



Mediation and Dispute Management in Public Service

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Executive Summary

Individual disputes arising from day-to-day employee grievances or complaints can prove difficult to manage, with causes such as complex relational differences and cultural and other factors affecting variances across countries and regions. In recent history, developments in the workplace include common features such as an increased range of individual rights protections, both domestic and by way of international regulations and standards, a decrease in trade union density and/or collective bargaining coverage, higher risks of termination of employment and unemployment in a globalised, ever changing world economy, reduced job quality and security due to greater use of various contractual arrangements for employment and other forms of work, and increased inequality as a result of often segmented labour markets.

This greater complexity is reflected in the diversity of individual disputes and in the evolution of processes and mechanisms for preventing and resolving such disputes, while also presenting a wide range of challenges. These include cost concerns, case overloads and delays, a lack of actual or perceived independence and impartiality, complicated and formalistic procedures, the fragmentation of services, limited access, ineffective remedies, and reduced scope for the voluntary prevention and settlement of issues through social dialogue.

In response, states have updated employment and labour laws, regulations and codes. Some have created or supported new dispute resolution mechanisms and institutions, while others have reconfigured existing institutions, or modified procedural rules. Innovative models have been initiated, such as online and telephone dispute resolution options. Employers, both in the public and private sector, have set up internal processes within the workplace with an increased emphasis on capacity building and training for dispute resolution practitioners. Labour administration agencies have developed a wider range of preventative measures.

Alternative disputes resolution (ADR) is a collective term describing a number of processes, such as mediation, conciliation and arbitration, utilised in attempting the resolution of disputes and conflicts outside the formal court processes. The appointment of a third party neutral, or neutrals, who are usually experts in the dispute subject matter as well as experienced in ADR, can offer parties a number of benefits, which include autonomy, flexibility, control, confidentiality, cost effectiveness and time saving. Depending on the ADR mechanism used, the parties may experience a much less formal process and more direct interaction with the neutral(s), rather than just via their attorneys or legal representatives, than in normal court proceedings.

In the civil service / public sector frame, in particular, comparative information about such internal or sector specific dispute resolution services and schemes is

unfortunately either limited or scarce. While there may be considerable information available within a jurisdiction about laws and systems for handling such disputes, it may be inaccessible to those outside, compounded further by language barriers, and thus knowledge of best practice and performance internationally, as well as crucial lessons learned by those who have piloted such initiatives either in specific contexts or in relation to other institutions or services, is difficult to find.

Accordingly, and particularly in the instance of a jurisdiction such as Georgia, which has in recent years enhanced both its Civil Service and ADR legislation, and wishes to imbed a culture of conflict management within the civil service workplace, there is real value in an in-depth and detailed comparative assessment of the operations and procedures of mechanisms and processes for resolving individual disputes, including how they have evolved in response to the growth and change in the number and character of such disputes, in other international jurisdictions.

Comparative practice suggests that the ways in which conflicts and disputes are approached are very diverse, reflecting a range of historical, socio-economic, political and legal contexts, as well as differing states of industrial relations within a jurisdiction.

This report seeks to define and analyse services and schemes existing internationally within the civil service or public sector bodies which have been designed specifically to address individual workplace and employment disputes at an early stage and ideally avoiding escalation to more formal internal procedures, such as grievances and investigations, or external submission to the courts of law.

The service and scheme selection within this report relies predominately on the availability of data. The selected jurisdictions have all undergone reforms to varying degrees in response to changes in the landscape of individual workplace disputes within the civil service and public sector.

The framework for the examination and assessment of each service has been shaped by soliciting information on the history of each scheme or service, detailed aspects of procedures and institutional settings, and consideration of key lessons learned from those responsible for its administration and management. This common framework for inquiry establishes a coherence across the chapters of this report, enabling the reader to identify differences and commonalities throughout the research.

The terminology used to define the concept of ADR within individual disputes diverges significantly across the countries examined. Particularly striking is the great variation in the use of the terms “conciliation” and “mediation”, which are not always legally defined, nor even always distinguished from each other. Even where the terms are legally defined, interpretations and practice differ, and whether they are legally defined or not, these processes may also reflect different specific practices in different jurisdictions. Accordingly, and to ensure that the reader understands and appreciates

these differences at the outset, a chapter on definitions is included at the beginning of this report for ease of reference.

The countries covered include the United Kingdom, Ireland, the United States, Australia and Switzerland. The availability and coverage of data vary across the chapters. Indicators of system performance are neither universally present nor necessarily comparable. Given the variety of mechanisms and processes, a cross-country quantitative comparison cannot readily be undertaken. Data provided are thus accompanied by descriptions of the specific context.

The nine detailed case studies in this report demonstrate that systems of individual workplace dispute resolution within civil service and public sector organisations and entities have undergone various reviews and updates since their initial establishment, frequently propelled by rising numbers of individual disputes. Despite the obvious differences between countries, certain commonalities emerge.

Firstly, it appears that mediation and/or conciliation are the preferred process models as these offer flexibility, informality and the opportunity for confidential, non-binding (unless an agreement is reached) dialogue between the parties. Moreover, many of the services profiled use a co-mediation model, whereby two mediators work in tandem with the parties, offering a broader base in terms of background, experience and status, often paired to achieve gender balance, all with a view to enhancement of neutrality and independence.

Mediation agreements, the pre-process document signed by all participants highlighted the roles of the mediators and parties, the process to be adopted and the key principles and rules, are kept simple and accessible for all readers. Individual examples are included in the appendices to this report.

Administrative support varies from service to service, with some offering dedicated staff for operations, while others are run by internal human resources personnel or departments. Often this is determined by the size of the organisation or entity and, of course, the availability of funds and resources. Nevertheless, all appear to operate professionally and prioritise active facilitation of information for the participants and mediators to ensure positive outcomes.

Success rates are high, averaging approximately 85% across the various schemes considered. The data here is not surprising given the wider effectiveness of mediation across the civil and commercial spectrum internationally, and particularly in advanced jurisdictions such as the United Kingdom and United States. Where outcomes are even more positively impacted is in the ongoing support and review with the participants of how matters have progressed beyond the mediation. Regular check ins, either by the mediators or the service administrators, allow for updates and early consideration of any further issues.

Mediators across the board undergo focussed workplace and employment training, with a program for continued professional development either built in as part of the service or required as a personal commitment to ensure quality and adherence to recognised rules, codes and practice standards.

Finally, in terms of key learning, here the focus appears to be on dissemination of service availability and information to the widest possible employee base to garner trust and confidence and increase take up.

A separate chapter then focusses on countries which have not, at least as yet, formalised these reforms in the establishment of internal schemes and mechanisms but do offer access for civil service staff as part of the wider workplace ADR options.

In consideration of both the variances and similarities described in this report, evidence suggests that, in considering the design of a similar dispute resolution service or scheme, a holistic approach can achieve a broad examination of the interactions between the various institutions (in the present context, within the Georgian civil service), as well as the role that the relevant legislation plays not only in providing a regulatory framework, but also defining both the benefits and the beneficiaries. To this end, this report includes a review of the relevant legislative instruments in Georgia and comments on their applicability and importance.

Finally, conclusions and recommendations are highlighted in the broadest sense given that any service or scheme will have to be designed in close collaboration between the Civil Service Bureau in Georgia and the various affected civil service bodies, such as ministries and municipal institutions. With a view to achieving this, it is suggested that these recommendations are viewed as a flexible framework for collective review following dissemination and consideration of this report (ideally by means of an interactive workshop attended by key stakeholders).

Definitions

<u>Alternative Dispute Resolution (ADR):</u>	An alternative method of resolving disputes or issues using a variety of approaches to arrive at a mutually agreed outcome. ADR methods emphasise flexibility, creativity, cooperation and interest-based problem solving.
<u>Arbitration:</u>	A process in which the participants to a dispute present arguments and evidence to an arbitral tribunal (see below) who makes a binding decision.
<u>Arbitral Tribunal</u>	A panel of one or more adjudicators which is convened and sits to resolve a dispute by way of arbitration. The tribunal may consist of a sole arbitrator, or there may be two or more arbitrators, which might include either a chairman or an umpire.
<u>Arbitrator:</u>	A neutral, third party selected to hear the arguments and evidence on a particular dispute and give a binding decision as to outcome. Arbitrators are typically professionals with expertise in law and the subject matter of the dispute.
<u>Claim:</u>	An allegation contained in a grievance. May also refer to the grievance itself.
<u>Co-mediation:</u>	A model of mediation involving multiple mediators (see below), usually two, who in some way may complement each other by gender, personality, culture, professional background or other ways in a manner that can improve the quality of both the mediation process and its outcome.
<u>Conciliation:</u>	A process in which the parties, with the assistance of the conciliator (see below), identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement.
<u>Conciliator:</u>	A person responsible for managing the conciliation process. A conciliator will provide advice on the matters in dispute and/or options for resolution but does not make a determination.
<u>Confidentiality:</u>	The duty to maintain confidence and keep sensitive information private, including the obligation to withhold

specified information from others, to assure participants' trust and confidence in the integrity of an ADR process. This duty may be subject to exceptions.

Disciplinary Action: A process for dealing with job related behavior that does not meet expected and communicated performance standards, with the purpose to assist the employee to understand that a performance problem or opportunity for improvement exists.

Dispute: A dispute exists when one or more people disagree about something and the matter remains unresolved.

Employee: A person who works under an employment contract with recognised rights and duties.

Evaluative Mediation: A mediation style concerned primarily with reaching a deal, with a greater focus on expected court outcome and lesser focus on parties' respective interests.

Facilitation: A process involving parties who are not so much in dispute as in a state of potential dispute and who wish to engage in dialogue in order reach agreement. There may be tensions between the parties' viewpoints or interpersonal or other relationship difficulties. The facilitation process is designed to ensure that the discussion between the parties are constructive, with the objective of achieving better understandings and avoiding future disputes.

Facilitator: A person responsible for managing the facilitation process.

Facilitative Mediation: A mediation model which focuses on facilitating the negotiations between parties with the goal to help everyone achieve their interests and to reach a durable, long-lasting agreement. Facilitative mediators usually do not comment on what would happen if the matter escalated to the next tier in the dispute resolution process (for example: formal grievance, tribunal or court).

Grievance: A formal method for an employee to raise a problem or complaint to their employer, usually under the employer's published grievance procedures. Reasons for filing a grievance in the workplace can be as a result of, but not limited to, a breach of the terms and conditions of an

employment contract, raises and promotions, harassment, bullying and discrimination.

Mediation: A voluntary process in which the parties to a dispute, with the assistance of a neutral mediator (see below) identify issues, consider alternatives, develop options and endeavour to reach agreement. Mediation is usually conducted in private and the outcomes are confidential to the parties to the mediation.

Mediation Agreement: A contract between the parties setting out how the process of mediation will be conducted and the key provisions underpinning their engagement, including, but not limited to, confidentiality, that the discussions and negotiations will be conducted without prejudice, and that any outcome will only be binding upon the parties if agreed by all.

Mediator: A person responsible for managing the mediation process. The mediator has no advisory or determinative role on the content or outcome of the dispute but may advise on the process for resolving the dispute.

Narrative Mediation: A mediation style that focuses on creating a new “story” or a new “narrative” to understand and reshape the conflict. Often narrative mediators will have a mental health background.

Neutral: A third party with the absence of any bias or conflict of interest in relation to the disputing parties.

Parties: The persons or organisations (such as an employer) involved in a dispute or conflict.

Personal Representative: An individual assisting a party in their participation in an ADR process, whether formally (such as an union representative or attorney) or informally (such as a family member or friend).

Settlement Agreement: A voluntary agreement between the parties, which can be both formal or informal, defining their future rights and obligations to each other following an ADR process.

Transformative Mediation: A mediation style that focuses first on repairing the relationship and then on resolving the dispute. Like

narrative mediation, often transformative mediators will have a mental health background.

Union Representative: A person authorised to represent and defend the interests of an employee member of a labour union.

Workplace Conferencing: Workplace conferencing brings a group of colleagues together with a neutral and qualified facilitator to resolve conflict. The intention of the conference is to enable everyone affected by the dispute to consider what happened, the effects on people and the best way forward to resolve the issues and move forward positively.

Without Prejudice: A principle to protect the parties in an ADR process so that any statements or concessions made, or any documents produced specifically for the process, in a genuine attempt to settle the dispute will generally not be admissible in any formal process, such as a grievance or court case, as evidence.

Workplace Dispute: A dispute caused by the actual or perceived opposition of needs, values and interests between persons working together in a professional environment.

Introduction

This document has been prepared for the United Nations Development Program (UNDP), Georgia, in support of the UNDP's Public Administration Reform initiative. The Terms of Reference (ToR) provide that the initiative "intends to sustain, support and build key institutions and processes" and further state that "development of professional and modern civil service and public administration are decisive".

In partnership with the Government of Georgia, the UNDP is supporting the Civil Service Bureau (CSB) in its implementation of Civil Service Reform, in part focussing on the "improvement of dispute resolution systems in the public service as well the establishment and usage of alternative dispute resolution mechanisms". The ToR provide that Georgia has seen an upward increase in the number of disputes within the civil sector, with many such disputes being dealt with by traditional court litigation, which is not only time-consuming but also often does not address the underlying issues and problems these disputes present.

The purpose of this report is to offer a comparative overview of civil and public sector Alternative Dispute Resolution (ADR) methodologies in other international jurisdictions, particularly the use of workplace mediation and conciliation, so as to allow the CSB to reflect on possible options for the establishment of a service in Georgia.

During an initial consultancy visit to Tbilisi, Georgia, by the consultant, Ms Baria Ahmed, which took place on 31 October to 1 November 2019 and incorporated a number of key stakeholder meetings as well a focussed sessions with the CSB to define the scope of the work to be undertaken, it was made clear that this report should primarily review and outline international best practice.

In particular, the following broad questions were to be considered for each example of such services and schemes in other jurisdictions:

- Which workplace mediation schemes and initiatives are currently operating internationally within the Civil and Public Sector?
- How did these schemes develop and transition into their current form, i.e. a note on the history?
- What, if any, data is available regarding case numbers, settlement rates, types of issues etc.?
- What risks and challenges has the scheme faced, if any?

Recommendations regarding best practice are to be reserved until after the CSB have reviewed the data in the study.

Significant research of individual schemes and workplace mediation initiatives internationally has been undertaken. Unfortunately, however, much of the material

and data required for the report is not easily accessible through secondary sources. Accordingly, extensive qualitative data collection through in-person or telephone conversations with scheme managers, advisers and mediators, has been necessary and even this has left some gaps in the information relative to certain schemes, as will be seen below.

Nevertheless, at the very least this report includes basic information about each scheme and its operation, with extensive information and supporting documents for some key schemes, markedly in the UK and North America. Mediation as a process for civil dispute resolution has the longest history in these jurisdictions and therefore such schemes are well established and offer greater information and guidance for the purposes of the comparative analysis.

The latter part of this report gives a brief overview of the current legislative framework in Georgia relevant to the use of mediation in Public Service matters. The two key legislative instruments considered are the Law on Civil Service and the Law on Mediation.

Defining Alternative Dispute Resolution

Internationally, to greater and lesser degrees, all countries allow for individual worker disputes concerning alleged breaches of employment law to be heard in an appropriate court of justice – whether a specialist labour court or a civil court.

The issue addressed by this comparative analytical report is the use of means seeking to resolve the problem before a full hearing takes place, that is, through alternative disputes resolution (ADR) procedures.

A narrow definition of ADR is the use of third parties engaging in conciliation, mediation and arbitration prior to a court hearing. This can be action by a legal authority, often the court judge, immediately prior to a hearing in an effort to resolve the dispute.

Alternatively, or in addition, it can involve the appointment of publicly-funded specialists, or private experts – either once an application has been made but before a court hearing is fixed, or before the claim has been made. These types of ADR linked to the judicial process are referred to as ‘judicial ADR’.

In addition, some countries emphasise the role of the internal mechanisms within the organisation, or sometimes in the region or sector, in providing an avenue for a worker to resolve a dispute. These are referred to as ‘non-judicial ADR’.

As well as the definitions given in the section above, it is useful to expand on the key distinctions between the most widely used forms of ADR:

Conciliation

In this type of ADR, the third party acts only as a facilitator by maintaining the two-way flow of information between the conflicting parties and encouraging a reconciliation between their antagonistic positions. The third party listens to each side, usually in person or sometimes by phone, and seeks to find an acceptable solution. Such solutions can include compensation or, alternatively, measures taken in the workplace. The conciliator does not make a judgement or suggest a solution, but works with the applicant and the employer to find an acceptable outcome, which is then recorded. In some countries, the law requires that before the matter can be heard in a labour court or tribunal, the applicant must use the services of a conciliator. If agreement is reached, it would be normal for the case to be withdrawn from the tribunal and registered as ‘settled’.

Mediation: In this form of ADR, an impartial third party – the mediator – helps two or more people in dispute to attempt to reach an agreement. There are two types of mediation. One type is similar to conciliation,

whereby the mediator meets the parties, or sometimes reviews written submissions, with a view to finding an acceptable solution and then issues a non-binding decision or recommendation. This is often done in writing. Such a process is similar to the well-established principles of mediation in collective labour disputes. The second type of mediation is referred to as 'relational mediation', based on the principles of collaborative problem-solving, with the focus on the future and rebuilding relationships, rather than on apportioning blame. The mediator guides the parties towards finding their own solution by getting them to explore different and new ways of thinking and acting. This approach has its origins in family mediation. Relational mediation is usually conducted without representatives or lawyers being present and no written decision is issued.

Arbitration: In this case, the third party hears the case presented by each person and makes a binding ruling on the outcome.

Labour inspectors or ombudsmen: Some countries use specialist experts known as labour inspectors and/or ombudsmen – as seen in Hungary, the Netherlands, Norway and Romania. Private companies sometimes appoint ombudsmen to deal with individual disputes inside their workplaces – as is the case in Ireland. In some countries, the ombudsman is appointed by the state to deal with particular types of disputes, such as discrimination.

Non-judicial ADR: These alternative means of ADR involve the social partners engaging in joint efforts to resolve the problem through negotiation, problem-solving and/or the use of grievance and disciplinary procedures. In this instance, the case is heard, a decision is made and there is often the chance of an appeal – all within the workplace or at the level of the sector and/or region.

Complexity of ADR

Whereas some countries apply all forms of ADR to workplace and employment disputes, including those in the civil sector, others have a long tradition of reliance on the social partners through collective agreements and/or works councils for non-judicial ADR. In certain countries, a distinct form of non-judicial ADR in the workplace is the use of bipartite conciliation commissions, sometimes called Labour Disputes Commissions.

In no jurisdiction is one method relied on to the exclusion of others, albeit the distinction between conciliation and traditional forms of mediation is often difficult to draw. What is clear is that the type of ADR arrangements in use is strongly influenced by the wider arrangements for structuring of the employment relationship

within each country. These arrangements reflect the historical development of the institutions of industrial and employment relations over many decades.

Elsewhere, declining levels of trade union membership and the emergence of non-union sectors with no tradition of collective bargaining have led, in some countries, to the emergence of new approaches to ADR. A good example is Ireland, where foreign-owned multinational companies have pioneered non-judicial forms of ADR in their establishments, wishing to downplay the more union-led forms of ADR that have operated in that country for many years. Moreover, Ireland is a good example of other types of complexity, where ADR for particular issues takes a different route from 'normal' disputes. In this case, separate legislation is in place establishing ADR for discrimination cases and involving the creation of specialist institutions such as a Rights Commissioner.

It is difficult to capture and summarise this inherent complexity relative to the use of ADR. In general, unfortunately, there is little concrete data on the extent of ADR usage or on recent trends outside of advanced jurisdictions in Europe, North America and Australasia. This is usually because these types of data are not collected, in itself a reflection of the still relatively low priority given to ADR in many countries.

The focus of this report is on the use of ADR within the public sector, especially the civil service, in the resolution of workplace and employment disputes. These arrangements are often different from those in place for private users. Below are details of some of these ADR schemes and arrangements and details their operations for comparative consideration.

United Kingdom - Civil Service Mediation Service

Historical Overview

The UK Civil Service Mediation Service (CSMS or “the Service”) was launched in 2012, following a long-running and very successful pilot within the Department of Work and Pensions (DWP), which began in 2006. Led by the DWP HR investigations team, the pilot was designed to promote the use of mediation to resolve workplace issues and, by 2010, through the provision of case data and success rates, a very compelling case had been made for the application of the process for all workplace disputes across the Civil Service. Following close consideration, discussion and review by a cross-government group, the central CSMS was established.

The Service operates in collaboration with 42 separate departments and agencies, with the majority having their own internal in-house mediation service. Approaches to the central mechanism of the CSMS are made either where the requesting department is too small for an internal mediation service, there is a resourcing issue with internal mediators not available or available mediators are located too far away from the parties geographically. Occasionally, requests are received where a mediator entirely independent of the department is required due to the sensitive nature of the issues or the seniority of the persons involved.

The CSMS thereby effectively functions as a resource pool when demand cannot be met internally or where departments are too small to operate their own inhouse service.

Operating UK wide, the Service also occasionally receives requests for international work for diplomatic entities such as the Foreign and Commonwealth Offices, and roughly covers around 400,000 staff across the Civil Service.

In terms of usage, while some departments do now have rather mature mediation services and therefore undertake substantial work in house, they are still large users of the CSMS, due large to the fact that the use of mediation is well embedded within the organisational culture and accordingly, at times, requests can exceed availability of internal mediators. In house departmental mediators also make themselves available to the wider civil service through the CSMS.

The Service has undergone some reviews and changes in the last 18-24 months to make the system more efficient and effective. Key changes include ensuring mediators are not having to travel significant distances, with appointments now made in light of the geographic location of the mediation parties, as well as a greater focus on promotion of the service.

Operational Overview

Access to the service is via HR personnel within a department or institution. Usually, a referring manager will contact the internal HR or mediation resource, who will either seek to deal with the matter via an internal mediation process or forward the request on to the CSMS where no mediators are available internally. These referring persons, often HR personnel, are labelled the “Single Point of Contact” (SPOC), and are seen as crucial to the service as they feed in key information about a disagreement or dispute and support with the logistics. SPOCs are, in addition, crucial for sharing department-specific insight with the CSMS on wider cultural issues and in sharing key messages with employees from CSMS.

The service operates largely on a co-mediation model (although there are instances of mediators conducting the sessions alone).

Upon receipt of a referral, the CSMS will send out a request for availability to mediators located within a reasonable geographical distance, requesting a response within 48 hours. Once two available mediators have been identified, CSMS will send out a confirmation to the mediators, detailing the venue and date. This is copied to the SPOC who referred the mediation, the SPOC who “owns” the mediators (in other words, the department they are attached to), the referring manager and the mediators so that all relevant parties are fully informed about next steps. The SPOC will then send out the invitation letter to the parties, detailing all the arrangements for the day.

Following the mediation, the mediators report the outcome to the CSMS within 3 days, stating simply whether an agreement, a partial agreement or no agreement was reached. Alternatively, where the mediation is postponed or cancelled, the mediators provide a note of the agreed next steps and any reasons for the postponement or cancellation.

Separately, the parties are also sent a first feedback survey directly after the mediation and a second survey 3 months later, designed to draw out their thoughts on the mediation, the mediators, whether any agreement reached is still working, and, if not, why.

The Service covers all types of disputes and the CSMS is keen to work with HR to ensure, where appropriate, mediation is increasingly considered as an option for resolving disputes related to bullying and harassment. The guidelines from the service suggest matters are not appropriate for mediation where an internal or external decision is required under the rules of employment, such as next steps following formal disciplinary proceedings, or where a matter is subject to any criminal issues or investigations. All relationship breakdown disputes may be suitable and should be considered for mediation.

Mediation Process Model

The CSMS Guidance (attached at appendix I) provides the following outline for users:

“Mediation is an effective way of resolving disputes informally. It involves an independent third party - one or two qualified mediators - who help both sides reach an agreement. Mediation is entirely voluntary and can only take place if both parties agree. Anything discussed and agreed during the mediation is confidential and not shared with any other party. The mediator does not make judgements, take sides or give advice. They support both parties to discuss their issues and reach an agreement.”

The Service uses the facilitative mediation model with mediations normally concluded within a day, usually running 9 am to 5 pm. Mediators may have slightly different methodologies for conducting the sessions, depending often on their individual mediation training, but overall there is not a great deal of difference in the way that the mediators work. Whereas the CSMS encourages good practice, the Service does not mandate any process requirements centrally.

In terms of good practice, mediators are encouraged to set up a “pre-meet” call with each party, usually running to about 20 mins, designed to answer any questions about the process, their participation and to manage expectations (particularly around timing, health considerations, external attendees etc.).

On the mediation day itself, the mediators will initially see Party A for around an hour in the morning, who will then be offered a break to consider their participation in the afternoon joint meeting. A similar meeting with Party B, also running to around an hour, will then take place, followed by a break for all. The joint meeting is then convened in the afternoon and can run to anywhere between an hour and four hours.

On occasions and, certainly within departments, there may be mediation sessions which take place over 2 days, with the private meetings with the individuals taking place on the first day and the joint meeting on the second day. However, this is rare in the CSMS model.

Agreement to Mediate

The Confidentiality Statement and Agreement to Participate in Mediation, which must be signed by the parties in advance of the mediation (enclosed at Appendix I), states:

“Having had the mediation process explained to me, I voluntarily agree to participate in mediation in a good faith attempt to resolve issues with [name].”

If issues are not resolved I understand that either [name] or I may pursue this matter further through formal management processes.

The mediation can be terminated at any time by either party or the mediator.

I agree to remain bound by the confidentiality provisions of this agreement:

- *Mediation is an entirely confidential service.*
- *All discussions during mediation will be held on a confidential, "without prejudice" and "privileged" basis, meaning that anything said during the process is for resolution purposes only, nothing said by anyone in the process can be used as evidence in any subsequent:*
 - o *Management or Formal Investigation*
 - o *Disciplinary Action*
 - o *Grievance or Appeal*
 - o *Employment Tribunal.*
- *The mediator will not willingly testify on behalf of any party or submit any type of report on the substance of this mediation*
- *Any notes or paperwork written or produced by either party, their Trade Union representative or colleague and the mediators in this mediation will be destroyed at its conclusion, with the sole exception of a formal written agreement to resolve the matter if one should be produced*
- *Unless agreed between the participants the agreement is confidential to them only and must not be disclosed to any other party.*
- *Where information received during the mediation is of such gravity that confidentiality cannot be maintained, for example, where there is a significant risk to the safety of any person or in cases of illegal activity, mediators can break confidentiality and end the mediation.*

No admission of guilt or wrongdoing by any party is implied, and none will be inferred, by participating in this process.

I have been informed that:

- *Mediation referrals are recorded for statistical purposes only*
- *All information will be treated in the strictest confidence.*

I agree and consent to this on the basis that the only reports produced will be statistical with safeguards in place to ensure anonymity.

I understand that the mediator has no decision-making authority in this matter and is not acting as an advocate for either party in it.

By signing this document, I acknowledge that I have read, understood, and agree to the terms of this Agreement to participate in Mediation."

External Attendees

The Service guidance recommends that the parties attend on their own, however should they wish to have a colleague or union representative accompany them to

the individual meeting in the morning, that is usually acceptable. The parties must attend the joint meeting on their own. The only exception is where there is a need for a workplace adjustment to be made due to a mental health or physical condition requiring support.

Settlement Agreement

Any settlement terms are drafted on a case by case basis and include tangible statements that are tested out by the mediators. As an example, where the parties agree to “meet more regularly”, the mediators will ask to include detail around this agreement such as how often, which day, face to face or via telephone, what will happen if the meeting can’t go ahead etc.? They will then draft this additional information within the settlement agreement so that all parties are clear about their agreement and obligations.

Mediators

There are currently 269 mediators on the CSMS panel, inclusive of all mediators working within the various departments and agencies, and all are certified in workplace mediation, albeit the mediation training providers vary depending on department and location. The CSMS itself does not as yet certify mediators, relying instead on external training providers who themselves have been approved to deliver mediation training by the UK Civil Mediation Council.

The Service operates on a reciprocal basis. There is no charge for mediation and all mediators are volunteers, with a “day job”, who give their time as an additional corporate contribution. As an example, should a department A send in a request and a department B had mediators available, the department B would then cover any travel and subsistence costs for those mediators to attend and undertake the mediation. In return, as and when the department B may need external mediators, the department sending those mediators would similarly cover the associated costs. This system operates on a goodwill basis and recognises that some departments use mediation more than others. However, the CSMS will ensure that any disparities are addressed and discussed to allow the goodwill to continue between the various departmental users of the service.

Case Data

Mediations September 2018 – September 2019:

New Referrals	126
Mediations conducted	242
Agreement Reached	224
Agreement Not Reached	18
Withdrawn	91

Agreement Rate 93%

The CSMS logs data and information into a service dashboard (see Appendix I for 2018-19 overview). Whereas the numbers given above are representative of CSMS activity, the Service also collects data from other departments on their internal cases, usually around another 200 cases dealt with by way of internal mediation mechanisms. Parties in those cases are also surveyed by the CSMS to ensure that a full view is available for quality assurance.

Key Learning

The CSMS has placed a key focus in the last few years on service promotion, which in turn has had a positive impact on referral numbers and overall service take up. This has been achieved in part by way of a refreshment of the Service and engaging more with the SPOCs. During last year's UK Mediation Awareness Week, CSMS engaged in a Civil Service wide program to raise awareness.

As noted above, the CSMS collates anonymised feedback data from various surveys. Another of the key recent changes included an additional survey of the referring manager, in addition to the mediation participants, to get thoughts on how the process has impacted the relationships and whether things have improved as a result. Additionally, the appointment of a senior champion, to advocate the value of the service from an elevated and visible platform, has meant that mediation can be and is discussed at the highest level of the Civil Service.

United Kingdom - British Army Mediation Service

Historical Overview

The Army Mediation Service (AMS) was established in 2012 and provides soldiers and civil servants with the opportunity to address workplace relationships which have broken down by offering resolution at the appropriate level of escalation. Recognising that more needed to be done address problems when they first occur, allowing individuals can resolve issues before they escalate, the service was spearheaded by the Royal Air Force (RAF). However, it is within the Army that the service has really expanded and seen the greatest growth.

Underpinned by the Army's operating model, which is based on clear shared values and standards recognised by all with an inclusive climate driven by strong leadership, the requirement now is for line managers to embrace diversity, ensure people feel they belong, develop and nurture talent in order to achieve, and promote health and wellbeing.

Fractious workplace relationships are viewed as impacting not only the individuals involved but also other around them. Commitment to the job, as well as the values of the armed forces, can be undermined by small disagreements and frictions between different personalities. Relative to this, the service operates on the basis that employees should they can be open whenever there's a problem, safe in the knowledge that their issue is going to be dealt with in a balanced and mature way, free from internal politics. Where such problems cannot be solved by immediate line managers, mediation is considered to be the best way of tackling them.

Close cooperation between the Army Mediation Service and the Army's Bullying Harassment and Discrimination helpline "Speak Out", also allows any individual who calls with an issue where mediation may be appropriate to be identified. The Speak Out operators can provide an overview of the mediation process and can arrange for the Army Mediation Service to call an individual back at their convenience to provide more detail.

If complainants so wish, in the absence of a resolution, the next step is to enter the formalised Service Complaints process, which is embedded in law and overseen by an Ombudsman. This process is applauded and has created a transparent and open way for soldiers to voice their complaints. However, the scope of the complaint received, the lack of individual ownership and the onerous burden on line managers are some of the more negative consequences.

Operational Overview

Referrals are normally made via the chain of command who contact the mediation service to report that an issue has been identified or a complaint has been received. Should the matter be suitable for mediation, the chain of command is then directed to contact the parties and suggest a scoping call with the mediation service. It is considered crucial that the parties themselves make the decision to engage in the mediation process rather than see it as something they're required to do by the chain of command. Following these discussions, if the parties are happy to proceed, the service recontact the chain of command and ask them to arrange a date and location.

The service operates on a co-mediation model and participation is entirely voluntary, with parties able to withdraw at any time. The service ensures that the mediators appointed on each case are entirely impartial, having no relationship or prior knowledge of either party or the chain of command to ensure there can be no allegations of bias or lack of neutrality. All mediations are conducted in civilian clothes, with only first names used throughout. Whereas the mediator could be a brigadier, a general or a corporal, the parties will not know this information.

In terms of the venue for the mediation, the service works to ensure that the location is close to the normal place of work for the parties, but not their place of work.

Upon receipt of the agreed mediation date and confirmed venue, the service sends a request to all Army mediators to check availability, allowing approximately one week for the responses to come in. Mediators are then selected based on a number of factors. Importantly, the service will try to match the mediators to the parties, i.e. should the parties be an officer and a soldier, the service will aim to ensure that the mediators are an officer and a soldier. Even though the parties won't know the mediators' roles and titles, this is done to give the parties and the mediators the best opportunity of creating a positive rapport as part of the process. The service also tries to ensure that, for each mediation, there is a male and female mediator as part of the team.

Once the mediators have been confirmed, they service will set up a pre-mediation call with the mediators to pass on any key information about the dispute, as well as recent lessons from other mediators. As most Army mediators only mediate 2-3 times a year, this is to ensure they feel well equipped and supported throughout the process.

The mediators will then get in touch directly with the department point of contact to finalise arrangements and attend the mediation.

Following the mediation, the service coordinator will again contact the mediators to find out how things went and whether there are any learning points they would like

to pass on for others, including points that can be built into the training and continued professional development programs for the following year. The service also follows up with the parties, who are required to fill out a post mediation feedback form (attached at appendix II) and the department point of contact.

Each mediation, therefore, requires a significant input of time from the service coordinator both in preparation in advance of the mediation and in consolidation of matters following the mediation.

Outcomes are reported simply as “success”, “partial success” or “not a success”. All discussions at the mediation are kept entirely confidential and there are no reports to the parties’ chain of command about what took place. What and whether the parties choose to report back is up to them and agreed at the mediation.

The AMS covers pretty much all issues where relationships have been affected between personnel. However, there are some exceptions. Firstly, the mediation will only proceed if both parties are agreeable. Where there are allegations of gross misconduct, for example fraudulent or criminal behaviour, or where the issues require a legal decision, the service will not get involved. Similarly, where the matter requires technical verification or expert opinion, mediation is not seen as the right process.

The AMS reports that the average time taken, from initial contact to mediation being completed, is around four weeks.

Mediation Process Model

The AMS Defence Instructions and Notices (DIN) (attached at Appendix II) relative to mediation provide the following overview of the service:

“The aim of mediation is to resolve workplace conflict and restore operational effectiveness as quickly as possible. Mediation seeks to provide a non-hostile, neutral environment, facilitated by two trained mediators, where parties can raise their views and concerns on issues in dispute. The mediators do not offer solutions; they enable parties to reach mutually agreed resolutions. Mediation can be facilitated between two or more individuals / groups.”

The Service uses the facilitative mediation model with mediations normally concluded within a day. There are two individual sessions in the morning, one with each party, followed by the joint session in the afternoon.

Agreement to Mediate

The Agreement to Engage in Mediation, which must be signed by the parties in advance of the mediation (enclosed at Appendix II as part of the DIN), states:

“I voluntarily agree to engage in mediation. If issues are not resolved through mediation, I understand that parties may pursue or continue formal processes, as long as the applicable time frames are met. I have read and understood the mental health clause below and am able to participate in the mediation process.

AMS Mental Health Clause

Mediation can be a challenging process, raising deep emotions. It is advisable for participants in mediation to be healthy, including having good mental health, in order to deal appropriately with issues that may arise during the process.

*If you are being invited to consider mediation, it is important to be certain you are physically and mentally resilient enough to participate in the process without placing yourself either at risk or at a disadvantage in representing your own interests. If you think that this may be the case, then you are encouraged to explore your concerns **IN CONFIDENCE** with a trained mediator in the AMS Team.*

*If you are undergoing treatment for physical or mental health issues, it is advisable for you to consult your medical professional first to assess your fitness to take part. If this is the case, please disclose **IN CONFIDENCE** to the AMS Team; they are willing to discuss the mediation process with your medical professional if requested. Appropriate safeguards will be put in place to protect you during the process.*

I understand that mediation can be terminated at any time by any of the parties, or the mediator(s). However, I will remain bound by the confidentiality provisions of this agreement, as outlined below.

AMS Confidentiality Clause

Mediation is a confidential process, but if matters which breach Service / civilian law or place an individual at risk are disclosed the mediator(s) have a legal responsibility to report them to the appropriate authorities.

Any documents submitted to the mediator(s) and all conversations during the mediation are for resolution purposes only. The mediator(s) will not willingly testify on behalf of any party or submit any type of report on the substance of the mediation. By participation in this process no admission of guilt or wrongdoing by any party is implied, and none should be inferred.

Unless explicitly agreed during the mediation process, parties are prohibited from disclosing information discussed.

I understand that the mediator(s) have no authority to impose a resolution and are not acting as advocates for any of the parties. By signing, I acknowledge that I have read, understood and agree to the terms of the document."

External Attendees

The AMS does not allow external attendees to be involved in the mediation process.

Settlement Agreement

There is no proforma settlement agreement utilised as part of the service. The parties decide, with the mediators, whether anything will be set down in writing at the conclusion of the mediation on a case by case basis.

Mediators

The AMS operates with an active pool of 80+ trained mediators drawn from the wider Army and civil service workforce. The service takes a coordinated approach to continued professional development, leading to a higher level of consistency in both the delivery of mediations and a wider use of the mediator pool in other activities linked to resolving conflicts, including presentations throughout the wider Army and involvement in the Army's culture surveys.

The large pool of mediators not only allows them to be carefully paired with the parties involved but also allows for new mediators to work with a more experienced mediator to ensure that they are supported through their first few mediations. A detailed knowledge of each individual mediator's strengths and weaknesses allows the AMS coordinator to select individuals who will complement each other and provide the best chance of success.

Learning is ongoing and, as noted above, is built into the pre and post mediator briefings, mandated development days and an annual conference where best practice is shared. Demand for mediator training in the Army is high, with around five applications being received for each available place on the annual course.

Case Data

Mediations 2018:

Enquiries	80
Mediations conducted	42

Settlement rate	88% success, or partial success
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Mediations 2019:

Enquiries	108
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Mediations conducted 68

Settlement rate 98% success, or partial success

Due to resourcing restrictions, the AMS does not log anything more than simple case data as noted above.

Key Learning

The service has undergone some changes over the years, particularly from mid-2018 onwards with a change in processes, to include the pre-scoping calls by the AMS coordinator, to professionalise the service resulting in a positive impact on overall take up and success rates.

The AMS team brief on every command course run by the Army, across all levels, on the importance of mediation and how the process works. There is a separate Service Complaints Branch, dealing with formal complaints, who have also promoted recent direction and guidance stating that wherever complaints are raised, mediation must at least be considered with the parties.

In common with other large and complex international organisations, the Army has a variety of workplace cultures and management styles where colleagues and line managers share a reluctance to acknowledge problems and engage in conversations to resolve them. In the Army, this is exaggerated by hierarchical structures which are both traditional and an important part of the culture. A career structure where individuals often move jobs on a two to three-year timeline, combined with a can-do attitude, can lead to issues being ignored and, even if acknowledged, endured for what is seen to be an acceptable amount of time. If frustrations lead to an individual resigning, a replacement needs to be 'grown' from the bottom- there is not currently the option for lateral entry.

United Kingdom - Norfolk County Council Mediation Scheme

Historical Overview

With its headquarters in the city of Norwich, Norfolk County Council (NCC) is the top tier local government authority for Norfolk, England.

In 2013, following a review of the learning and development needs of HR staff within the NCC, senior executives saw a clear trend with staff requesting conflict management skills to help deal with employee related issues. The NCC undertook some additional research into the cost of grievances, and a decision was made to invest in the set-up of a mediation scheme with a view to lowering such costs and ensuring a more productive and engaged workforce.

With a wide headcount of 14,000, a core staff of 6,000, and a budget in excess of £1billion, the Council approached the Centre for Effective Dispute Resolution (CEDR) to assist them in the design, development and introduction of the mediation scheme. Working with the NCC's in-house Organisational Development professionals, CEDR trainers delivered a series of workplace mediation skills training sessions and consultancy advice with regard to integrating mediation into the culture of the Council.

The scheme was pioneered by the NCC's Well-Being and HR Team, and mediation has now been fully integrated into organisational policies and procedures, leading to a significant reduction in the number of formal grievances. The largest majority of cases are around relationship breakdown issues, either employee to employee, or manager to employee, and occasionally within teams. The scheme is not designed to negotiate exit strategies for those employees who wish to depart the Council and end their employment, but rather focusses on repairing relationships, although there have been a few occasions where one of the parties has decided to move on to other employment.

The NCC Mediation Guidance and Policy (attached at Appendix III) highlights that the service is available as a preventative measure, and most mediations under the scheme therefore take place before any formal grievance procedures are commenced. Again, there have been a few occasions where the mediation has taken place following a recommendation from a grievance procedure.

One of the key shifts the scheme has undergone is in language and labelling, having initially been set up as a dispute resolution service, and later rebranded as mediation. This is evident in some of the older scheme documents which still refer to the "Dispute Resolution Service".

Operational Overview

Access to the scheme is via either a direct employee referral or manager referral in a fixed form (attached at Appendix III). The mediation team sits within the HR Performance and Governance Department and hosts a separate email inbox for all referrals. Upon receipt, a member of the mediation team will arrange to have a conversation with the referee and gauge some of the historical background to the conflict or issues. Where the referral comes from a manager, given the voluntary nature of the process, there is a check to make sure that the employee(s) are willing to participate. The process is conducted confidentially, and the outcome is not shared. All participants are surveyed after the mediation to check what, if any, difference the process made, and how things may have improved for them since the mediation.

Mediation Process Model

The NCC Mediation Guidance provides the following outline for users:

“The mediator will initially speak to all parties individually to understand the issues from their point of view and what each individual believes might resolve the issues. They may also challenge the parties’ perceptions, assumptions and individual actions.

Following these individual discussions, there will usually be a joint meeting where the parties can share relevant points with one another in the presence of the mediator, with a view to reaching an agreement. The mediator will facilitate the discussion between the parties.

There may need to be further individual discussions between each party and the mediator until such time as a suitable resolution has been identified and agreed by all parties.

All meetings will be arranged for times agreed with all parties concerned.

Where it becomes apparent that an adjournment is needed during any of the meetings involved in the process, this may be requested by any party. The mediator will determine a suitable timescale for adjournment as appropriate to the situation.

The mediation process can be emotionally and mentally challenging for the parties. In addition, whilst the mediator will estimate the length of the time the process may take, it may take longer depending on the circumstances. It is important that the parties allow enough time for themselves and the process and, therefore, it is requested that parties do not book any other meetings after the mediation. Consideration should be given to options such as working from home or being able to leave work directly after the mediation.

Once positive solutions have been identified and agreed verbally by the parties, the mediator will draft an agreement document which reflects what has been agreed. Each party will be asked to sign the agreement to confirm they will adhere to it. The mediator may deem it necessary to meet with the parties to talk through the draft agreement with the parties before asking them to sign it, for instance if there are any actions which may require some clarification.

All parties involved in the mediation process will receive a copy of the signed agreement. No further copies or documentation relating to the mediation will be stored on file.

Referring managers should be aware that they will only receive minimal feedback from the mediation, as the process is confidential. However, on occasion, and with the agreement of all parties involved, it may be deemed necessary to share the agreement with management, for instance where additional support, monitoring or involvement may be required."

Agreement to Mediate / Code of Conduct

In advance of the mediation, the Parties are asked to sign a Code of Conduct (enclosed at Appendix III), which states:

"Parties agree to:

- 1. attempt in good faith to settle their dispute at the mediation joint meetings*
- 2. commit to, and prioritise, the process of reaching a resolution*
- 3. be open and honest*
- 4. be respectful of one another*
- 5. focus on the incident or reason for the dispute and not the character of anyone involved*
- 6. listen to each other, wait your turn to speak and not interrupt*
- 7. reflect upon their own perceptions/actions and to be challenged on those*
- 8. consider all options/solutions and be open to agreeing a way forward*
- 9. focus on positive suggestions, rather than what they don't want*
- 10. respect confidentiality at all times and not to share any information disclosed during the process with anyone else."*

External Attendees

The Guidance clearly discourages the involvement of external representatives, including Trade Union Stewards, in mediation, highlighting the core principle of the process offering an opportunity for self-determination by those central to the conflict in finding mutually acceptable outcomes. It does, however, describe circumstances where it may be necessary or advantageous for a party to have such representation or support, such as a disability or medical condition, or language restrictions. The Code of Conduct for a Trade Union Steward (enclosed at Appendix III) is amended

to reflect the different type of possible representatives and supports who may attend as needed.

Settlement Agreement

A standard form template is used by the mediators and the parties to record the terms of all agreed items (enclosed at Appendix III).

Mediators

As at November 2019, the NCC mediation service is operating with a total of 5 mediators. All mediators are well-being officers, working to ensure the highest quality of wellbeing of all staff, and sit within the Council structure. There are set rules about what types of conflict and cases a mediator may take on, to ensure that there can be no suggestion of bias or lack of neutrality, crucial to which is transparency relating to separation and independence. The mediator group meets quarterly to debrief confidentially, with a view to peer support and reflection on experiences, as well as attending seminars and events focussed on ADR for continued professional development.

The service does, on rare occasions, use external mediators, in particular where the issues are particularly sensitive or where there are specific resourcing problems. Generally speaking, there is usually an internal mediator available at the appropriate level to deal with any matters, including issues involving senior members of staff.

Case Data

Mediations 2018-19:

Colleague to colleague	3	Settled	12
Manager to Manager	2	Stopped / Not settled	8
Manager to Employee	16	Ongoing	3
<u>Other</u>	<u>2</u>		
Total	23		

Mediations 2017-18:

Colleague to colleague	2	Settled	5
Manager to Manager	2	Stopped / Not settled	1
Manager to Employee	2	Ongoing	0
<u>Other</u>	<u>0</u>		
Total	6		

Mediations 2016-17:

Colleague to colleague	5	Settled	9
Manager to Manager	0	Stopped / Not settled	1
Manager to Employee	5	Ongoing	0
<u>Other</u>	<u>0</u>		
Total	10		

Key Learning

Service take up has been affected and impacted by a number of factors over the years. Particular challenges and learning points have included:

- Accessing the service at the right time – mediation is very much seen as a preventative tool by the NCC. Accordingly, where conflict or issues have been in place for lengthy periods of time, the parties are quite often too entrenched, making it more challenging for the service and the mediators to assist. To address this, the mediation team are working hard to ensure take up is proactive through regular engagement with staff and HR personnel.
- Attending in the spirit of resolution – historically, due to a lack of understanding about the process and its potential value in resolving issues, it was clear that some parties did not attend with the right mindset and focus. Accordingly, the mediation team are now far more engaged from the outset in ensuring that the parties understand the nature of the process, ground rules such as confidentiality and self-determination, as well as the mediator’s and their own roles.
- Awareness raising – tied to the above, the mediation team undertake significant awareness and engagement initiatives, in particular at management level, to ensure that employees are fully aware of the service and its benefits.

The positive increase in referrals and take-up in the last 12-18 months, as evidenced by the case numbers above, has been due to the mediation team’s focus on engagement and education. Plans to train more mediators and set up a separate online resource section for mediation are also in the pipeline.

United Kingdom - East Lancashire Hospitals NHS Trust Mediation Scheme

Historical Overview

The East Lancashire Hospitals NHS Trust (the “Trust”) was established in 2003 and is a large integrated healthcare organisation employing approximately 8,000 staff members.

In 2008, following the arrival of Change Consultant and Acting Director of Human Resources, an internal mediation scheme was established to shift how the Trust dealt with conflict and difficult relationships within the workplace. Prior to her tenure at the Trust, the new Director had been employed by a number of Nation Health Service (NHS) organisations, and as an accredited mediator herself, had extensive experience in the field of workplace conflict management. Struck by the Trust’s reliance on formal approaches to dispute resolution, including discipline, grievances, fair treatment and performance management, she also noted that employment relations within the Trust were highly adversarial and confrontational, and thus began to prepare for the implementation of a mediation scheme.

With a view to ensuring that the scheme was carefully designed and initiated, she partnered with a workplace mediation and training provider, with an early focus on stakeholder engagement and awareness raising, as well as identifying potential mediators for the service. Formal mediation training programs were delivered, with continued professional development (CPD) systems in place; a mediation protocol for the Trust was drafted and finalised; mediation coordinators were appointed to run and manage the service; and an evaluation framework was created to ensure regular review of service effectiveness and sustainability.

In the first 18 months of the scheme, 23 mediations took place with 96% resulting in a written agreement. Issues included relationship breakdown, bullying and harassment, racial discrimination, sexual harassment and other grievances. The Trust also reported a significant reduction in formal dispute cases and grievance procedures. More significantly, the Trust argued that the involvement of key trade union representatives in both the introduction and operation of the mediation scheme had a transformative impact on the ability of the organisation to resolve individual employment disputes and also underpinned broader improvements in management-employee relations.

Unfortunately, however, following some structural changes at the Trust in 2012 leading to the departure of the mediation coordinator (a former Lead Trade Union Representative who had been trained as a mediator at the time the service was set up). Management of referrals and mediations was left in the hands of HR

administrators less familiar with the framework and process, and as a result case numbers dropped significantly – approximately 40 referrals, of which only 20 accepted the offer of mediation, over the 4-year period 2012-2016.

In light of this, a business case was made by the Head of Occupational Health & Wellbeing to place and develop mediation within the holistic strategy for staff wellbeing for a formal relaunch of the scheme. Occupational health is widely seen as impartial within the Trust structure across all staff groups. This was accepted, with previous mediation coordinator appointed as Health and Well Being Practitioner, and the service was relaunched in September 2016, now reporting a 98% success rate in terms of improved working relationships and staff satisfaction rates since.

Operational Overview

The mediation service sits under the umbrella of the Occupational Health Department. Access to the scheme is via referral either directly by a member of staff, a manager, a union representative, the Staff Guardian (these employed by each Trust across the UK), HR, Occupational Health, or by the mediation coordinator.

Upon receipt of the referral form (see Appendix IV), the mediation coordinator will arrange to meet with the referee as soon as possible, usually on the same day. This meeting runs to around 20 minutes and allows the coordinator to explain the mediation process, following which the staff member is given the key service documents and 7 days to confirm if they wish to proceed. Participation is voluntary in nature and therefore both/all parties must agree.

The process is conducted confidentially, and the outcome is not shared with referrers or other parties. Participants are surveyed some 6 weeks after the mediation to check what, if any, difference the process made, and how things may have improved for them since the mediation. The feedback asks specific questions, to provide a data set which can be compared and analysed.

Mediation Process Model

The Mediation Background (enclosed at Appendix IV) provides guidance for participants both in terms of the value and potential benefits of mediation, as well as the procedure. It states:

“Mediators are responsible for facilitating and determining the procedure for the mediation. They have no legal power, do not offer advice or impose solutions and make no attempt to judge the situation. Workplace mediation is a voluntary and confidential process.

Stage 1

The mediator has an initial private meeting with each separate party in order to explain how mediation works. Those involved are asked to discuss how they see and feel about the situation. The main issues involved are clarified and ways of resolving them explored. At the end of the meeting, the mediator confirms with the party their agreement to continue with mediation and how they wish to proceed.

Stage 2

In most cases a joint face to face meeting is then arranged. When facilitating face to face meetings, the mediator ensures that they are safe and controlled, allowing those involved the opportunity to speak and to respond to the issues raised.

At the start the mediator confirms how the meeting will be conducted. Each of the parties is then given an opportunity to speak about the situation, without being interrupted. The mediator works through issues with the parties to work towards an agreement. The issues to be discussed are clarified and confirmed.

The mediator works through these issues with the parties, helping them to communicate, negotiate and work towards their own agreement. Any agreement reached is the responsibility of the parties themselves and is not legally binding.

Whenever possible it is best to conduct initial separate meetings and the face to face meeting on different days. This approach helps parties to remain fresh and enables them to reflect on the discussion in the initial meeting before starting the face to face meeting."

Stage 1 meetings can run to around an hour or more, depending on the nature of the issues and the needs of the staff members involved. Once these meetings have been conducted, the mediation date is set, usually within two days to ensure continued engagement.

Stage 2, the mediation session itself, is run for 4 hours, with most concluding within this timeframe and any continuation beyond it by mutual consent of the parties. Participants are given guidance on preparation of opening statements (see Appendix IV) and all mediations are conducted away from the parties' formal place of work.

Agreement to Mediate

In advance of the mediation, the Parties are asked to sign an Agreement to Take Part in Mediation (enclosed at Appendix IV), which includes specific reference to the confidential nature of the process. It states:

"I have agreed to take part in mediation; willingly and in good faith. I will work with the mediators to explore the issues, and to understand my needs in an attempt to establish workable solutions.

I understand that the purpose of mediation is to reach an agreement with my colleague about how we work with each other in the future. When we reach agreement, we will write down what each of us will do, sign it and keep it as a reference document. This will be done in the presence of and with the support of the mediators.

I understand that that the process is confidential, which means anything said during the mediation is confidential to you as the parties. You may choose to reveal some or all of what has occurred during the mediation to colleagues, or your managers, but only if both of you agree. The only exceptions are where, for example, a potentially unlawful act has been committed or there is a serious risk to health and safety – then the mediation will make an appropriate disclosure.

Should mediation fail, I understand that normal HR processes and management interventions may be used; if this happens the mediator(s) will not be required to disclose any issues discussed during mediation.”

External Attendees

Involvement of externals is only permitted at the time of the early referral conversation with the mediation coordinator, and sometimes during the stage 1 meetings with the mediator, when the participants may bring others to help support them through the conversations and process.

However, at the stage 2 mediation itself, only those staff members in conflict are permitted to attend. Where a settlement is agreed, each party is given a break to reflect on the terms before the final signature.

Settlement Agreement

A standard form template is used by the mediators and the parties to record the terms of all agreed items (enclosed at Appendix IV). The signed copies are kept by the staff members themselves, with clear acceptance that any terms may only be shared with others subject to mutual agreement. The outcome, in simplest terms of agreement reached or not reached, is confirmed by the mediation coordinator to the referring manager in circumstances where the referral came from such route.

Mediators

As at November 2019, the Trust mediation service is operating with a total of 18 mediators, coming from a variety of backgrounds, including union representatives, HR professionals, managers and occupational health specialists. The group holds regular mediator network meetings which are used as debriefing sessions, to foster peer learning and support and to provide a valuable source of continued professional development.

Case Data

Since the relaunch of the service in September 2016 to date:

Mediations conducted	101
Not settled	2
Failed following agreement	3
Ongoing to formal procedures	2
Settlement rate	95%

Of the above 101 mediations, 6 involved groups or teams rather than one-to-one parties. All were successful.

Most recent case figures, from March 2019 are:

Referrals	29
Mediations conducted	29
<u>Settled</u>	<u>29</u>
Total	29
Settlement rate	100%

Key Learning

Service take up was clearly affected by structural changes within the Trust in 2012 leading to the scheme being operated out of the HR function directly. This led to a significant drop in both referrals and mediations. By contrast, a marked increase in both can be seen once the service was relaunched under the Occupational Health Department and, together with the engaged, hands-on approach taken by the mediation coordinator and the mediators themselves, has led to excellent success and satisfaction rates since 2016.

In fact, plans to replicate the service in other Trusts around northern England are in place with training programs to be delivered for both new mediators, and for managers in difficult conversations and other key skills.

Ireland - Civil and Public Service Mediation Service

Historical Overview

Launched in 2014, the Civil and Public Service Mediation Service (CPSMS) was set up through the Civil Service HR Managers Network (the “Network”), facilitated by the Department of Public Expenditure and Reform (the “Department”). The Department supports the CPSMS informally, while the service itself operates autonomously, required only to submit brief reports on case numbers and data on an annual basis.

The Network is an informal exchange system allowing HR managers across the civil service to come together, discuss common issues and offer support through collegiate collaboration.

Prior to the launch of the CPSMS, complaints raised by staff, under the Bullying and Harassment Policy in force at the time, almost always ended up in an investigations. Not only did this lead to increased costs for the departments and institutions involved in monetary terms, members of the Network were particularly concerned about the individual cost to the well-being of the staff members involved as many such complaints took years to resolve. The view was that, even at the conclusion of such investigations, the parties felt that they had suffered personally and psychologically through their participation in the process. Whereas clearly there was still a need for investigations in certain matters, it was seen that this was not the need in every case. Rather, what was required was a mechanism to take away some of the pain of the formal processes and investigations and allow the parties to consider, and hopefully resolve, the issues earlier.

A number of members within the Network had already been trained and accredited as mediators at the time, and others were aware of staff who had undergone mediation or similar dispute management training.

The CPSMS was therefore set up as an informal service for the benefit of HR managers in dealing with staff complaints. As stated above, it operates with a very loose connections with the Department, in that the service is mentioned in the Department’s policies, without any formal control over the service. There is a requirement to provide basic statistical data on an annual basis and the Department does offer a small measure of funding for the Continued Professional Development (CPD) of the service mediators via the Mediation Institute of Ireland (MII).

The CPSMS covers about 40,000 employees across the civil and public sector. Whereas initially the service offer was confined to civil service, it has since branched out to support staff in local authorities across Ireland.

Operational Overview

Access to the service is only via HR personnel within a department, institution or authority, usually where a manager or a staff member lodges a complaint against another, leading to HR suggesting mediation.

Operationally the service is managed by the Coordinator, an HR professional within one of the larger departments, who, upon receipt of a referral, will identify some key information such as the location of the parties, name of department etc., before approaching service mediators to check availability.

All CPSMS mediators have full time jobs within the civil service elsewhere and thus their release to conduct the mediation must be signed off by their own line manager, which can occasionally prove difficult in terms of alignment of priorities.

No formal referral form or document is used for the initial enquiry. Operating on the premise that those in conflict can often be wholly consumed by the situation, and often rather suspicious about participating in any HR recommended processes, including mediation. The service coordinator does not, in light of this, seek extensive details at the point of referral from HR, who simply confirm that two or more persons are having interpersonal issues, providing their names, highlighting who has made the complaint, and the contact details for all relevant parties. The mediator, once appointed, makes contact with the parties, usually with the complainant first, and learns more about the issues from them directly.

Similarly, service materials and documents are limited. A leaflet and guidance document (enclosed at Appendix V) are sent to the parties. However, more often the mediator will discuss any questions or reservations about the process with each party following appointment or in the pre-mediation meetings.

Neither is the service widely marketed to staff, relying instead on engagement with HR managers through the Network, which makes regular presentations about service operations and process models. Each Department or Institution has at least one HR manager and the service works closely with around 60 persons in this capacity around the country.

Following completion of the mediation, the only reporting requirements is for mediators to confirm either that the issues were resolved or were not amenable to mediation. Additionally, no formal feedback is taken from the parties, although the mediators and service coordinator will usually check in about 3 months after the mediation to see how things are with the parties.

Mediation Process Model

The CPSMS Guidance provides the following outline for users:

“Mediation requires the voluntary participation and co-operation of all parties in order for it to take place. An assigned Mediator will meet with the parties in pre-mediation, usually separately to begin with, to outline what is involved in Mediation and to discuss the issues that have led them to Mediation. This will take place before the formal agreement of the parties to participate in the process. If, following pre-mediation, the Mediator believes that the dispute is appropriate to Mediation and that there may be a reasonable prospect of resolution s/he will bring the parties together in an effort to reach a common understanding and agreement on acceptable future behaviour. A mediated agreement seeks to reach an accommodation between the parties and thereby restore harmonious working relations. A mediated solution may result in the issues not being dealt with under a disciplinary code/process, however management will have discretion in this matter. Minimal paperwork and/or records will be generated during Mediation. It is for the Mediator ultimately to determine if a complaint is suitable for Mediation.”

The service uses the facilitative mediation model with a pre-mediation stage before the formal face-to-face mediation meeting. Pre-mediation sessions usually take about half a day, approximately 2 hours per party, with the mediation itself running as long as needed given the context and issues for the individual parties in a particular case. The process does allow for breaks as needed by the parties, reconvening at a later time or date if necessary.

Pre-mediation is seen as the most important aspect of the process both in ensuring all parties are prepared to engage, but also to highlight what can and should be discussed, as well as what should not be raised. The pre-mediation sessions tend to take place on a separate day from the main mediation session, usually with a few days' break to allow participants to absorb the discussions so far and ensure that they are ready to proceed to the next stage.

Agreement to Mediate

The Agreement to Mediate template which must be signed by the parties in advance of the mediation (enclosed at Appendix V), states:

“It is my wish to engage in Mediation, a voluntary process of conflict resolution which I understand allows parties to a dispute the opportunity to address their issues in a confidential and private setting facilitated by an independent Mediator. The Mediator is accredited to the Mediators' Institute of Ireland and acting in accordance with its Code of Ethics and Practice (available at www.themii.ie).

I am entering Mediation in good faith and will endeavour to resolve the issues at dispute through this process. I will comply with all reasonable requests made by the Mediator during Mediation.

I understand that it is for the parties to the Mediation with the Mediator's concurrence, to determine the scope of the Mediation. The Mediator does not offer advice.

I understand that information gathered in the Mediation process is confidential and privileged. Neither the Mediator nor any party to the Mediation including any accompanying person or persons shall divulge any information gained in the Mediation process nor seek to have the Mediator or any party to the Mediation divulge information relevant to that Mediation in any setting whatsoever. In the event that it is necessary for a third party to be consulted in the context of a solution, prior agreement will be sought from the parties to the dispute.

I agree that in the event that the Mediator asks me to break out of the plenary meeting into a private meeting/caucus session, I will do so.

In the event that during a Mediation meeting I believe it is no longer possible to continue with the Mediation, I agree to meet briefly with the Mediator in private session prior to withdrawing.

I understand that the Mediator may terminate the Mediation meeting in circumstances where s/he believes it is not appropriate to proceed.

I understand that the confidentiality of the Mediation process shall not excuse the Mediator's duty to act as required to do so by law, to report any threat of or actual physical or psychological injury to a party; attempt to commit or conceal a crime; concern as to welfare and safety of a child or children, revealed during said process. At the conclusion of the process, no written record will be retained by any of the parties, other than the written Mediated Agreement, if relevant and this document (Agreement to Mediate/Mediation Contract)."

External Attendees

There is no restriction on the attendance of others to support the parties, and the service experience shows that there are occasions when persons are uncomfortable attending alone. Mediators will generally encourage parties to attend alone, highlighting the significance of the opportunity of self-determination. This can be done during the pre-mediation stage which is, in part, designed to build trust in the mediator and allow them to reflect with the parties how best to manage and oversee the process.

However, where such external attendees do present at the mediation, they must sign the mediation agreement and are bound, in particular, by the confidentiality provisions therein. Additionally, they are not allowed to verbally contribute during the face-to-face mediation session, only in private during any breaks, and of course during the pre-mediation session.

Settlement Agreement

CPSMS mediators do not use a standard settlement agreement or template document. Rather, in most cases a flipchart is drawn up at the end of the mediation with the key points agreed, and this is signed by all parties. It is then taken away, written up and resent to all. As part of the agreement, parties must mutually agree whether any or part of the settlement terms are to be shared to others, such as HR or management, if at all.

Mediators

There are currently 30 mediators operating under the scheme, with some from the HR Network and others who are managers or staff members within the various departments and institutions covered by the service. All are certified by the Mediation Institute of Ireland (MII) and bound by its Code of Ethics (enclosed at Appendix V), as well as being required to complete CPD annually (at least 1-2 workshops a year arranged by the CPSMS) and ethics training every 3 years. The mediator group meets every 6 weeks to share learning and discuss any relevant issues for the service. Each mediator is expected to mediate 3-4 times a year.

The service does offer a complaint mechanism whereby parties can refer any issues either to the CPSMS coordinator or directly to the MII, who deal with these under the Code of Ethics according to their own procedure.

Case Data

Mediations 2019:

Referrals	48
Settled	37
<u>Stopped / Not settled</u>	<u>11</u>

Settlement rate 77%

Key Learning

At CPSMS' launch, there were many disputes already in the system of interpersonal issues that hadn't been dealt with, often ongoing for a number of years, that these early cases proved quite difficult even for mediation. However, the service is now

been accessed earlier and therefore far more effective at conflict management and dispute prevention.

One of the primary considerations for the positive operation of the service is access to mediators. As stated above, most have full time roles within the civil service which can be both demanding and difficult to step away from. Often, when a mediator has just been accredited and joined the service, they are very enthusiastic but after a number of years, particularly where they may have moved roles, it can be that they are not able to give up as much time. Additionally, particularly since the service now covers local authorities, a further challenge is the travel required as most of the mediators are Dublin based. The employing, or requesting, department does cover travel expenses but there are no formal fees for mediators.

The CPSMS also offers, as a separate service, Conflict Coaching to management staff, with many mediators also trained as conflict coaches. If a department or institution identifies an area where a manager is facing a conflict situation, they can also approach the CPSMS for the appointment of a coach to support the manager in how they might approach and deal with the situation so that it doesn't escalate to a complaint or more formal processes.

There is some discussion around formalising the entire service in the near future, although details are not available at this time.

United States - Federal Mediation and Conciliation Service

Historical Overview

Created by Congress as an independent agency of the US Government in 1947, the Federal Mediation and Conciliation Service (FMCS)'s primary responsibility is to promote sound and stable labour-management relations through a variety of mediation and conflict resolution services. These services include the mediation of collective bargaining negotiations and grievances, training for labour and management in skills and processes aimed at improving the workplace relationship, and the referral of private arbitrators for the settlement of controversies over the application or provisions in a collective bargaining agreement.

Whereas most collective bargaining agreements include a grievance procedure, usually culminating in arbitration if the grievance is not settled beforehand, grievance mediation by the FMCS is a completely voluntary step, taken prior to any arbitration, which provides an opportunity for a third party neutral to assist the parties in reaching their own resolution of the dispute. The mediator does not make a binding decision for the parties, but rather guides them to their own mutually acceptable resolution of the grievance, assisting in cooperative problem-solving between labour and management.

FMCS views the grievance mediation process as a means to fashion improved labour management relations. While FMCS cannot involve itself in the mediation of all routine grievances, it can agree to mediate in the context of a full-service approach or within the framework of a larger, ongoing program, especially when grievance and arbitration mechanisms have broken down and disputes are not being resolved expeditiously. In these exceptional situations, FMCS uses grievance mediation to help parties establish better methods of conflict management and resolution.

FMCS mediators work out of more than 60 field offices around the United States, administered through 10 geographic regions. In recent years, FMCS mediators have worked with critical agencies such as the Department of Homeland Security, the Internal Revenue Service, and the Department of Health and Human Services, to name just a few, to train their staffs in the skills to both mediate disputes and manage conflict internally on an ongoing basis.

FMCS provides professional services to a wide range of federal, state, and government agencies on a cost-reimbursable basis. The Administrative Dispute Resolution Acts (ADRAs) of 1990 and 1996, authorize FMCS to assist federal agencies in resolving disputes, train persons in skills and procedures employed in alternative means of dispute resolution, design conflict management systems, build

capacity for constructive conflict management, and strengthen inter-agency and public-private cooperation. Through this work, FMCS seeks to reduce litigation costs and to promote better government decision-making.

Operational Overview

For informal requests, either the labour organisation or management can contact a Director of Mediation Services, or a federal mediator in their area to discuss the type of assistance FMCS can provide. However, to utilise the service a formal request must be submitted in the form of a signed, joint request to FMCS requesting assistance. Formal written requests must provide a brief overview of the issues (by type) and the geographical location of the parties. Not every request is seen as appropriate for mediation and FMCS reserves the right to decide whether or not it will offer grievance mediation services on a case by case basis.

Where the mediation is to proceed, the parties must agree to abide by the FMCS procedures, as well as signing a grievance mediation agreement. General guidelines include:

- Mediation sessions are private. The grievant is entitled to be present. Non-parties may attend only with the permission of the parties and with the consent of the mediator.
- Mediation sessions are confidential. Statements made and documents created by the parties, the participants, and/or the mediator during the process are confidential and are not discoverable or admissible for any purpose in any arbitration or judicial proceeding. The mediator's notes will be destroyed after the session and the mediator will not testify in any forum about the proceeding.
- Mediation sessions are voluntary. The mediator has no authority to compel a resolution. If a resolution is not reached, the mediator may provide the parties, either in joint or separate session, with an oral advisory opinion.
- Mediation sessions are informal. The rules of evidence do not apply; no recordings will be made; and the mediator will not issue any written recommendations or conclusions.
- Grievance mediation is a supplement to and not a substitute for the steps of the contractual grievance procedure. The parties must agree that any time limits in their labour agreement will be extended as necessary to permit the grievance to proceed to the next step of the grievance procedure should the mediation not be successful. Nothing said nor any documents prepared during the mediation can be used in the arbitration proceedings.

- Mediation sessions will be conducted by the mediator using all customary techniques of mediation and problem solving, including the use of separate caucuses.
- The parties must agree, to the extent permitted by law, to hold FMCS and the mediator harmless of any claim of damages arising from the mediation process.

Mediation Agreement

The standard FMCS Mediation Agreement (enclosed at Appendix VI), required to be signed by all participants, states:

“The undersigned hereby request the assistance of the FMCS in the attempted resolution of the dispute between them today. They understand that mediation is a voluntary process that may be terminated at any time. Further, the undersigned agree to maintain the confidentiality of all information disclosed in the course of the mediation:

1. *The undersigned agree that all statements by the parties, participants or the mediator during the mediation process, and any documents created for or during these proceedings, are inadmissible and not discoverable for any purpose whatsoever, in any pending or subsequent judicial or other proceeding, absent consent of all of the parties, the mediator and the FMCS.*
2. *The undersigned agree not to subpoena the mediator or anyone else employed by FMCS to testify for any reason, nor to subpoena documents created for or during the mediation.*
3. *It is understood by the undersigned that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non- discoverable as a result of its use in the mediation proceedings.*
4. *The undersigned shall not rely on, nor introduce as evidence in any proceedings any views, comments or suggestions made by any party or participant with respect to a possible settlement of the dispute, any admissions made by another party or participant in the course of the mediation proceedings, or any proposals, opinions, or comments of the mediator. It is understood that FMCS policy is such that the mediator’s notes and records of the mediation content, if any, are routinely destroyed.*
5. *FMCS and its employees will be held harmless of any claim for damages for any act or omission occurring during, or in connection with, the mediation process.*

6. *The obligations imposed by this agreement are in addition to, and do not supersede, any obligations imposed by applicable state or federal laws regarding mediation confidentiality.*
7. *The undersigned agree to be bound by this agreement. By signing below, they represent that they have the full authority to bind their respective organization and/or members to this agreement."*

Case Data

2018:

Mediations conducted	1,641
Agreement reached	1,152
Settlement rate	70%

Key Learning

The goal of FMCS's ADR program is to promote mediation as an alternative to litigation. This goal expands upon the principle that voluntary and cooperative conflict resolution is less expensive and provides the parties an important opportunity to control their own destinies and, as such, offers a better long-term solution than comparable litigation models. By statute, FMCS's ADR work is generally limited to supporting the Federal sector but may include state or local entities if the dispute is related to a Federal rule or regulation.

ADR activities at FMCS are diverse, but typically involve employment or administrative program dispute mediation, dispute system design, training persons in ADR skills, and procedures or regulatory negotiations. All have the objective of resolving regulatory or enforcement policy disputes and statute-based workplace disputes.

Within the FMCS's stated strategic goals for 2018-2022, promotion of ADR to resolve regulatory / enforcement policy disputes and statute-based workplace disputes is seen as a primary focus. The objectives include:

- Use employment mediation as an alternative to litigation.
- Use problem-solving processes to resolve regulatory/ policy-based disputes.

Planned actions and stated strategies to achieve these objectives include increasing the number and variety of dispute mediation services provided to government agencies, including, but not limited to, employment mediation, regulatory negotiations, public policy disputes, systems design, skills development and training, facilitation of inter- and intra-Agency cooperation and collaboration, mediator coaching and mentoring. The FMCS will also advocate alternative dispute

resolution (ADR) as the preferred method for settling non-collective bargaining disputes.

Expected outcomes for the above strategy are seen as a likely increase in the number of mediated settlements in employment mediation cases, as well as an increase in the number of regulatory / policy disputes resolved through facilitated processes.

Using traditional dispute resolution vehicles, such as the courts or other statutory processes, may take several years and cost hundreds of thousands of dollars in legal fees and court costs, and require significant resource expenditures from the affected parties. In addition, imposed outcomes from utilisation of these processes are unpredictable and the conditions present when the dispute arose may have changed dramatically. By contrast, the FMCS is able to offer resolution in employment mediation cases for less than \$1,000 in most instances and provide an acceptable solution to both parties on the same day.

United States - Department of the Interior CORE PLUS Program

Historical Overview

The Department of the Interior (DOI) conserves and manages the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people. It provides scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities. To accomplish the multi-faceted mission of the Department of the Interior involves the skills of the 70,000 people it employs, along with more than 280,000 volunteers, in 2,400 locations throughout the United States.

Following the establishment of the Office of Collaborative Action and Dispute Resolution (CADR) by the Secretary of the Interior in 2001, based on finds and recommendations reported in "ADR at a Crossroad: A Review and a Plan for Action", in February 2002, the Acting Coordinator for Workplace ADR within the CADR office convened a workplace design team to respond to the findings and recommendations related specifically to workplace ADR. The design team included representatives from all bureaus, the HR and Equal Employment Opportunity communities, a union representative, the Office of the Solicitor, the Office of the Inspector General, and program managers involved in the pre-existing Conflict Resolution (CORE) and EEO PLUS programs. The design team reported to a senior level Executive Committee.

The design team was chartered by the Deputy Assistant Secretary for Human Resources and Workforce Diversity and the Director of the CADR office, to design one comprehensive, integrated workplace dispute resolution system to provide all employees throughout the Department with easy access through multiple entry points and clear options for addressing any workplace concern at the earliest opportunity and the lowest possible level.

The workplace design team trained together and used a facilitated collaborative process to reach consensus on a conceptual model for a new integrated conflict management system for the DOI.

The CORE PLUS model has been approved by Department and Bureau leadership, the Office of Human Resources, the Office of Civil Rights, the Office of the Solicitor, and the Office of the Inspector General, and has been implemented. CORE PLUS supplants the CORE and EEO PLUS programs.

Operational Overview

CORE PLUS is a system designed to provide impartial and confidential assistance to any DOI employee seeking to improve or resolve a workplace issue or concern. CORE PLUS is for all levels of employees and managers including bargaining unit employees, when the union elects to participate. CORE PLUS offers information and assistance on problem solving options. Assistance options include confidential consultation, individual conflict coaching, communication and conflict management training, climate assessment, group facilitation, team building, conciliation and mediation services.

The CORE PLUS guidance provides the following conflict management principles and safeguards are integral to the program:

- *“Participation is voluntary for employees*
- *Management must send a representative to participate in good faith when an employee elects to pursue a conflict resolution or ADR process except in the formal stage of Administrative Grievance Procedures*
- *Confidentiality*
- *Options and choices to fit the situation*
- *Self Determination by Parties*
- *Representation when Requested*
- *Settlement Authority*
- *Good Faith Participation*
- *Use of Official Time*
- *Impartiality and Credibility of Assistance.”*

CORE PLUS does not take the place of any other avenue of assistance or complaint process but may provide neutral assistance in resolving an issue/s raised before, during or after a formal complaint process or appeal. The deadlines and timelines for filing and processing a complaint or appeal under any other complaint procedure are not changed by seeking CORE PLUS assistance. The offer and election to pursue ADR may be made as part of other available complaint processes.

An employee can request conflict management assistance or an ADR process by calling, visiting or emailing anyone in CORE PLUS, including a Bureau Dispute Resolution Specialist (BDRS), a CORE PLUS Program Manager, Senior Counsel for CADR or by asking their supervisor, Equal Employment Opportunity (EEO) counsellor or a HR specialist. This initial consultation is entirely confidential and is aimed at providing general information about the situation. As part of the conversation, it is envisaged that the following information will be sought by the CORE PLUS representative:

- Whether the individual is contacting CORE PLUS first before exploring other options

- Whether ADR has been elected as part of a complaint process such as an Administrative Grievance or an EEO Pre-Complaint or EEO Formal Complaint
- The nature of the concern/s giving rise to the call
- The parties involved or impacted by the situation
- The person's objectives for calling
- What additional information is needed to provide appropriate assistance.

If an ADR process such as a mediation is agreed to be the appropriate process, the CORE PLUS Neutral should contact all parties to the mediation process to explain the mediation process, identify the appropriate participants, assist the participants in selecting an acceptable mediator (whether that is you or another mediator that is acceptable to all parties) identify a date, time and neutral location for the mediation, and to assess any special needs that should be accommodated for the mediation session.

In addition to ADR processes such as mediation and group facilitation, CORE PLUS includes assistance options such as: individual consultation, conciliation, conflict coaching, leadership coaching, training, organizational development, climate assessments and team-building, among others.

If an informal assessment reveals that some other conflict management process may be appropriate or more beneficial, but it is not clear what process/es to use, then a more formal climate assessment by a neutral can be conducted. If the informal assessment reveals that individual coaching, training, or a group facilitation or problem-solving process, is warranted and likely to meet the identified needs, then the CORE PLUS Neutral should clarify the steps for setting up such a process with the management representative/s and/or the initial caller to determine how to engage any additional participants and address issues such as cost, location, appropriate neutral to provide assistance.

Once the route has been determined, the CORE PLUS representative will confirm process arrangements and next steps with all participants and Neutral selected and provide any forms needed including Agreement to Mediate, settlement template/s, and Evaluation forms. They are also responsible for ensuring that all process information is recorded on the CORE PLUS tracking system.

Within 3 days of expiration of the CORE PLUS process, or within 3 days of a determination by the CORE PLUS Neutral that resolution cannot be achieved through CORE PLUS and the process is ended, the Neutral or Coordinator, as appropriate based on Bureau or office procedures, will issue a Notice of Results and Options to the employee who initiated the contact. The Notice of Results and Options summarizes the steps taken through CORE PLUS and informs the employee of other potential avenues of redress. When needed, the CORE PLUS

Neutral will assist the employee in finding the right person to contact regarding any formal action being considered or pursued. The CORE PLUS Neutral will never determine what other avenues are appropriate or whether the time frames for other avenues of redress have been met, but will refer the employee to the appropriate office or individual for proper guidance. If the parties elected ADR as part of an EEO or AGP Process, the Neutral should provide the EEO Counselor or HR Specialist who referred the case with a copy of the Notice of Results and Options.

Upon completion of a CORE PLUS process, the Neutral should provide all parties an evaluation form. The evaluation form is anonymous, if desired, and provided to the CADR Office as part of CORE PLUS's continuous efforts to provide employees with the best possible service. CORE PLUS evaluation forms can be found at Attachment L. If the process was a mediation, and two neutrals conducted a co-mediation, the neutrals should complete a co-mediation evaluation form to be submitted to the relevant BDRS upon completion of the process. The co-mediation evaluation form can be found at Attachment M.

If full resolution is not reached, provide the parties with a Notice of Results and Options. (Attachment F)

If resolution is reached by the parties, the terms of their agreement should be in writing, and the draft settlement agreement or memorandum of agreement should be reviewed for technical sufficiency before it is signed by all parties to the agreement. If the agreement resolves an EEO pre-complaint or formal complaint, it should be reviewed by the EEO Director or their designee. If it resolves an administrative grievance it should be reviewed by an HR specialist. The amount of money involved in the agreement determines whether an attorney must also review the terms.-See settlement DM language and Attachment H for consistency.

If a case was referred from an AGP or EEO complaint process, you should notify the appropriate HR or EEO person when the ADR process is ended and whether or not an agreement was reached.

Provide the parties with a process evaluation form and a pre-addressed envelope to the CADR office or collect the evaluation at the end of the mediation in a pre-addressed envelope and send to CADR.

Any party to a conflict resolution process may terminate the process at any time or the neutral may terminate the process. Reasons for ending a process may include a conflict of interest arising, further participation would not meet the parties' needs, other remedies would more sufficiently resolve the conflict, confidentiality has been broken and/or an impasse is reached which the parties are unlikely to move forward. Further, a party who started an ADR process as part of an EEO or AGP complaint process, may, after engaging in ADR, choose to withdraw his/her Complaint or Grievance.

A neutral that ends a process absent a resolution or settlement agreement, should do so in a way that provides no harm to either party, the bureaus or offices involved and/or CORE PLUS.

Mediation Process Model

The CORE PLUS Principles of Conflict Resolution offers information to parties about the process and their participation (attached at Appendix VII). It provides:

8. *“The session will begin with everyone together in a joint session, during which time the mediator(s) will explain the process. You will be asked to make a statement regarding the incidents that led to the issues which were brought to the neutrals. Normally, we begin with the person who contacted the neutrals. Each person will have uninterrupted time to speak to the issues from their perspective.*
9. *During the process the mediator(s) may meet privately with each of you to discuss specific issues. They will continue these private meetings to assist in identifying interests and generating options for resolving the dispute.*
10. *Unless the mediator(s) receive permission from a party to discuss any comments made in the private meeting, everything said in that private meeting will remain confidential.*
11. *At the conclusion of the session, the parties may specify their points of agreement and, with the assistance of the mediator(s), draft an agreement. Each party will sign the document. Some agreements may require a technical or legal review before the agreement can be put into effect.*
12. *If no agreement is reached, the parties may decide to end the session, seek more information, involve additional people, and/or reconvene at a later date.”*

Agreement to Mediate

All participants re required to sign the Agreement to Mediate and Confidentiality Agreement, which provides:

“The parties agree to engage in mediation and to participate in good faith in an open and honest discussion. The parties understand that the mediation may be terminated at any time by either party or by the mediator(s). The mediator(s) are impartial and agreed upon by the parties, have no authority to decide the case and are not acting as advocates or attorneys for any party. The parties have a right to representation during mediation.

Mediator(s) Confidentiality

The confidentiality provisions of the Administrative Dispute Resolution Act apply to this mediation. These provisions focus primarily on protecting private communications between parties and the mediator(s). Under the ADR Act, parties' oral communications to the mediator(s) during mediation are protected. The same is true for written communications parties prepare for mediation that are given only to the mediator(s). The mediator(s) are bound by this confidentiality and generally may not reveal what was said in mediation to anyone, with very limited and rare exceptions. The mediator is not required to maintain confidentiality if he/she has reason to believe that either party is in danger of bodily harm or egregious psychological harm, if either party has threatened bodily or egregious psychological harm, or if criminal activity is divulged.

Parties' Confidentiality

To promote full and open communication in the mediation process, the parties agree that oral communications made with all parties present or otherwise confidential documents a party makes available to all parties will be held as confidential in this mediation. The parties understand that by agreeing to hold communications and documents confidential in this mediation, they are agreeing to protection greater than that provided in the ADR Act. By signing this agreement, the parties understand that despite this agreement for additional confidentiality, outside parties may still have access under the Freedom of Information Act to documents which a party makes available to all other parties.

The parties, their representatives, and other participants (if applicable) will not electronically record or otherwise produce any transcript or written record of the mediation proceedings.

In unusual circumstances, a judge can order disclosure of information that would prevent a manifest injustice, help establish a violation of law, or prevent harm to public health and safety.

No party shall be bound by anything said or done at the mediation, other than this Agreement to Mediate and Confidentiality Agreement, unless a written resolution is reached and executed by all necessary parties. If a resolution is reached, the agreement shall be put in writing and, when signed and approved by the appropriate authorities for all parties shall be binding upon all parties to the agreement.

By signature below, we acknowledge that we have read, understand, and agree to the terms of this Agreement to Mediate and Confidentiality Agreement."

Settlement Agreement

Where an agreement is reached, the guidelines provide that the terms agreed must be recorded in writing and signed by the parties. The settlement must state the agreement of the parties as to how they will relate to one another in the future, including a

description of the responsibilities each has agreed to assume in order to resolve the dispute in an “understandable, comprehensive and specific” manner. Appeal procedures should also be included in the event either party fails to comply with the agreed terms.

Mediators

As well as the various sources of skilled conflict management and conflict resolution neutrals available to assist DOI employees, including CORE PLUS administrators, EEO counsellors etc., the main source of neutral assistance is from certified mediators, facilitators and trainers on the CORE PLUS roster which is managed by CADR and BDRS. The in-house roster includes approximately 75 certified CORE PLUS Neutrals at any time who are DOI employees from all regions of the United States.

In addition, CORE PLUS includes access to trained and experienced conflict management professionals from other Federal agencies through the Federal Government Shared Neutrals program in Washington DC and other Federal rosters of neutrals maintained and coordinated by the Federal Executive Boards (FEBs) in several regions. The Federal Mediation and Conciliation Service (FMCS) is another source of experienced mediators and facilitators available at a fixed rate cost. CADR has negotiated a standard process with FMCS to give any bureau or office the ability to acquire an FMCS mediator, facilitator or trainer from any part of the country through a simple standard process.

Additionally, CADR has awarded contracts for a full range of CORE PLUS assistance from private professionals to be utilised as and when internal resources have been exhausted or are limited, or there are other good reasons for external neutrals to be engaged.

Case Data

FY 2018

Outstanding informal complaints	600
Settled pre-complaint	34
Informal Resolution	211
Settlement Rate	41%

Key Learning

To meet the goal of full and effective implementation and integration of CORE PLUS throughout the Department, the DOI sees several factors are directly related to the success of the program:

- **Demonstrated support of senior managers for CORE PLUS.** Consistent verbal and written support of CORE PLUS by Department and Bureau leadership are

important for building a culture of effective conflict management. The dissemination of CORE PLUS information to employees such as memoranda from leadership officials describing and endorsing CORE PLUS is important for the credibility of CORE PLUS.

- **Effective marketing and dissemination of consistent** information about CORE PLUS to all employees throughout DOI, including current contact information about who is able to provide conflict management assistance and how and where CORE PLUS services can be obtained.
- The **knowledge, skills, experience and impartiality of the CORE PLUS Neutrals** available to assist employees in resolving any workplace issue or concern.
- **Trust in the ability of the CORE PLUS** network to encourage better communication and problem-solving at the earliest opportunity, provide accurate information and appropriately refer to other sources of information and assistance, and arrange for appropriate conflict management and dispute resolution assistance acceptable to the individuals involved.
- The ability to **keep commitments to maintain confidentiality**. See Attachment A.
- **Education and skills training** to promote conflict management competencies.
- **Constant feedback** loops and collecting data on experiences to allow for continuous assessment and improvement.

A BDRS, CORE PLUS Coordinator, CORE PLUS Neutral or anyone in the CADR office can help individuals determine the most appropriate resource to use and can help them to access the assistance they need. The decisions about what types of assistance are appropriate and who can best provide those services are very important ones. They should be made based on the specific circumstances in each situation. Typical criteria and factors to consider in making these decisions will include the expectations, objectives and needs of the parties involved as well as the timeframe, location, budget, nature and complexity of the issues to be resolved, number of parties involved, potential conflicts of interest, and availability of the neutral.

Any real or perceived conflict of interest or lack of impartiality or neutrality should be avoided. If a concern is raised by any party, the matter should be referred to another qualified person for assistance to avoid any potential lack of trust in the process. All neutrals should immediately disclose any potential conflict of interest to the parties while convening the process. If a real or perceived conflict of interest exists, the neutral should assist the parties in finding a neutral to continue the process.

Australia - Civil Sector Mediation

Historical Overview

The Australian Public Service Regulations (Regulation 5.1(4)) acknowledge alternative dispute resolution as a means of resolving employee complaints. Agencies are increasingly using alternative dispute resolution, in conjunction with the review of actions scheme. For example, when employees make inquiries about lodging review of actions applications, human resource practitioners may offer mediation as the first step in resolving the employee's concerns.

Some larger agencies, in particular the Department of Defence (DOD), have invested significantly in alternative dispute resolution and formalised it as a strategy for responding to workplace conflict.

The Employee Assistance Program assists DOD employees who are experiencing difficulties of a personal or work-related nature. It offers a confidential work-based intervention program designed to enhance emotional, mental and general psychological wellbeing. The program provides short-term preventative and proactive interventions for issues that may and do adversely affect performance and wellbeing. The program aims for early detection, identification and resolution of work and personal issues.

The program is available to all Australian Public Service (APS) employees (ongoing and non-ongoing), Australian Defence Force (ADF) Reservists, ADF Cadets and officers and instructors of ADF Cadets. These services also extend to managers, supervisors and immediate family of eligible members within Defence. Services include:

- education and training group awareness sessions that target common health and wellbeing topics that aim to promote enhanced wellbeing in a work and personal environment
- critical incident debriefing and trauma counselling
- pre-deployment and post deployment assessment and support for APS employees.

The 2018–19 annual utilisation for the Employee Assistance Program by eligible Defence members (Australian Public Service, Reservists and Cadets) was 4.4 per cent. This is 2.5 percentage points lower than the public administration / government benchmark of 6.9 per cent.

The DOD employs alternative dispute resolution (ADR) as the preferred method for the resolution of workplace conflict. The ADR and equity programs are delivered through Fairness and Resolution Centres in each mainland capital city, established

to provide a one-stop-shop for assistance and support in relation to dispute resolution issues.

These centres are staffed by Fairness and Resolution practitioners who are trained in conflict coaching, mediation and group facilitation processes. They also employ a technique unique to Defence called Interactive Problem Solving. Interactive Problem solving requires a practitioner to work with a commander, manager or employee to explore and examine all aspects of a conflict or dispute, to consider options for resolution and to make a choice on a course of action.

The Fairness and Resolution practitioners also provide awareness and skills training in equity and diversity and the prevention and early resolution of workplace conflict.

The Department has 55 mediators (who hold accreditation under the National Mediator Accreditation Scheme), 25 accredited conflict coaches and 11 qualified group facilitators... There are 13 full-time Fairness and Resolution practitioners (who possess the range of ADR skills) in the regional Fairness and Resolution centres.

Evaluation of the programs shows that there is increasing acceptance and trust within the organisation of ADR processes and that the practitioners who deliver the services are held in high regard.

Professionalisation

Alternative dispute resolution is becoming increasingly professionalised with professional associations, codes of practice and national accreditation standards. An industry-based national accreditation scheme for mediation commenced in January 2008.

The National Advisory Council on Alternative Dispute Resolution ([NADRAC](#)), which advises the Attorney-General on the development and promotion of alternative dispute resolution, was involved in the development of the scheme.

Some agencies have invested in training their human resources staff in mediation. Where agencies are offering mediation for workplace disputes, it is recommended that the people providing these services meet national accreditation standards.

Using ADR Appropriately

Agencies are being encouraged through the work of NADRAC to adopt a strategic approach to managing and resolving disputes more generally and to make a cultural shift from using adversarial processes. Looking at alternative ways of resolving workplace disputes is consistent with this approach.

However, the principles underpinning alternative dispute resolution interventions, as recommended by NADRAC, may place some constraints on using particular methods in particular disputes. For example, when suggesting mediation, human resource practitioners need to consider the following:

- participation in mediation has to be voluntary
- some disputes are suited to mediation and some are not
- the neutrality and independence of the mediator are important for the credibility and success of the process.

Mediation is not suitable for all forms of disputes. For example, disputes which raise behavioural issues serious enough to be considered under the agency's procedures for investigating suspected misconduct, should not be dealt with through mediation. In these circumstances the agency must be seen to reinforce appropriate standards of behaviour publicly. The private agreements reached through mediation do not allow for this.

Both parties need to feel that mediation is a safe process in which their concerns can be aired and listened to respectfully. The interests and behaviours of the parties to a dispute may mean the dispute is not suited to mediation. Skilled mediators conduct pre-mediation screening (intake assessments) to determine whether mediation is likely to be successful given the values, interests and behaviours of the parties.

In addition, it is important to the success of mediation that the mediator is seen to be neutral and independent. Conflict resolution skills are a useful part of the package of skills of human resource practitioners. However, unless an agency is large enough to provide a service that is independent of the consultancy and management advisory function of the human resources, it may be more appropriate to source mediation from the industry than to develop expertise in-house.

While mediation may not always be the most appropriate response to a workplace dispute, the expanded scope of alternative dispute resolution processes provides a suite of options. In addition, where formal statutory interventions are necessary such as an investigation of suspected misconduct, once the investigation process has run its course, alternative dispute resolution techniques can assist in rebuilding relationships in the workplace. While participation in alternative dispute resolution is voluntary it may be particularly helpful where there is a need to deal with the emotional impact of workplace conflict, and where the restoration of workplace harmony, teamwork and improved productivity is the goal.

Switzerland - Skyguide Mediation Scheme

Overview

Skyguide provides air navigation services for Switzerland and certain adjacent parts of neighbouring countries. With its 1500 employees at 14 locations in Switzerland, the company guides some 1.2 million civil and military flights a year safely and efficiently through Europe's most complex airspace. The organisation is owned in part by the government, with headquarters in Geneva.

Recognising the need to manage employee related issues and disputes in a proactive and non-litigative manner, Skyguide established a Mediation Board in 2018. Inviting a number of well-established Swiss mediators to take part, the Board was designated to advise on the establishment of a HR management system for employment and workplace conflicts, service agreements, conflict management agreements, a safe arbitration process, feedback system and a panel of mediators. A mediator panel, made up of representative individuals from the different regions and offering varied language skills, was also published on the organisational intranet.

To date, only one request for mediation has been reported, from the French arm of the organisation. Not yet resolved, the focus thus far has been on analysing the needs of the parties involved and offering conciliation as an ongoing method to attempt resolution, with both management and staff involved.

The overall low-level take-up of the service may be due to a number of factors, including that some of the key personnel spearheading the conflict management system have since left the company. Additionally, there has not been a formal introduction of the system, or indeed the panel of external mediators, to employees.

It is envisaged that more will be done to promote the service and engage with the potential users during 2020. Being a relatively new system, take up will take some time but there is a positive outlook given the work that has already been completed in design.

Other Jurisdictions

Following extensive research, it is apparent that workplace and employment mediation in the public and civil sector is often not formalised in the shape of defined services, schemes and programs, especially outside the more experienced mediation hubs of North America, the United Kingdom and Australasia. Primary resources on the topic are limited and in person research is both time consuming and can lead to little or no response.

In planning this report, it was envisaged that there would at least be some information included upon early review of schemes in New Zealand, Singapore and China, for example. However, despite repeated attempts and the utilisation of extensive professional networks, the data was either scarce or not accessible. Accordingly, and as will be noted from the study sections above, at this stage at least, those jurisdictions have been left out of the framework of this study.

What information is available focusses more broadly on the use of mediation in labour and workplace disputes, rather than those specifically relating to public or civil sector matters. This data may still be relevant for the CSB as it offers a much broader view of the use of ADR. Key country examples have, therefore, been included below:

Armenia

The labour legislative framework in the Republic of Armenia is contained in the Constitution, as well as the Labour Code and other legal acts in the social and economic field. Chapter 24 of the Labour Code details the settlement of labour disputes. Individual disputes concerning contracts of employment are to be dealt with by the courts, following the procedure established by the Civil Procedure Code, while collective labour disputes are regulated by Chapter 11.

Accordingly, while individual cases are not referred to mediation, conciliation is a mandatory stage in the collective labour disputes settlement procedure. To this end, a conciliation commission consisting of an equal number of representatives of the parties to the dispute has to be established within seven days after the beginning of the dispute. The commission then has a further seven days to consider the dispute, with any decision taken by it having binding force on the parties to the dispute. In case of failure of conciliation, the parties may invite a mediator. If no agreement is reached, the parties may then apply to the court.

Austria

ADR is well established through the operation of trade unions and especially the Chamber of Labour in Austria. Membership of the Chamber is compulsory for all private sector employees.

In the case of an individual labour dispute, the employee concerned will initially contact the works council for advice – or where there is no works council, they will contact the trade union or Chamber. In the majority of cases, either the trade union or the Chamber will try to intervene in order to avoid the need for formal litigation in the courts.

In most instances of such informal intervention, a settlement out of court can be reached once the Chamber or the trade union has managed to confer with the employer. This intervention can include the use of forms of conciliation or mediation.

For some types of disputes – such as those concerning gender issues, work-life balance and performance management – a third party may be called on to conciliate or mediate. In addition, there are two particular areas in the employment field where the law provides for out-of-court conciliation or mediation. These relate to disability issues and the termination of apprenticeships.

Cyprus

Arbitration is the final and fourth step in a procedure established under Cyprus' Industrial Relations Code. The first two steps allow for non-judicial ADR in the workplace – first, at the level of supervisor and then, if not resolved, by higher authorities in the workplace.

The third stage, if required, is a referral of the worker to the Ministry of Labour and Social Insurance for mediation. This must be completed within 15 days. If a settlement is not reached at this stage, the complaint is referred to binding arbitration.

It is the responsibility of the Ministry to appoint a mutually acceptable arbitrator within one week of the special request from both parties and to provide administrative support to the arbitrator – thus, access to arbitration is by mutual agreement only. The Ministry issues the arbitrator's decision 15 days after the last arbitration meeting, or within three days in the case of dismissals.

Since the Labour Code is not legally binding, arbitrators' decisions have no legal standing, although it is very rare for decisions to be challenged in the courts.

Czech Republic

The procedure available for the settling of individual labour disputes in the Czech Republic is that of court proceedings. There are no special courts in the Czech Republic, which would be called upon to deal with individual labour conflicts. These are subject to civil proceedings before a court, on the same footing as other civil court proceedings. Labour disputes are judged by tribunals consisting of one professional judge and two lay judges (court of first instance), or by tribunals consisting of three professional judges (Court of Appeal).

Parties can, by agreement, refer disputes to a company conciliation body. However, the establishment of such a body is without prejudice to the option to apply to a court of law without having the case first considered by the conciliation body. There is also a question of enforceability as only court rulings are binding, although the parties can make an application for settlement order where proceedings are ongoing.

Estonia

In Estonia, there are several ways to resolve an individual labour dispute between an employee and an employer. It can be resolved by an agreement between the employee and employer through the mediation of an employees' trustee (an elected employees' representative at the workplace) or a trade union. The parties can also turn to court, which is mandatory in cases of monetary claims exceeding €10,000.

A third option is that the parties could turn to their local dispute committee (LDC), established within the local branches of the Labour Inspectorate. LDCs are independent, extra-judicial individual labour dispute resolution bodies with three members – the chair of the labour dispute committee, and representatives of employees and employers. The introduction of LDCs was motivated by the courts' slow handling of cases.

The out-of-court dispute resolution mechanism is regulated by the Individual Labour Dispute Resolution Act. This has been in force since 1996 and, in the past 20 years, has experienced only some technical changes. However, the regulation has become outdated as it does not take into account the current socioeconomic situation and has proved to have several shortcomings in the way it is implemented. The need for more modern regulation was apparent. At the end of 2016, the draft act for amending the current regulation was finalised and was approved by the Estonian Parliament on 14 June 2017, with the changes taking effect in 2018.

Significant changes include the way individual labour disputes are defined, with a widening to cover the entire employment relationship, including aspects regulated by employment-related legislation, but not necessarily concerning employment contracts, meaning it will now be possible to turn to the LDC on issues related to

working conditions (for example, health and safety at work) or discrimination at work, and on issues arising from the way conditions set out in a collective agreement are applied to the individual worker. Currently, these issues belong to the jurisdiction of the court or the national conciliator. However, the regulation excludes LDCs from resolving disputes related to occupational diseases and accidents, due to their more complicated nature.

Another important development is the introduction of some new resolution mechanisms. Firstly, it will be possible to use conciliation procedures. The conciliator will be the chair of the committee. If the parties cannot reach a conciliation agreement, they have the right to file an application to the LDC to use other resolution mechanisms. Secondly, a hearing at a meeting of a LDC will no longer be necessary for reaching a resolution. The new regulation allows written proceedings where one of the parties admits the other's claims to the full extent, and in the case of monetary claims not exceeding €6,400. Thirdly, an agreement procedure has been formally introduced. It is currently used in practice, but does not result in a formal enforcement instrument. In practice, it means that the dispute is ended by an application being withdrawn. With the new regulation, such a procedure will result in a formal compromise resolution.

Additional changes include the possibility of turning to the LDC with monetary claims exceeding €10,000, which are currently accepted only by the court. The term for reaching the hearing from receiving the application is extended from 30 calendar days to 45 calendar days since, in recent years, the average duration of reviewing the application has been 36 days. To increase the quality of the service, it will be possible to resolve any deficiencies in an application within 15 calendar days, which currently is not possible.

To make the procedures faster and cheaper, the chair of the LDC will have more authority; for example having sole responsibility in the case of written proceedings or conciliation procedures.

Overall, the new regulation creates a comprehensive set of procedural rules and norms, and specifies several technical aspects, which currently are fragmented and regulated by different legislative acts or practices.

Figures from the Labour Inspectorate show that, since 2006, LDCs have received around 2,000–6,000 applications per year. The number was the highest in 2009 (6,371) and the lowest in 2014 (2,364). It been relatively stable in recent years, staying at a similar level to that in 2006–2007 (that is, around 2,600).

Finland

The Finnish Forum for Mediation was established in 2003 and promotes mediation for the management of workplace disputes. The cases referred usually deal with the

breakdown of interpersonal relationships, with mediators being private individuals who are paid for by the employers. There is no link between the use of this type of relational mediation and the Finnish labour courts.

Germany

The labour courts have exclusive jurisdiction over virtually all legal conflicts between the employer and employee arising from the employment relationship. Labour court proceedings aim to be simple, speedy and inexpensive. Every case brought before the labour court begins with a conciliation hearing heard by the chairperson acting alone. The purpose of this approach is to achieve an amicable settlement, usually a compromise between the parties, before recourse to a formal hearing. The parties may also agree to a private mediation at this stage.

For non-escalated disputes, all employees have the right to have their grievances heard by the works council. It is then possible for a company-level arbitration committee to be established. In practice, in most cases where a works council exists, an employee might first address the council; the works council would then seek to resolve the matter with management, sometimes using informal mediation. Where there is no works council, the trade union would seek an out-of-court agreement with the employer. In cases of individual dismissals, the works council must be consulted.

Greece

There is no specialist labour court in Greece. Employment issues are dealt with by the civil courts, but it can take a year for district court cases to be heard. Reliance is therefore placed on the local labour inspectors who are authorised to intervene in a conciliatory manner in order to resolve any individual or collective labour disputes that may arise and to enforce administrative sanctions.

Once a complaint is made, the labour inspector will convene a three-party meeting between the inspector, employer and employee, although there are issues around enforceability. Contacts report that the inspectors seldom issue fines and when they do, the sums are usually small and do not operate as an effective deterrent. In many cases, the inspectors merely refer the matter on to the courts.

Hungary

Some labour court judges use the first court hearing to explore the possibility of a settlement, and the 'real' hearing only occurs if this fails. It is not uncommon that the parties conclude an agreement at the first hearing, during the pause in proceedings or at a later stage.

Italy

Recourse to the judicial authorities for the resolution of a labour dispute must be preceded by a mandatory attempt at conciliation – referred to as ‘administrative conciliation’. This takes place before a special board instituted by the relevant Provincial Labour Directorate. Where a judge ascertains at the beginning of the court procedure that no attempt has been made to use conciliation, the proceedings may be suspended and the parties ordered to use the procedure.

The administrative difficulty in setting up a conciliation hearing, especially in the public sector, can lead to lengthy delays. Alternatively, a worker may give written permission to a trade union to attempt ‘trade union conciliation’ in the workplace. If the outcome is registered with the labour directorate, it is deemed valid.

In non-union organisations, the equivalent process available is called a ‘transaction’, ending in a written agreement or decision. Issues relating to the payment of wages can be dealt with by ‘monocratic conciliation’ at the Provincial Labour Directorate prior to a formal intervention of the labour inspector at the behest of the worker.

Kazakhstan

The Labour Law of Kazakhstan provides for different settlement procedures depending on whether the dispute is individual or collective. Individual dispute settlement is regulated mostly by the Labour Law, which also applies to collective labour disputes together with the Law on Collective Labour Disputes and Strikes.

Disputes may be resolved by agreement between the parties or through the courts of general jurisdiction. Collective disputes may also be referred to other processes, such as labour arbitration and mediation.

By agreement, the parties in a labour dispute may refer their issues to a conciliation commission, which is formed of equal numbers of representatives of the employer and employees, with organisational and technical support provided by the employer. The commission considers the claimant’s petition within three days from its filing, following which a decision is issued. Where such a decision satisfies the claimant, it is executable within 3 days.

Latvia

The use of mediation in the settlement of civil disputes is currently in its initial stages in Latvia. There is no central government body responsible for regulating the mediation process or profession, nor is mediation regulated by any external laws and regulations. The process is most widely used in civil disputes arising in family and commercial law. Recourse is voluntary and mediation is not a pre-requisite to initiating or continuing any judicial proceedings.

The main source of law governing the settlement of individual labour disputes is the Labour Disputes Law. Section 4 of this law defines an individual labour dispute as a disagreement between an employee or a group of employees and an employer concerning the conclusion, amendment, termination or implementation of the contract of employment or the application or interpretation of statutory enactments, collective agreements or working procedure regulations.

There are three stages in the settlement of individual labour disputes. The first of these is internal negotiations between an employee and an employer. However, this is not a compulsory stage and its omission does not affect the parties' right to apply to a labour disputes commission or to the court.

Where no such internal negotiations take place or where they do not lead to an agreement, the parties may, by way of mutual agreement, refer the matter to a labour disputes commission for settlement. These commissions either sit within the organisations or chosen by other means. Parties are also free to stipulate the establishment of a labour disputes commission in collective agreements.

Exceptions to this principle are contained in Section 7 of the Labour Disputes Law, pursuant to which the following cases are reviewed exclusively in court: (1) the invalidation of a notice of termination by an employer and the reinstatement of an employee, (2) the application of an employer, in case of refusal by the employee trade union to accept the notice of termination of a contract of employment to the member of an employee trade union, (3) the exacting of undue payments, (4) the violation of the principle of equal treatment, (5) the application of an employer or an employee, where the termination of a contract of employment is claimed by a third party.

When the parties favour the labour disputes commission, they must conclude a written agreement providing for the composition of the commission, its competence, terms and other issues concerning the operation of the commission. The commission consists of equal number of representatives from both parties. Members of the commission shall be impartial and may not have any direct or indirect interest in the outcome of a particular case. Moreover, independence of the members of the commission during the exercise of their duties shall be guaranteed by the prohibition of any interference or influence on their work.

The labour disputes commission shall review the case within 10 days running from the submission of the application. The commission is not deterred to review a case and shall deliver its decision without the presence of any of the parties. The commission takes the decision by majority voting. The decision taken by the labour disputes commission shall be compulsory and has to be executed within 10 days. Where the decision has not been executed voluntarily, the other party has the right

to appeal to the court. The decision enters into force after 10 days provided the decision has not been appealed to the court.

The review of an individual labour dispute by a court, in accordance with the civil procedure is the third and final stage. Each party has the right to plead to court if: (1) the parties have not settled the dispute during the negotiation stage, (2) a party is not satisfied with the decision taken by the labour disputes commission, (3) the decision taken by the labour disputes commission is not enforced, (4) the dispute involves one of the exceptional occasions when the case is heard directly by the court (listed above). The fact that the court is the first instance does not serve a ground for refusal to admit an application. Individual labour disputes may not be reviewed in arbitration.

It should also be noted that during settlement of individual labour disputes, trade unions have a special right to represent their members without special authorisation and to bring the case to court on their behalf if considered necessary or appropriate.

Lithuania

Most individual disputes in Lithuania, with the exception of employment termination cases, have to be handled by a Labour Dispute Commission. These commissions are either standing institutions in the workplace or have to be specially set up once an application has been received from an employee. They are governed by the country's Labour Code and must have an equal number of employer and employee representatives, with the chairperson rotating between the two sides at every meeting. Trade unions have no formal role and all cases of individual disputes must be heard by the commission before going to court, with the courts refusing to hear a case where the commission has not been met.

Unfortunately, the system is not entirely successful given the lack of a third party neutral, such as a mediator, to help the parties resolve the dispute. Commission members very rarely find agreement and most disputes continue on to the litigation process in the courts.

Luxembourg

The Luxembourg Labour Inspectorate has had responsibility, since 2007, for preventing and resolving individual employment-related conflicts. The labour inspectors are meant to provide ADR through tripartite conciliation and mediation, however case numbers are low with the perception that the Inspectorate offloads its legal obligations to trade unions and the courts.

Netherlands

While there are no specialised labour courts and labour law is complex in the Netherlands, especially when distinguishing between the public and the private sectors, individual labour disputes may be settled by mediation in two ways: on the parties own initiative or through referral by a judge.

The Dutch government encouraged the use of mediation in the civil courts in 2007 with the provision of legal aid. Mediation can be implemented before the court hearing or take place in parallel to court proceedings by way of court annexed mediation. Individual labour disputes constitute just over one third of the total number of mediations – the others encompassing family, commercial and environmental disputes.

It is usual for the costs to be paid by the employer, although no statutory rules are in place concerning such payments. If the dispute is successfully resolved, the details are laid down in a special contract where the parties refrain from further litigation.

Norway

Most cases must be brought before the Conciliation Board, which helps the parties achieve a simple, swift and cheap resolution of the case. In addition, there is a Dispute Resolution Board, which deals with cases particularly related to the Working Environment Act, such as working time, flexible working, and entitlements to absence. Under the Dispute Act, which regulates conciliation, the option also exists to use mediation as a further step. This can be either through out-of-court mediation, where the mediator is agreed by the parties, or through judicial mediation by the judge or by a legally qualified person on the courts' list of mediators.

Poland

In Poland, various avenues are open for the use of ADR, including out-of-court settlements, court supervised settlements, or the use of a mediator and/or arbitration linked to the court.

Despite these arrangements the number of disputes resolved by ADR is low and a majority settled before the conciliation commissions. A key obstacle to growth is the reluctance on part of employees, who are unwilling to trust methods other than court proceedings. While trade unions are largely in favour of ADR, employers are seen as somewhat ambivalent to ADR. In order for the use of mediation to be better imbedded, there is a need for a change in mindsets of employees and employers. Unfortunately, however, while the government has established a mediation council for use in a wide range of civil court cases, there is generally low trust in public institutions among the Polish people.

Portugal

The Portuguese government is committed to encouraging the use of ADR in order to reduce the burden on the courts, including the labour court. In 2006, a tripartite protocol was signed creating a Labour Mediation Service. Initially operating in the metropolitan areas of the capital city Lisbon and Porto in northern Portugal, it was extended in 2007 to all areas of the country.

The Service can deal with virtually all types of individual disputes. To access the Service, the aggrieved worker or the employer submits an application and the Service then contacts the other party and appoints a mediator from a list of suitably qualified persons.

It is also possible for a judge at the labour court to ask for the Service to intervene if the parties before the court agree. While the Service pays the cost of the mediation, each party is required to pay a nominal fee. Once a mediation hearing has started, time limits on making a claim to the labour court are suspended.

The Service operates on a membership basis with members made up of employer organisations, companies and trade unions.

Slovakia

Mediation legislation was adopted in 2004 to reduce the burden on the civil courts, although it should be noted that there is no special labour court in Slovakia. The legislation regulates the performance of mediation, its basic principles and organisation, as well as specifying the outcomes. Labour disputes coming under the scope of the country's Labour Code are amenable to mediation, which is voluntary and paid for by the parties.

Once an application is made, either by the individual worker or through the trade union, the employer and the worker are required, in a written statement, to confirm their willingness to use mediation and must agree on the name of the mediator. The mediator, at the end of the hearing, proposes a solution to the dispute in writing. If this is accepted by both parties, it is binding on them and can be accepted as an out-of-court settlement by the courts.

Slovenia

The use of arbitration is regulated by the Employment Relationships Act 2007 in Slovenia. An arbitration procedure to settle individual labour disputes may be incorporated in collective agreements. The agreement will specify the composition of the arbitration body and determine the procedures to be used. Arbitration needs to be concluded within 30 days after an eight-day period following an application to allow the employer to cease the alleged violation and/or fulfil the obligations. If

the arbitration award is not reached within 90 days, the employee has the right to take the matter to a labour court.

Separately, there is currently only one legal basis governing mediation in Slovenia – that is, the Mediation in Civil and Commercial Matters Act, which was entered into force on 21 June 2008 and defined mediation as ‘a procedure in which parties voluntarily and with the assistance of a neutral third party (a mediator) try to amicably settle a dispute that arises or is connected with a contractual or other legal relationship’.

Sweden

Individual disputes in Sweden are mainly solved bilaterally between the social partners at company and/or sector levels. Where the local negotiators are unable to resolve the matter, experts from the central staff of the trade union and the employer organisation will get involved, taking over the negotiations or assisting in conflict resolution.

Only when the matter remains unresolved will it be taken to the labour court, which will then seek to resolve the matter by way of separate negotiation or arbitration before the formal hearing. Special arrangements exist for discrimination cases, where an ombudsman can take a case to the labour court – however, even here, preference is given to allow the trade unions to deal with the matter rather than taking it to the labour court.

Turkey

The Turkish Law on Labour Courts was adopted in 2001, making mediation mandatory in certain types of labour disputes in Turkey. This new approach to labour disputes had a very satisfactory outcome with a success rate of 70%, which has also relieved the courts up to an extent and supported a swift resolution of such disputes.

Even prior to the enactment of the Law, employers and employees were actively seeking the services of private mediators to resolve their disputes. Public sector and government bodies, particularly at municipality level, are also utilising mediation for the management of confidential negotiations around rights, movement of workers, power imbalance in the workplace, and of course relational issues arising out of allegations of bullying and harassment. Where no formal conflict management programs have been established within the civil service as yet, there are ongoing discussions around the possibility of a scheme.

Legislative Review

In consideration of the CSB's vision to design and launch a workplace mediation and ADR program for employees within the Civil Sector in Georgia, it is seen as crucial to ensure that any such scheme or system will fit within and sit alongside the regulatory and legislative frameworks currently in place.

The two key pieces of legislation for consideration in light of this requirement are the Law of Georgia on Public Service (LoPS) and the Law of Georgia on Mediation (LoM), with the primary question being whether these laws allow for the use of mediation in workplace and employment disputes within the civil sector.

In consideration of the provisions within these two pieces of legislation, it is clear that there is no direct prohibition for the use of the mediation in the suggested context. Indeed, the LoM states its applicability, under Article 1 (2), to all matters mediated under the provisions of a mediation agreement. In the absence of a similar direct provision barring the use of mediation in civil service workplace and employment disputes, it is therefore appropriate to infer that such matters are covered.

A consideration, which may be necessary, relates to the mediation process model, as one is clearly defined within the LoM. However, that LoM makes it clear that mediation is a voluntary process, with the parties in ultimate control of the manner in which the process is to be conducted by virtue of their direct agreement on the matter with their chosen mediator.

This section considers some of the key provisions within each of these legislative documents and provides views on their application and significance for the proposed workplace mediation service for the Civil Service in Georgia.

Law on Public Service

The overriding objective of the LoPS is set out in Article 1, which states its aim is *"to establish a legal basis for the formation and functioning of a stable, unified public service in Georgia."*

The LoPS defines the difference between the state and civil service in Article 3. Political officials, such as ministers, fulfilling functions in the exercise of legislative, executive and judicial authority, as well as state supervision and control, are described as state servants. Their rights and obligations are prescribed under legislation other than the LoPS.

Civil service, by contrast, describes in the broadest sense those who perform activities related to the exercise of public legal authority. This does include those who perform duties in the administration of legislative, executive and judicial authority, or

supervision and control. It extends to the bodies of local self-government institutions and certain Legal Entities of Public Law (excluding cultural, educational-scientific, religious and membership based LEPLs).

Civil servants are further divided into professional civil servants and individuals employed in civil service under administrative or labour contracts. The Law defines professional civil servants as those appointed to a regular office staff position of civil service for an unlimited period of time, and who exercise public-legal powers, individuals employed under labour contracts to perform supplementary or temporary tasks within a public institution, and individuals employed under administrative contracts to assist political officials by providing field or sectorial advice and technical assistance, as well as the performance of organisational and managerial functions.

The LoPS ranks civil service positions, assigned based on responsibility, difficulty of discharging duties, competence, qualifications and experience. Classes may also be awarded to civil servants based on performance evaluations and years in service, as well as other considerations such as institutional reorganisation.

Issues related to discrimination are fully covered under Article 9, which provides that *“all public servants are equal before the law... irrespective of their race, colour, language, sex, age, nationality, origin, place of birth or residence, property or social status, religion or faith, national, ethnic or social origin, profession, marital status, health status, disability, sexual orientation, gender identity and expression, affiliation with political or other associations, including trade unions, political or other views, or other characteristics.”*

Chapter X details the regulation of disciplinary procedures, how actions are to be initiated, status of persons involved, how liability is to be established as well as the availability and form of penalties. Termination is only to be considered in the event of significant misconduct with possible forms and detailed assessment criteria provided in Articles 85 and 98.

Other key provisions within the law which may be relevant to dispute and conflict management relate to how staff are appointed, progression of careers, restructuring, resignation and dismissal. However, whereas the LoPS provides detailed procedures for the formal management of conflict, and indeed issues which may lead to possible conflict, there is no direct provision for dispute prevention or early, informal resolution, such as workplace mediation.

To this end, the CSB has a prescribed role, under Article 21, in the gathering of data and making recommendations related to the management and settlement of disputes. Article 21 provides:

“The main functions of the Bureau are to:

a) study and analyse the current social context of civil service, monitor implementation of a unified state policy in the area of public service and the observance of normative acts related to the policy and prepare respective recommendations;

...

e) examine and generalise existing practices of recruitment, evaluation, career promotion, career management, professional development and dismissal of officers and adherence by public servants to ethical norms, and prepare respective recommendations;

...

h) study and generalise the experience of other countries in the area of public service and cooperate with international organisations to improve public service management;

...

i) analyse legal disputes arising between officers and prepare respective recommendations to improve the current practice;

..."

Given the above specific legislative remit, it is appropriate to infer an active role for the CSB in putting their recommendations, following the assessment and analysis of relevant information and data, for the management of workplace disputes in place within the civil service.

Related to this, while these provisions do not specifically provide for the CSB to be the administrator of any such service, in the absence of directives to the contrary, nor a clear requirement for some other body to take such a role, and with the clarity of vision around at least the CSB's thematic role as stated above, there appears every incentive for the Bureau to either act as the fulcrum through which such a service can operate or at least for the application of knowledge in the design of schemes and pilots within individual civil service entities.

Law on Mediation

The Law on Mediation provides, under Article 1(2), the scope of its applicability both for those matters referred to mediation by way of a mediation agreement between the parties, and those matters referred to mediation by a judicial officers under the Georgia Civil Procedure Code, which includes any referrals to court annexed mediation services.

Where the Law does not refer specifically to individual workplace or employment disputes, it does, however, state that it has no applicability to collective bargaining disputes, which are prescribed for under the Georgia Labour Code.

Article 3 highlights the key principles of mediation, namely:

- voluntary participation;
- self-determination;

- honesty and equality;
- confidentiality; and
- independence and impartiality of mediators.

Accordingly, it is appropriate to infer the LoM broad applicability for workplace disputes within the Civil Service, subject to the above requirements being met.

Co-mediation, where more than two or more mediators work together on the same mediation, and which is the preferred model for many of the workplace mediation schemes included earlier in this report, is possible under 4 (1) of the LoM. All mediators are also required to disclose any potential conflict under Article 6.

Interestingly, the Law states mediators must be appointed from the Georgian Unified Mediators Registry (Article 4 (4)), placing a requirement on any Civil Service mediators to ensure they meet the prescribed rules for appointment to the Registry and their continued placement within that panel. Details of how the Registry is to be established, by the Georgian Association of Mediators, a new Legal Entity of Public Law, are provided in Chapter III. Key provisions within this Chapter relate to mediator training, accreditation, quality standards, codes of conduct and continued professional development.

The conduct of the mediation is prescribed under Article 8, which provides that parties may choose a process by agreement with the mediator which expands upon the rules provided within the Law. Article 8 (10) also allows for a mediator, by the express agreement of the parties in a particular matter, to make a proposal for a possible settlement, and indeed may make a decision as to outcome (Article 8 (9)).

Voluntary participation by the parties in the mediation process is addressed both at Article 7 (5), which states that a party may withdraw from the mediation at any time, and Article 9, which provides broadly for how the mediation process may be concluded, either by way of an agreement or by one or all parties or the mediator making the decision that they do not wish to continue. Where a settlement is reached, however, the terms of agreement must be written and signed by the parties and the mediator under Article 9 (3). Such a settlement is legally enforceable under Article 13.

All mediations conducted under the LoM place a burden of confidentiality upon both the parties and the mediator under Article 10. Information shared privately by one party with the mediator may not be revealed to another party without express consent, and all documents prepared specifically for the mediation are equally protected. However, confidentiality is not absolute and specific circumstances are provided under Article 10 (4) where mediation confidentiality does not apply.

In light of these key provisions of the LoM, there appears to be no specific reservation regarding establishment of a workplace scheme within the Civil Service in Georgia as

long as the requirements within the Law are clearly met, or expanded upon appropriately, where such expansion is allowed. The design of any such service will need to ensure its adherence, with clear rules and structures as to the appointment of mediators, how the mediation process will be conducted, standardising mediation agreements and settlement agreements, and offering parties a clear understanding of both their own roles, rights and obligations as participants as well as those of the mediators and the department or persons administering the process within the Civil Service.

Conclusion

In undertaking and drafting this report, what has been most evident is that while the use of ADR for the resolution of workplace, employment and labour disputes is growing across the globe, some jurisdictions are further ahead than others in the establishment of mechanisms and services offered specifically to civil service staff and public sector workers. Most such schemes are in place only in larger common law jurisdictions which have the longest history in the use and application of ADR, and accordingly examples within this report are representative of this currently reality.

Nevertheless, it is worth noting for Georgia that regional counterpart countries, such as Turkey, Ukraine and Lebanon are in a similar position, in that they are giving respectful consideration to the use of ADR and mediation to resolve workplace and employment disputes within the civil sector. Contacts report ongoing policy review and stakeholder engagement on the topic, visualising enactments of new regulatory or legislative provisions to allow for such disputes to be referred to mediation and other forms of ADR, and for the design of services and schemes to support active usage, as well as engagement and promotion programs.

Where Georgia and the CSB are ahead of the curve is in the enactment of the key legislative frameworks supporting workplace dispute management and mediation. With the benefit of the operational and structural overviews of the various active systems covered above, there is now a clear opportunity to design and initiate a pilot program, at the very least, to see how such mechanisms can be firmly installed within the civil service framework in Georgia.

This report is designed to offer data and information, to be used by the CSB in considering which model might work best in the Georgian context. It is not, therefore, a report focussing on recommendations. However, there are clearly a number of options that may help structure the discussions that do need to take place about the establishment of a service and this chapter looks at these briefly, with a view to such discussion expanding through stakeholder workshops, interactive discussions and reviews.

Option 1 - Pilot Scheme

The real value of establishing a small pilot scheme is in the capacity to gather knowledge and data for the refinement of any larger service to cover the entire civil sector at a later date. It would offer an opportunity for the CSB to review and perfect service procedures, administration, guidance, documents and dissemination in a considered and structured manner.

Such a pilot is also easier to design than a sector wide service. It can be operated by one well-trained administrator and would require the only a small number of mediators, say 6, at the outset, albeit the mediators should themselves come from other departments and ministries to ensure neutrality and independence. If the geographical profile of the selected Ministry was restricted to Tbilisi, rather than one which has oversight of municipal offices and staff, the administration of the pilot could be relatively streamlined.

Consideration will need to be given to whether the offer includes a specific process, such as mediation, or a tiered system which moves from one process to the next. There are advantages to both options, with the former allowing for focussed analysis and the latter offering a wider view of effectiveness of different structures and mechanisms. Documents will need to be prepared, including guidance materials for staff members as well as standard model documents, such as mediation agreements.

Beyond the scheme administrator, other HR personnel internally will need to undergo effective training so that they may both advise members of staff about the service and engage with conversations and questions in a demonstrably educated manner. Equally, effective engagement and marketing are crucial to the take up of any such scheme, requiring a program of wider staff sensitisation, both through the usual staff engagement channels but also perhaps through workshops or development sessions to offer and insight into what they can expect the process to look like and their potential participation in it.

The table below highlights current number of employee related issues and disputes within three individual ministries in Georgia. While the numbers are not large, the impact of such disputes can still create pressure and stress for both the employees and internal HR teams and personnel.

2019-2020			
	Ministry of IDPs, Health & Social Affairs	Ministry of Regional Development and Infrastructure	Ministry of Foreign Affairs
Disciplinary Proceedings Initiated	16	1	3
Disciplinary Proceedings Completed	16	1	3
Disciplinary Proceedings Initiated; Completed in LEPLs	0	2	0
Court Decisions	0	2	5
Ongoing Judicial Litigation	2	5	3
Judicial Litigation Initiated; Completed in LEPLs	0	5	0

Performance Appraisal-related Disputes	0	1	6
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Considering the numbers only, the Ministry of IDPs, Health and Social Affairs may be well suited for a pilot program given the significantly higher number of disciplinary proceedings initiated. An alternative view may be to consider where the disputes are most often escalating beyond internal procedures to external litigation processes, which may lead to either the Ministry of Regional Development and Infrastructure or the Ministry of Foreign Affairs appearing as better candidates for the pilot. However, given the low overall numbers of employee disputes and referrals within these ministries, the pilot would have to run for a longer period and may offer limited data for review.

The above table gives only a snapshot and ideally any decision about such a pilot would be made in view of similar data from all ministries and departments to ensure that the pilot would, in turn, offer the most value in terms of lessons learned.

Such a pilot may not, however, meet some key current issues for the CSB such as appearing to put into place something for all civil service staff and affecting a more immediate response to the overall numbers of employment and workplace disputes across the sector. To do so requires the establishment of a more centralised service.

Option 2 - Civil Service Bureau ADR Service

As can be seen in both the United Kingdom and Ireland, the establishment of a central ADR service under the auspices of an institution like the CSB in Georgia may have many advantages. Such a program can be resourced and managed at the highest level and offer a level of assurance regarding the independence, neutrality and quality of both administrative staff and ADR neutrals. Given the CSB positioning, it can also appropriately take the lead on setting standards for training, continued professional development, peer support and quality assurance through feedback and review. Such a system, if designed and marketed appropriately, could be viewed positively by the widest cross section of potential users.

To achieve this, the greatest of care will be necessary in ensuring buy in across the civil service institutions and bodies who, together with their staff, are the ultimate beneficiaries of the scheme. Necessitating a discursive program of planning, design, operational considerations, training, marketing and engagement initiatives, it will be crucial to ensure participation and a sense of ownership, which should be distilled to the wider civil service staff at the outset via the individual ministries and department HR functions.

One way of achieving engagement is to demonstrate the significance and importance attributed to the service at the highest level with the appointment of a high profile

“champion” at the outset. The choice of person should be considerate of the widest perceptions within the civil service workforce. Rather than a figurehead, the champion should ideally be a well-known, established member of the civil service, seen, as far as possible, as both trustworthy and neutral to engender the requisite level of confidence.

Similar considerations exist as for a pilot scheme around establishment of an administrative hub for the service, training of mediators (albeit a greater number will have to be trained than for a pilot), process options, guidance and document development, as well as marketing and dissemination across the civil service. However, in setting up a sector wide service, these reviews and their resultant outputs may take longer.

Where a central service stands out is in its accessibility to all civil service staff and the broader impacts on perception of Georgia as a state, and the CSB as a body, taking great steps to ensure the safety and satisfaction of the civil service workforce. However, ensuring a truly positive profile and the overall success of such a service relies on a far greater workload for the CSB at the outset.

Key findings from quantitative research conducted among civil servants in Georgia, undertaken under the Public Administrative Reform project by the ACT Research Company and shared by the UNDP, highlight areas where staff feel less than protected. Examples include stark figures such as:

- 60% believe employee selection process is not fair;
- 62% believe employee dismissal process is not fair;
- 44% believe they can be punished for filing a complaint about a violation within the agency;
- 53% believe there is no protection mechanism against arbitrary decisions taken by managers;
- 34% believe managers do not treat staff equally;
- 46% believe, in the event of a dispute with a political official, their managers will not act in their best interest;
- 45% believe work is not fairly distributed; and
- 44% believe appraisals are not fair.

While 76% of staff have not had any conflict or dispute within the agency within the last year, the other statistics are otherwise crucial in assessing and addressing overall staff satisfaction levels.

In light of the above, and as stated previously, the process of design must both participatory and engaging in nature and disseminated to the widest cross section of staff as a response to their historical concerns and expressed needs for better management.

Whichever option is selected, it is a key recommendation of the report is that the process be initiated following the presentation of the findings herein to both the CSB and stakeholders such as HR staff and management personnel from the various ministries, departments and agencies to ensure that all are equally informed about both best practice internationally and options for Georgia, and can request any further information or clarification before looking at specific solutions for domestic civil service staff, ideally resulting in a workplan for next steps and timeline for launch.

Appendices

Appendix I - United Kingdom Civil Service Mediation Service

1. CSMS Mediation Fact Sheet
2. CSMS What is Mediation
3. CSMS Confidentiality Statement
4. CSMS Dashboard Sept 2018 – Sept 2019

Appendix II - United Kingdom British Army Mediation Service

1. AMS Users Guide to Mediation
2. AMS Commanders Guide to Mediation
3. AMS Defence Instruction and Notice (DIN) on Mediation
4. AMS Mediator Logbook and Training Record

Appendix III - United Kingdom Norfolk County Council Mediation Scheme

1. NCC Mediation Policy 2019
2. NCC Guidance – Set up
3. NCC Guidance – Code of Conduct
4. NCC Guidance – Resolution Agreement

Appendix IV - United Kingdom East Lancashire Hospitals NHS Trust Mediation Scheme

1. ELHT Referral Form
2. ELHT Mediation Agreement
3. ELHT Opening Statement Guidance
4. ELHT Final Agreement Template
5. ELHT Mediation Report Template

Appendix V - Ireland Civil and Public Service Mediation Service

1. CPSMS Mediation Information Leaflet
2. CPSMS Mediation Policy 2019
3. CPSMS Agreement to Mediate

Appendix VI - United States Federal Mediation and Conciliation Service

1. FMCS Grievance Mediation Brochure
2. FMCS Grievance Mediation Overview
3. FMCS Mediation Agreement

Appendix VII - United States Department of the Interior CORE Plus Program

1. CORE PLUS Implementation Handbook
2. CORE PLUS Mediator Code of Conduct
3. CORE PLUS Principles of Conflict Resolution
4. CORE PLUS Brochure
5. CORE PLUS FAQs