

# The Whys and Wherefores of Workplace Mediation

# Aim of the Session

To increase HR Practitioners' awareness of what mediation is, how it works and how it can add value to a business

# Objectives of the Session

At the end of the session:

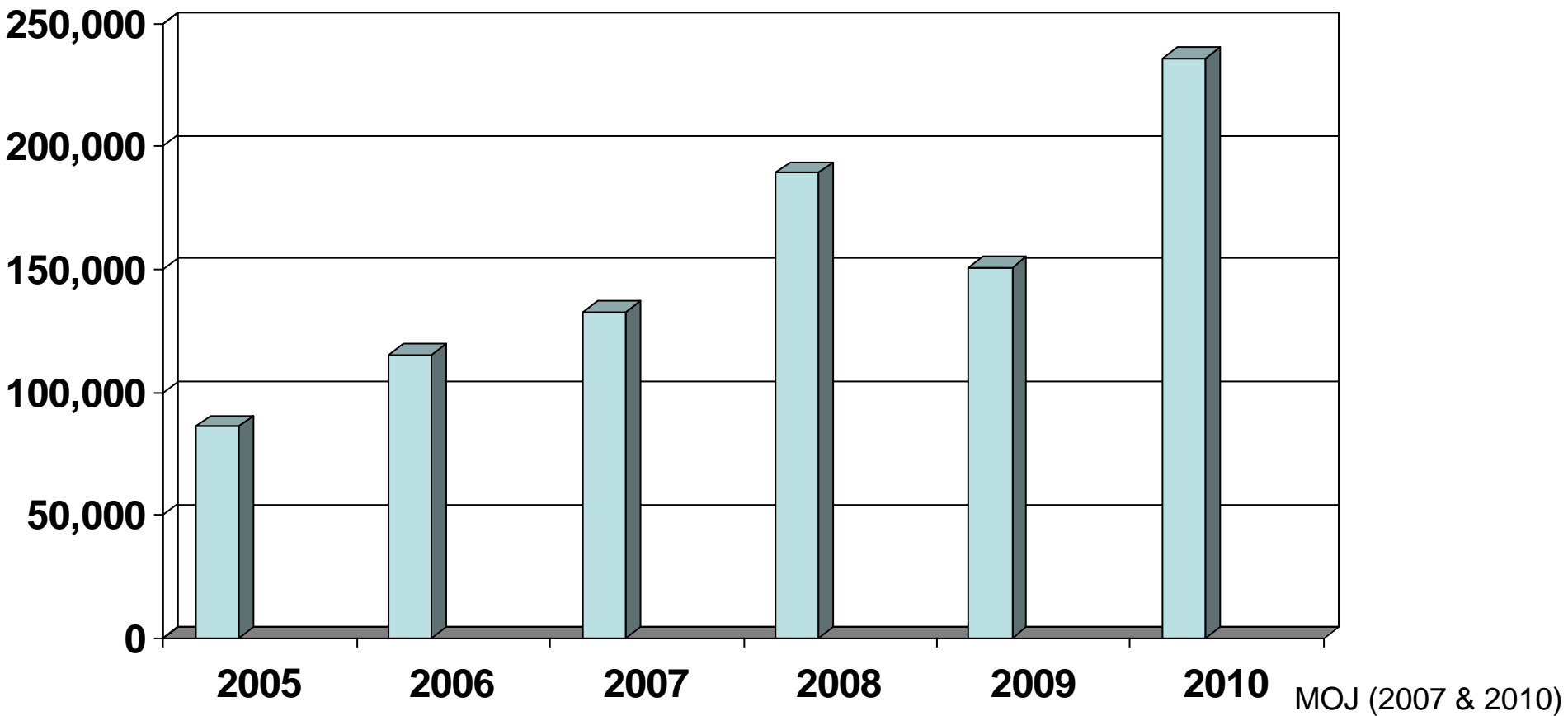
- You will be clear on the benefits of mediation
- You will be able to spot the circumstances where it is appropriate and inappropriate
- You will understand how and where mediation fits within the D&G process
- You will be able to build on existing HR skills to develop your own informal mediation capabilities

# SDRPs

The Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 752/2004)

1. Set out the issue in writing
2. Meet to discuss the issue
3. Opportunity to appeal

# Accepted ET Claims



# Employment Tribunal System

- Claim (ET1) raised
- Response (ET3) submitted
- ACAS conciliation
- Case management hearing
- Pre hearing review
- Final hearing
- Rights of appeal

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# The Gibbons Review

Some of the recommendations:

- Repeal the SDRPs
- Produce non-prescriptive guidelines
- Incentivise compliance (ET awards / costs)
- Encourage employers to mediate

DTI (2007)

# What Is Employment Mediation?

“Employment mediation is an alternative form of conflict resolution that aims to help 2 or more people who are experiencing problems at work to reach an agreement and move forward amicably.” (Chisholm, 2010)

# Employment Mediation Aims and Objectives

- “The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible.” ACAS (2010)
- “Mediation seeks to provide an informal and speedy solution to individual workplace conflict.” CIPD (2008)

# What Is Employment Mediation?

- Voluntary process
- Confidential
- Non-binding to point of agreement
- Privileged
- Introduced at any stage of dispute
- Allows the parties to retain control

# How Does Mediation Work?

- Initial telephone conversation
- Sign an agreement to mediate
- Compile an individual statement
- Meeting
- Agenda for the day
- Series of individual meetings
- Negotiation
- Agreement

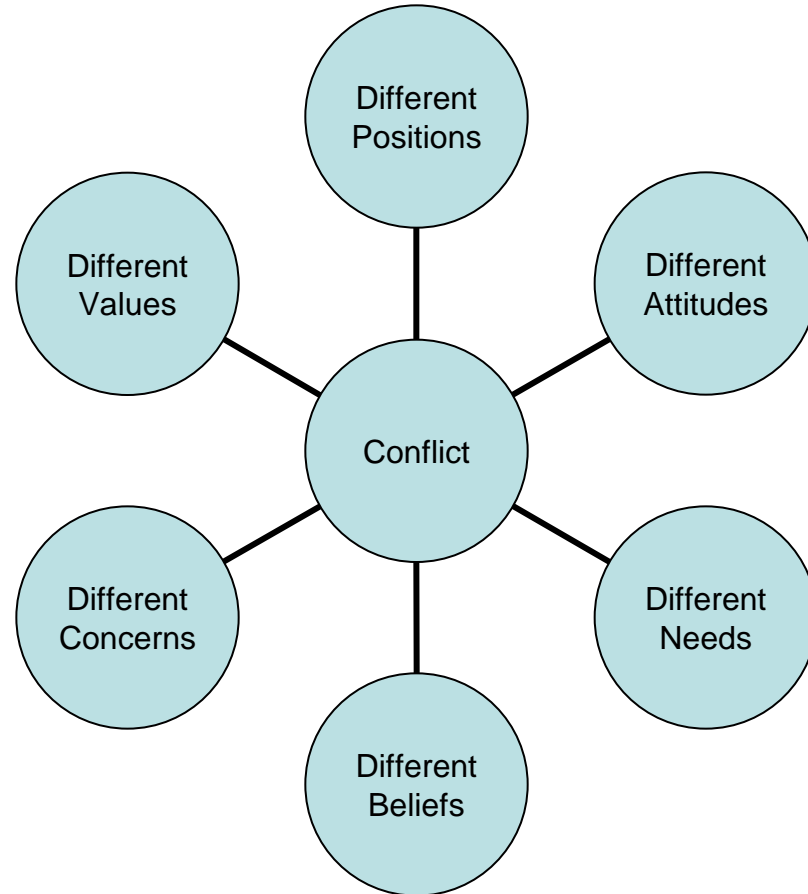
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I never said she stole money

# The Root of Conflict



(Chisholm, 2010)



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# Unhealthy Response to Conflict

- An inability to distinguish and react to the things that matter to the other person
- Volatile, irate, unkind and resentful reactions
- The withdrawal of contact, resulting in rejection, seclusion and fear of abandonment
- An inability to compromise or see the other person's point of view
- The fear and avoidance of conflict
- An expectation of negative outcomes

# Healthy Response to Conflict

- The ability to recognise and respond to the things that matter to the other person
- Composed, non-defensive, considerate reactions
- A willingness to forgive and forget, moving beyond the conflict without umbrage or annoyance
- The ability to negotiate and compromise
- A belief that addressing conflict is best for both sides
- BUT this may require an independent person to facilitate the discussion

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# Definitions

- Values
  - ❖ principles or standards of behaviour; one's judgement of what's important in life
- Attitude
  - ❖ a settled way of thinking or feeling about something
- Belief
  - ❖ something one accepts as true or real; a firmly held opinion

Oxford Dictionaries (2010)



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# Values Exercise

Rank the following in order of importance of their value to you

1 = most important

7 = least important

Health

Career

Pleasure

Finance

Freedom

Faith

Family

No joint ranking allowed!

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# Attitudes

1. Qualifications are more important than experience
2. People with disciplinary records should not get promoted
3. It's difficult to terminate someone with a disability
4. Day-to-day HR should be the responsibility of Line Managers
5. SOSR is a good “catch all” for dismissal

# Useful Techniques

Open ended questions are important to resolving workplace disputes. They can:

- Open up discussion, expand on issues, broaden perspectives, and encouraging deeper thinking
- They open up options when people feel stuck
- Help people to move away from fixed positions
- Help people to see things from a different perspective
- Help to explain the broader context, making it easier to understand the reasons behind the behaviour
- Slow down the process when participants are engaged in tit for tat exchanges

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# Useful Techniques

- 2 ears, 1 mouth
- Open body language
- Tell me about ...
- What ...?
- How do you think ...?
- Give me an example of ...
- How did it make you feel?
- How could you...

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# Self Reflection

- Think about a dispute you've been involved with or made aware of that could have been solved or improved using some kind of mediation
- In what way might mediation have made the outcome different?

# Proposed Reforms to the ET System

## AIM:

- Reduce ET costs, sustain business growth and minimise vexatious claims

## KEY ASPECTS

- Increasing qualifying period from 1 to 2 years (Day 1 rights remain unaffected)
- All claims to be lodged with ACAS to allow Pre Claim Conciliations to take place
- Extending jurisdictions for judges to sit alone on UD cases
- Increasing the scope for judges to tackle weak or vexatious cases by increasing deposit and cost limits imposed
- MOJ will consult on a fee to raise a claim in Spring 2011

BIS (2011) Stevens (2011)



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# Conclusion

- Disputes can be time consuming, costly and complex
- Mediation is a speedy, sensible, low cost and low stress solution
- You already possess the skills to perfect your mediation questioning techniques
- Basic skills can be useful but know when to consider outside support
- Mediation isn't always the answer

# Aim of the Session

To increase HR Practitioners' awareness of what mediation is, how it works and how it can add value to a business

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