

# UK National Work-Stress Network Conference 21 November 2009

## Mediation: an answer to stress at work?

John Usher: solicitor and accredited  
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# From Zeus to the Conciliation Act 1896

- From the Conciliation Act 1896 to the Employment Act 2008
- Over 100 years ago, the Board of Trade, at the party's request was given statutory power to appoint conciliators in its discretion in respect of any difference between the parties "existing or apprehended".

# A new landscape for workplace dispute resolution?

- The 2008 Act “will reform the mechanisms for dispute resolution by repealing the statutory workplace dispute resolution procedures and replacing them with a package of non-legislative measures to help employers and employees resolve disputes earlier.”

Minister for Employment Relations, Mr. Pat McFadden

- Will trade unions resist in the face of the threat that early mediation poses to their role and their ability to help their members, or
- will they take the opportunity to help their members resolve disputes at work to their advantage?

- ◉ There is no doubt that the courts and tribunal systems often do not provide effective remedies for workers in a dispute and mediation may do that.
- ◉ Unions will certainly have a part to play.

# Examples...

- ◉ Stress and bullying
- ◉ Discrimination
- ◉ And the ongoing relationship

# Who will participate?

- ◉ Stress and the Unison protocol
- ◉ And who will pay for mediation?
- ◉ In Acas we trust...who else?
- ◉ The employers' HR department?
- ◉ The case for regulation

# The union's role

- ◉ Representation and the right to be accompanied
- ◉ "The mediator shall conduct the proceedings in an appropriate manner taking into account the circumstances of the case, including possible power imbalances..." European Code of Conduct for Mediators

- “These are seasoned negotiators, happy to sit out the debate for as long as it takes to get the right result. Even if the trade unionist represents only his own individual case the Mediation can be suffocatingly and distractingly crowded by the invisible presence of the future brothers and sisters who could suffer equal injustice if the ‘proper’ result is not reached.” (Jane Andrewartha)

# What is mediation? (1)

- ◉ a skilled mediator aids those in dispute to reach a mutually acceptable resolution to their dispute;
- ◉ the participants take part on an entirely voluntary basis – and can walk away from the mediation at any time;
- ◉ all discussions are confidential and “without prejudice”;

# What is mediation? (2)

- ◉ the mediator holds informal joint and private meetings with the participants;
- ◉ the mediator's function does not include making a binding decision;
- ◉ the mediator guides and facilitates the participants to indentify the issues;
- ◉ if settlement is reached, as it is in the majority of cases, the parties may make a binding agreement.

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**Mediation: not *the* answer  
to stress at work, but an  
effective option...**

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