

Applying Nudge Thinking to Mediation Series

Part 2: From Grievance to Resolution using the 'nudge' principle in mediation

by John Crawley

The 'Nudge' principle recently embodied in the Coalition Government's Nudge Unit was first developed by Richard Thaler and Carl Sunstein¹. As discussed in my previous article on the subject, "Changing the 'choice architecture' around mediation is the key"; Thaler and Sunstein argue persuasively that we each have the potential to be 'choice architects' and evidence the effectiveness of 'libertarian paternalism'. This involves 'nudges' – 'any aspect of the choice architecture that alters people's behaviour in a predictable way without forbidding any options... Nudges are not mandates.'

Why nudge mediation?

Successive governments have backed mediation as both a sensible, humane response to workplace conflict and as a cost-efficient measure. Policy makers and HR professionals are positive about mediation and the mediation 'profession' has mobilised much credible evidence about the benefits of mediation to employees, employers and business². The question remains, why mediation is not more widely used in the workplace.

I've designed nudges which will alter the choice architecture around mediation to increase understanding and uptake. Most of the nudges suggested are either free or resource neutral, or will utilise existing resources in a more organised way. These nudges will cut the cost of conflict at work and unlock many of the benefits of mediation, namely its ability to resolve disputes, restore relationships, revive motivation and improve performance.

¹ 'Nudge – Improving Decisions about Health, Wealth and Happiness'; Thaler, Richard H and Sunstein, Carl R; Penguin 2009

² Contact CMP deborah.casey@cmpresolutions.co.uk for references and links for research on conflict at work and workplace mediation

'Nudging' as a process

The nudge approach encourages focused practical consideration of small steps which have a rapid and observable impact. It gets the mind out of neutral gear so that the journey forward has momentum. Below are three of CMP's initial steps in the 'nudge' direction of travel. Read the White Paper:

'Nudging Mediation: Applying 'Nudge' thinking to increase the use of mediation and cut the cost of conflict in the workplace"³

Visibility – overcoming 'status-quo bias' and 'conformity'

One of the initial tenets of Thaler and Sunstein's thinking is visibility – people are more likely to use something if it is the first, the most visible, and the most often selected choice. People are powerfully attached to the status quo and inclined to conform, particularly if they feel the eyes of their peer group upon them.

Like most measures which offer a solution to a relatively uncommon problem, mediation has not built up a critical mass of usage in the UK to encourage people to opt for it. The main alternative – litigation – has centuries of case-work, famous users, well-known practitioners, and a body of fiction and film in which the litigator is the star. Adjudication and litigation must remain part of workplace dispute resolution. A majority of distressed, hurt, disappointed people choose to put in a grievance and seek an investigation because this option feels more familiar and appears more conventional.

Mediation is not the norm, and many complaints which would be resolved by mediation never enter the process. The following nudges will deflect people from the idea that litigation, or grievance or formal process is the natural choice:

1. Abandon the term ADR (Alternative Dispute Resolution)

By positioning mediation as an Alternative Dispute Resolution process, we relegate it to a secondary place, reinforce the 'status-quo bias' and emphasise mediation's lack of primacy.

³ The White Paper – Nudging Mediation: Applying 'Nudge' thinking to increase the use of mediation and cut the cost of conflict in the workplace – is published at:

http://cmpresolutions.co.uk/pdfs/CMP_Resolutions_Nudging_Mediation.pdf

The term “alternative” evokes negative connotations: wacky, not for your ‘average’ person, left field. Mediation should be repositioned as concept and term in its own right. Let’s all start talking about ‘mediation’ not ADR.

2. Rebrand grievance procedures as resolution procedures

Re-brand grievance procedures as ‘grievance resolution procedures’ or just ‘resolution procedures’ to emphasise resolution over grievance. A grievance procedure invites parties to grieve; a resolution procedure encourages parties to resolve.

3. Replace the concepts and terms ‘formal’ and ‘informal’ in resolution procedures

Mediation is generally located under the ‘informal’ section of a grievance policy. ‘Formal’ in contrast sounds serious, credible, legitimate and powerful, and by implication ‘informal’ process are perceived as casual, relaxed, and ‘soft’. Renaming the processes available within a grievance procedure as ‘resolution options’, or ‘resolution pathways’ will identify each option by what it is, and the circumstances in which each is best used. Rather than an informal and formal section, describe a range of options each with their own characteristics and benefits.



This article is Part 2 of 3 in this series.

John Crawley is the Founder and Chair of CMP Resolutions.

CMP Resolutions work to Close, Manage and Prevent disputes at work through skills development, mediation and investigation services.

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