

Workplace Case Study – Key Learns for Mediators

Malcolm Currie

Introduction and Background

This is an employment and workplace case study involving a situation I dealt with recently. I was a Trade Union Negotiator before I became a mediator. I have worked with research institutes, pharmaceutical companies, universities, etc. A large proportion of people in these were neurodivergent which made them good at their jobs, but this caused various issues regarding how they interact with people which their employers were not good at dealing with. So, this study is very recent and is very interesting and useful.

It was a local authority setting. Specifically, a school. There was a team of 5 teachers all in the same department. They worked closely alongside each other, and one had a supervisory role. This situation was based on allegations that one wasn't pulling their weight and was repeatedly absent from work. A counter allegation was made by the complainer that they were being excluded and that it was not a collegiate approach taken. The parties went through the mediation process, and there were other complicating factors. The deputy head was involved in a lot of the decision making around the situation but excluded themselves from the mediation. This caused major issues, as they were a material person regarding what happened and were also trying to resolve the allegations. Some of them were resolved quickly and others came out over time. Organisations are very tolerant of problems going on between their employees. This is common in public sector but also happens in private sector. Organisations will tolerate toxicity about their interactions because the colleagues and employees involved are good at their jobs. There was one mediation case where they tolerated people not speaking to each other for 7 years before doing something about it. The complainer [in this case] indicated that they had been diagnosed with ASD and suspected that they had ADHD but were on the waiting list for a test. They also had various mental health issues including depression and anxiety and various physical health issues as well. So, this was complex.

Key Learn 1:

What did I know beforehand?

I knew the background of the case, and I knew that I would've liked to have had the deputy head there. The headteacher wouldn't speak to me, so there was a real detachment. I also knew from speaking to the parties before joint mediation that there was a level of discrimination in the culture; other than the excluded individual, several individuals kept saying that the complainer was playing the disability card which is not appropriate language. There is case law applicable to disability discrimination, and I knew those factors as well.

Key Learn 2:

What did I wish I knew beforehand?

That out of the group, at least 2 of them were also neurodivergent, but they were also discriminatory against the person who was openly neurodivergent. The person was also suffering mental ill health and contemplating suicide. They suffered from depression for 20 years, perhaps because of undiagnosed neurodivergence. However, they were in that position because they weren't coping with their work because of their mental health issues and lack of support from their employer. They were convinced it was all because of their ASD and ADHD, but it was to do with mental health. This is a contributory factor, but it doesn't mean it isn't discriminatory. the 2 people in the group's neurodivergence was contributing to their behaviour and they were unaware of this.

Key Learn 3:
What have I learnt?

It would have been useful to get the group together to just see what the group dynamics were. This would have taken time but would have brought to the surface the group dynamic going on. One of the neurodiverse people really disliked the complainer, while the complainer conceded that they had, to an extent, been isolating themselves. I should have asked to spend more time with them. Ultimately, I would question whether the situation was suitable for mediation as it was a cultural issue and the underlying culture needed to be changed. This was plastering over cracks. The situation was resolved as the main protagonist in the group decided to leave and the one feeling isolated felt it was appropriate to transfer to another school. Mediation support helped dissipate this, but the culture in the school was still there and needed to be addressed.

Question and Answer

Q1: who paid for this mediation?

A: the local authority.

A: I'm amazed this was paid.

A: This was paid because it was an imbedded cultural issue and there were reputational issues here.

Q2: What do you do about it?

A: I talk to the employer about it. This is part of the commissioning process; how long has this been going on? What else has been happening? You have to read between the lines. There is often a situation there that they have been aware of, and they have chosen not to address it unless it's flagged to them. I often ask them if it would be suitable for me to make general observations regarding their workplace, culture, patterns etc – I will share these as it will make life better for the parties and culture.

Q3: We pride ourselves in being impartial as mediators – how did you maintain neutrality?

A: "not my problem" is my usual answer. I try to tell myself that I am here to help them find a solution to their issue, and I will lose all neutrality if I take on the problem. I can try and balance the power there but be neutral as it isn't my problem to solve.