Four (1 hour) focus groups with 4-5 participants who have at least six months work experience in a UK workplace: two groups with male participants and two groups with female participants.

Purpose:

Explore what people perceive as and understand to be bullying and/or harassment.

Explore what is considered as fair way of dealing with bullying and harassment.

Explore what these perceptions and determinations are based on (public/private standards) and how their relative importance is weighed.

Pre-group:

Complete confidential demographic information and question about experience of workplace bullying.

Provided with a copy of the scenario to be discussed:

Katrina and Philip are both probation officers. They work together in an environment where there is a lot of banter which sometimes includes sexual innuendo. Both frequently participate in this. They were initially the same grade but Philip has since been promoted and is now Katrina's line manager. Neither of them say this has affected the level of banter between them. Katrina gives examples of Philip tying her scarf around her face when she is typing, making comments about her appearance and, on at least three occasions having made remarks about her "being on the game". Until recently Katrina had never complained about the behaviour to Philip or to anyone else. She is now off work with stress and is saying she wants the behaviour to stop. Philip is shocked to hear that she has said she feels harassed and bullied as he thought she had happily participated. He doesn't deny any of it but said the comments about her being a prostitute were in response to Katrina's statement to her colleagues that "in an ideal world she would like to be the madam of a high class brothel". Their colleagues are also surprised as they say Katrina is "no shrinking violet".

Focus group plan:

Introduction

Outline project and how data will be used (confidentiality etc; consent forms)

Encourage difference of opinion and conversation between participants and not just with facilitator.

Ground rules:

Be respectful of other opinions, if want to challenge/follow up a comment made by another participant wait for them to finish/don't shout

Want to hear from everyone so if someone is talking a lot may ask them to finish, not because what they're saying isn't worth hearing but because time is time and want to give everyone the chance to speak.

Will not be asked to disclose whether you have experience of bullying and harassment but if you do and choose to draw on that experience then that's fine, although will not be asked for details.

Ice breaker/introductions

Task

Each participant to be given a copy of the pre-disclosed scenario together with the corresponding questions from the questionnaire and asked to complete them. The responses will be collected in (to help in analysis re: individual/group influences).

Discussion

1. Would you describe the situation in the scenario as an example of bullying?
 - What makes you say that?
2. Would you describe the situation in the scenario as an example of harassment?
 - What makes you say that?

Things to explore:

-power relationship

-intention

-perception

3. Do you think that Philip was acting in a sexist way towards Katrina?

- What makes you say that?

4. Do you think a situation becomes more serious if sexism is involved?

- What makes you say that?

Things to explore:

-characteristics of the parties involved

-zero tolerance/inherently wrong or objectionable behaviour

5. What do you think needs to be done to deal with this situation in a fair way?

Things to explore:

-parties have chance to explain themselves

-importance of public process and outcome

-employer role and accountability

-waiving legal right

-speed and cost

-importance of justice

Closing

Do you think that taking part in this focus group has changed the way you think about bullying and harassment?

APPENDIX 12 FOCUS GROUP INDIVIDUAL QUESTIONNAIRE



The University of Manchester
Manchester Business School

Name:

Which statement do you think best describes the situation in the scenario?

- It's inappropriate and it's definitely bullying
- It's inappropriate and it might be bullying
- It's inappropriate but it's not bullying
- It's appropriate and it's definitely not bullying

Which statement do you think best describes the situation in the scenario?

- It's inappropriate and it's definitely harassment
- It's inappropriate and it might be harassment
- It's inappropriate but it's not harassment
- It's appropriate and it's definitely not harassment

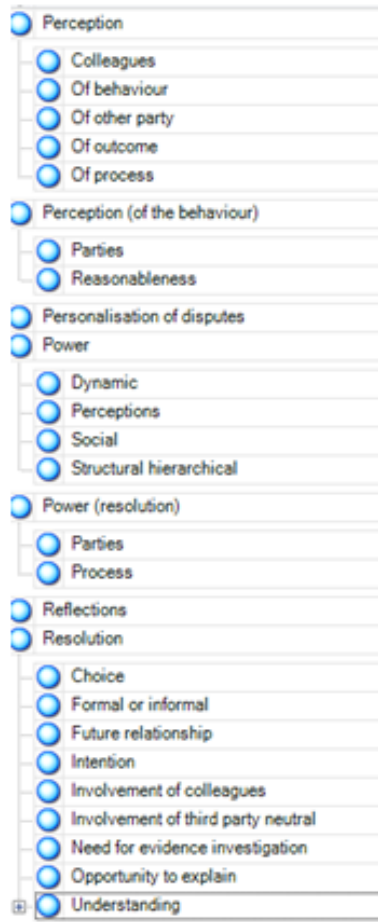
Please indicate how strongly you agree or disagree with each of the following statements

	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
I would describe the scenario as an example of racism.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe the scenario as an example of homophobia.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would describe the scenario as an example of sexism.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe the scenario as an example of homophobia.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe the scenario as an example of sexism.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think some people would describe the scenario as an example of racism.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

APPENDIX 13 FOCUS GROUP CODING TEMPLATE (FINAL)

Name
Behaviour
Characteristics of bullying
Mutual or unwanted or level of involveme
Persistency and duration
Relationship
Personal
Work
Characteristics of harassment
Relationship
Characteristics of sexism
Behaviour
Characteristics of the person (person v p
Group characteristic
Definition problems
Distinguishing bullying and harassment
Difficult
Usefulness of distinguishing bullying and
Fairness
Behaviour
Outcome (substantive)
Perception
Process
Subjective or objective
Impact of resolution choice
Individual
Organisational
Societal
Intention re the behaviour
Accidental or unintended
Deliberate (distinguishing act and consequen

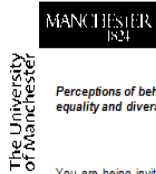
Intentions
Behind behaviour
Toward other party
Toward outcome
Toward process
Justice
Law
Procedure
Substantive
Organisation
Attitude toward behaviour
Attitude toward dispute resolution
Attitude toward mediation
Attitude toward parties involved
Culture
Productivity
Outcome
Definitive right or wrong answer or definitive
Individual choice
Influence involvement of others
Public private
Parties
Impact of behaviour
Organisation as a party
Personal characteristics
Position in organisation
Reaction to the behaviour
Parties (resolution)
Necessary characteristics
Organisation as a party
Personal characteristics
Position in organisation



(Extract from NVivo 10)

APPENDIX 14 PARTICIPANT INFORMATION SHEETS (INTERVIEW AND FOCUS GROUP)

Mediator Interviews



Perceptions of behaviour in workplace bullying and harassment and the accommodation of equality and diversity into alternative dispute resolution (ADR) discourses.

Participant Information Sheet

You are being invited to take part in a research study as part of a PhD student project. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part. Thank you for reading this.

Who will conduct the research?

Ria Deakin, PhD Candidate, Manchester Business School, University of Manchester, Booth Street West, M15 6PB

Title of the Research

Perceptions of behaviour in workplace bullying and harassment and the accommodation of equality and diversity into alternative dispute resolution (ADR) discourses.

What is the aim of the research?

The aim of the research is to explore how you perceive workplace bullying and harassment both generally and where there may be an issue of racism, sexism and/or homophobia. It hopes to look at what you think is important in deciding what is bullying and harassment and what influences how it should be dealt with. It also seeks to explore the role that mediation may play in this.

Why have I been chosen?

You have been chosen because as part of your job you routinely encounter and make the types of the decisions the research is interested in.

What would I be asked to do if I took part?

You would be interviewed about workplace bullying and harassment and about workplace mediation.

What happens to the data collected?

The interview would be recorded and a transcript would be made. The data will be analysed and used for my PhD and associated purposes (for example publication).

How is confidentiality maintained?

No names or contact details will be attached to recordings or transcripts and I (Ria) am the only person who will have access to the data. No identifying information (real names for example) will be used when the interviews are written up.

What happens if I do not want to take part or if I change my mind?

It is up to you to decide whether or not to take part. If you do decide to take part you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time without giving a reason and without detriment to yourself.

Will I be paid for participating in the research?

No incentive is offered for participating in the research.

What is the duration of the research?

One interview of 30 minutes to 1 hour.

Where will the research be conducted?

At a location mutually agreed.

Will the outcomes of the research be published?

It is anticipated that the results will be published in the future.

Contact for further information

If you would like any further information, please contact: Ria Deakin

Ria.Deakin@postgrad.mbs.ac.uk

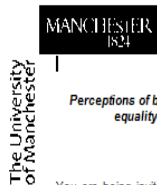
Manchester Business School, University of Manchester, Booth Street West, M15 6PB

What if something goes wrong?

If your query cannot be dealt with by Ria Deakin, please contact Roger Walden (PhD Supervisor), Manchester Business School, University of Manchester, Booth Street East, M15 6PB

If you wish to make a formal complaint about the conduct of the research please contact the Head of the Research Office, Christie Building, University of Manchester, Oxford Road, Manchester, M13 9PL.

Focus Groups



Perceptions of behaviour in workplace bullying and harassment and the accommodation of equality and diversity into alternative dispute resolution (ADR) discourses.

Participant Information Sheet

You are being invited to take part in a research study as part of a PhD student project. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part. Thank you for reading this.

Who will conduct the research?

Ria Deakin, PhD Candidate, Manchester Business School, University of Manchester, Booth Street West, M15 6PB

Title of the Research

Perceptions of behaviour in workplace bullying and harassment and the accommodation of equality and diversity into alternative dispute resolution (ADR) discourses.

What is the aim of the research?

The aim of the research is to explore how you perceive workplace bullying and harassment both generally and where there may be an issue of racism, sexism and/or homophobia. It hopes to look at what you think is important in deciding what is bullying and harassment and what influences how it should be dealt with.

Why have I been chosen?

You have been chosen because you have at least six months work experience in a UK workplace.

What would I be asked to do if I took part?

You would be asked to participate in a focus group. You would be presented with examples of real life scenarios and asked to make and discuss assessments based on the details given.

Please be aware that the scenarios given are based on real life events and you may find some of the details and resulting discussion offensive, upsetting, uncomfortable, embarrassing or insulting. However the scenarios and focus groups are not intended to degrade or diminish respect for any racial, ethnic, gender, age, religious or other groups. Please think about this possibility carefully before participating.

What happens to the data collected?

The focus groups will be recorded and transcribed. The data will be analysed and used for my PhD and associated purposes (for example publication).

How is confidentiality maintained?

No names or contact details will be attached to recordings or transcripts and I (Ria) am the only person who will have access to the data. No identifying information (real names for example) will be used when the focus groups are written up

What happens if I do not want to take part or if I change my mind?

It is up to you to decide whether or not to take part. If you do decide to take part you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time without giving a reason and without detriment to yourself. I would again ask that you think carefully about the potential impact of reading the scenarios and the resultant discussion before choosing to participate.

Will I be paid for participating in the research?

You will receive a £10 Amazon voucher.

What is the duration of the research?

1 hour

Where will the research be conducted?

The focus groups will be held in an easily accessible location, for example at the University of Manchester.

Will the outcomes of the research be published?

It is anticipated that the results will be published in the future.

Contact for further information

If you would like any further information, please contact: Ria Deakin

Ria.Deakin@postgrad.mbs.ac.uk

Manchester Business School, University of Manchester, Booth Street West, M15 6PB

What if something goes wrong?

If your query cannot be dealt with by Ria Deakin, please contact Roger Walden (PhD Supervisor), Manchester Business School, University of Manchester, Booth Street East, M15 6PB

If you wish to make a formal complaint about the conduct of the research please contact the Head of the Research Office, Christie Building, University of Manchester, Oxford Road, Manchester, M13 9PL.