ANALYSIS OF THE USE OF MEDIATION IN RESOLVING WORKPLACE CONFLICTS

BY

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TABLE OF CONTENTS

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Abstract

The following dissertation was written as part of the MA in Dispute Resolution at the Independent College Dublin (ICD). During this dissertation, a critical analysis of the use of mediation and other Alternative Dispute Resolution methods to resolve workplace conflicts. This research will consider the challenges, difficulties, and limitations experienced by the parties involved in workplace disputes, the alternative methods available to solve disputes that arise in the workplace, and how efficient mediation is to resolve such disputes. The critical analysis will focus on how mediation is used to resolve workplace conflicts such as bullying. Harassment, discrimination, and employers use to this mechanism. This research will also examine other ADR mechanisms such as Arbitration, Negotiation, Conciliation, we will also examine the stages involve when resolve a dispute through mediation (Frenkel and Stark, 2008), the weaknesses and the strength of using this ADR mechanism, the advantages of ADR in resolving conflicts, the outcomes of using mediation.

Also, this research work will present critical reviews on the use of this process and how other scholars have observed. The methodology which will be used in this work will be purely academic bibliography that is it will be based on a constructivist philosophy approach. This is to say, it will examine mainly what others have written on the use of mediation in resolving workplace conflicts.

All the difficulties faced by the parties involved in terms of limitations, the unique characteristics of these disputes, and the orientation of the principles, approaches, and declarations in using alternative methods and mediation demonstrated that alternative dispute resolution is a good choice to resolve workplace conflicts especially with the abundance of advantages it has .

Mediation is essential and valuable because it can guarantee a good relation and co-operation between the parties in the future, and arbitration, even with no high number of cases been resolved by this method, seems to help cross border disputes.

Keywords: Alternative Dispute Resolution (ADR), workplace conflicts (WPC). Workplace Relation Commission (WRC)

List of Tables and Figures

Background to the study

The rise of conflicts especially in workplaces and the use of litigation to resolve such conflicts has inaugurated the introduction of Alternative Dispute Mechanisms (ADR) in our communities today. Alternative Dispute Resolution is the process of initiating alternative methods and procedures to resolve a dispute without resorting to litigation. Conflicts are normal phenomena therefore it is almost impossible to avoid such in a society of today that is why most people rather resort to using ADR to resolve their conflicts (Ahmed Mahmoud, 2017).

Looking at the evolution of ADR, it originated in England as early as 1066 (McManus and Silverstein, 2011). English citizens held their own informal court to solve private disputes. Often, these informal meetings were led by respected male members of the community. Sometimes, instead of trying a case in king's court, the king would adopt the decision of the citizens. This is one of the first forms of arbitration created. In the American Colonies, mediation was more popular than traditional lawyers and courts. After the United States gained independence, arbitration was mainly used for patent claims until the 19th century when the Federal Mediation and Conciliation Service (FMCS) was created. Then, in the 1920s congress enacted the 'Federal Arbitration Act'. Throughout the 20th century it grew in popularity in America and now ADR is a big part of the American Legal System.

Contextually, the 2008 Irish survey revealed that ADR practices for resolving collective conflict were more pronounced in Ireland than individual ADR practices, but most nevertheless remained features of minorities of firms and even of larger firms (Roche and Teague 2011: 445; Teague et al. 2012: 595). Latent class analysis revealed that an estimated 25 percent of mainly non-union firms used sets of collective ADR practices that included 'brainstorming', problem-solving and associated techniques to solve problems and resolve disputes, as well

interest-based bargaining, and intensive formal communications regarding impending change. A further five percent of mainly unionised firms combined these practices with conventional disputes procedures and used external experts to promote early dispute resolution (Roche and Teague 2011: 447-52). There was little evidence that these clusters arose from deliberate proactive attempts to develop conflict management systems (albeit confined to group conflict). Thus, the 2008 Irish survey unambiguously showed that the adaptation of ADR-inspired conflict management practices in Ireland was neither as widespread nor as transformational or systemic as the pattern that research was finding in the USA.

This study is divided into five chapters. Chapter 1 reviews the related literature of this study; chapter 2 examines the research methods and methodology; chapter 3 presents data/findings, chapter four analyses the data. The study ends with chapter five, which examines the conclusions and recommendations.

Research questions

The research questions of the study were;

1. What is ADR?
2. What are the various ADR Mechanisms?
3. What are the various workplace conflicts?
4. What is the process of using mediation in resolving workplace conflicts?
5. What are the strengths and weaknesses of using mediation in workplace conflicts?

Aims and Objectives

The aim of the study was to analyse the use of mediation in resolving workplace conflicts. The objectives of the study were to analyse what ADR is all about, explain the various ADR mechanisms, state the various workplace conflicts, explain how mediation is used in resolving

workplace conflicts and identify the strengths and weaknesses of using mediation in workplace conflicts.

Problem Statement

It is very common to find individuals at loggerheads in workplaces like companies, firms as well as industries. This may either manifest in conflicts between the employers and the employees or among the employees themselves. Nevertheless, the escalation of these conflicts has the potential of ending in litigation, which is time consuming and most at times costly as opposed to the use of Alternative Dispute Resolution (ADR) measures which saves time and money. Conflicts are bound to occur in workplaces be it relationship conflicts, task conflicts, value conflicts as well as bullying, but what should be of primary concern is the techniques adopted to resolve the conflicts. Mediation is the most used ADR mechanism, but it is not, however, clear whether it is successful in resolving workplace disputes. It is against this backdrop that the researcher thought it wise to conduct an analysis of the use of mediation in resolving workplace conflicts.

Significance of the Research and Limitation

This study can be beneficial to employers and employees within a company or an establishment where conflicts are rampant. Therefore, the different ADR mechanisms can be applied to resolve workplace conflict-making litigation as the last resort.

Talking about the study's limitation, the study is limited in analysing the use mediation for the resolution of workplace conflicts.

CHAPTER ONE: LITERATURE REVIEW

1.1 INTRODUCTION

Alternative Dispute Resolution also known as ADR is a mechanism used to resolve conflicts out of court. In recent times many people drift from going to court but prefer resolving their disputes using any ADR mechanisms, typically dispute resolution processes are techniques parties can use to settle disputes, with the help of a third part. This third party is some time chosen by the parties themselves or referred by the court and must be impartial mechanisms are used when parties cannot reach an agreement and does not intend making the conflict to be in public. In the past years, many people who found themselves to be in conflicting situations or disagreement with others where resistance to the usage of ADR mechanisms same as their advocates, but in recent times, it has gained widespread acceptance both the public and the legal profession in recent years. In fact, before any case is brought to litigation, some courts require parties to resort to ADR before permitting the party's case to be heard.

There are some cases that cannot go through ADR procedures, cases such as criminal offences. It makes use of third party such as the mediator, or a negotiator, arbitrator, using this mechanism in resolving disputes reduces the load on an overburden court system and it is often less expensive and less time consuming for all parties. Alternative dispute resolution has gained acceptance in the business and legal community. Parties in conflict might sort of ADR before a trail or during a trial that is before reaching a ruling in court. If the parties decide to use this mechanism in resolving any dispute that arises, it is known as ex-ante ADR that may lead to an agreement. When it is used during the trial, it is known as export ADR, in which case using DDR mechanism to resolve conflicts is always voluntary. The parties who are involved in the conflict, sue motto agrees to use this method to resolve their dispute and

sometimes the agreement from this process turns out to be non-binding on the parties especially if the parties used mediation.

In other circumstances, the court asks the parties to resort to ADR in resolving their conflicts dispute-settling mechanisms in any given society range from the informal to the formal and even ritualistic (Ajayi and Buhari, 2014). They differ as to the consequences of non-acceptance of the solutions devised and as to whether they utilise 'third parties' as deciders or purposes of solutions. One major classification is third party machinery that is binding on the disputants, but such disputes' settling machinery are not of the same type either in our formal legal system or in our commercial groups. We can take three basic models as being representative of the variety of structure that has been found. These are the umpire, the adversary, and the investigatory models. It is your own personal choice whether you want to use ADR to resolve a dispute with a business or at work rather than rooting for litigation. You do not have to use ADR and have the right to take legal action instead.

A court will usually require you to show that you have tried to resolve the issue before taking legal action. You can find out more about the small claims procedure and taking a civil case. In most cases, participation in ADR schemes is not mandatory for companies. However, any business who commit to using, or are legally obliged to use an ADR entity must point you to the name and website of the relevant ADR scheme. Alternative dispute resolution has been chosen instead of court procedures because it is less expensive, less time consuming, and is considered more efficient, this, however, does not make litigation less efficient. These kinds of procedures are also more collaborative and allow the parties to discuss and understand each other's points of view, aims, and interests, helping them keep a good relationship after the case has been resolved. This is sometimes lacking when

it must deal with court procedures. It is worth noting that ADR helps parties to come up with a significant point and it gives room to creativity, it helps to build relationship rather than the parties becoming enemies and to a greater extent helps parties themselves to reach solutions that a court proceeding may not be legally capable of offering (FindLaw, 2021). The concept of ADR has been devised with an intent to provide an alternative to the conventional methods of dispute settlement. ADR was said to have started at the Pound Conference of 1976 when Professor Roscoe Pound presented a paper entitled 'The Causes of Popular Dissatisfaction with the Administration of Justice in America'. Today, ADR is no more seen as an alternative mechanism but a mainstream (Sourdine, 2014).

It is easy for one to distinguish the various ADR mechanisms according to the degree of formality they employ in their procedures. In some procedures, they utilise formal rules of evidence, discovery, motion practice, and the like, while others entirely dispense with procedural formality and encourage participants to simply, 'tell their stories'. Similarly, some involved decision-makers who are constrained by legalistic notions of precedence and stare devise particularly in arbitral procedures, while others permit decisions simply on the facts and equities in each case. One can also distinguish ADR mechanisms based on whether they culminate in a consensual resolution of a dispute or whether a settlement is imposed. Mediation and other settlement-enhancing processes result, if successful, in a consensual settlement of the dispute. On the other hand, arbitration and some of the other processes result in a third-party decision, comparable to a judgement by a court.

The main aim of ADR organisations is to facilitate communication between parties to help find a solution to the problem that is agreeable to both sides. Some ADR organisations can only propose a solution, while others have the power to impose a decision or ruling

(Citizens Information.ie, 2022). It makes use of third parties such as mediators or negotiators or arbitrators. Using alternative dispute resolution mechanisms, we consider the load on an overburdened courts system; and it is often less expensive and less time consuming for all parties involved. Alternative dispute resolution has gained acceptance in the business and legal community. Parties in conflict may seek to resort to alternative dispute resolution before a trial which is known as ex-ante ADR might sometimes lead to an agreement alternative dispute resolution can also be recommended after a dispute arises also known as ex-post. This process is a voluntary process where non-binding alternative dispute resolution is required there can be a trial. In other instances, the court asks the parties to resort to ADR in resolving their conflicts. Alternative dispute mechanism has so many advantages, and it is beneficial to both parties. The first advantage of using any ADR process is that it is private, especially in the process conflict negotiations among celebrities where parties do not want their dispute to be disclosed to the public. They may resort to ADR and it will also lower the risks by offering dispute alternatives, dispute resolutions that are mutually beneficial to both parties. It is less expensive as compared to litigation and this makes it more confidential and desirable for some parties as they have more control over the other parties in the dispute. Alternative disputes typically offer a less formal environment with which to resolve workplace conflicts. Parties can work together with a natural individual or panel to come to an argument so as to enable resolve issues of conflict giving them a good understanding of the problem at hand and to inform the parties which alternative dispute mechanism to be used and which is suited in order to resolve the conflict.

This mechanism allows parties to come to a win-win resolution that considers everyone's opinion and position rather than litigation process. In an article which is related to ADR namely the Irish beach business and employers' confederation stated that ADR is an umbrella

term covering a range of initiatives that are introduced by organisations to modernise or strengthen workplace conflict management agreement (Doherty, Teague and Naughton, 2008). Recently, the number of disputes by courts in Ireland has increased this may be caused by various reasons including increased frustration from employers or employees English and to economic circumstances. As the years go by, increased legislation including the Organisation of Working Time Act 1997, the Safety Health and Welfare at Work Act 1989 and the Equal Status Act 2000 have set challenging goals for employees (Schutte, 2003).

ADR has become essential in recent times as it is seen as the first method for resolving disputes outside of the official judicial mechanism. Alternative dispute resolution has different mechanisms which can be used in resolving conflicts. Often, the involved parties consider which one to choose. Alternatively, the court can recommend mechanisms that ought to be used depending on the facts presented in court. Alternative dispute resolution includes informal tribunals. Alternative dispute resolution is classified into four parts which include negotiation, arbitration, mediation, conciliation. These mechanisms are classified as formal and informal, and may depend on the jurisdiction of their applicability. Mediation is classified to be an informal process of resolving disputes while a classic formal tribunal form of ADR is arbitration (both binding and advisory of non-binding).

1.2 Types of ADR Mechanisms

The different ADR mechanisms are diverse based on the opinions of different scholars, but they all agree that the mechanisms are suitable for resolving workplace disputes. According to Fiadjoe (2004, p. 2), the different mechanisms of ADR are Negotiation, Mediation, Arbitration and Conciliation. Colvin, Klaas and Mahony (2006) subscribe to their opinion through the addition of peer review.

1.2.1 Negotiation

Negotiation may be defined as any form of direct or indirect communication through which parties who have conflicting interests discuss the form of any action they might take together to manage and ultimately resolve the dispute between them (The Law Society of Upper Canada, 1992). Negotiations may be used to resolve an existing problem or lay the groundwork for a future relationship between two or more parties. According to Dispute Prevention and Resolution Services (2022), it must be noted that there is no compulsion for either of the parties to participate in the process of negotiation. The parties have the free will to either accept or reject the decisions that come out of the process of negotiation. There is no restriction on the number of parties that can participate in the process of negotiation. They can vary from two individuals to the process of involving dozens of parties. Unlike arbitration and mediation, parties reach the outcome of a negotiation together without resorting to a neutral third party. The process is flexible and informal, ensures confidentiality at the choice of the parties.

In terms of procedure, negotiations are probable the most flexible form of dispute resolution process because it involves only those individuals or parties who are interested in the matter. They shape the process of negotiation with regards to their needs and at their convenience. The chances of reaching a mutually acceptable agreement are high in this process since the acceptance by all the parties is ensured. Since the process of negotiation uses the interests-based approach, it provides a greater possibility of a successful outcome. As mentioned above, there is no compulsion for either of the parties to participate in the process which makes negotiation a voluntary process. Once an agreement is reached between the parties, negotiation may also enhance the relations between them.

However, negotiation has some disadvantages as well. Although negotiation provides a greater possibility of a successful outcome, if the parties are unequal then those in a weaker position may be placed in a disadvantageous position. The parties may terminate the process whenever they wish to during the proceedings, this may cause a huge loss of time and money invested in the process. Negotiation does not ensure the good faith and trustworthiness of either of the parties. It must also be mentioned that some issues may not be amenable to negotiation.

Despite all its disadvantages, negation is still on the rise as a medium for resolving disputes. It is much more time maximising and money-saving. Negotiation allows the parties to meet to settle a dispute.

1.2.2 Mediation

Mediation is the most frequently employed ADR method because of the mediation process itself when people feel that a process is fair, they are likely to be significantly more satisfied with the outcome (Bingham, 2004). A satisfactory outcome for participants is that the experience is as collaborative and least traumatic as possible. In mediation this happens in the same way in either a legal context or in other conflict situations (King & Guthrie, 2007) such as peer mediation (McWilliam, 2010) and workplace conflict resolution (Bingham & Novac, 2001). The general process involves three features (McKenzie, 2015):

Participation. Participants are actively involved in the decision-making process. By participating, it may be found that simple misunderstandings are at the heart of a dispute. ***Representation/reparation***. Parties are allowed to express their perspective and how they feel about what has occurred. One of the powerful forms of reparation is an apology (research on apologies at work has found them to be effective).

Validation/reintegration. Parties work to solve a dispute in a cooperative and respectful way. For example, in restorative justice, balance is achieved through forgiveness as the parties are reintegrated back into the original 'community' (Kidder, 2007).

McKenzie (2015) highlighted that there are three kinds of mediation as given by Bingham (2004), and Nabatchi, Bingham & Good (2007).

Evaluative in which the mediator offers an expert opinion to assess the legal and substantive merits of a claim to give the parties information about the strengths and weaknesses of their case.

Facilitative where the mediator structures the process for the parties and engages in problem-solving techniques to move the parties toward settlement.

Transformative this is less directive than the other approaches. The mediator provides opportunities for parties to clarify their own interests, goals, and choices to reach a better understanding or acknowledgement of the other's perspective and to resolve their own conflict.

Mediation is becoming a progressive significant aspect of organisational integrated conflict management systems. Considered to be effective in disputes involving strong emotions, it is increasingly popular to resolve discrimination and harassment complaints. Mediation may also help resolve the relational and emotional aspects of intractable conflict found in psychological injury claims (Retzinger & Scheff, 2000). McWilliam (2010, p. 294) suggests that 'if left unresolved, the residual, underlying relational issues may be externalised in more destructive forms of conflict'. Mediation has also been found to produce better organisational outcomes than either no intervention or one involving judgement, such as arbitration, as it is

often less expensive and more satisfactory to the parties involved (Bingham, 2004). Harkavy (1999, p. 156) for example, argues that 'mediation provides a comfortable forum for all parties and thus is more likely to facilitate a workable resolution to a dispute than a more adversarial process involving rights adjudicated in a formal setting under a fixed set of rules. It has also been found that employees involved in an interpersonal dispute often simply want cessation and reconciliation rather than retribution (Harlos, 2004). Certainly, the possibility of an apology is possible in mediation rather than litigation, where it may be considered an admission against interest or evidence of liability (Bingham, 2004). White (2006) argues that the promotion of forgiveness using court-ordered apology can maximise the therapeutic effect and minimise the anti-therapeutic effect of judicial procedures. There are also examples of legislation in several countries that allow for this without being deemed constituting an admission of liability for death or injury. Critics of the court-ordered (as opposed to voluntarily given) apology have remarked that this has the potential to manipulate victims, although research has shown that it is the degree to which the apology is perceived as genuine and sincere that is key to its acceptance (Allan, Allan, Kaminer & Stein, 2006). Furthermore, there is little to say what differentiates apologetic behaviour from other restorative behaviour, and to what extent an apology can address emotional and psychological wounds is open to debate; some judges have been known to use apologies as a shaming mechanism (Allan et al., 2006).

1.2.3 Arbitration

According to LEXLAW (2022), arbitration is a form of alternative dispute resolution where an impartial arbitrator makes a final and binding decision to settle a dispute between parties.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

The main role of the arbitrator is to ensure there is a binding decision on the parties and award is awarded to the party of merit, ensures a fair hearing and accurate preponderance and of evidence. This process is governed by the Arbitration Act of 2010 which lays down the process and the procedures in arbitration. This process is very flexible and private, the arbitrator is always ready to form the parties and the hearing can be arranged without unnecessary delays.

In Ireland today, arbitration is one of the oldest forms of ADR, and its usage has been traced to the Brehon laws; whereas in the United States of America, it has been traced to the eighteenth century when courts were unreceptive to its usage. In the 1920s things stared to change with the passage of the first state arbitration law in New York (Yang, 2008). Arbitration is commonly used to resolve international commercial conflicts, international boundary disputes, insurance, employment consumer disputes including package holidays, contracts for the sale of motor vehicles, etc. Arbitration just like litigation rulings are final and binding on the parties, however, the difference with litigation is that it can always be appealed at superior court.

Parties have to give their consent before the commencement of any arbitral procedure, being guided by the act and also be mentally prepared for its outcome and the arbitral process can be within the parties' control if they can reach an agreement. Section 2 of the arbitration act 2010. There is also compulsory or statutory arbitration although it is challenging to situate it with the framework of arbitration since the latter takes place pursuant to the argument of

the parties. And not because it is mandatory to refer the dispute to arbitration. This method is linked to the domestic provision of each individual legal system (court proceedings in wartime).It is important to say that compulsory arbitration can find all the elements of special jurisdiction your institute the choice of the arbitrator is left to the parties, it must be looked upon from different views of each legal system. Talking about international arbitration the Geneva Convention 1927 what about international arbitration worldwide this convention reinforces foreign arbitration awards and it is also known as the New York Convention, it is through this convention Warren arbitrary award was recognised which is also known as the (convention on the recognition and enforcement of foreign arbitrary award New York 1958). United Nations Commission on international trade law 2022 elaborated more on foreign arbitral awards. Parties that give consent to an arbitration process committed themselves impliedly to bring to the arbitrator's attention all relevant points and issues connected with the disputes so that at the end of the process the matter can be conveniently concluded with fair hearing and not being biased to any of the parties. The private nature of the arbitration process makes resolution of disputes easy to all the parties involved and due to its flexibility nature, there is no standard of proof that each party needs to adduce unlike litigation process that is why the court might sometimes refer some juice dispute to arbitration rather than litigation. In commercial contracts where there is a clause in the contract that states that in case of any dispute that arises in the course of the contract parties may resort to arbitration, therefore within the course of that contract where there are any dispute parties are bound by that clause and not litigation.

Some merits of arbitration include:

- In contrast to litigation, where one cannot 'choose the judge', arbitration allows the parties to choose their own tribunal. This is especially useful when the subject matter of the dispute is highly technical: arbitrators with an appropriate degree of expertise (for example, quantity surveying expertise, in the case of a construction dispute, or expertise in commercial property law) in the case of a real estate dispute can be chosen.
- Arbitration is often faster than litigation in court.
- Arbitral proceedings and an arbitral award are generally non-public, and can be made confidential.
- In arbitral proceedings the language of arbitration may be chosen, whereas in judicial proceedings the official language of the country of the competent court will be automatically applied.
- In most legal systems there are very limited avenues for appeal of an arbitral award, which is sometimes an advantage because it limits the duration of the dispute and any associated liability.

Some of the disadvantages include:

- Arbitration agreements are sometimes contained in ancillary agreements, or in small print in other agreements, and consumers and employees often do not know in advance that they have agreed to mandatory binding pre-dispute arbitration by purchasing a product or taking a job.
- If the arbitration is mandatory and binding, the parties waive their rights to access the courts and to have a judge or jury decide the case.

- There is sometimes a disconnect between the presumption of confidentiality and the realities of disclosure and publicity imposed by the courts, arbitrators, and even the parties themselves (Brown, 2001).
- If the arbitrator or the arbitration forum depends on the corporation for repeat business, there may be an inherent incentive to rule against the consumer or employee.
- There are very limited avenues for appeal, which means that an erroneous decision cannot be overturned easily.
- Although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays.
- Arbitrators are generally unable to enforce interlocutory measures against a party, making it easier for a party to take steps to avoid enforcement of members or a small group of members in arbitration due to increasing legal fees, without explaining to the members the adverse consequences of an unfavourable ruling.
- Discovery may be more limited in arbitration or entirely non-existent.
- The potential to generate billings by attorneys may be less than pursuing the dispute through trial.

1.2.4 Conciliation

Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions, and assisting parties in finding a mutually acceptable outcome. Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the

conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

According to the Consulting and Conciliation Service (2022), there is a form of 'conciliation' that is more akin to negotiation. A 'conciliator' assists each of the parties to independently develop a list of all their objectives (the outcomes which they desire to obtain from the conciliation). The conciliator then has each of the parties separately prioritise their own list from most to least important. The conciliator then goes back and forth between the parties and encourages them to 'give up' on the objectives one at a time, starting with the least important and working toward the most important for each party in turn. The parties rarely place the same priorities on all objectives, and usually have some objectives that are not listed by the other party. Thus, the conciliator can quickly build a string of successes and help the parties create an atmosphere of trust which the conciliator can continue to develop.

There is a different form of conciliation that, instead of a linear process of bilateral negotiation, employs deep listening and witnessing. Conciliation literally means: 'Process of bringing people together into the council'. In this second definition, a conciliator is not so much focused on goals and objectives pre-set by the parties, but more focused on assisting parties to come together to resolve conflicts on their own. Many people in trying to resolve conflict independently come up with solutions that turn into goals based on understanding only a portion of the whole issue. By helping parties understand deeply where all are coming from, different and new solutions emerge from this deep understanding. The conciliator is in service to this deep witnessing between all parties involved. At times when two or more parties are not ready to face each other nor communicate with each other directly, the conciliator helps parties to understand their own perspective, feel more empowered to speak their truth and represent their own needs in a future dialogue with the other parties to the

conflict. The conciliator addresses any power disparities perceived by any party in a safe manner. The ensuing dialogue in this form of conciliation can – with the parties' wishes – involve the conciliator as a facilitator until the parties feel comfortable to communicate on their own. This form of conciliation is non-linear and involves an informal method of reconciliation between people who do not necessarily need to negotiate legal issues such as property rights or tort injuries. It can also involve more emotional and passionate elements as tangible and historical topics emerge as the causes of the conflict. Most successful people who work in conciliation quietly persevere and allow the progressive movements in the parties' healing guide them.

1.3 WORKPLACE CONFLICT

Workplace conflict is bad for business because it can lead to downturns in productivity and increases in absenteeism (Workplace Conflict, 2022). There are broadly two kinds of workplace conflict: when people's ideas, decisions or actions relating directly to the job are in opposition, or when two people just do not get along. The latter is often called 'a personality clash'.

A conflict of ideas on any aspect of business can often be productive if the parties involved are willing to 'brainstorm' solutions together. Sometimes, the compromise can be better for business than either of the original ideas. Conflict of this kind often generates better work practices and initiates positive changes that would otherwise never have occurred. Personality clashes, on the other hand, are very rarely productive. A clash may start with a dispute on business practices and escalate from there to mutual loathing, or else the two people may simply have disliked each other from the beginning (Workplace Conflict, 2022). This type of workplace conflict is bad for business, because it can lead to downturns in productivity and increases in absenteeism. On an individual level, workplace conflict is

stressful and unpleasant. This anxiety may spill over into other areas of life and disrupt, for example, personal relationships.

1.3.1 The stages of conflict

It is not always easy to pinpoint when a disagreement becomes a conflict because of the different ways that people react (ACAS, 2013, p. 6). But there are distinct stages in the lifecycle of conflict, where they will display certain common behaviours. It can be helpful to recognise these (Table 1).

Table 1: The conflict lifecycle

Stage of conflict	Behaviours or signs
Beginning	Incompatible goals
	Open or covert conflict
	Avoidance of conflict
	Tension starts to be noticed
Early growth	Confrontation
	Polarisation of positions
	Seeking allies
	More overt signs of conflict
Deadlock	Conflict at its peak
	Blame apportioned
	Communications cease between parties
	Entrenched positions
Look for a way out of the conflict	An acceptance that the problem needs to be sorted out

Working together for a solution	Collaborating Consensus

Source: Mediation: An approach in resolving workplace issues (2013, p. 7)

1.3.2 Types of workplace conflicts

According to Shonk (2021), three types of conflicts are common in organisations: task conflict, relationship conflict, and value conflict.

1.3.3 Task Conflict

The first of the three types of conflict in the workplace, task conflict, often involves concrete issues related to employees' work assignments and can include disputes about how to divide up resources, differences of opinion on procedures and policies, managing expectations at work, and judgements and interpretation of facts. Task conflict often turns out to have deeper roots and more complexity that it appears to have at first glance. For example, co-workers who are arguing about which one of them should go to an out-of-town conference may have a deeper conflict based on a sense of rivalry.

Task conflict often benefits from the intervention of an organisation's leaders. Serving as de facto mediators, managers can focus on identifying the deeper interests underlying parties' positions. This can be done through active listening, which involves asking questions, repeating back what you hear to confirm your understanding, and asking even deeper questions aimed at probing for deeper concerns. Try to engage the parties in a collaborative problem-solving process in which they brainstorm possible solutions. When parties develop solutions together, rather than having an outcome imposed on them, they are more likely to abide by the agreement and get along better in the future.

1.3.4 Relationship Conflict

The second category of workplace conflict according to Shonk (2021) is relationship conflict which arises from differences in personality, style, matters of taste, and even conflict styles. In organisations, people who would not ordinarily meet in real life are often thrown together and must try to get along. It is no surprise, then, that relationship conflict can be common in organisations. Pollack Peacebuilding (2022) corroborate to this type of workplace conflict but added that different types of personalities simply do not get along, especially when put together under pressure to reach a common goal. Sometimes in these circumstances, the only way to avoid conflict is to ensure certain people do not get on projects together. Other times, there can be team-building initiatives that can help competing teammates learn to understand each other or at the very least have patience with one another. Personality-clashing types of conflict in the workplace examples can include arguments over time management, proficiency, attention to detail, and overall focus on the quality of output.

1.3.5 Value Conflict

Value Conflict can arise from fundamental differences in identities and values, which can include differences in politics, religion, ethics, norms, and other deeply held beliefs. Although discussion of politics and religion is often taboo in organisations, disputes about values can arise in the context of work decisions and policies, such as whether to implement an affirmative action programme or whether to take on a client with ties to a corrupt government. Disputes involving values tend to heighten defensiveness, distrust, and alienation. Parties can feel so strongly about standing by their values that they reject trades that would satisfy other interests they might have.

Susskind (2022) recommends that instead of seeking to resolve a values-based dispute, we aim to move beyond demonisation toward mutual understanding and respect through

dialogue. Aim for a cognitive understanding in which you and your co-worker reach an accurate conceptualisation of one another's point of view. This type of understanding does not require sympathy or emotional connection, only a 'values-neutral' ability to describe accurately what someone else believes about the situation.

There are different causes of workplace conflicts it is of no doubt that the workplace has to be a safe place for every worker this includes safe ingress and engress, safe equipment under standard ought to be one of reasonableness and this is on the organisation or the company to put in place a safe system of work. Conflicts at work can be physically and mentally draining if not handled properly and with care and due diligence that is why the law that regulates the workplace system in Ireland, Health and Safety and Welfare at Work Act 2005–2010, in its section 8 sets out the employees' obligation there are four levels of workplace conflict (Rahim,2010) which are interpersonal, intra-personal, intra-group, an entire group. The Workplace Relations Commission is in charge of every complaint laid by any worker in any organisation therefore they have the responsibility to see that each dispute arises in any organisation is being resolved except in criminal cases which can be referred to court for adjudication there are procedures laid down by the workplace relation Commission in Ireland when dealing with complaints be it from an employee or an employer, however, where a dispute arises in the working environment the parties in questions are advised to resolve the problems within themselves and where the problem is above the parties they can be referred to a higher authority and where did higher authorities cannot handle such a dispute they have referred to other forms of alternative dispute resolution mechanisms such as mediation and conciliation.

There are many types of workplace conflict and there are various causes as well, there are high rates of workplace aggression help which includes bullying, harassment discrimination

assault and there are diverse laws that guide each of these offences and different organisations that handle each of these offences this research explains better the various types of conflicts that arise in working environment,

1.4. Bullying At Workplace

The workplace bullying institution defines bullying as an act that is repeated, harmful, mistreatment of an employee by one or more employees, abusive conducts that takes that take the form of verbal abusive, physical, and non-verbal behaviours that are threatening, intimidating, or humiliating. It also involves work interference or sabotage or in some combination (Workplacebullying.org, 2021). The issue of bullying in the workplace, also called 'mobbing' in many countries, is a complex one. It may come in many shapes and shades, with multi-in practice, only minor differences exist between the concepts of bullying harassment, and mobbing (Zapf and Einarsen, 2005).

The term bully may more easily lend itself to descriptions of the perpetrator who behaves aggressively in many situations and possibly toward more than one target. Whereas the concept of mobbing is more attune to the experiences of targets who are exposed systematically to harassment by one or more perpetrators and who may, over time, become severely victimised by this treatment. Hence, the concepts seem to focus on the two different but interrelated sides of the same phenomenon, the perpetrators, and the targeted causes on many levels, and with diverging views on its very nature (Agervold, 2007).

According to Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work bullying is defined as ''Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more people against another or others, at the place of work and/or in the course of

employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work, but, as a once off the incident, is not considered to be bullying (Health, 2007).

The latest study of Einarsen and Nielsen (2014) depicted that the fact that workplace bullying is some sort of criminal act in which employees star to feel inferior and indulge in fear and depression. Davenport, Schwartz, and Elliot (2005), and Davidson and Doughty (2003) state that workplace bullying is another form of emotional abuse, harassment, psychological terror, and victimisation. Workplace bullying is one of the most damaging issues for any organisation as it affects employee productivity and financial performance and brand strength. At a basic level it is about the systematic mistreatment of a subordinate, a colleague, or a superior, which, if continued and long-lasting, may cause severe social, psychological, and psychosomatic problems in the target. Exposure to such treatment has been claimed to be a more crippling and devastating problem for employees than all other kinds of work-related stress put together, and it is seen by many researchers and targets alike as an extreme type of social stress at work or even as a traumatic event (Zapf et al., 1996). Employees deserve to work in a compatible environment of psychological safety and be able to collaborate with others without fear or emotional upset. Workplace bullying can cause grievous negative effect on employees' management company culture and overall productivity. Workplace bullying have various effects on the victims such as low morale or loss of motivation, inability to concentrate or to complete tasks, social anxiety and avoiding people.

Studies have suggested that bullying must be examined and studied because it is directly linked up with the long-term cost of organisation as well as employees (Dasilverira Etal, 2020).

However, many organisations control the bullying actions, which make the environment quite feasible for the employees to work productively. The harmful and insidious bullies are present in every organisation, if they are not controlled, then they may be the cause of the company's fiasco. Workplace bullying can be done through hostile email messages, physical aggression and even with gossips. All these types of bullying agitate the workers, which make them unable to concentrate on the work. According to the research, there are three different elements of bullying. These elements include aggressive and negative behaviour, which aims to harass people, the repeated behavioural act, and the behaviour, which originates from the power imbalance between the parties involved. The possible reasons of workplace bullying include victims socially exposed position, the absence of leadership, absence of work design and low morale standards at the department. The literal meaning of bullying includes, when a person is exposed to the negative actions repeatedly over time by one or more oppressors (Judge et al., 2001; Lazarus & Folkman, 1984; Lee, 2000; Lee & Brotheridge, 2006).

There are different models of definition when dealing with workplace bullying. Heinz Leymann (1990b, 1993, and 1996), who has been very influential in many European countries when it must deal with workplace bullying, has argued strongly against individual factors as antecedents of bullying, especially when related to issues of victim personality. Instead, he advocated a situational outlook, where organisational factors relating to leadership, work designs, and the morale of management and workforce are seen as the main factors. He asserted that four factors are prominent in eliciting bullying behaviours at work (Leymann, 1993): (1) deficiencies in work design (2) deficiencies in leadership behaviour (3) the victim's socially exposed position, and (4) low departmental morale. He also acknowledged that poor management of conflict might be a source of bullying, but in combination with inadequate organisation of work. However, he again strongly advocated that conflict management is an

organisational issue and not an individual one. Conflicts escalate into bullying only when the managers or supervisors either neglect or deny the issue, or if they themselves are involved in the group dynamics, thereby fuelling conflict. Since bullying takes place within a situation regulated by formal behavioural rules and responsibilities, it is always and the responsibility of the organisation and its management.

It is important to also take note that bullying most not only be physical presence, there is also cyber bullying which in other terms referred to as online bullying. This type of bullying takes place over digital devices like cell phones, computers, and tablets. Cyberbullying can occur through SMS, and apps, or online in social media, forums, or gaming communities where people can view, participate in, or share content. Cyberbullying includes sharing, sending, or posting negative, harmful, false, or mean content about someone else.

1.4.2 **CHARACTERISTICS OF BULLYING**

Different writers and authors have carried out research that reveals various characteristics of workplace bullying. Kemberly (2004) and Frankling (2016) agree that bullies are usually self-centred people who always want to make others feel inferior by their actions, or verbally. It is not possible or advisable to engage in guess work or stereotyping with regards to bullies. It may be that those who bully have general difficulty working with others, adapting to changing circumstances or handling conflict. However, people with these characteristics may also not bully, so each case should be taken on its own merit as generalisations are unhelpful in resolving bullying complaints. Good job design for all, adequate and effective training for all and proper supervision can help ensure a workplace where any conflict or issues around behaviours are dealt with, fairly and effectively. Bullying can have serious effects for both the person being bullied, for an individual who wrongly feels bullied but who is engaged instead

in a conflict situation, and for those who are accused of bullying. For an employer, bullying can result in dysfunctional work environments, low morale, lost time, and litigation issues.one of the characteristics of workplace bullying is that the act should be repeated on several occasions, just a single occurrence of such behaviour does not amount to bullying. For an act to be termed as bullying it most have occurred in various instances which the victim could no longer withstand.

Again, another characteristic of bullying is the fact that the bullies are compelled to act aggressively to attain forceful respect and power from others, the most constructive trait as per the analysis aggressive behaviour and communication which is assertive

1.4.3 LAW GUIDING WORKPLACE BULLYING

Workplace bullying is regarded as a very sensitive aspect in Ireland, hence there are various laws and regulations guiding this act. The first law is the code of practice for employers and employees on the prevention and resolution of bullying at work which examines extensively what bullying entails, the various types, who bullies at work, why deal with bullying and acts which are not considered to be bullying (Code of Practice of Employers and Employees on the presentation of and resolution of bullying at work, 2022).

The 1937 constitution of Ireland, in its article 40, protects the personal rights of every citizen, which include the right of equality. The law sees everyone as equals; and considers that they should have equal opportunities and the right to dignity of people. No one has the right to humiliate or intimidate or harass another person, irrespective of their age, their gender, and their sexual orientation (Citizens Information.ie, 2018). Based on this logic the Irish government has set up an organisation such as the Workplace Relations Commission where complains of such can be filled.

1.4.4 Harassment

Bullying and harassment are quite linked together, sometimes it becomes very challenging to separate both terms. The interchangeable use of the words harassment and bullying can lead to a misunderstanding of what each one relates to. They are legally distinct concepts, so behaviour can be deemed either bullying or harassment, not both. This Code refers to behaviours which come within the definition of workplace bullying only. The code does not extend to harassment under the Employment Equality Acts 1998–2015. According to e Employment Equality Acts Harassment/sexual harassment for the purposes of the Employment Equality Acts is any unwanted conduct related to any of the discriminatory grounds under the Employment Equality Acts. Sexual harassment is any form of unwanted non-verbal, verbal, or physical conduct of a sexual nature. Discrimination based on the nine grounds specified in the Acts (gender, civil status, family status, sexual orientation, religion, age, disability, race, and membership of the Traveller community) comes under the remit of the Employment Equality Acts and promoting awareness of equality in the State is the responsibility of the Irish Human Rights and Equality Commission (IHREC). In this regard IHREC has published a Code of Practice on Sexual Harassment and Harassment at Work giving practical guidance on addressing issues around harassment at work (Statutory Instrument 208 of 2012 Employment Equality Act 1998 – Code of Practice – – Harassment – Order 2012)

1.5 Critical Review of Mediation in Resolving Workplace Conflicts

The goal of workplace mediation is for participants to resolve the dispute themselves, by making an informed decision that everyone can live with (Dickinson, 2018). The mediator will not impose an outcome and a resolution will not be required or forced on the participants.

Mediation is used as a tool to resolve workplace conflicts or disputes. Often it is described as forms of alternative or informal way of resolving disputes, based on its informal nature as compares two other mechanisms but it is nonetheless followed as a structure approach.

Mediation seeks to give a speedy solution to individual workplace conflicts and can be used in various stages of disagreement (CIPD, 2022). Mediation is a flexible process and any decision arrived at is morally rather than legally binding the objective of the process is to create a safe confidential space for those involve that is the parties in the dispute to find solutions that are acceptable to each side, both geared toward resolve the conflict. In resolving workplace conflict using mediation, both parties must be willing to comprise and engage in resolving the dispute by dialoguing, they have to be willing to put the past behind them.

Using mediation to resolve workplace bullying might sometimes turn to be inefficient, based on the fact that it is not certain if the bully will be authentic in wanting to achieve the goal, he might rather see the mediation session as an opportunity to manipulate the victim further base on the informal nature of the mediation process.

The process of mediation is beneficial in resolving equal employment opportunity cases such as bullying although it faces some challenges. In a mediation process parties are seen to be equal and thus every contribution made by them in resolving such dispute is regarded as equal, but in conflicts of workplace bullying, the agenda is entirely on the appropriate behaviour of the bully in the workplace.

Mediators act as intercessors and enablers in a conversation between the people involved in conflicts. They help them to come to a mutually satisfactory agreement, and to avoid getting derailed or stuck in an argument. Talking about utilising mediation specifically for workplace

disputes, MindTools (2022) suggest the following ways which mediators can apply in any workplace dispute;

a). Establish Ground rules

First, meet with each participant separately, to outline what they can expect from you and in the process. Make sure that they are both willing to participate – mediation will not work if you try to impose it! Agree some ground rules for the next stage of the process. These might include asking each person to come prepared with some solutions or ideas, listening with an open mind, and avoiding interruptions. It is important that you build trust with both participants, and make them feel safe enough to talk openly and truthfully with you and with one another.

B). Have a full and frank discussion with each person independently.

Meeting with the participants individually will allow them to share their side of the story with you openly and honestly. Use active listening skills and open questions to get to the root of the problem. Reflect upon and paraphrase what your team members tell you, to show that you understand their points of view. Use your emotional intelligence to identify the underlying cause of the conflict, and pay attention to each participant's body language to help you to get a better sense of their state of mind. Be prepared to encounter a range of strong feelings, from fear and distress to anger, and even a wish for revenge. But avoid shutting these feelings down – this might be the first time that your team members have fully expressed the impact of the conflict, and it will likely give you valuable clues to its cause. Then ask each person what they hope to gain from the mediation. Remind them that it is not about winning, but about finding a practical resolution that suits everyone who is involved.

C). Explore the issues together

Once both sides have had time to reflect, arrange a joint meeting. Open the session on a positive note, by thanking them for being open to resolving the conflict. Remind them of the ground rules, summarise the situation, and then set out the main areas of agreement and disagreement. Explore every issue in turn, and encourage participants to express how they feel to one another. Make sure that they have an equal time to talk, and that they can express themselves fully and without interruption. If they become defensive or aggressive, look for ways to bring the conversation back to the main problem at hand. Encourage them to empathise with one another, and to improve their understanding of one another's point of view by asking questions themselves.

D). Negotiate and compromise

Once both sides have given their views, shift their attention from the past to the future. Go over the points that were raised in your meetings, and try to identify areas where they have at least some shared opinions. Resolve these issues first, as a 'quick win' will help to build positive momentum, and bolster both sides' confidence that a workable solution can be found.

Ask participants to brainstorm solutions and encourage win-win negotiation to make sure that they reach a solution that they're happy with. If a suggestion is unreasonable, ask the initiator what he would consider to be reasonable, and whether he thinks that the other party would agree.

E). Create a written agreement.

Take notes during all the meetings that you mediate and, once the participants have reached a solution, write that up as a formal agreement. Make sure that the agreement is easy to understand and that actions are SMART (Specific, Measurable, Achievable, Relevant, and Time-bound).

Help to avoid any confusion or further disagreement by checking that your language is neutral, free from jargon, and clear for all. Read the agreement back to both parties to make sure that they fully understand what will be expected from them, and to clarify any points that they do not understand or that are too general or vague.

You might even consider getting each person to sign the agreement. This can add weight and finality to the outcome, and help to increase their accountability. But mediation is designed to be a relatively informal process, and you could undermine this by pushing too hard.

F). Get some closure

It is time to bring the mediation to a close. Give the participants copies of the agreed statement, and clearly explain what will be expected from them once they are back in the workplace. Take some time to prepare, together, how to overcome obstacles to implementing the agreement, and to explore options for dealing with them. Summarise the next steps, offer your continued support as a mediator, and thank both parties for their help and co-operate.

Mediation is often a more productive approach to resolving conflict in the workplace than more formal methods. It can help to improve trust and team relationships, especially if it is used to deal with conflicts promptly, as soon as they arise. It is confidential, and needs to be

facilitated by a manager or another team member who both sides can trust to be objective, unbiased, and non-judgemental.

Similarly, ACAS (2014) recognised the following as stages of mediation in tacking workplace disputes;

First contact with the parties. The mediator will meet parties separately. The aim of this first meeting is to allow everyone involved in telling their story and find out what they want out of the process.

Hearing the issues. The mediator generally brings the participants together and invites them to put their side of the story during a period of uninterrupted time. At this stage the mediator will begin to summarise the main areas of agreement and disagreement and draw up an agenda with the parties for the rest of the mediation.

Exploring the issues. Having identified the issues to explore, the mediation is now about encouraging communication between the parties, promoting understanding and empathy, and changing perceptions. The aim of this part of the meeting is to begin to shift the focus from the past to the future and begin to look for constructive solutions.

Building and writing an agreement. As the process develops, the mediator will encourage and support joint problem-solving by the parties, ensure the solution and agreements are workable and record any agreement reached.

Closing the mediation. Once an agreement has been reached, the mediator will bring the meeting to a close, provide a copy of the agreed statement to those involved and explain their responsibilities for its implementation. In some cases, no agreement is reached and other

procedures may later be used to resolve the conflict. However, nothing that has been said during the mediation can be used in future proceedings.

In addition, Buon (2014) in his model noted seven (07) stages of the mediation process for eradicating workplace disputes, namely: Pre-mediation, Mediation start, Opening statements, Identify issues, Negotiation, Agreements and Follow-up.

Stage 1: Pre-mediation

The Mediation process commences with an individual Pre-mediation session with each of the parties. Each session would take 45–90 minutes depending upon the nature and complexity of the issues and the parties involved. The pre-mediation stage provides an opportunity for the mediators to meet alone initially with each party to participate in mediation. This minimises the potential distress of bringing the parties together in the first instance or a further escalation of the conflict especially where the mediators make an assessment that mediation is not recommended or where one party decides not to proceed. The pre-mediation stage also provides an opportunity for the mediator or co-mediators to map the conflict prior to the conduct of the joint sessions and consider the potential areas of agreement or barriers to agreement.

Stage 2: Mediation Starts

The Mediationis always conducted using two separate rooms (or more if there are multiple parties) and each party is met with again privately in separate rooms following the pre-mediation stage prior to bringing them together into the same room. This may occur on the same day as stage 1 or at an agreed time following the pre-mediation meetings. These private sessions may take 5–20 minutes.

Stage 3: Opening Statements

Once the parties have been brought together in the same room, the mediators welcome the parties to the joint session and explain what will happen. Each person is the invited to make an opening statement and is provided with an uninterrupted period within which to raise their issues with the other person. If at any time during thus or any subsequent stage of the mediation, the mediators wish to speak privately with one of the parties they may take that person into the other room and bring them back together again. A private session may be called to talk in private about a person's concerns, confront a person about their behaviour or talk through options. It can also be called so that the mediators can meet privately to discuss what to do next. The use of private sessions or 'caucus' sessions as they are sometimes referred to is the key to conducting a successful mediation and, in our view, constitute a mandatory element of workplace mediation.

Stage 4: Identify Issues

Following the opening statements, the parties will then be invited to enter an open exchange with each other. They will want to respond at this point to what has been said during opening statements. They will have substantive issues they want to talk about, and they will also have some emotions they want to express how they feel the other person's actions or behaviour has affected them. They will also want to make statements about how they think the situation needs to be resolved. At this stage, the parties are still polarised and have 'fixed positions'. This is all about telling their 'story' and being heard. The Mediators will ensure that each person feels heard and that each person feels comfortable and safe. The parties are then encouraged to begin the process of identifying the key issues and to begin to prioritise them.

The Mediators will then begin the process of 'reframing' the parties' fixed positions into the most neutral language of needs and interests so that they can start to move closer toward an exploration of how they can move forward.

Stage 5: Negotiation

Once the issues have been identified, prioritised, and reframed the parties are then facilitated to enter a negotiation process with each other about options for resolution and how they can move forward. This will involve brainstorming, more reframing, weighing up and evaluation of the options, reality checking assumptions and expectations and a detailed exploration of the initial resolution offers made by each party.

Stage 6: Agreements

If after negotiating each priority issue, the parties can reach a mutually acceptable way forward they are then facilitated to begin the process of preparing their agreement with each other. All parties sign a handwritten copy of the Mediation agreement that each party takes away at the end of the Mediation session. A typed copy of the agreement is then forwarded to the parties within one working day of the Mediation. As part of the agreement stage, the Mediators explore with the parties how they will make their agreement work once they return to work. Agreement is also sought about whether the parties wish to disclose their written agreement to their line managers, HR, or others and whether there is any other information they wish the Mediators to disclose either formally or informally to others as part of the implementation process of the agreement. The Mediators thank the parties for their participation, review what has been achieved, cover what will happen next and wish the parties every success in making their agreement work and resolving any difficulties with each other in the future.

Stage 7: Follow-up

It may also be agreed that the Mediators will meet with the parties after an agreed period to explore how their agreement is working and facilitate any problem-solving and provide positive feedback. At this follow-up session, the agreement may also be modified if needed or the possibility of re-Mediation can be explored if required.

Judging from the works of MindTools (2004), ACAS (2014) and Buon (2014), one can conclude that the process of mediation is both an art and a science. It is an art because it requires creativity and intuition in reaching a compromise among individuals involved in workplace conflicts/disputes. It is a science, as it has to do with the observation of systematic processes

to arrive at a consensus.

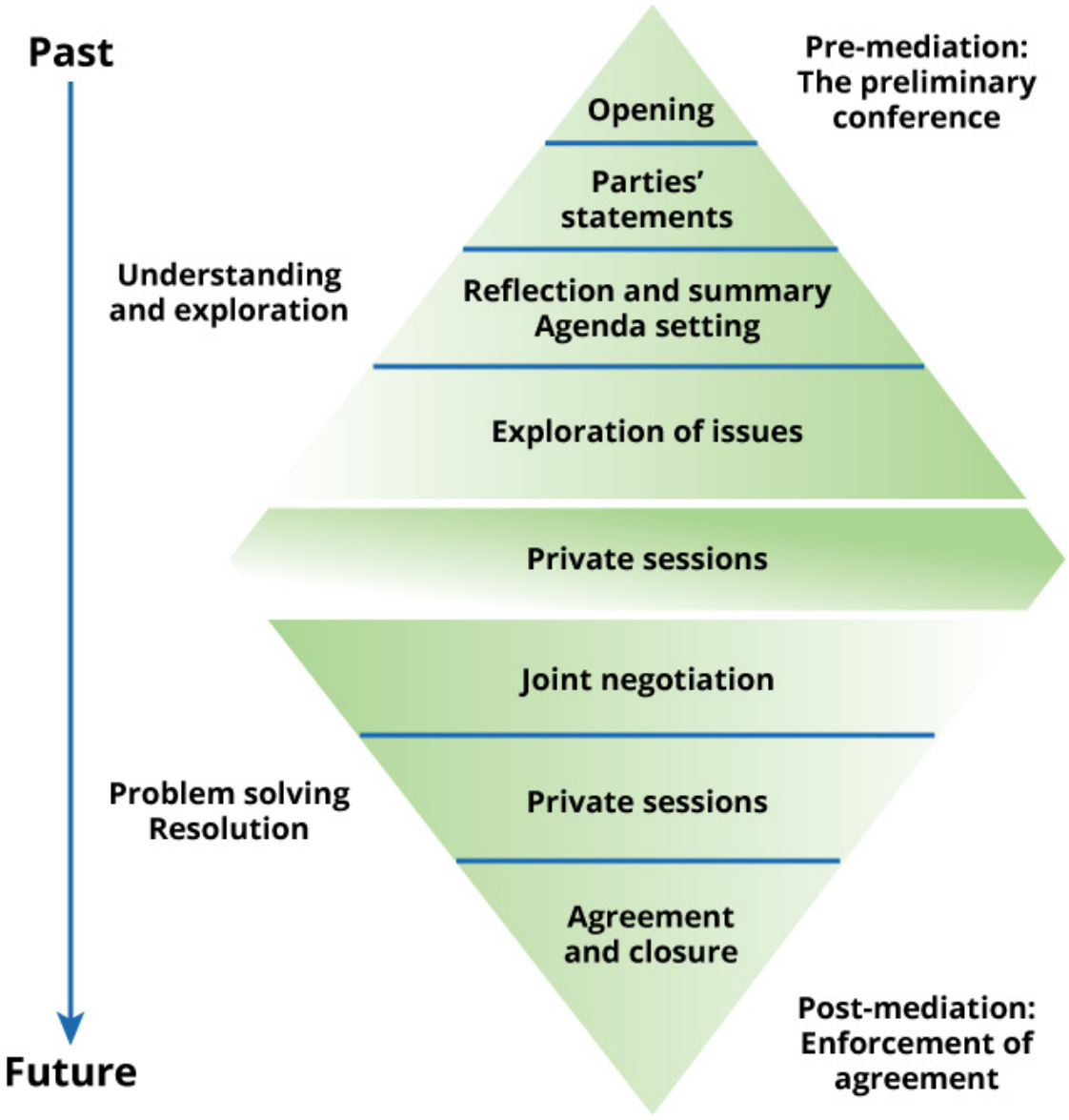


Figure 1: brief explanation of the mediation process (Winter Lawyer, 2021).

1.6 Outcome of the Use of Mediation in Resolving Workplace Conflicts

A study was carried out by McKenzie (2012) on the impact of mediation on workplace relationship conflict and return to work outcomes: a snapshot review. Stress triggered by workplace-based interpersonal conflict can result in damaged relationships, loss of

productivity, diminished job satisfaction (Kidder, 2007) and increasingly, claims for psychological injury. While the cost and prevalence of claims for stress-related conditions in Australia vary between States, nationally the numbers are rising (Guthrie, Ciccarelli & Babic, 2010). These claims are also likely to be difficult to manage and disproportionately costly (Haines, Williams & Carson, 2006). Research and best practice suggest that mediation, conducted by an independent third party, may help resolve claims caused by a breakdown in workplace relationships and assist claimants in returning to work (Bingham, 2004; Bingham & Novac, 2001; Brett, Barsness & Goldberg, 1996). Due to the subjective and emotional aspects of workplace interpersonal conflict, this review considers, in a return-to-work context, the relational rather than settlement-based features of mediation models.

Talking methodology used, a systematic search of various health and social science databases was conducted to identify relevant literature published between 1990 and 2012. Limited Australian material was found so that findings are based largely on North American research. The findings revealed that the facilitative and transformative models of mediation were found to be more appropriate in resolving interpersonal conflict in the workplace (Bingham, 2004). This is illustrated using a case study of REDRESSTM, a successful workplace mediation programme designed and implemented by the United States Postal Service. The study concluded that the process of mediation has the potential to be an effective method of resolving psychological injury claims due to workplace relationship breakdown, especially when supported by organisational commitment to Alternative Dispute Resolution strategies, policies, and processes, and conducted by independent, skilled mediators. However, since there is a lack of literature on mediation in the occupational rehabilitation and return to work contexts, it is recommended that further research be undertaken, from both employee and employer perspectives, to determine its effectiveness in Australian settings.

The 2008 CIPD (Chartered Institute of Personnel and Development) survey on workplace mediation showed that three-quarters of respondents considered mediation to be the most effective approach to resolving conflict in the workplace. In the GFK NOP telephone survey of managers in 500 SMEs, of those that had used mediation, 99% agreed that it was a good tool for resolving workplace disputes. The CIPD 2007 Managing Conflict at Work reports provided some evidence that organisations providing mediation training for managers receive fewer employment tribunal claims.

According to the 2011 CIPD Conflict Management survey report, the main benefit in using mediation is improving relationships between individuals, cited by 80% of respondents, to reduce or eliminate the stress involved in more formal processes (64%) and to avoid the costs involved in defending employment tribunal claims (52%). The 2008 CIPD survey on mediation also identified other common benefits to include: retaining valuable employees (63%) reducing the number of formal grievances raised (57%) developing an organisational culture that focuses on managing and developing people (55%) reducing sickness absence (33%) being able to maintain confidentiality (18%).

Research by ACAS (2014) found that the introduction of in-house mediation can have a transformative effect on workplace relations and underpin a new (and more informal) approach in the way that conflict is managed (Saundry et al. 2011). New skills acquired by mediators influenced their everyday practice and gave them new ways of managing conflict in a wide range of settings (Saundry and Wibberley, 2012).

What happens in Workplace Mediation	What mediators do	What benefits exist for the parties to Workplace Mediation
structured, step-by-step process	Remain impartial. Listen and help people listen to one another.	Less adversarial/confrontational. Addressing issues rather than leaving the job
Pre-mediation to educate parties about mediation. Formulating a strategy to guide the mediation	Help people communicate through questioning and summarising.	Speed and informality. Clarification about misunderstandings which may fall outside formal procedures.
Confidential and speedy	Create a safe environment for the parties and ensures they understand the principle of confidentiality	More relax in fast solutions to resolve the conflict
Defining the dispute and the issue	manage conflict constructively through reframing	Speed and informality. Clarification about misunderstandings which may fall outside formal procedures.
Assessing the suitability of these options. Win/win solutions are sought.	Help people think more creatively about solutions through reality testing.	Opportunity for emotional catharsis. Understanding/information that can improve future relationships. Problem-solving orientation
Joint meetings and separate (caucus) meetings as appropriate.	Explains the reason a joint meeting or a caucus is relevant depending on the parties	Maximises party autonomy. Possibility of integrative, customised win/win solutions that meet the needs and interests of both parties. Opportunity to restore and improve the relationship between the parties. Stimulates healthy change. Fosters dignity at work.
Issues are clarified and are explored one by one. Generating and exploring options for possible ways forward.	Tries to resolve the issues one by one and while doing so takes that note on pertinent points	Improves understanding of how to prevent conflict and how to handle disputes. Better communication if future problems occur.
Attempting to Craft a Final Agreement	The mediator drafts the final agreement which the parties have agreed on in order	to enhance communication between the parties. Agreements. Non-monetary savings (reduced anxiety and stress). Monetary savings (rights and power-based options) do not preclude participation in other dispute resolution processes.

Table 2: An Overview of Workplace Mediation (Bingham and Pitts, 2002)

1.7 Advantages of Using ADR in Resolving Workplace Disputes

According to The Breakthrough Mediation Team (2021), the following are key advantages of using ADR in workplace conflicts.

Faster resolution. The court system is overloaded. It cannot hold a trial for every lawsuit that is filed. As a result, it can take several years for a legal case to go to trial. One of the benefits of ADR is that resolution is fast. A settlement or arbitration award can be issued within a few weeks or months of filing a lawsuit.

Lower costs. Another one of the key advantages of alternative dispute resolution is that ADR is usually a lot cheaper than a trial. Just the discovery process for going to trial can lead to an exorbitant total cost that includes court reporter fees, attorney fees, and the expenses associated with printing and mailing documents. More importantly, a long, drawn-out court trial can require jurors, witnesses, and the parties themselves to remain off work for weeks. With ADR, the process is shorter, and time is money.

More flexibility. The ADR process is less rigid. Unlike a trial date that can vary because of the backlog, ADR can be scheduled at any time. This not only provides greater flexibility but also helps speed up the resolution of the conflict.

Privacy. For the most part, court trials are public record and can be accessed by anyone. On the other hand, ADR is not only private but also confidential. When an arbitration award is issued, or when both parties come to an amicable settlement through mediation, there is no public record of what transpired during the session. The amount of the award or settlement, the statements made, the list of participants, etc., all remain private. In summary, the public will have no idea when the ADR took place and the eventual outcome. This level of privacy

can be very beneficial for high-profile clients, as both parties are able to maintain their reputations.

No bias. A neutral third party is selected to preside over all cases that go through ADR. The neutral third party should have no connections to anyone involved in the lawsuit and no interest in the outcome of the dispute. In a court trial, the judge is not selected to preside. The judge is assigned. This difference is critical, as clients can select a neutral third party with specific subject-matter expertise to help facilitate or arrive at a well-informed resolution.

Less Friction. Once a court verdict is delivered, it invariably leaves one side disappointed, upset, angry, and even bitter. With ADR, the process uses every opportunity to preserve the rapport between the two sides. For example, if there is a child custody case being presented, the mediator or arbitrator will not only consider the welfare of the child, but also the relationship between the parents. In fact, ADR can help preserve a variety of relationships, including those between business partners, employees-employers, and even homeowners' association board members.

On the other hand, Coyle (2022) listed the following as disadvantages of ADR

There is no guaranteed resolution. The alternative resolution process does not always lead to a resolution. This means that the parties could invest time and money in trying to resolve the dispute out of court and still end up having to proceed with litigation and trial before a judge and jury.

Decisions are final. With few exceptions such as fraud, the decision of a neutral arbitration cannot be appealed against. On the other hand, decisions of a court usually can be appealed on a variety of legal grounds

Facts may not be disclosed fully. Because there is no equivalent of disclosure in arbitration as in litigation, there is a risk that the parties may resolve a dispute without knowing all the facts, which may lead to a wrong decision. For example, most businesspeople, however, believed that a quick decision is better than wasting time and money on a dispute to get a correct decision.

Orlando (2021) in his classification of advantages and disadvantages of ADR mechanisms, tabulated the following;

Table 3: Advantages and Disadvantages of Dispute Resolution Processes

ADVANTAGES	DISADVANTAGES
Speedy and informal resolution of disputes; generally, less stressful.	Can be used as stalling tactics.
Confidentiality and the avoidance of publicity.	Parties not compelled to continue negotiations or mediation.
May improve communication between parties thereby preserving or enhancing relationships between parties.	Do not produce legal precedents.
High degree of party control: Parties create their process and craft their agreement.	Exclusion of pertinent parties weakens final agreement.
Flexibility: resolutions can be tailored to the needs and underlying concerns of the parties and can address legal and non-legal issues as well as providing for remedies unavailable through adjudicative processes.	Parties may have limited bargaining authority.

Legal and/or other standards of fairness can be used in crafting agreements. Increased satisfaction and compliance with settlements when parties have directly participated in crafting agreements. May assist in clarifying and narrowing issues, and fostering climate of openness, co-operation, and collaboration, even if a settlement is not reached.	Little or no check on power imbalances between the parties. Disclosure of information and truthfulness of communications depends on good faith of parties – mediation cannot compel good faith In negotiation – lack of neutral may reduce the chance of reaching agreement, particularly in complex disputes or those involving multi-parties.
Risk-free: communications are without prejudice and if no agreement reached, parties can pursue other options. In mediation – parties may select a mediator with substantive knowledge. In mediation – facilitated discussion useful. If negotiations have broken down or if strong emotions are present. Process voluntary (except when mandated by contract or legislation). Agreement binds parties.	May not adequately protect the parties' legal rights. In mediation – strong-willed or incompetent mediator can exercise too much control.

Source: Orlando (2020)

1.8 Use of Mediation in Resolving Workplace Dispute in Ireland

Mediation like other ADR strategies is becoming increasingly popular as a mechanism for dispute resolution in Ireland. Irish Industrial Relations News (IRN) article in 2014 highlighted this trend.

> '*Mediation is being strongly promoted by the legal and political establishment, along with other forms of alternative dispute resolution. The signs are that it is catching on as a means of addressing conflict in the workplace and some of its progress may be down in part to considerations of cost and administrative convenience.' (IRN, 2014)*

In the public arena in Ireland, mediation is offered by the Workplace Relations Commission to address both individual/small group disputes and complaints of discrimination (Curran, 2015). In the private arena, the professional association of mediation practitioners in Ireland, the Mediators Institute of Ireland (MII), as of 2015 has 700 members and has 35 accredited mediation training programmes across the country (Curran, 2015, p. 177). Of the 700 mediators registered with the MII, 180 claim to 'specialise' in workplace disputes, although it is reasonable to assume that many of the 'generalists' will mediate workplace disputes if requested. All the accredited training programmes, bar two, either specialises in or cover workplace mediation.

The Mediation Bill which is now the mediation Act, enacted in 2014 (Curran, 2015). The aim of the Act is to encourage and facilitate the use of mediation in resolving commercial, civil, and family disputes. It seeks to provide an effective and efficient alternative to litigation by reducing legal costs and speeding up the resolution of disputes. On the publication of the Bill, the Irish Minister for Justice, Equality and Defence said

Mediation Officers will be appointed for the purposes of the Act and mediated agreements will be enforceable in Court.

> The terms of a resolution consequent upon a mediation conference under this section shall be binding on the parties and if either party contravenes any such term, the contravention shall be actionable in any court of competent jurisdiction. Workplace Relations Bill Section 39 (6)

Clearly, the legal and institutional context for mediation is changing in a way that will encourage the increasing use of mediation as a mechanism for dispute resolution.

> … Director General may, where he or she is of the opinion that a complaint or dispute is capable of being resolved by mediation, refer the dispute for mediation by a mediation officer. The Director General shall not refer to a complaint or dispute for mediation to a mediation officer under paragraph (a) if either of the parties to the complaint or dispute objects to its being so referred. Workplace Relations Bill Section 39 (1) (a) and (b)

CHAPTER 2: RESEARCH METHODOLOGY AND METHODS

2.1 Introduction

In this section, the research philosophy, research approach as well as research design will be discussed.

2.2 Research Philosophy

Philosophy is a search for a general understanding of values and reality as it explains why we make certain decisions, the purpose of such decisions as well as the consequences to be incurred. The research philosophy suitable for this study is constructivism. Honebein (1996) describes the constructivism philosophical paradigm as an approach that asserts that people construct their own understanding and knowledge of the world through experiencing things and reflecting on those experiences. Constructivism is therefore based on the fact or basis that people form or construct much of what they learn through experience. The constructivists' philosophy was seen more appropriate than the positivist and pragmatist philosophies because knowledge in this study will be constructed by the researcher by careful examination of documents from secondary sources such as books, magazines, and articles, to analyse how mediation can be used to resolve workplace conflicts. In this case, knowledge is constructed rather than just been generated as proposed by the positivist and pragmatist philosophies.

2.3 Research Method and Design

A research design is a plan or blueprint, which specifies how data related to a given problem, should be collected, and analysed. To Creswell (2009), research designs are plans and procedures for research that span the decisions from broad assumptions to detailed methods of data collection and analysis. There is no design that is suitable for investigating all research problems. To choose a particular research design, the research must take into consideration

the relevance of the proposed design. The research design appropriate for this study is the qualitative design. Qualitative research according to Creswell (2009) is a means of exploring and understanding the meaning individuals or groups ascribe to a social or human problem. The process of research involves emerging questions and procedures, data typically collected in the participant's setting, data analysis inductively building from particulars to general themes, and the researcher making interpretations of the meaning of the data. To Amin (2012), the purpose of qualitative research is to promote greater understanding of not just the way things are, but also why they are the way they are. This design was seen appropriate for this study because the researcher is interested in analysing how mediation can be used in resolving workplace conflicts through intensive and extensive observation, interviews, and discussions. This therefore warrants the researcher to deal with text and image data derived from books, articles, and magazines.

The design outweighs the quantitative design and mixed design because the researcher is only interested in gathering informing using textual data, which are non-numerical in nature and not numerical data as utilised by the quantitative and mixed designs.

2.4 Research Strategy

The research strategy to be used in this work is the documentary analysis strategy. Hefferman (2013) describes document analysis as analysing data from the examination of documents from secondary sources like textbooks, magazines and so forth relevant to a particular study. It involves reading extensive amounts of text data to understand and shed more light on a particular field of study. The interpretive analysis aspect of document analysis that seeks to find hidden meanings to decode them for public consumption will be used by the researcher in reviewing written materials on mediation and its impact on workplace conflicts. Through

this strategy, I will be able to collect data from many articles, books and references that analyses how mediation is used in resolving workplace disputes.

2.5 Research Approach

This dissertation will adopt an inductive research approach; according to Saunders, Lewis, and Thornhill (2007), research using an inductive approach is likely to be particularly concerned with the context in which such events were taking place. Therefore, the study of a small sample of subjects might be more appropriate than a large number as with the deductive approach. They further advanced that, utilising the inductive approach warrants a researcher to collect data, then develop a theory based on the analysis of that data. Through this approach, I will be able to collect relevant data from documents, then analyse via explanations to come up with the development of a theory.

Inductive approach to research begins by collecting data that is relevant to the topic of interest. Once a substantial amount of data has been collected, the researcher will then take a breather from data collection, stepping back to get a bird's eye view of the data (Sheppard, 2022). At this stage, the researcher looks for patterns in the data, working to develop a theory that could explain those patterns. Thus, when researchers take an inductive approach, they start with a set of observations and move from those experiences to a more general set of propositions about those experiences; that is, they move from data to theory, or from the specific to the general.

2.6 Research Instrument

The documentary review will be used as an instrument for data collection where only data from secondary sources like books, articles and magazines will be generated. According to Kombo and Tromp (2006) in carrying out research, a research instrument requires a method

of high accuracy, generalisability, and explanatory power at a low cost, it should be able to be administered rapidly and minimum with administrative inconveniences. In documentary literature researches, the instruments are usually data from sources such as libraries, the internet, records from schools, national or state archives, etc. In this research, the main source of the secondary information, as has been posited above are articles, books, and magazines.

2.7 Validity of the Instrument

Orodho (2009) defines validity as the degree to which an instrument measures the intended concepts. It is also a degree to which results obtained from the analysis of data actually represents the phenomenon under study. To ensure validity, the documents used in the research were all peer reviewed documents, to make sure that they are legitimate researches.

2.8 Strengths and Weaknesses of the Qualitative Design

According to Anderson et al., the following are the strengths and weaknesses of qualitative research design as have been adopted by this study:

In a qualitative methodology, there is less emphasis on counting numbers of people who think or behave in certain ways. More emphasis is rather on explaining why people think and behave in certain ways. Furthermore, participants in qualitative studies often involve smaller numbers.

Another strength of the qualitative method over others is that, it complements and refines quantitative data

Also, it provides more detailed information to explain complex issues. That is, it requires researchers to study a particular phenomenon in depth and explaining in detail why things are happening the way they are.

Further, data collection in a qualitative study in general and documentary analysis in particular

is usually inexpensive and time efficient.

Qualitative methods tend to collect very rich data in an efficient manner: rather than being limited to the responders to a set of pre-defined questions, it is possible to explore interesting concepts that can lead to novel theory by analysing the entirety of a participant's interview/story/interaction.

Qualitative methods can lead to the generation of new theory from unexpected findings that go against 'conventional' public health understanding.

When combined with quantitative methods, qualitative research can provide a much more complete picture. For example, a well-designed process evaluation of a trial may provide important insights into participant attitudes, beliefs, and thoughts about the intervention and its acceptability, which may not be evident from the quantitative outcome evaluation.

Irrespective the strengths possessed by the qualitative method which has been employed in this study, there are also some weaknesses;

Firstly, findings for qualitative studies usually cannot be generalised to the study population or community. Qualitative research alone is often insufficient to make population-level summaries. The research is not designed for this purpose, as the aim is not to generate summaries generalisable to the wider population.

Policy makers may not understand or value the interpretive position and therefore may not recognise the importance of qualitative research.

Qualitative research can be time and labour-intensive. Conducting multiple focus groups and documentary analysis can be logistically difficult to arrange and time consuming. Furthermore, tranalysanscription and analysis of the data (comparing, coding, and inducting) requires intense concentration and full immersion in the data – a process that can be far more time-consuming than a descriptive statistical analysis.

2.9 Method of Data Analysis

The data from the documents will be analysed through explanations. No quantitative analysis will be done because such analyses are not needed for such a qualitative study which deals with texts and images.

2.10 Ethical Considerations

As far as ethical considerations are concerned, all books and related documents consulted will be duly acknowledged in the list of references/bibliography.

CHAPTER 3: PRESENTATION OF THE DATA

3.1 Introduction

As was explained in the previous chapter of this dissertation, the research strategy adopted was documentary analysis strategy where data will be analysed based on textual data. This chapter presents data that was analysed from the pure reviewed articles, pure-reviewed journals, and books; the data generated from these documents will be presented by explaining them and based on the research questions.

3.2 Research question one: What is the meaning of ADR?

Table 4: Definition of ADR

Concept	Explanation
Meaning of ADR	ADR typically denotes a wide range of dispute resolution processes and techniques that parties can use to settle disputes with the help of a third party. They are used for disagreeing partners who cannot come to an agreement short of litigation (Pirie and Andrew, 2000). In the past years, many people who found themselves to be in conflicting situations or disagreement with others where resistance to the usage of ADR mechanisms same as their advocates, but in recent times, it has gained widespread acceptance both the public and the legal profession in recent years. Many people drift from going to court but prefer resolving their disputes using any ADR mechanisms, typically dispute resolution processes are techniques parties can use to settle disputes, with the help of a third part. This third party is some time chosen by the parties themselves or referred by the court and must be impartial mechanisms are used when parties cannot reach an agreement and does not intend making the conflict to be in public. In some cases, prior to initial litigation, the court asks the parties to resort to ADR in resolving their conflicts (Legal Information Institute, 2022). According to Ajayi and Buhari (2014), dispute-settling mechanisms in any given society range from the informal to the formal and even ritualistic. They differ as to the consequences of non-acceptance of the solutions devised and as to whether they utilise 'third parties' as deciders or purposes of solutions. The main aim of ADR organisations is to facilitate communication between parties to help find a solution to the problem that is agreeable to both sides (Citizens' Information, 2020). Some ADR organisations can only propose a solution, while others have the power to impose a decision or ruling. It makes use of third party such

	as the mediator, or a negotiator, arbitrator, using this mechanism in resolving disputes reduces the load on an overburden court system and it is often less expensive and less time consuming for all parties. Alternative dispute resolution has gained acceptance in the business and legal community. Parties in conflict might sort of ADR before a trail or during a trial that is before reaching a ruling in court. If the parties decide to use this mechanism in resolving any dispute that arises, it is known as ex-ante ADR which sometimes might lead to an agreement but where it is used during the trial, it is known as export ADR using DDR mechanism to resolve conflicts is always voluntary the parties who are involved in the conflict sue motto agrees to use this method to resolve their dispute and sometimes the agreement from this process turns out to be non-binding on the parties especially if the parties used mediation.

3.3 Research question two: What are the various ADR Mechanisms?

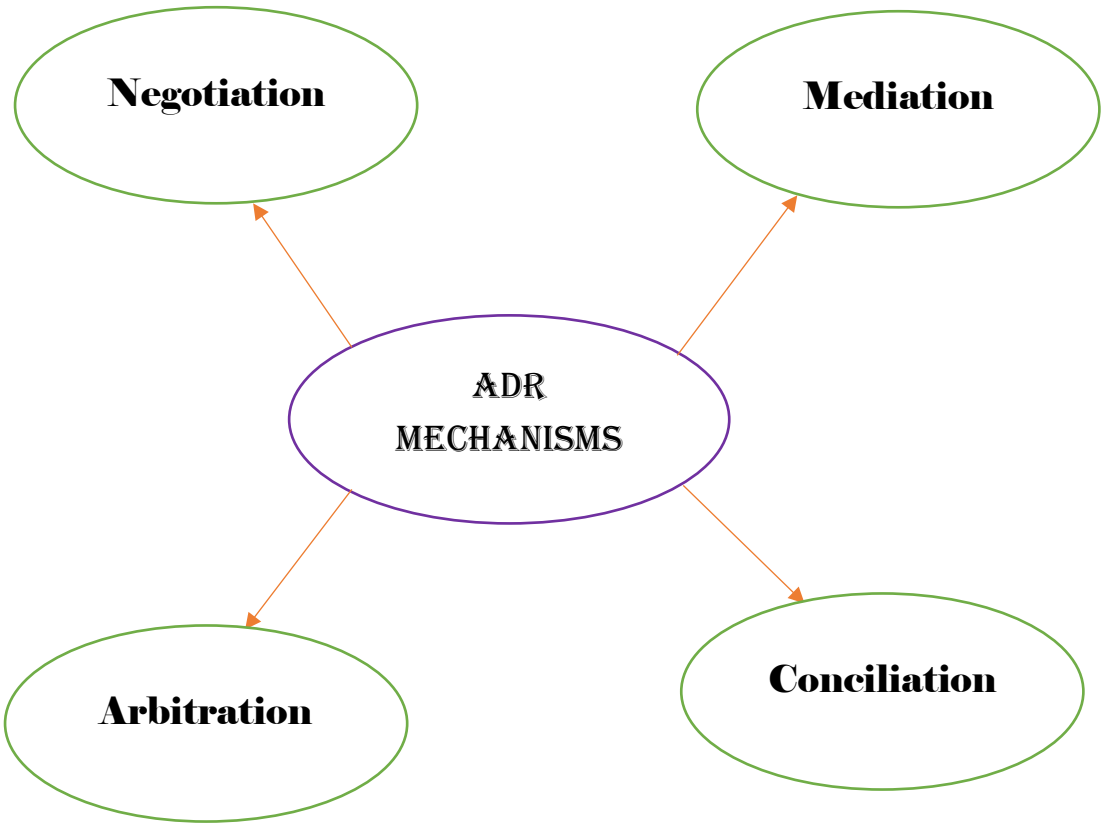
Table 5: Types of ADR Mechanisms

Concept	Explanation
Negotiation	Negotiation may be defined as any form of direct or indirect communication through which parties who have conflicting interests discuss the form of any action they might take together to manage and ultimately resolve the dispute between them (The Law Society of Upper Canada, 1992). Negotiations may be used to resolve an existing problem or lay the groundwork for a future relationship between two or more parties. According to Dispute Prevention and Resolution Services (2022) it should be noted that there is no compulsion for either of the parties to participate in the process of negotiation. The parties have the free will to either accept or reject the decisions that come out of the process of negotiation. There is no restriction on the number of parties that can participate in the process of negotiation. They can vary from two individuals to the process of involving dozens of parties. Unlike arbitration and mediation, parties reach the outcome of a negotiation together without resorting to a neutral third party. The process is flexible and informal, ensures confidentiality at the choice of the parties.
Mediation	Mediation is the most frequently employed ADR method because of the mediation process itself (Bingham, 2004). When people feel that a process is fair, they are likely to be significantly more satisfied with the outcome. A satisfactory outcome for participants is that the experience is as collaborative and least traumatic as possible. In mediation this happens in the same way in either a legal context or in other conflict situations (King & Guthrie, 2007) such as peer

	mediation (McWilliam, 2010) and workplace conflict resolution (Bingham & Novac, 2001). However, McKenzie (2015) proposed three features of mediation which are; participation where parties are actively involved in the decision-making process; representation/reparation where parties are allowed to express their perspective and how they feel about what has occurred; validation/reintegration where parties work to solve a dispute in a cooperative and respectful way. McWilliam (2010, p. 294) suggests that 'if left unresolved, the residual, underlying relational issues may be externalised in more destructive forms of conflict'. Mediation has also been found to produce better organisational outcomes than either no intervention or one involving judgement, such as arbitration, as it is often less expensive and more satisfactory to the parties involved (Bingham, 2004).
Arbitration	According to LEXLAW (2022), arbitration is a form of alternative dispute resolution where an impartial arbitrator makes a final and binding decision to settle a dispute between parties. Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. The main role of the arbitrator according to LEXLAW (2022) is to ensure there is a binding decision on the parties and award is awarded to the party of merit, ensures a fair hearing and accurate preponderance and of evidence. This process is governed by the arbitration act of 2010 which lays down the process and the procedures in arbitration. This process is very flexible and private, the arbitrator is always ready to form the parties and the hearing can be arranged without unnecessary delays.
Conciliation	Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions, and assisting parties in finding a mutually acceptable outcome. According to the Consulting and Conciliation Service (2022), there is a form of 'conciliation' that is more akin to negotiation. A 'conciliator' assists each of the parties to independently develop a list of all their objectives (the outcomes which they desire to obtain from the conciliation). The conciliator then has each of the parties separately prioritise their own list from most to least important. The conciliator then goes back and forth between the parties and encourages them to 'give up' on the objectives one at a time, starting with the least important and working toward the most important for each party in turn. The parties

rarely place the same priorities on all objectives, and usually have some objectives that are not listed by the other party. Thus, the conciliator can quickly build a string of successes and help the parties create an atmosphere of trust which the conciliator can continue to develop.

Figure 2: Types of ADR Mechanisms



Source: Adopted by researcher, 2022

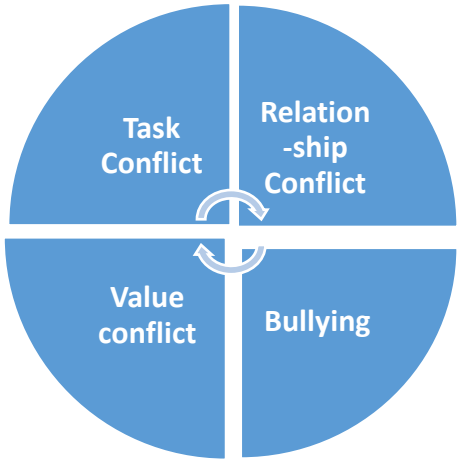
3.4 What are the various workplace conflicts?

Table 6: Type of workplace conflicts

Concept	Explanation
Task conflict	This often involves concrete issues related to employees' work assignments and can include disputes about how to divide up resources, differences of opinion on procedures and policies, managing expectations at work, and judgements and interpretation of facts (Shonk, 2021). Task conflict often turns out to have deeper roots and more complexity that it appears to have at first glance. For example, co-workers who are arguing about which one of them should go to an out-of-town conference may have a deeper conflict based on a sense of rivalry. To Shonk (2021), task conflict often benefits from the intervention of an organisation's leaders. Serving as de facto mediators, managers can focus on identifying the deeper interests underlying parties' positions. This can be done through active listening, which involves asking questions, repeating back what you hear to confirm your understanding, and asking even deeper questions aimed at probing for deeper concerns.
Relationship Conflict	This arises from differences in personality, style, matters of taste, and even conflict styles (Shonk, 2021). In organisations, people who would not ordinarily meet in real life are often thrown together and must try to get along. It is no surprise, then, that relationship conflict can be common in organisations. Pollack Peacebuilding (2021) corroborate to this type of workplace conflict but added that different types of personalities simply do not get along, especially when put together under pressure to reach a common goal. Sometimes in these circumstances, the only way to avoid conflict is to ensure certain people do not get on projects together. Other times, there can be team-building initiatives that can help contending teammates learn to understand each other or at the very least have patience with one another. Personality-clashing types of conflict in the workplace examples can include arguments over time management, proficiency, attention to detail, and overall focus on the quality of output.
Value Conflict	Value conflict can arise from fundamental differences in identities and values, which can include differences in politics, religion, ethics, norms, and other deeply held beliefs (Shonk, 2021). Disputes involving values tend to heighten defensiveness, distrust, and alienation. Parties can feel so strongly about standing by their values that they reject trades that would satisfy other interests they might have. Susskind (2004) recommends that instead of seeking to resolve a values-based dispute, we aim to move beyond

	demonisation toward mutual understanding and respect through dialogue. Aim for a cognitive understanding in which you and your co-worker reach an accurate conceptualisation of one another's point of view. This type of understanding does not require sympathy or emotional connection, only a 'values-neutral' ability to describe accurately what someone else believes about the situation.
Bullying	The workplace bullying institution defines bullying as an act that is repeated, harmful, mistreatment of an employee by one or more employees, abusive conducts that takes that take the form of verbal abusive, physical, and non-verbal behaviours that are threatening, intimidating, or humiliating (Workplacebullying. org, 2021). It also involves work interference or sabotage or in some combination. Workplace bullying is one of the most damaging issues for any organisation as it affects employee productivity and financial performance and brand strength. Workplace bullying is one of the most damaging issues for any organisation as it affects employee productivity and financial performance and brand strength. At a basic level it is about the systematic mistreatment of a subordinate, a colleague, or a superior, which, if continued and long-lasting, may cause severe social, psychological, and psychosomatic problems in the target. Exposure to such treatment has been claimed to be a more crippling and devastating problem for employees than all other kinds of work-related stress put together, and it is seen by many researchers and targets alike as an extreme type of social stress at work or even as a traumatic event (Zapf et al., 1996).

Figure 3: Workplace conflicts



Source: Adopted by researcher, 2022

3.5 What is the process of using mediation in resolving workplace conflicts?

Table 7: Stages of mediation

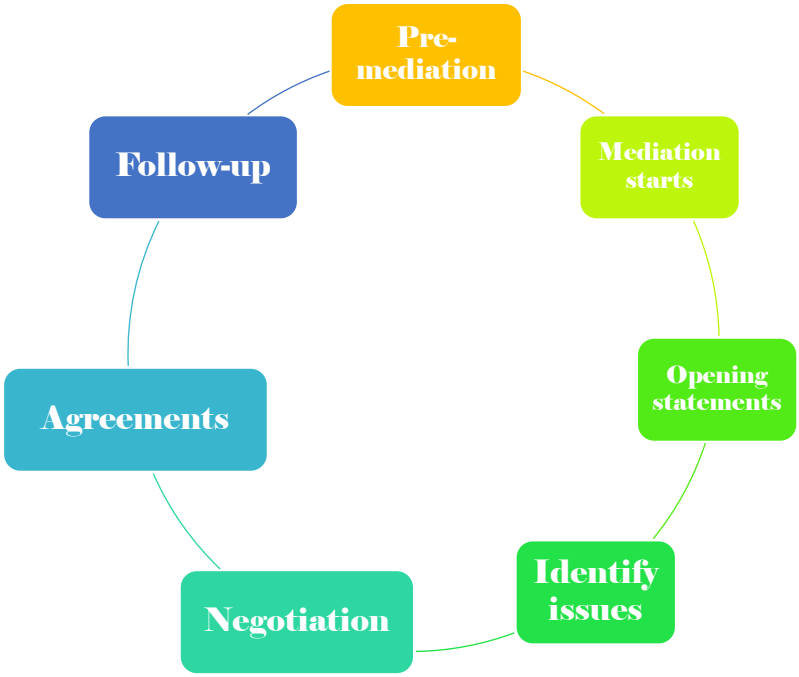
Concept	Explanation
Stage 1- Pre-mediation	The Mediation process commences with an individual preMediati on session with each of the parties. Each session would take 45–90 minutes depending upon the nature and complexity of the issues and the parties involved. The pre-mediation stage provides an opportunity for the mediators to meet alone initially with each party to participate in mediation.
Stage 2 – Mediation Starts	The Mediation is always conducted using two separate rooms (or more if there are multiple parties) and each party is met with again privately in separate rooms following the pre-mediation stage prior to bringing them together into the same room. This may occur on the same day as stage 1 or at an agreed time following the pre-mediation meetings. These private sessions may take 5–20 minutes.
Stage 3 – Opening Statements	Once the parties have been brought together in the same room, the mediators welcome the parties to the joint session and explain what will happen. Each person is then invited to make an opening statement and is provided with an uninterrupted period within which to raise their issues with the other person.
Stage 4 – Identify Issues	Following the opening statements, the parties will then be invited to enter an open exchange with each other. They will want to respond at this point to what has been said during opening statements. They will have substantive issues they want to talk about, and they will also have some emotions they want to express how they feel the other person's actions or behaviour has affected them. They will also want to make statements about how they think the situation needs to be resolved.
Stage 5 – Negotiation	Once the issues have been identified, prioritised, and reframed the parties are then facilitated to enter a negotiation process with each other about options for resolution and how they can move forward. This will involve brainstorming, more reframing, weighing up and evaluation of the options, reality checking assumptions and expectations and a detailed exploration of the initial resolution offers made by each party.
Stage 6 – Agreements	If after negotiating each priority issue, the parties can reach a mutually acceptable way forward they are then facilitated to begin the process of preparing their agreement with each other. All parties sign a handwritten copy of the Mediation agreement that each party takes away at the end of the Mediation session. A typed

copy of the agreement is then forwarded to the parties within one working day of the Mediation.

Stage 7 – Follow-up

It may also be agreed that the Mediators will meet with the parties after an agreed period to explore how their agreement is working and facilitate any problem-solving and provide positive feedback. At this follow-up session, the agreement may also be modified if needed or the possibility of re-Mediation can be explored if required.

Figure 4: Stages of mediation



Source: Adopted by researcher, 2022

3.6 How effectively has mediation been used to resolve workplace conflict?

Table 8: Outcome of the use of the use of mediation in resoling workplace disputes

Concept	Explanation
2008 Report from CIPD survey on workplace mediation	Their report showed that three quarters of respondents considered mediation to be the most effective approach to resolving conflict in the workplace. In the GFK NOP telephone survey of managers in 500 SMEs, of those that had used mediation, 99% agreed that it was a good tool for resolving workplace disputes. The CIPD 2007 Managing Conflict at Work reports provided some evidence that organisations providing mediation training for managers receive fewer employment tribunal claims.
2011 CIPD Conflict Management survey report	Based on their report, the main benefit in using mediation is improving relationships between individuals, cited by 80% of respondents, to reduce or eliminate the stress involved in more formal processes (64%) and to avoid the costs involved in defending employment tribunal claims (52%).
Research by ACAS (2014)	The study found that the introduction of in-house mediation can have a transformative effect on workplace relations and underpin a new (and more informal) approach in the way that conflict is managed. New skills acquired by mediators influenced their everyday practice and gave them new ways of managing conflict in a wide range of settings.

3.7 what are the strengths and weaknesses of using mediation in workplace conflicts?

Table 9: Strengths and weaknesses of using Mediation in workplace conflicts

Strengths	Weaknesses
Speedy and informal resolution of disputes; generally, less stressful.	Can be used as stalling tactics.
Confidentiality and the avoidance of publicity.	Parties not compelled to continue negotiations or mediation.
May improve communication between parties thereby preserving or enhancing relationships between parties.	Do not produce legal precedents.
High degree of party control: Parties create their processes and craft their agreement.	Exclusion of pertinent parties weakens final agreement.
Flexibility: resolutions can be tailored to the needs and underlying concerns of the parties and can address legal and non-legal issues as well as providing for remedies unavailable through adjudicative processes.	Parties may have limited bargaining authority.
Legal and/or other standards of fairness can be used in crafting agreements.	Little or no check on power imbalances between the parties.
Increased satisfaction and compliance with settlements when parties have directly participated in crafting agreements.	Disclosure of information and truthfulness of communications depends on the good faith of the parties – mediation cannot compel good faith.
May assist in clarifying and narrowing issues, and fostering climate of openness, co-operation, and collaboration, even if a settlement is not reached.	In negotiation – lack of neutral may reduce the chance of reaching agreement, particularly in complex disputes or those involving multi-parties.
Risk-free: communications are without prejudice and if no agreement reached, parties can pursue other options.	May not adequately protect the parties' legal rights.
In mediation, parties may select a mediator with substantive knowledge.	In mediation – strong-willed or incompetent mediator can exercise too much control.

CHAPTER 4: DATA ANALYSIS/FINDINGS

4.1 Introduction

The aim of the study was to analyse what ADR is all about, explain the various ADR mechanisms, state the various workplace conflicts, explain how mediation is used in resolving workplace conflicts and identify the strengths and weaknesses of using mediation in workplace conflicts. As far as the methodology is concerned, the study adopted a constructivist philosophy where knowledge is constructed based on experiences (as far as the study is concerned, knowledge will be constructed based on the articles and books studied). The study also adopted a qualitative research design where the documentary analysis research strategy was employed and data collected from secondary sources such as pure reviewed academic articles and books. Alternative Dispute Resolution is the process of initiating alternative methods and procedures to resolve a dispute without resorting to litigation. Conflicts are normal phenomena therefore it is almost impossible to avoid such in a society of today that is why most people rather sort of using ADR to resolve their conflicts (Ahmed Mahmoud, 2017). It is therefore any means of settling dispute outside the courtroom with the help of an impartial third party, providing a confidential and alternative method to resolve legal disputes. It allows people and entities to resolve their disputes privately it is a much less formal court process, and it will generally save you a lot of money and time. In a perfect world, every conflict can be resolved privately, equitably, and without a lot of fuss and expense. However, this is not always the case. When disputes are more complicated or if they are emotionally charged, they are often better heard in court, where third parties oversee the proceedings, and the letter of the law prevails. Disputes are bound to arise in dealings in life. For this reason, the courts were created to resolve and amicably settle disputes which arise between individuals or individuals and the government. The mechanism through which

the court settles disputes is through adjudication in the Court of law. However, the demerits of adjudication in Court which includes time wasting, expensive nature, deducing many evidences have led to modern legal development of Alternative Dispute Resolution. There are different ADR mechanisms which are used in resolving disputes out of court such as Arbitration, Mediation, Negotiation, Conciliation; and all of these have different ways of applicability and each of such mechanisms used has its advantages and disadvantages.

4.2 ADVANTAGES OF ADR MECHANISM

ADR is speedy: While the adjudicatory method of dispute resolution takes time in the determination of a case or settlement of a legal dispute, non-adjudicatory methods, on the other hand, are speedy, saves time, and avoids delays and uncertainties of adjudicatory trials. The court system takes a lot of time to complete, depending on the type of disputes involve, cases in court can take months and extend to hear without any ruling on them, whereas in most disputes where ADR is used the conflicts can be resolved sooner and quicker (Jeffries, 1992).

It is flexible: This is so as parties have the flexibility to select the procedural rules which will apply to their dispute and they have the power to control their own fate rather than relinquishing the power to decide their rights to an adjudicator, and they also have the power to select their arbitrator or mediator. Additionally, ADR is free from formalities of Court such as the rules of Evidence, witnesses. The litigation process is often very adversarial in nature, which sometimes results to hostility between the parties even if the initial dispute was not damaging (Petrenko, 2021).

Alternative dispute resolution process it's highly confidential unlike litigation process which is always done in public most ADR mechanism are confidential in nature and so it is done

privately. Litigation Process it's a public phenomenon that anyone can easily access the procedure unlike ADR which gives the parties the right to have the session privately. With some of the mechanisms such as mediation negotiation conciliation the decision-making process is entirely. The person appointed plays just a role in helping the parties reach an agreement without taking part in the decision-making process. He or she is seen as a facilitator and so any decision got from such procedures are not legally binding on the parties, however, it is morally enforceable.

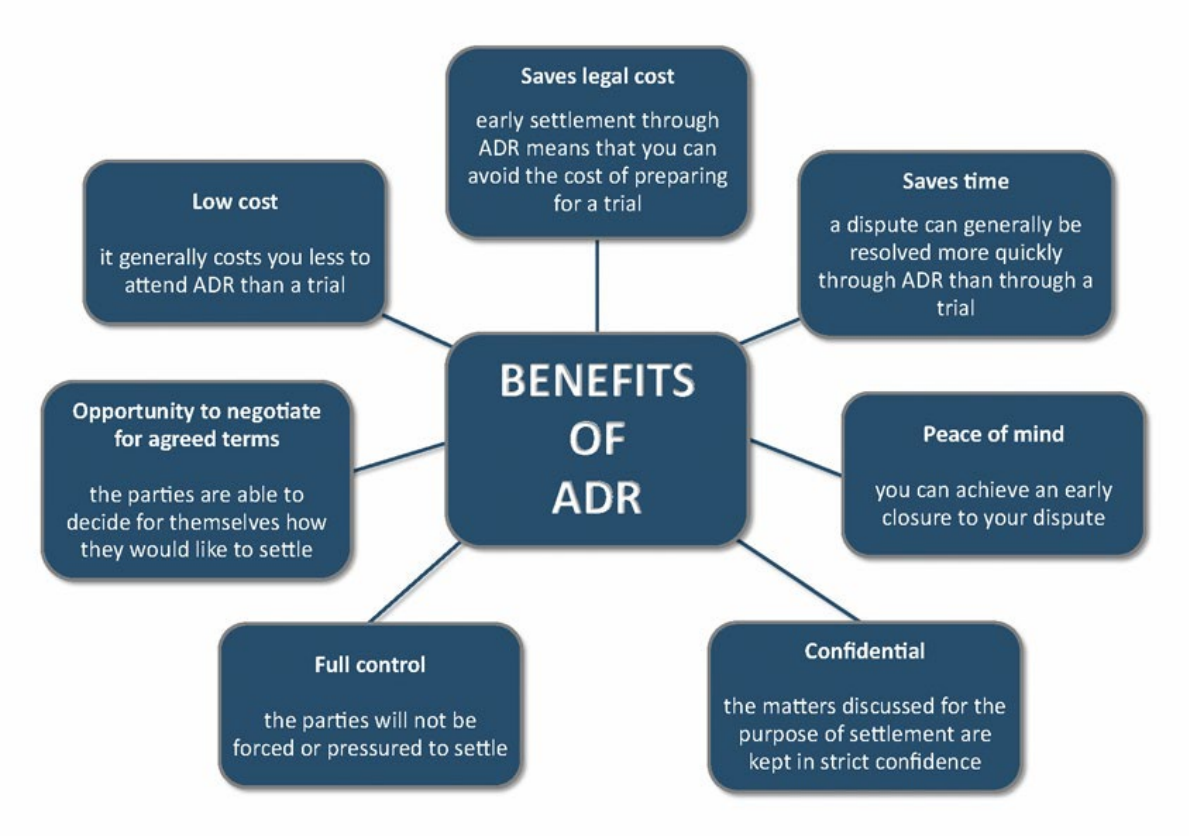


Figure 5: *Benefits of ADR (https://www.owllegal.org/, 2019)*

The above diagram briefly explains the advantages of using ADR mechanism in resolving. Conflicts, however, there are some demerits that comes with the first disadvantage of using ADR. Some agreements or resolution of ADR is not binding on the parties. This must deal with mediation. ADR critics have focused primarily on mediation, charging that it favours the dominant party, undermines legal entitlements, and tends to become second-class justice for those who cannot afford trials. More empirical research is required to address these criticisms, particularly regarding the effects of compulsory participation in alternatives to litigation (Sourdin, 2014).

Scholars have also argued that another demerit of using ADR is that there is no agreement that may be enforced in the same manner as a court judgement or order with the same effect, enabling ADR awards to be enforced as if they were court judgement. However, the awards are not so easily enforceable. Arbitration mostly resolves disputes that involve money. They cannot issue orders compelling one party to do something, or refrain from doing something; hence, they cannot give injunctions (Bartol, 1991).

Using ADR mechanism has its limitation when it must deal with disclosure of some certain facts. Because there is no equivalent of disclosure in arbitration as in litigation, there is a risk that the parties may resolve a dispute without knowing all the facts, which may lead to a wrong decision. Unlike litigation, the ruling of the judge solely depends on the preponderance of evidence adduced by the parties involved in the dispute. There are certain disputes for which ADR is not suitable. Criminal Cases cannot go through a mediation process (Aspatore, 2012). Alternative dispute resolution is not appropriate when a client needs an injunction, when there is no dispute to resolve, and when the client needs a legal ruling (ADR and Civil Justice ' – *im Lichte der Verbraucher* – ADR, Richtlinie, 2016).

4.3 ADR Mechanisms

From the data presented in the previous chapter one can deduce that Alternative Dispute Resolution also known as ADR is a mechanism used to resolve conflicts out of court. It is one of the easiest ways of resolving conflicts among individuals instead of turning to litigation (litigation may be costly and time consuming). Furthermore, the process of applying ADR mechanisms will require a third party acting as mediators, negotiators, or arbitrator, who is neutral and not favouring any of the individuals involved in the conflict.

4.4 Types of ADR Mechanisms

Based on the data obtained from books and pure-reviewed articles, the following are types of ADR mechanisms, negotiation, mediation, arbitration, and conciliation. In negotiation, disputing parties discuss on the course of action to take to resolve their dispute. Based on the readings, the decisions taken must not involve a third party usually known as a negotiator which therefore connotes disputing parties have the free-will to either accept or reject the decisions that come out of the process of negotiation. The chance of reaching a mutually acceptable agreement is high in this process since the acceptance by all the parties is ensured. Negotiation is basically communication for the purpose of persuasion it is the preeminent mode of dispute resolution. The process can also be done even if there is no dispute but for future deals to enable good relationship in the future. There are two types of negotiation which are deal-making negotiations and dispute settlement negotiations (Carriere et al.,1998). Both types are very similar, and most scholars treat the two types interchangeably.

In the book 'Getting dispute resolved', the first experts in the chapter William Ury, Jane Brett and Stephen Goldberg I said that, in seeking to resolve a dispute, negotiators can focus on interest (what they want or care about) and they talked about rights and power which is the capacity to persuade someone to do something whereas he or she does not have to do (Ury,

Brett and Goldberg, 1988). They recognise that the dynamics of the negotiation may require a negotiator to move from one focus to another during a negotiation process, from the book it is agreeable that an interest-based approach negotiation is agreeable and preferable because it has the greatest likelihood of leading to a mutually advantageous agreement.

This same approach was discoursed in the book 'Getting to yes' by Roger Fisher William Ury, and Bruce Patton. According to the authors an interest-based approach can increase the resources available for the parties to divide among themselves this phenomenon is often described as 'expanding the pie' (Fisher and Ury, 2012). The principles of negotiation have been criticised by several authors of the most famous criticism was done by James White who asserts in his article, 'The pros and Cons of Getting to Yes,' he states that this piece of work in north insists more on the use of objective criteria which only warrants the parties to focus more on their interest their rights and power in the belief that by doing so they will achieve better results for themselves. He States that this does not tie with the phenomenon of dividing the pie as pointed by the former writers (Funken, 2001).

It is important to note that negotiations are not always one-on-one at times one or both parties may be represented by a single negotiator and sometimes there might be more than two parties involved in the negotiation process this assertion was established by Jeanne, refried man, and Kristin Bahfar in the article 'How to manage your negotiation Team'.

From the data got above it is imperial to also note that success in negotiation is solely a function of the negotiators strategic approach Antarctica skills carrying out the strategy. This process is also influenced by the by emotions generated in the interaction between the negotiators and the parties in Robert Mnookin's article, 'Why Negotiation Fails' he explains the barriers that can hinder a successful negotiation. According to him, negotiators

sometimes feel because of the lack of reaching and agreeable settlement and by doing so he analysed that there are a number of potential arguments that will benefit both parties therefore the negotiator has to employ negotiating skills and techniques, knowing the position, interest and needs of various parties. He concluded by saying that most negotiations do not reach an argument because the parties focus more on their positions and interests rather than bargaining (Hames, 2012).

As far as mediation is concerned, the readings from academic articles and books reported that mediation is the most frequently employed ADR method because of the mediation process itself, when people feel that a process is fair, they are likely to be significantly more satisfied with the outcome. Mediation this negotiation carried out with the assistance of a third-party interest and positions are valuable in every mediation the mediator has no power to impose any agreement on the parties. The *mediator* helps the parties overcome the barriers switching an argument, the key mediator skills include active listening empathy sympathy effective communication, responding to what the participants say and how they say it.

In most contexts the mediator and parties assume that the aim of mediation is a settlement although not at any cost as seen above from the data analysed from pure academic review it is imperial to know that parties may seek a mediator in intercultural disputes with the primary aim of promoting understanding. Parties may also engage mediators for public disputes with the hope of narrowing and organising debates (Bush and Folger, 2005). Mediation also helps parties to communicate, so that they understand and appreciate each other's perspectives.

Analysing mediation in the in a critical manner some authors are of the view that the process helped parties to improve on their relationship and helps them to build up their capacity in

resolving problems on their own without the aid of a mediator especially when it has to do with interest-based mediation (Goldberg, 2015). Mediators will modify techniques so as to enable them to adjust to the collective goals for the mediation process without being biased and discriminatory. The onus is on the mediator to be impartial all throughout the mediation process so he has the liability to operate in a variety of contexts and use many of the same skills and techniques in this perspective of the dispute involved although the parties might have different goals (Goldberg and Sender, 2007). Mediators' strategies vary widely even though their goals for the process is the same which is assisting parties in reaching an amicable settlement, they encourage the parties to actively participate in the process, mediator can be a lawyer or a trained, certified specialist. In Ireland, the Mediators' Institute of Ireland (MII) is in charge of certifying individuals who wish to become mediators.

It is worth noting that there is no best way to mediate a dispute but it has been accepted by many authors that the best ADR mechanism to use in workplace conflict is mediation although decisions arrived in this process are not legally binding. The technique's imitation varies with the parties, the type of conflict involved and the process for instance in workplace conflicts especially in the private sector mediation is competitive and positional in nature that's all it enables the use of collective bargaining and negotiating, and the mediators will spend considerable time walking separately with the parties in the process known as caucus so as to reach an amicable settlement.

Unlike negotiation, it involves a third party usually seen as a mediator who mediates in the affair of the disputing parties to proffer a solution. The process of mediation is often satisfactory and less expensive. Like mediation, arbitration as an ADR mechanism uses a third party in the dispute resolution process usually known as arbitrator whose job is to ensure

there is a binding decision on the parties and award is awarded to the party of merit, ensures a fair hearing and accurate preponderance and of evidence. The process of Conciliation like arbitration and mediation also involves a third party known as a conciliator who meets with the disputing parties both separately and together in an attempt to resolve their differences. Information from one of the articles consulted revealed that conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

4.5 Type of Workplace Conflicts

Based on data generated from the books and pure-reviewed articles, the following are the type of workplace conflicts; task conflict which often involves concrete issues related to employees' work assignments, as presented in the previous chapter. We also have relationship conflicts which arise from differences in personality, style, matters of taste, and even conflict styles. Value conflicts arising from fundamental differences in identities and values, which can include differences in politics, religion, ethics, norms, and other deeply held beliefs. Lastly, there is bullying which involves a non-verbal, verbal, or physical abuse of an employee or a co-worker that can be intimidating and humiliating. The various workplace conflicts if not resolved can affect the mental health of employees, which will then have a spill over effect on their productivity. Looking at the various workplace conflicts from a critical perspective, one would realise that, they may not apply in all organisations as every organisation has their context-specific conflicts.

4.6 How Mediation Is Used to Resolve Workplace Conflicts

According to the pure reviewed academic articles and books consulted, the following mediation stages are used in resolving workplace disputes; pre-mediation, mediation, opening statements, identify issues, negotiation, agreements, and follow-up. If mediators can apply these various stages, it will go a long way to resolving conflicts faced by the workforce today.

Irrespective of the seven stages presented in chapter three, other authors like Rogers and Salam (1987) divided the mediation process into 5 stages which are the opening stage also known as the pre-mediation in other words 'getting to the table' or introduction. The second stage is known as the storytelling stage where the parties get to state the facts in the issue. The next stage is the exchange of facts, here the parties get to set the agenda for themselves, what they think are the facts in the issue and the resolution they want. The next stage is the problem-solving stage, and the final stage is reaching an agreement.

4.7 Outcome of the Use of Mediation in Resolving Workplace Conflicts

Mediation, as an ADR mechanism, has been applied by different studies and organisations in resolving conflicts. Majority of the reports based on the outcome were positive in nature. Some of these reports include; 2008 Report from CIPD survey on workplace mediation, 2011 CIPD Conflict Management survey report and Research by ACAS (2014) as presented in the previous chapter.

4.8. Strengths and Weaknesses of Using Mediation in Workplace Conflicts

Based on the analysis of pure reviewed articles and books, a good number of the strengths suggest that mediation is easy, time saving and flexible. On the other hand, the weaknesses suggest that it may sometimes be subjective and does not lead to legal precedents.

4.9. Criticism of Mediation in Resolving Workplace Conflicts

Mediation is the most common ADR mechanism use when it has to do with workplace conflicts. Some authors I said to the view that it is the most effective mechanism whereas others have criticised this accession.

The first criticism of using mediation to resolve workplace conflict because, mediation it's usually a byproduct of failure that is the inability of the disputants to work out their own differences, each party typically comes to the musician session locked into a position that the author(s) might not accept, the parties turn to distrust each other and maybe angry or frustrated, discouraged all hurt. Using mediation in workplace conflict usually has the power imbalance this means that the employer always feels superior over the employee and sometimes tend to overshadow the employee which breaks down effective communication (Davis and Salam, 1984). Often, this refers to how power imbalances relate to process imbalances. Process-power imbalances are about the capacity of parties to negotiate. They determine whether it is fair or appropriate that mediation proceeds. That determination requires an examination of each individual process power imbalance that might be present. The mediator is required to assess whether there are adequate measures that would be available during mediation to adequately address the handicap which the imbalance presents and Salem,1984). It is commonly said that power imbalances in mediation render it unfair (Gewurz, 2001).

However, it is more productive to focus on the issue of capacity, rather than the issue of power imbalance as such. The key consideration with respect to workplace conflicts is whether fear and domination will render the employee unable to freely negotiate. Endeavouring to quantify the power imbalance may be a somewhat abstract and unhelpful exercise.

On the critical point of view, one of the most current reviews that authors have criticised when it must deal with workplace mediation is the fact that decisions or agreements from the mediation process are not legally binding on the parties (Doris Rebhorn Spies, 2014**).** Mediation is not legally binding unless the parties reach an agreement and they sign it on a legal document unlike a court process, every ruling of the court binds the parties and they are legally obliged to adhere to the court ruling (Baraldi and Lervese, 2010). A mediator does not have the power to force the parties to resolve their dispute. Even if they have a solution, the mediator cannot force it on the conflicting parties. The mediator cannot decide who will win the case.

They offer a more conducive environment for the parties to talk and agree. Mediation is an effective alternative to a court hearing which can be extreme. The mediator will talk to the conflicting parties together about the dispute, the mediator's role is to facilitate the process (Blake et al., 2013).

Some writers argue that using mediation has some limitations such as the period. From the data collect on different academic reviews it is seen that most duration of a mediation session is too short. It has been analysed that the maximum time for mediation is two hours, however, the time varies depending on the complexity of the conflict. The length and statutory time-frame to complete a mediation is thirty days from the date the agency refers the dispute to

mediation, unless the parties agree otherwise (Hopt and Steffek, 2018). Some scholars argue that the number of hours per mediation session seems to be small as mediators are been made paid by the hours incurred during the mediation session. The Mediators' Institute of Ireland (MII) does not suggest mediation rates to its members, nor does it have access to this information. It is up to each individual Mediator to agree their charges and method of payment with the parties at the start of the mediation process. The MII strongly recommends, however, that when selecting a mediator, you talk to at least two Mediators and, apart from satisfying yourself that the mediator has the experience and expertise to act in your case, you should ask them about their charges – both the applicable rates and payment terms (www.themii.ie, 2022).

CHAPTER 5: CONCLUSION/DISCUSSION RECOMMENDATIONS, REFLECTIOIN

Discussion

The discussion will be done in a line with the research objectives. For research objective one that was out to investigate the meaning of ADR, the pure-reviewed articles, and books like that of Pirie and Andrew (2000), we saw mediation as a wide range of dispute resolution processes and techniques that parties can use to settle disputes with the help of a third party. They are used for disagreeing partners who cannot come to an agreement short of litigation. One can deduce that ADR through its mechanisms establishes a compromise among individuals which litigation may not. However, from a critique view, ADR has the potential of making litigation, which is backed legally. Concerning research objective two, which was based on the types of ADR mechanisms, the pure review data generated and analysed shortlisted the following as types: negotiation, mediation, arbitration, and conciliation. Nevertheless, mediation emerged as the most popular among them. For research objective three which was based on the various workplace conflicts, the following were shortlisted as workplace conflicts based on the pure reviewed articles and journals; relationship conflict, value conflict, task conflict and bullying. These different workplace conflicts may be further diverse in companies and industries depending on the purpose. Correspondingly, research objective four reviewed the stages of mediation and outlined seven stages; pre-mediation, mediation, opening statements, identify issues, negotiations, agreements, and follow-up. The different stages may not be applicable in all contexts, especially because countries adopting ADR mechanisms have a unique modus operandi. The last research objective examined the strengths and weaknesses of ADR mechanisms. A good number of the strengths suggest that mediation is easy, time-saving, and flexible. On the other hand, the weaknesses suggest that it may be subjective and does not lead to legal precedents.

Conclusion

The aim of this study was to analyse the use of mediation in the resolution of workplace conflicts. Specifically, the study was out to analyse what ADR is all about, explain the various ADR mechanisms, state the various workplace conflicts, explain how mediation is used in resolving workplace conflicts and identify the strengths and weaknesses of using mediation in workplace conflicts. The study therefore concludes that ADR is better conflict resolution method especially in workplaces other than litigation. Mediation is the most effective and efficient ADR mechanism, bullying the most frequent workplace dispute. Applying mediation in resolving disputes involves stages which must be contextual and lastly the advantages of using mediation outweighs the disadvantages. During this research, we also encountered that mediation can easily be used to avoid conflict from escalating, having gone through the course and carrying out this research it is worth noting that I learned some skills that help in preventing and resoling issue which I now use in my day-to-day activities especially at work.

In concluding this research paper, it is important to recommend that ADR mechanism should be used widely; a lot of people are not aware of this mechanism that is why conflicts that could easily resolve get to escalate and sometimes it comes very complicated thus damaging relationships whereas with some of the ADR mechanism, especially mediations get to build relationship because of its friendly and informal nature.

Another recommendation will focus on the aspect that the agreement got from a mediation process should be legally binding on the parties and not morally. Some scholars are of the view that mediation agreement does not bind the parties legally therefore, these agreements should be more enforced by the courts so that the parties will not take the process for granted.

REFLECTION

Conflicts are almost inevitable, in every day-to-day life we encounter conflicts in one way or the other the most common conflicts are those which arises at workplace, and how to resolve such conflicts are always challenging. During this period of my dissertation while doing the research I realized that workplace conflicts can be resolved if only the parties involved are willing to go through the process although there is likely to be Some power imbalance. A unique example I will present is that, during this dissertation session I encountered a serious conflict between two of my colleagues at work, they were not in talking terms so when I realized this conflict immediately I knew that if it is not handled it might escalate. Therefore I had to play the role of the mediator between them I called both of them and tried to know what the issue was I allow both parties to tell their stories after hearing from both parties I ask them to state what they wanted and how they want this conflict to be resolved both parties stated their position and their interest at the end of the session we had an agreement Although this agreement was not legally binding on the parties because it was some sort of an informal mediation but however it helps both of them to understand each other's point of view to my colleagues they felt like I helped them resolve these issues but to me I was applying what I have learned so far from my course and throughout my research and how I can apply this knowledge , even though both parties were my colleagues I had to apply the skills of a mediator and make sure to be in baize. This also helped me to evaluate if mediation can be used in resolving workplace disputes and how this process can also help to amend conflicts from escalating this proves that meditation and all other ADR mechanisms are faster and easier to resolve conflicts unlike litigation.

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