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# A critical review of the role of bias in workplace mediations dealing with bullying and harassment

By

ELIS REGINA DA SILVA DOS SANTOS

Student Registration No. 51711257

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## **Abstract**

Conflicts are inevitable and part of everyday life, as are conflicts in work environments; what sets us apart are the ways of dealing with them. Specifically, conflicts of bullying and harassment in the workplace can negatively affect both companies and employees. The human resources department, which deals with the company's human capital, can be a great ally in the resolution and prevention, using mediation techniques and tools to facilitate these internal conflicts. This study aims to critically review the role of bias in mediation, focusing on bullying and harassment conflicts.

To achieve the objective, a survey was carried out to analyse the opinions and experiences regarding this issue with human resources professionals and mediators regarding conflicts in the workplace and bias. A questionnaire was created through the Google Forms website with seventeen questions, closed and open, to collect meaningful data for the research. Moreover, an interview was conducted through the Zoom videoconferencing platform. The study applied qualitative and quantitative methods and descriptive techniques and an inductive cross-sectional approach. Through data analysis, it was observed that mediation is a valid path as an alternative to disputes. However, mediation is also considered part of a whole process in bullying and harassment conflicts and not just the only strategy. Furthermore, professionals are aware of their biases.

Concluding that conflicts in workplaces related to bullying and harassment and human resources professionals performing internal mediations is not the best approach and should be considered external mediators to ensure non-bias.

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## **Introduction**

Conflicts are part of life, and if we look at the history of humanity, they have always been there. It is no wonder that we are currently studying conflicts, their causes and how to deal with them. Conflict is present in the community, within our home, within ourselves and in the workplace. Every organization faces conflicts daily, and they cannot be avoided, but it is possible to manage them (Turkalj, et al., 2008). This study aims to focus on bullying and harassment conflicts. Exposure to bullying in the work environment is a severe and prevalent stressor in professional life today. Bullying in the workplace is linked to persistent interpersonal hostility with a level of power imbalance, whether formally or informally, among members of an organization (Einarsen, et al., 2016). At first, we might think that bullying and harassment are the same things, but workplace bullying is generally considered a subcategory of harassment with some characteristics. While harassment has a specific focus related to gender, sexual preference, colour, race or disability, bullying focuses on any circumstance that arouses the perpetrator's interest (McLay, 2009).

In the contemporary world in which we live with the various conflicts we face daily, different forms of resolution are also offered. Mediation is seen as a qualified form for disputes, where it involves ongoing relationships than other forms of resolution (McLay, 2009). Mediation is a process where a trained neutral assists the parties in resolving a dispute (Swift, et al., 2005). The Mediators guide the process, yet the parties do the work of coming up with the solution and making the decisions (Beer, et al., 2012). Successful organizations understand how important it is to maintain good human resources principles and practices to ensure a healthy business (Armstrong & Mitchell, 2019). Initially, this study aimed to investigate human resources professionals as facilitators in internal mediations in cases of bullying and harassment as a good practice tool and an ally for internal conflicts. Human resource is a process of acquiring, training, evaluating and remunerating employees while addressing their concerns about labour relations, health and safety and justice (Armstrong & Mitchell, 2019), are professionals in a position of

assistance and support the interests of the organization and the collaborator. For this reason, doubts arose about the human resources professional acting as a facilitator in internal mediations and focusing on cases of bullying and harassment.

As dispute resolution learners, we understand that it is essential to follow the pillars of neutrality and impartiality for mediation to work. Therefore, seeing this professional as a facilitator in internal mediations, we are talking about bias. For this reason, this dissertation intends and tries to answer the question: Is it possible for a Human Resources professional to facilitate an internal mediation following the pillars of neutrality, impartiality and non-bias?

This dissertation aims to critically review the role of bias in mediation in the workplace in cases of bullying and harassment. In order to reach an understanding, this research will focus on the following objectives:

- Identify conflicts in work environments, their effects and the role of mediation in the resolution;
- How bias can influence the conduct of mediation;
- Identify types of bullying and harassment and how to prevent them;
- Analyse the role of mediation in bullying and harassment claims.

In Chapter 1, a literature review is divided into three parts. With a critical evaluation of workplace mediation, the first part is where it is possible to place the reader with a brief history of mediation, definitions and its principles and analysis of conflicts in the workplace and their causes. The second part focuses on a critical review of the role of bias in mediation. And the third part, a critical analysis of the role of bias in bullying and harassment claims.

In chapter 2, the research methodology and methods used are detailed.

In chapter 3, the data obtained in the investigation are presented and analysed. The objective was to analyse the experiences of human resources professionals and mediators about conflicts in the workplace related to bullying and harassment.

In chapter 4, the information obtained through the Google search platform, where it was prepared, was analysed.

The study aims to contribute to the analysis of the conflict of bullying and harassment and to explore the causes and negative effects in the work environment. However, explore the option of internal mediation in response to these conflicts and be facilitated by human resources professionals, even though they are trained professionals committed to their employees' well-being, safety, and health, considering the pillars of mediation, especially bias.

## **Chapter 1 – Literature Review**

### **1.1. A critical evaluation of workplace mediation**

#### **1.1.1. The history and definition of mediation**

The first part of this paper focuses on carrying out a critical assessment of mediation in the workplace. To synthesise the reader about the subject. Mediation has a long and varied history in society around the world. In those societies where mediation was the first resource for conflict resolution, these members looked to a third party for help with resolution. These intermediaries could include relatives, a mutual friend or a neighbour. Moreover, if informal mediation did not resolve or were more serious, they would look for more authoritarian figures, such as chiefs, elders and religious leaders (Moore, 2014).

In most cases, mediators learned to mediate informally and fulfilled this role in the context of other functions or duties. From the 20th century onwards, mediation formally became institutional, became a recognised profession, and expanded worldwide in recent decades. It is believed that this growth was due to greater recognition of human rights and individual dignity, democratic expansion at all social and political levels. It was thought that the individual has the right to participate and take control and decisions on issues that affect their lives. The change was also motivated by dissatisfaction with those who took the findings and their strict procedures with imposed agreements that did not meet the genuine parties interests. In the end, the costs of money, time, and damages to interpersonal and community solidarity is a dispute resolution where everyone loses (Moore, 2014).

*Since then, mediation* has been a conflict resolution process. A third party, who does not have the authority to make a final decision, voluntarily intervenes to effectively assist the parties involved in reaching an agreement and understanding. Mediation helps conflicting parties talk and resolve their conflicts together (Beer, et al., 2012). As specified in part 1 of the *Mediation Act 2017*, "mediation" means a confidential, facilitative, and voluntary process in which parties to a dispute attempt to reach a

mutually acceptable agreement to resolve the dispute with the assistance of a mediator. Mediation is commonly initiated when disputing parties on their own cannot start productive talks or have begun discussions and reached an impasse (Moore, 2014).

The figures below represent the difference in approach between conflict resolution in a more traditional system and how it works with conflict mediation.

Figure 1 is a more traditional approach, where barristers have a more central role in communication between their clients, the opposition barrister and the judge. Thus separating the clients from the judge and one from the others. In this more traditional model, the law defines the entire process and communication and exclusively defines the problem and solution. Other factors that might be important to consider are absent during the process, restricting communication between barristers and the judge. In a more traditional approach, the judge has a significant role and function to apply the law to the disclosed facts. Barristers being the second important role ( Friedman & Himmelstein, s.d.).

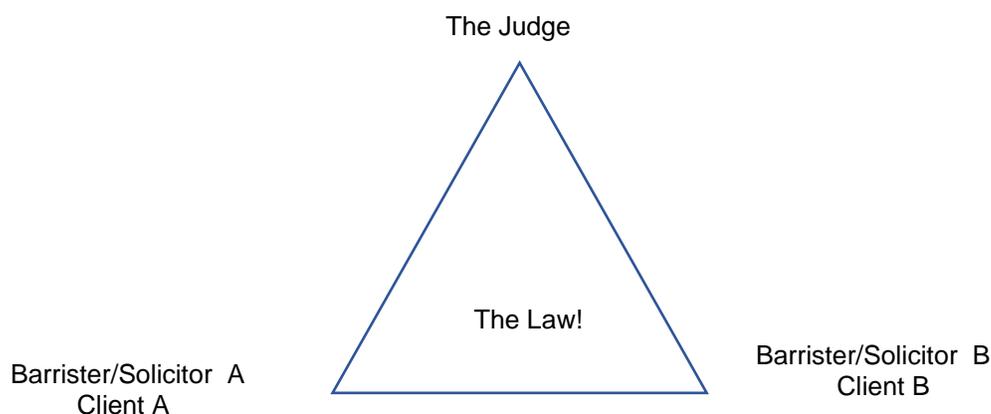


Figure 1: Represent the Adjudicative Process (Friedman & Himmelstein, n.d.)

In Figure 2, the law plays an uncertain role, as other factors are considered, such as interests and

aspirations, which do not happen in a traditional process and are ignored. This second figure also shows the position of solicitors and barristers who stand beside their clients without being an intermediary between the parties ( Friedman & Himmelstein, s.d.). During the mediation process, the parties can request legal help and advice at any time and cannot be from the third party acting as mediator. According to section 14 and 15 of the *Mediation Act 2017*, even if the disputers are engaged in the process at the court's invitation, the solicitors and barristers should provide information regarding mediation services, informing his client about the process being voluntary, confidential and its benefits of mediation in addition to the enforceability of mediation settlements.

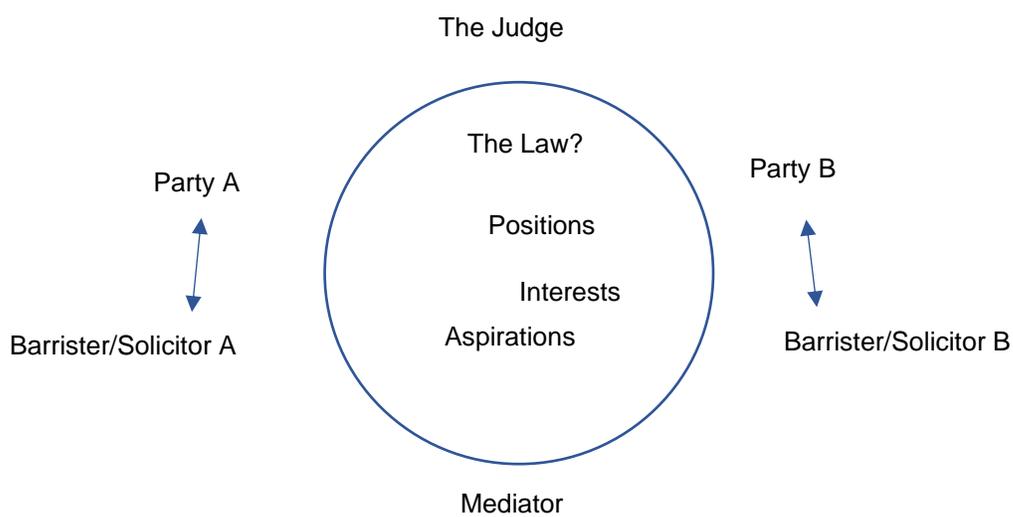


Figure 2 - Represent the Consensual processes ( Friedman & Himmelstein, n.d. )

### 1.1.2. Principles and types of mediation

The Irish government promotes through the *Mediation Act 2017* as a viable, effective and efficient alternative way of resolving court cases, with reduced costs and faster results in less stress than is typical in traditional legal processes (Menton, 2017). Not only promote and install mediation as an alternative to disputes in civil proceedings, but also a code of conduct and recognition of a body such as the Mediation Council of Ireland.

The principles of mediation consist of confidentiality, impartiality and neutrality, self-determination, voluntariness and respect.

According to part 2 section 6 and 8 of the *Mediation Act 2017*:

- i. Confidentiality - The mediator will not disclose any information about the parties, content, or the mediation outcome to anyone who is not going through the process unless the parties have consented. Breach of confidentiality can be broken for reasons of negligence by the mediator, when the need to protect or prevent any physical or psychological harm, and when the practice or intent to commit a crime is revealed.
- ii. Impartiality or Neutrality - The mediator will conduct the process impartially, treating all parties fairly and neutrally.
- iii. Voluntary – Mediation is voluntary, and either party can withdraw from the process at any time, even the mediator.

In addition, according to *The mediator's handbook* (Beer, et al., 2012):

- i. Respect - Ensuring that the parties are treated with respect throughout the entire process.
- ii. Self Determination - It is the parties' responsibility to decide the outcome of the mediation.

As mentioned in the principles, the mediator does not have the final decision-making power in the mediation process but only supports the parties to communicate passively and negotiate between them to reach a mutually acceptable agreement. The mediator does not make the decision for the parties, but facilitates initiating and improving communication between them, helps to build more respectful and productive relationships, assists the parties in understanding and considering each other's needs, interests and concerns, helping effective way to solve problems, to recognise and build mutually acceptable agreements (Moore, 2014). Christopher Moore adds, "They also do not have predetermined biased, or fixed opinions regarding how a dispute should be resolved..". The mediator is a third party, an individual

who works between or among parties in dispute. Third parties are generally somewhat independent of disputes. Neither the primary parties involved in a conflict nor a party is likely to be significantly affected or receive direct benefits from resolving disputes' differences (Moore, 2014).

Within mediation, there are several types of mediation or "schools". It is related to mediation professionals where the philosophy, thought, orientation, objective, focus and style of assisting in resolving conflicts are equal (Moore, 2014). Those "schools" or mediation styles that will be cited in this paper are six. Facilitative Mediation, Transformative Mediation, Narrative Mediation, Therapeutic Mediation, Evaluative Mediation and Restorative Mediation will be defined shortly.

Facilitative mediation is the most used in mediations in Ireland emphasises the importance of identifying the needs and interests to reach a possible agreement and thus be sustained in the future (Roche, et al., 2014). Through mediation, they focus on the parties' negotiation process, leaving the content in the parties' domain for some reason (Moore, 2014): (i) The fact is that the parties are better informed about the conflict issues, and the best decision rests with the parties and not a third party; (ii) That the parties need help with the process and not third-party advice; (iii) They believe that the parties' commitment to comply with the agreement is more valued because it was their decision; (iv) They believe that the mediator's impartiality with the issues dealt with helps build trust between the mediator and the parties (Moore, 2014). The most commonly used is facilitative in workplace disputes, but no style is predominant (Roche, et al., 2014).

Another mediation that follows the same focus on the relationship and self-determination of the parties is Transformative Mediation. In this school, the mediator helps the conflicting parties change the interaction between them, discussing their problems and possibilities of solving a relationship with destructive and harmful interaction to more constructive and positive interaction (Moore, 2014). The objective is the empowerment of the parties and the restoration of self-confidence (Roche, et al., 2014).

Narrative Mediation also has as its primary objective the relationship between the parties, taking the focus away from solving the problem and focusing again on trying to establish respect and equality in which the parties can build a functional relationship (Roche, et al., 2014). The mediator's task is to help the parties to overcome a division in a conflict. The parties are asked to narrate their stories to visualise better their points of view and perceptions of the conflict. In this way, the mediator helps the parties to develop new narratives (Moore, 2014). Another school focusing on the parties' relationship is Therapeutic Mediation, which focuses on improving and increasing understanding between the parties, touching on more psychological and relational issues, working through emotions so that this interaction between them evolves into more positive relationships. This mediation practice aims to transform dysfunctional relationships, behaviours or emotional difficulties (Moore, 2014).

While on the one hand, there are schools that follow the concept of restoring negative relationships, guiding and supporting the parties to reach an agreement or an understanding in the face of their conflicts. On the other hand, we have Evaluative Mediation is a process that emerged in the United States in the 80s. It is a mediation that focuses on the assessment of legal issues and legal rights. It is a process where the mediator can provide information without the parties having requested it that can be useful to the process, such as finding gaps, clarifying weaknesses in arguments, identifying where the law or previous cases do not support the views of a party. The central focus in this type of mediation is more restricted to legal merits (Moore, 2014).

Lastly mentioned in this paper is Restorative Mediation or restorative justice. It is a school that focuses on improving relationships between victims, offenders and the community, focusing on conflicts related to anti-social behaviour. It is a process where the parties affected by an injustice decide what must be done to repair that damage (Moore, 2014).

### **1.1.3. Workplace Conflicts and their causes**

According to the Oxford Language dictionary, conflict is a disagreement or discussion, usually prolonged, caused by incompatibility between two or more opinions, principles or interests (Dictionary, 2021). For Abdul and Yaser conflict is defined as an antagonistic state of opposition, disagreement or incompatibility between two or more parties resulting in interdependent interactions where their interests are incompatible, inconsistent or in tension. It is also a clash of values and interests (Hussein & Al-Mamary, 2019). That is, the conflict can happen for infinite reasons for disagreement or opposition in relation to one or more people, ideas and interests (Farnsworth, et al., 2002).

According to IBEC and their guide to Workplace Dispute Resolution, If we look at the conflict that arises in the workplace, it can be a traumatic experience for those involved with harmful results (Doherty, et al., s.d.). It can affect productivity, increase absenteeism and cause large-scale conflicts that can lead to more serious and violent crimes (Farnsworth, et al., 2002). Even so, conflict has the power to move society and lead to new economic, technological and institutional systems. It is emphasised that conflict is linked with perception and not exactly with real facts, it is the differences between people that lead to conflict. Conflicts can have positive or negative results and bring benefits to the company, as long as its leaders know how to identify these situations and act accordingly to both inspire and resolve them (Hussein & Al-Mamary, 2019).

Six types of conflicts that exist in a corporate environment are identified were found (Hussein & Al-Mamary, 2019):

- I. Intrapersonal Conflict – It is a conflict that happens between the person and herself. This conflict is related to their values and beliefs, and there is no compatibility in relation to their activities. This conflict can arise within the individual because his motives or impulses are impeded, and he cannot make a good decision in the face of adverse objectives and activities. This conflict includes

elements such as incompatibility, unacceptable, uncertainty, frustration, goal conflict, and role conflict.

- II. Interpersonal Conflict – It is the most common conflict that occurs between two people. This conflict occurs due to differences of ideas regardless of the hierarchical level, and it can happen between superiors and their subordinates and also among workers. Oppositions may occur in relation to the company's goals and objectives. What causes this conflict are differences in personality, perceptions, interests, lack of information, power and status both within the company and socially.
- III. Intragroup Conflict – When there are different goals between the members of a group in a company. It happens when an individual in a group does not agree with their group's goals and means of achieving them. Leaders can act in a disciplinarian way, which in the future can cause a loss of productivity.
- IV. Conflict between Groups – It is the conflict that occurs between groups within the company. Every company has its departments, which ends up causing it to have several internal groups. And generally, these conflicts are related to the company, such as resource rivalry, conflicting decisions and competition. Moreover, as each group ends up developing its own organisation, if it is a company where the same department works with shifts, there may also be a conflict between them for reasons related to work, such as lack of equipment. Furthermore, the excellent integration between the groups is essential for the good functioning of the company and having its results achieved.
- V. Intra-Organizational Conflict – Within this group, there are four types which are vertical conflict, horizontal conflict, team conflict and role conflict. Vertical conflict is when conflict happens from superiors to subordinates and vice versa, which is called the organisational level. Horizontal conflict is when it occurs between departments with similar hierarchical levels. Line team

conflicts are conflicts that commonly occur between line personnel and the personnel department by whom they are observed. Role conflict is when specific tasks are expected to be performed according to their role.

VI. Inter-Organizational Conflicts – These are conflicts that occur between organisations that depend on each other. Like a company that manufactures shoes and its fabric supplier, or even workers' unions and the companies they employ.

Conflict is a challenge for the company (Farnsworth, et al., 2002). For Abdul and Yaser, conflicts can also be seen as positive conflicts for organisations. Although it is often seen as something negative, conflict can lead to enlightenment if the problem is resolved (Farnsworth, et al., 2002). Regardless of whether the conflict has a positive or negative effect, what matters is the strategy committed to dealing with it. As shown above, conflicts can affect companies in terms of wasting resources and limited performance. The positive side of a conflict is when individuals work together to resolve the conflict by creating a spirit of cooperation and teamwork, by working together, what could be negative gains positive impacts (Hussein & Al-Mamary, 2019).

The negative effects can cause psychological damages that affect an individual: distraction, lack of interest, dissatisfaction, disappointment, and disagreements. And the negative behavioural damage related to conflicts can lead the individual to unusual behaviours such as excessive use of cigarettes and alcohol, being hostile towards other people, leading to reduced dialogue and resistance (Hussein & Al-Mamary, 2019). The negative effects of a conflict can not only be harmful to the individual but to the company as well, the employer is misled into believing that conflicts within the organisation only affect workers. For the company, it can cost high, and some of these effects are waste of time, loss of employees, sabotage, theft, damage and health costs (Hussein & Al-Mamary, 2019).

The workplace, for being an environment where people of different personalities and different

socioeconomic levels, ends up not being a peaceful place when it comes to conflicts. And if there are limiting working conditions, conflict arises more easily. And the situation can get worse when it happens from authority to employee (Yasmin & , 2017). In addition to the types of existing conflicts mentioned above, it was also found that organisational conflicts occur due to political, ideological, cultural and regional differences (Yasmin & , 2017). Another cause of conflict is the communication gap that can result in misunderstandings within an organisation, resulting in conflict, and these misunderstandings are one of the most common reasons (Yasmin & , 2017).

We can see that within an organisation there is not only a single source of conflict, but a combination of factors and it is difficult to highlight which causes are more dominant than others (Yasmin & , 2017).

#### **1.1.4. Workplace Mediation – Advantages and Challenges**

A mediation for conflicts in the work environment is defined as the intervention in a negotiation or conflict of a third party who has limited or no decision-making power and voluntarily assists the involved parties to reach a mutual agreement dispute resolution agreement. The interest of organisations in seeking mediation is due to the efficiency and effectiveness of the resolution. Because mediation is faster, in terms of resolution time and cheaper, compared to traditional means. Furthermore, because it is seen as a quick and sustainable solution, it helps to reduce absenteeism and, consequently, layoffs, thus minimising cases that reach litigation. Because mediation is conducted more quickly, less management is required compared to traditional dispute resolution methods (Roche, et al., 2014).

In practice, mediation happens in the same way, whether it is a mediation of conflicts coming from a work environment or not. It will usually start with an individual meeting with each party, also known as a Caucus, where the parties will reveal their view of the dispute. Then, meetings are held between the parties and the mediator; unless the relationship between the parties is damaged, this can happen

separately. Moreover, the mediator explains the entire process, and the parties can show their perspectives on the conflict without being interrupted. With the support of the mediator or facilitator, they can further explore the reasons for the dispute. The mediator uses techniques such as listening, questioning, summarising, frame and reframing (Roche, et al., 2014).

Moreover, in addition to the benefits regarding the durability of mediation compared to other types of disputes, it has the advantage of as the parties have total control in the decisions, practising self-determination. The approach is more optimistic, aiming at the importance of maintaining working relationships. The process is confidential and faster comparing with other disputes. Lower costs, which do not happen when there is a process where an appeal can occur. Moreover, it is a process without prejudice. If the parties do not reach an agreement, it is possible to proceed to other types of dispute resolution (Saundrya, et al., 2018). Mediation also suggests an opportunity for the team to deal with conflicts in a less disorderly manner and offers the parties the opportunity to understand better their perspectives, which might not be possible if forms of the resolution were used formally (Roche, et al., 2014).

On the other hand, the union issue is sidelined in this conflict with employers, believing that the use of mediation resources will replace the union voice and limiting the union to only the role of consulting and not being part of the process. Mediation ends up eliminating the union's role in defending its workers (Roche, et al., 2014).

Despite being asked about the right time to refer a conflict to mediation (Roche, et al., 2014). And timing is important for effective mediation, but it can be complex. Because in order to prevent a conflict from evolving in early stages, individuals are led to dispute, and the parties may consider it unnecessary at the risk of the dispute being seen as an escalation of conflicts and even diminishing the power of supervisors and managers of resolve in a more informal and direct way (Roche, et al., 2014).

Regarding the principles mentioned above, and their practices when mediation is practiced to resolve

conflicts in the workplace, some questions are raised when related to confidentiality, voluntariness, effectiveness in the resolution and its success.

First, confidentiality, as mentioned in the section 10 of the *Mediation Act 2017*, ensures that all information related to the dispute must be kept confidential. Have some exceptions, such as.

- i. when needed to comply with The agreement;
- ii. when it is necessary to protect some physical or psychological damage;
- iii. when required by law;
- iv. when necessary to prevent or reveal the practice of crime, concealment of crime and the practice of one;
- v. And even the negligence or misconduct of the mediator.

So this confidentiality protects the parties and creates a safe environment in which participants can express themselves freely (Roche, et al., 2014). However, it is believed that this confidentiality can be dangerous and challenging to maintain in the workplace. Confidentiality can limit the company from learning from its conflicts, failing to review and improve its practices in the workplace. What is more, it can hide seriousness and/or misconduct, causing the company to fail to take appropriate actions (Roche, et al., 2014).

The second question concerns voluntariness. As one of the pillars, and it is also mentioned in the *Mediation Act 2017*, mediation is an entirely voluntary process. It is up to the parties to decide whether or not to engage in the process. However, as in the *Mediation Act 2017*, the court can suggest mediation for the parties. However, when there is an internal conflict in the work environment, it is possible that individuals feel forced to mediate in the workplace by their manager. Also, they are reluctant to be fully involved in the process, even if they do not have an explicit compulsion; the individual may feel obligated to participate for fear of harm to their reputation if they deny it. Moreover, that can be a reality for those

managers who feel the pressure to embrace organisational policies and values (Roche, et al., 2014).

Third, regarding the success of mediation. Regardless of the pros and cons of a work environment mediation, or even considering the pros and cons. How will it be evaluated when mediation is successful?

It is known that the purpose of mediation is that the parties reach a mutual agreement with the support of a third party, the mediator. Can it be considered a successful mediation when the parties reach a final decision and sign the agreement?

Assessing the success of mediation is complex as it involves several factors beyond a final signed agreement. The parties' expectations, understanding, and attitude will influence the final satisfaction and the considered success in mediation. Studies show the satisfaction of success in the short term. However, it is not known whether this satisfaction remains in the long term, especially when the parties maintain a level of relationship after mediation, as is the case in work environment relationships, mainly in disputes where there is no balance of power between the parties (Roche, et al., 2014).

It is said that it is difficult to determine. The success of a mediation can be evaluated as a set of factors that led to an agreement and the reduction of conflicts. Changes happen in the months after mediation. Mediators should see the final agreement as another step in a long journey of development (Roche, et al., 2014).

The fourth concern is concerning effectiveness. It is asked about the right time to refer a conflict to mediation, and it is essential for effective mediation, but it can be complex. Because in order to prevent a conflict from evolving in early stages, individuals are led to the dispute, and the parties may consider it unnecessary at the risk of the dispute being seen as an escalation of conflicts and even diminishing the power of supervisors and managers of resolve more informally and directly (Roche, et al., 2014).

Other requirements that are also questioned about mediation and its effectiveness are the skills and strategies used by the mediator to gain the parties' trust, which can hinder cooperation. To be successful in this strategy is related to how impartial the mediator is. Moreover, the parties' acceptance to cooperate

is essential to developing that trust. Impartiality can be questioned when using an internal or external mediator within the company. Internal experts have the advantage of knowing the organisational context, unlike external mediators (Roche, et al., 2014).

When we think about an HR professional acting as an internal mediator the literature has already suggested stating that having training in internal mediation can improve the company's ability to deal with its conflicts, in addition to increasing the manager's reputation, allowing for more knowledge and resources that will expand creative problem-solving capacity (Roche, et al., 2014).

## **1.2. A critical review of the role of bias in mediation**

In this second part of this paper, we focus on critically reviewing the role of bias in mediation. As seen earlier in the first chapter, the third party that will facilitate the process is expected to be non-bias. During the teaching period in the classes on conflict resolution and mentioned above, it is taught that one of the qualities expected of a mediator is that he is neutral, impartial and not biased. Moreover, one of the concerns when seeing the Human Resources professional performing work as a facilitator in an internal mediation in the company is whether this professional can facilitate a totally impartial and neutral mediation, regardless of the hierarchical position of the parties participating in the process and their prior and daily contact with the parties before mediation since this facilitator is also an employee of the company. This chapter aims to review and assess the bias within mediation and how it can affect the professional acting internally.

The mediator is the point of trust of the parties, is the neutral person who will not take sides and has no authority with the final result and guiding the entire process so that it is carried out consciously and respectfully, following the pillars of measurement. According to what is disclosed in the Code of Ethics and Practice by the Mediation Institute of Ireland (MII) The mediator must act and be seen to act

impartially throughout the process of mediation. Impartiality means freedom from favouritism, bias or prejudice. The mediator must not take sides. If a Mediator believes that they cannot remain impartial, they shall terminate the mediation (Ireland, 2021). In a conflict situation where the parties are looking for a resolution, the mediator is the leader to guide the participants to get from point A to point B in a friendly way and acting in a non-bias way.

A human resources professional is a direct employee within the company acting as a mediator. How can this professional overcome this challenge of trust and bias because mediator neutrality is understood to mean that the mediator has no pecuniary interest in the subject matter in an undisclosed relationship to the parties and no possibility of personal gain (Izumi, 2012). Building a trusting relationship with the parties is essential for mediation to flow fairly and encourages them to open up and disclose their interests, concerns, feelings, and thoughts.

In a mediation where the parties have different hierarchical levels, is it possible for this facilitator to build trust on both sides and leave his (and the parties') bias aside and facilitate the process neutrally and impartially? Let us imagine a mediation where one party is an employee and the other party its leader. Perhaps this leader already has confidence in the mediator because of his position in the company and because of his hierarchical level above the other party. Believing that this can benefit it in some way during the process. We can identify two challenges for this professional. First, build this trust with the employee, ensuring that he or she has no favouritism within the mediation and that his role is neutral and impartial.

Furthermore, the second challenge is to act impartially and not be biased. How not to be biased when we are mediating a process with people in our daily life who probably, even if you are not aware, already have a pre-judgment for a specific person or group of people. A mediator influenced by implicit biases can create barriers to resolution resulting from (Marlin, 2017):

- i. the insult and/or anger felt by the victim of the bias which may impact his or her trust of the mediator, and
- ii. the failure of the mediator to obtain important information, knowledge or insight held by the victim of such conduct.

According to the Oxford bias dictionary, it is the intense feeling favouring or against one group of people, or one side in an argument, often not based on fair judgement.

Four mediator elements are expected no conflict of interest, procedural equality; outcome-neutrality; and lack of bias, prejudice, or favouritism toward any party (Izumi, 2012). Including the freedom from favouritism and bias is in words, actions and appearance. As stated above, mediation is a voluntary process, where participants have the autonomy to decide whether or not to participate in the process. This includes the mediator himself as mentioned in the Mediation Act 2017 in part 2 of section 6 and subsection 6, the mediator may withdraw from the mediation at any time during the mediation by notice in writing given to the parties stating the mediator's general reasons for the withdrawal. Moreover, this does not prevent the mediator from re-mediating the session as said in the sequence, in the same section 6 of part 2 of the Mediation Act 2017, becoming the mediator in that mediation.

The measurement process is based on the duty of the parties to reach an agreement, and it is not up to the mediator to give a final opinion, giving the parties complete control over the final agreement between them. Moreover, the mediator has only the role of facilitating this communication, understanding and negotiation between the parties giving support to reach a possible amicable final agreement (Moore, 2014). Furthermore, for the facilitator to be able to give this adequate support to the parties, there must be trust between the parties and the mediator. The mediator has no personal preference that the dispute is resolved in one way rather than another. The mediator is there to help the parties identify solutions that they find acceptable, not to direct or steer the parties toward results and favours (Izumi, 2012). Carol

Izumi state Favouritism might be caused by a personal bias for or against a participant based on that person's background, position, personality or bargaining style (Izumi, 2012). Also, that in order to maintain neutrality, mediators have to be aware of their biased assumptions and their judgment about the participants, especially in cases where one of the parties can give them trigger and have strong emotions in the relationship. she adds that for facilitators to achieve this neutrality and impartiality in mediation, it is essential that the mediator has a vision of their own perspectives and experiences to understand the impact they can have on this relationship with the parties. There is concern that the mediator's approach to a problem affects the direction of the process and the final result and the mediator's difficulty in perceiving and monitoring their unconscious bias (Izumi, 2012).

For Louis M. Marlin, a former litigator, mediation is neither an effective discovery tool nor acceptable to employ it to harass an opponent. It is a case resolution tool (Marlin, 2017). The author adds that controlling bias is essential to help parties achieve their goals during the process. In addition, he adds that there are two types of bias, the conscious and the unconscious. The consciousness is the easiest to be identified and temporarily put aside in a mediation process where neutrality is required. Unconscious bias is the most challenging and worrisome, as few admit they are biased. Due to the lack of effort on our part to control generates a negative impact for rational analysis in the face of a mediation process. Louis Marlin claims. Psychologists tell us that our unconscious biases are simply our natural people preferences. Biologically we are hard-wired to prefer people who look like us, sound like us and share our interests. Social psychologists call this phenomenon "social categorisation", meaning we routinely and rapidly sort people into groups (Marlin, 2017). Carol Izumi makes a statement that sounds controversial and makes us reflect and think about it. She says that the requirement for neutrality is impractical to achieve in real life and that studies reveal the disconnect between ideal neutrality and real techniques and strategies used by mediators. It is undeniable that mediators influence parties, using various degrees of persuasion and even outright manipulation to obtain results (Izumi, 2017). With that,

they induce and facilitate a process so that it has a favourable result. In addition to this, she explains that to have a mediation free from favouritism, she proposes that mediators be aware of their assumptions, prejudices and judgments about the participants (Izumi, 2012). It demands a high degree of self-knowledge (Marlin, 2017), as stated by Louis Marlin.

Author Louis Marlin clarifies that unconscious bias is the hardest to notice because it is very subtle, resulting in almost imperceptible behaviours such as paying less attention to what the other person is saying and even avoiding talking to them. Moreover, this kind of unconscious bias is as essential, or even more critical, as the conscious one for the professional who will facilitate an internal mediation process in the company and need to be alert. And not only the bias that happens from the mediator to the parties during the process, but the keen perception to identify the unconscious bias between the parties (Marlin, 2017). As stated before, it is the most dangerous, common and difficult to perceive, but not the least important to be aware of its existence. Unless recognised by the mediation participants, they will have an almost imperceptible impact, if not controlling, on the outcome of the mediation. While it is challenging to recognise bias in our clients, and most importantly, in ourselves as mediators, overcoming them is a challenge that the effective practitioner must face (Marlin, 2017).

In addition to the conscious and unconscious bias mentioned in this paper as a warning for mediators to be aware of the existence and work on self-judgment. Charlie Irvie brings some studies into cognitive errors that can affect our perception of judgment and better understand how our bias can work. Charlie states that we all need to make daily judgments about the people and situations around us, such as labels, trustworthiness, honesty, smartness, etc. This judgment is called "Attribution". This kind of judgment can be precious when we are walking down the street at night and a stranger approaches us. According to these judgments, it can be a danger alert that prompts us to take quick action. However, for some other everyday situations and social interactions, this judgment is dubious. For example, in a work environment, what happens makes us judge everything and everyone, whether it is a joke from a

colleague, the way someone looked at us and many other situations. Moreover, the answers to these judgments have more to do with how we see the world than what it actually is (Irvine, 2014).

These assignments are divided into internal attribution and external attribution. Internal attribution is when we attribute the behaviour of the other based on an internal characteristic of the other that we defined. Like being in a work meeting and noticing that one of the colleagues is not paying attention but is fiddling with his cell phone, we automatically assume that he is arrogant and keeps a mental note that we will keep for the future. That is, an internal attribution has been created on it, and this is a permanent attribution. However, if this same co-worker has a good reputation, we immediately imagine that his lack of attention at the meeting is for urgent or worrisome personal reasons; this would be an external attribution, as we attribute his behaviour as a passenger. We end up not giving importance; attribution external different from internal is unstable and does not help us predict future situations (Irvine, 2014). However, what usually occurs is a "fundamental attribution error", we do internal attribution when we should be doing external attribution. Moreover, there are some explanations for these errors, which are (Irvine, 2014):

- i. When observing a scene, we naturally see the person in the scene first and not the situation. We are required to pay more attention to observe the circumstances around us.
- ii. We build the world in two ways, first spontaneously and then more deliberately, causing the first impression to be changed or corrected over time.
- iii. The cognitive load. It means that we are more prone to cognitive error when we are "cognitively busy," even when situational information is available. When we are not paying attention, such as when we are under stress, we are more likely to make the fundamental attribution error.

When the attributions are related to our own behaviour, the judgment is different. We tend to make attribution external to ourselves about situations where we would make internal attribution if it were

someone else. Like the example of the inattentive co-worker at the meeting, if we were the ones looking at the cell phone, the explanation for the absence would be about some important family problem or any other emergency, not that we are inattentive and arrogant. Alternatively, even give the excuse of multitasking, we tend to be more complacent. Thus, we also relate the results of our actions to internal and external attributions. If we have a positive and successful result, we make an internal attribution, congratulating ourselves for the positive result; on the other hand, if we have unfavourable results, we make an external attribution, placing the blame on another person or circumstance, not on ourselves (Irvine, 2014).

It is well known how essential the mediator's skills and strategies are and how crucial it is to determine the results of measuring the ability to establish the parties' trust and empathy with the disputers (Roche, et al., 2014). Furthermore, when analysing the issue of bias in mediation and what is disclosed about the study of internal and external attribution and its errors, it makes us think if it is really possible for an HR professional to act as a facilitator of internal mediation, considering that the impartiality is vital in order to have a fair result. Louis Marlin still raises a question where even if the parties feel that there was a fair mediation and result, does it really matter the mediator's impartiality? He does not believe in this argument, as conducting a mediation without impartiality and being biased influences its result. Therefore, it is unfounded that in the end, it is a fair result. Also, making the parties believe in a fair result being biased generates moral disapproval. However, what makes us think about external mediators, which may be more expensive than internal mediators, is the guarantee of neutral mediation (Marlin, 2017). What makes us think about external mediators, which may be more expensive than internal mediators, however, is the guarantee of neutral mediation (Roche, et al., 2014).

Luis Marlin adds that the best thing to do to avoid bias is to examine our own conduct, thoughts and beliefs by stepping back and listening critically. Although we don't need to be judgmental, we do have to be willing to analyse our actions and words to determine if they would be different if it weren't for our

intrinsic beliefs (Marlin, 2017).

### **1.3. A critical analysis of the role of mediation in bullying and harassment claims**

#### **1.3.1. Mediation in bullying claims**

Studies in relation to bullying in the workplace began in Scandinavia in the 1980s, at that time research related to bullying among school-age children was already underway. Professor Heinz Leymann noticed several incidents of abuse and social exclusion, he believed that this conflict was more linked to the work environment than to those involved, as a specific quality of the psychosocial work environment, work design and leadership practices (Einarsen, et al., 2004). Years ago, leaders and public bodies did not want to accept the existence of this type of conflict and could not prevent the cases that arose and manage it fairly. However, the situation has changed and is increasingly becoming a global issue (Einarsen, et al., 2004).

According to the Irish Business and Employers Confederation (IBEC) workplace bullying is defined as repetitive inappropriate behaviour, direct or indirect, by one or more people in the workplace, impairing the individual's right to dignity in the workplace. work, but it is not considered bullying when the incident occurs in isolation (Doherty, et al., s.d.). Bullying is a negative behaviour in which the person who is being targeted ends up in a lower position (Rai & Agarwal, 2016), is characterised by interpersonal hostility ( Einarsen,, et al., 2016). Just as the incident is not considered bullying when it happens in isolation, it is also not considered bullying when the conflict happens on an equal footing (Rai & Agarwal, 2016), as there is a degree of formal or informal power imbalance between individuals in the organisation ( Einarsen,, et al., 2016).

Recent surveys in Ireland reported that nearly one in ten employees of a company had recent experience

with bullying. And as a result 1.7 million<sup>1</sup> working days are lost in Ireland to workplace bullying, which economically speaking is a quarter of a billion euros a year (Cullinan & Hodgins, 2021).

Academic research shows that there are three characteristics for the practice of bullying, which are persistence, power difference and hostility. Persistence for being a negative behaviour that happens repeatedly, which can last from weeks to months, in addition to a patterning of behaviour (Rai & Agarwal, 2016), during this period the victim is increasingly exposed to the hostile acts of the perpetrator who finds it difficult to defend himself ( Einarsen., et al., 2016) generating the imbalance of power, and this negative behaviour against the target being without much variety (Rai & Agarwal, 2016). In addition to bullying, the victims are physically, socially and psychologically distressed, leading the targets to a desire to resign, low productivity, dissatisfaction, stress and poor physical and emotional health. In addition to these negative impacts, affecting targets can also impact the company, creating a non-cooperative environment (Gupta, et al., 2020).

And this type of behaviour can range from the most subtle to the most explicit. Like work-related ones like information retention, excessive monitoring, unmanageable workloads, and more. And self-related ones as repeated reminders of mistakes, persistent criticism, and humiliation about work. And the ones that are physically intimidating like insults and threats. It is essential to understand how and why bullying behaviours evolve and manifest themselves (Rai & Agarwal, 2016). The perpetrator realises that the target cannot defend itself in the same way and can provoke, insult and socially isolate the target. This process takes place gradually and persistently, and is nurtured by the target's reactions, which are often dramatic emotional reactions ( Einarsen., et al., 2016).

According to Professor Leymann, conflict in the workplace usually starts with a minor conflict and evolves over time with more negative and persistent actions. Making the work environment abusive and

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<sup>1</sup> RTE source. 2021 data.

authoritarian, making the person feel victimised. And thus, four phases of this process were identified (Rai & Agarwal, 2016):

- I. Original Incident – This is the critical incident. In this first phase the conflict is shorter and sometimes difficult to recognise.
- II. Bullying and stigmatisation – It is the stage where the victim receives continuous criticism, humiliation, slander, threat of violence and meaningless task assignments.
- III. Personnel Administration – This is the stage where the administration intervenes and ends up misjudging the situation and blaming the target for the conflict.
- IV. Expulsion – This phase is characterised by the departure of the target from the organisation. Whether leaving for reasons of dismissal, or by voluntary exit, with a resignation.

In the same way that happens in cases of harassment, bullying is often not denounced because of the victim's insecurity and because they are feeling embarrassed and intimidated by the aggressor. And for this reason many end up resigning, to protect themselves against attacks and for the sake of their physical and psychological health (McLay, 2009). For a long time, bullying at work was seen as a normal culture in work environments and human behaviours (McLay, 2009), as well as in schools. However, the effects of these negative acts are relevant (McLay, 2009).

Bullying in the workplace and domestic violence has its similarities. As in domestic violence, bullies isolate the target from their friends, and any other support, use tactics of intimidation, emotional abuse and threats. In both cases, the aggressor intends to have control over the victim and minimise his responsibility by blaming the target (McLay, 2009).

Work engagement is defined by organisational psychology as a positive, rewarding work-related state of mind, characterised by dedication and absorption, causing positive effects on employee engagement such as creativity, performance and effectiveness. Therefore, we can say that for a good performance of the

organisation in general, any reason that prevents the engagement of its employees in the work environment should be seen with concern by the management ( Einarsen,, et al., 2016). Because the negative impact that bullying causes in the organisation goes beyond the victim and extends to other employees, contributing to low productivity and performance resulting from decreased morale, stress and insecurity and consequently having a large negative impact on absenteeism and staff turnover (McLay, 2009), what affects engagement at work.

According to the Workplace Relations Commission (WRC) in their Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work, in relation to complaints of bullying in the workplace it is said that any allegation or complaint of bullying is necessary attention, calm and consistency. It adds that the sooner an informal intervention takes place, the more likely it is to have a good result, especially when it intends to re-establish relations. However, the commission warns that in case of complaints of bullying in small companies, it is advisable not to carry out this intervention, but forward it to management. And it suggests external assistance for an effective solution.

There are three reasons why mediations take place in the workplace involving cases of bullying. The target has already resigned and wants redress, the target wants to resign because of the bullying and wants to negotiate his way out, or the target is still in the company and wants to stay but wants to make sure that he will not continue to be the target of Bullying (McLay, 2009). However, there is controversy about the use of mediation for disputes related to bullying, that mediation is not suitable for all disputes and this is true for cases of bullying at work, due to the imbalance of power, especially if the aggressor is the employer or the presence of the perpetrator is insisted (McLay, 2009). Thus, the mediation process internalises the conflict that takes place in the work environment, transforming unfair treatments into interpersonal conflicts and transferring responsibility to the employee and not the employer, and the employer's power of control is repeated. Therefore, mediation in cases of bullying and harassment would not be appropriate, but other more formal types of resolution should be applied (Roche, et al., 2014).

As already mentioned in the first part of this paper about the advantages and disadvantages of carrying out mediation in the workplace, confidentiality is once again cited here as a disadvantage when this mediation is carried out for reasons of bullying complaints. It is argued that one of its principles is confidentiality, mediation does not cooperate with the community on the issue of behaviour patterns in this type of harassment, as it avoids public awareness of this problem. And for this reason, bullies in the workplace will continue with their intimidating behaviour causing more damage and traumatising more victims (McLay, 2009).

### **1.3.2. Mediation in harassment claims**

According to the Irish Human Rights and Equality Commission, harassment is any form of unwanted verbal, non-verbal or physical conduct related to the nine grounds<sup>2</sup>. This conduct has the effect of violating a person's dignity by creating an intimidating, hostile, humiliating and offensive environment. Moreover, such unwanted conduct can include solicitations, acts, spoken and written words, gestures, images or other material (ihrec, s.d.). Harassment of a worker, whether a temporary employee or an intern, in the workplace is prohibited whether this act is committed by another employee, the employer, or a client. In the literature, it is defined as an act of offensive and/or negative harassment that influences an individual's work functions (Gupta, et al., 2020).

At first we might think that bullying and harassment are the same thing, but workplace bullying is generally considered a subcategory of harassment with some characteristics. While harassment has a specific focus related to gender, sexual preference, colour, race or disability, bullying focuses on any circumstance that arouses the interest of the perpetrator (McLay, 2009).

Mediation is designed to be a process of empowerment and balance between the parties, making

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<sup>2</sup> They are: Gender, Civil Status, Family Status, Sexual Orientation, Religion, Age, Disability, Race and Traveller Community

individuals directly collaborate with a different outcome from what happens in the litigation (McLay, 2009). As in bullying, the dynamics of harassment has the unbalance of power as a characteristic between victim and aggressor, for this reason it may not have a constructive resolution of the conflict, which instead of the parties being strengthened and balanced during the process, it is possible that it is reinforced the dynamics of existing power. And if this relationship of power and imbalance is not changed by the mediator, the parties can see the approval of this imbalance on the meter (McLay, 2009).

Another question found in relation to mediation in cases of bullying and harassment is whether in these cases mediation can really be taken into account and its effectiveness. Going back to the fact of confidentiality, it is said that information regarding the agreement reached and whether the complaint has been resolved cannot measure the scale and impact of this on the workplace and community (McLay, 2009).

A certain type of workplace harassment that is asked whether or not to consider being mediated is in cases of sexual harassment. If the decision to use mediation is positive, in these cases it is recommended to have specific criteria about what will be mediated, despite being a voluntary process, mediators can carefully assess the situation so that mediation does not happen. If the harasser will be dismissed by the company, mediation may not be considered, on the other hand it can help resolve conflicts arising from the harassment, as a way to show the harasser the negative results of their actions and give the victims space to express their feelings and concerns arising from the harassment suffered (Swift, et al., 2005). On the other hand, when mediation is not considered, it is stated that the most appropriate is to go to the investigation forum so that the line of acceptable behaviour in the work environment is clearly drawn (McLay, 2009).

Regarding neutrality and impartiality in relation to cases of violence, and here we are saying more specifically about sexual abuse and harassment, it is said that mediators must assume that violence within a relationship is not acceptable and suggests that in these cases neutral mediators and impartial is not

appropriate when there is violence and abuse, both cases impair the individual's ability to negotiate equally with each other, if the mediator has a neutral and impartial role, as this mediator puts himself in the position that harassment and bullying in the place is unacceptable without affecting your impartiality? (McLay, 2009)

Another challenge for mediations related to harassment is that the company finds itself in a situation where the dispute is based on the parties' narrative of what occurred and has no other evidence about the case, as the mediation is not focused on who it is best, as a result the parties can resolve the conflict and help develop working rules with the support of the mediator who can keep them working together (Swift, et al., 2005).

## **Chapter 2 - Research Methodology and Methods**

Research can be defined as a scientific understanding of existing knowledge and the formation of new knowledge that can be applied to improve humanity, searching for the truth. The research contributes to overall progress. (Bairagi & Munot, 2019). Also, according to the Oxford English Dictionary encyclopaedia, it is defined as a systematic study investigation to determine facts and reach new conclusions. Through scientific study or by critical investigation.

In this dissertation chapter, the focus is to describe and understand the methodology and method used. Research methodology clarifies the research process, and research methods purport to obtain answers to research questions. (Bairagi & Munot, 2019)

Firstly, the methodology used to carry out the research was epistemologically, unlike the anthropological, which refers to the nature of reality. Epistemology tells about assumptions about knowledge, how the researcher handles the research, what makes knowledge acceptable and valid, and how it will be transmitted to others (SAUNDERS, et al., 2019). With the application of the previously elaborated questionnaire to obtain qualitative and quantitative answers from professionals acting as mediators with expertise in conflicts in work environments and human resources professionals who act as mediators. From this questionnaire and their answers, their opinions, thoughts, concerns and suggestions regarding the topic will be analysed. Furthermore, from these subjective answers, we can conclude the questions at the beginning of this paper.

Second, the research design shows the strategy used to apply the research logically, thus collecting and analysing data. The research design used in this research was the onion model. Moreover, the stages for the research to arrive at the answers are philosophy, approach, strategy, choices, and time horizon to have the data collection and analyse it finally.

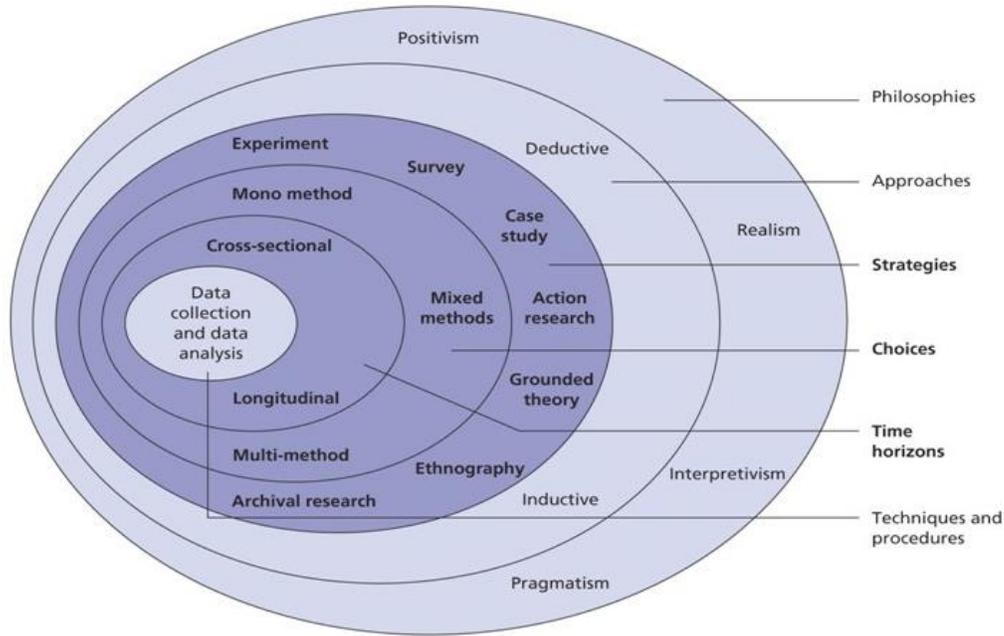


Figure 3 - Research Onion Model (Mark N.K. Saunders, Philip Lewis and Adrian Thornhill, 2019)

The philosophy chosen for research was positivism. This philosophy aims to understand existing theories and develop hypotheses with an empirical focus, generating data and facts not influenced by human interpretation or prejudice (SAUNDERS, et al., 2019). With positivism, the researcher was able to analyse the opinions of research participants about conflicts in the workplace in a neutral way. These conflicts are related to issues of bullying and harassment. The questions were structured according to knowledge previously acquired through a literature review such as articles, books, and websites. Finally, analysed by the researcher using existing rules to explain their results.

The approach chosen for the research was inductive. It is the oldest and most popular form of scientific activity to date (Walliman, 2006). In this type of approach, the research is intended to collect qualitative data. Moreover, the research aims to subjectively perceive and analyse human behaviours and their experiences related to the research objectives.

The chosen strategy to be used was a survey, with the construction of questionnaires and semi-structured

interview. In the interview, the same questions from the questionnaires were used. The interview has the advantage of adaptability, and the interviewer can probe responses and investigate motives and feelings, which is not the case with the questionnaire (Bell & Waters, 2014). The respondent's information was disclosed narratively as the conversation flowed, which perhaps would not be possible to obtain in a closed questionnaire.

The objective was to collect qualitative information both in questionnaires and in interviews so that it is possible to understand opinions, reasons and thoughts. The mixed-method was the method chosen to obtain quantitative and qualitative results.

Precisely for this research, the qualitative was used to obtain information related to the professionals' experiences approached. In contrast, the quantitative was used to analyse the data collected in the research through the questionnaires.

Finally, the time horizon of this paper is defined as cross-sectional. The research is based on a sample defined by the researcher, and it was applied only for some time.

## **2.1. Ethical Research**

Ethics are the rules that conduct research, and it is necessary to know them (Walliman, 2006). The research was guided honestly and ethically, following all ethical and moral criteria. Specific guidelines were followed during the process, including the protection and privacy of the personal data collected. The information was obtained in reliable ways from the participants.

The researcher received prior consent from the participants when informed about the topic, and the research does not contain any personal or confidential information. Previously, the questions were submitted and approved by the supervisor before being released to the public.

As an aid to the researcher in obtaining good results, the data presented in Chapter one were based on a

literature review and research according to the theme and objective.

Finally, the acquired information was analysed to understand better the role of bias in workplace mediations in cases of bullying and harassment. The answers obtained in this study were used only for academic study and will not be published in another publication.

## 2.2. Sample and Data Collection Methods

Census is a data survey from an entire population, like the National Census that develops a questionnaire. The entire population of the country is asked to participate by answering this questionnaire. However, the census is something expensive and time-consuming (Walliman, 2006).

Moreover, this process of choosing a small group is called sampling (Walliman, 2006). In addition to a sample being more financially viable, it saves time, being something to consider when we have tight deadlines. With fewer data to analyse, results are obtained faster (Saunders, et al., 2007).

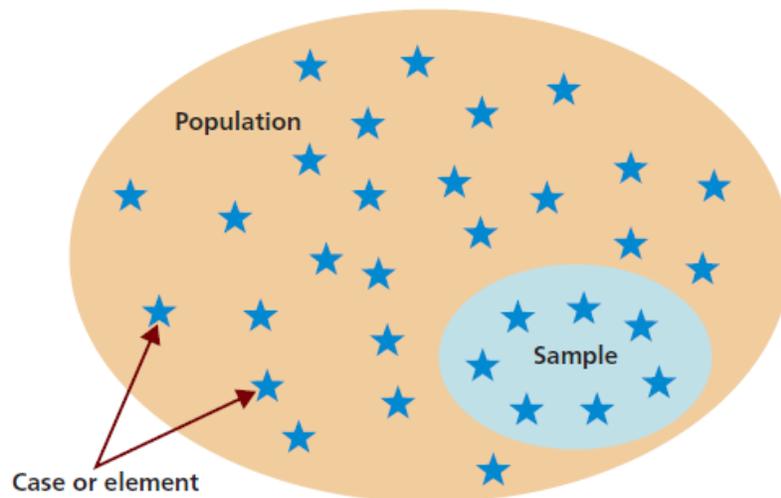


Figure 4 - Population, sample and Individual cases (Mark N.K. Saunders, Philip Lewis and Adrian Thornhill, 2007)

There are two types of sampling. Probability sampling is a technique used based on random selection,

reflecting the entire population. The non-probabilistic sampling, the non-random technique, is based on the researcher's judgment (Walliman, 2006).

So, the technique used for the sample chosen for this study was non-probabilistic. Mediator professionals with an experience in the work environment and human resources professionals who work or have already acted as mediators. The aim was to explore and understand their opinions and experiences regarding mediation focused on bullying and harassment. The sample had a total of 37 professionals who agreed to participate in the research, with 17 open and closed questions allowing them to be answered in a wide and varied way.

As much as we are surrounded by data every day through the media, it is not easy to collect data for our purpose (Walliman, 2006). So the data collection for this dissertation occurred through information based on primary sources; this information collection is more specific to the subject (Walliman, 2006). Collecting by secondary sources, all research studies need this data for the study base (Walliman, 2006). Moreover, both the research through primary and secondary sources were aimed at obtaining qualitative answers.

In addition to the questionnaire, an interview was also carried out with a mediation professional. The interview was conducted semi-structured, where the same questions in the questionnaire served as a basis to guide the interview. However, it remained open to adding more questions according to the researcher found it necessary and letting the respondent answer freely what does not happen with a questionnaire, as it is limited.

The research carried out for this study can be classified as qualitative research. Unlike quantitative research, it does not involve counting numbers, as it is based on the information disclosed in words, such as descriptions, reports, opinions and feelings.

The questionnaire participants were selected at random, but they were asked to be professionals in the area of mediation and Human Resources due to the theme and objective of the research because it was

required participants to know about workplace conflicts in cases of bullying and harassment. Before participants started the research, everyone was informed about the purpose and objectives of the research. And the guarantee of confidentiality and protection of personal data.

The questions were designed to help the researcher analyse and understand conflicts in the workplace and bias in mediation, focusing on bullying and harassment.

An online link to the forms platform called Google Forms was made available for participants to access the questionnaire. This link was sent via emails and social networks such as LinkedIn and WhatsApp. The interview was conducted through a videoconference tool called Zoom, and the entire interview was recorded and transcribed for data analysis.

### **2.3. Data Analysis Procedures and Limitation of Methodology**

This study used the qualitative and quantitative data collection technique. Qualitative analysis we can understand and collect narrative data from participants, as well as literature review with books, articles and websites of organisations and news. Quantitative is statistical analysis includes data collection, analysis, interpretation of collected data. With both being possible to collect data, analyse and interpret and present the results, and find relevant data on bias, bullying and harassment in the workplace. At the end of the analysis of the responses, the results were based on the view of the sample.

As the theme for the research, in particular, the researcher found limitations during the application of primary data; more precisely, was found limitations and difficulties for data collection. Many mediators and human resources professionals were contacted and invited to answer the questionnaire. All were informed about the secrecy and confidentiality of personal data, the research purpose, and the answers obtained are only used for academic study. The same happened for the interviews to be carried out. Eight professionals were invited to participate in the interview. More than 400 emails with invitations and an

online link to answer the questionnaire were sent to the meters associated with the MII (Mediators' Institute of Ireland). However, besides confidentiality and secrecy, participation is voluntary, with only 37 questionnaire responses and one interview at the end. The survey was open for thirty-nine days. All participants who accepted voluntary participation have relevant and significant professional experiences for the research. However, due to the low number of the sample, they may not be the most representative of the population. Moreover, finally, the questions can be considered insufficient, even being related to the researched topic.

Judith Bell and Stephen Waters have said that non-response is a problem because of the probability, confirmed in practice, that people who do not are different from those who do (Bell & Waters, 2014).

### **Chapter 3 – Presentation of the Data**

We can say that the study performed is cross-sectional, as it has data collected for a certain period, different from a Longitudinal study where data are collected for an extended period.

Data were collected for a short period on a subset sample population. The information collected is from people who act as mediators in the work environment and human resources professionals from different industry sectors. Throughout the research, there was no change in the variables.

The research was cross-sectional with a qualitative, quantitative and descriptive approach. The link to the survey, built in the form of the Google online platform. The survey contained seventeen questions, five of which were preliminary questions, to understand the participant's profile, and the remaining twelve were questions exclusively based on the research theme. The survey was sent to professionals by email, social networks and an instant messaging app.

The supervisor checked all questions before being disclosed to research participants. All participants received, along with the questions. This introduction contained the objective and purpose of the research and questions related to confidentiality and willingness to participate, and total secrecy and protection of personal data.

Even with a variety of professionals participating in the research, the quality of results and conclusions are in line with the central theme of the research.

The questions were all answered on the Google Form platform. The surveys contained multiple-choice questions and free answers, with unlimited space for developing thought and having indeterminate.

In the first part of the survey, the questions were related to nationality, gender, profession and industry of work. The remaining questions were multiple choice and opened to understand participants' opinions about the conflict of Bullying and harassment.

## **Chapter 4 - Data Analysis/Findings**

The purpose of this chapter is to present data analysis based on the responses of research participants. The main objectives were to identify the participants' knowledge about mediation in the work environment and even being a leadership professional if they had already had experiences with mediation in an organisational environment and their interest in the subject.

Regarding professionals who do not act as mediators but have a leadership position, the aim was to understand whether these professionals are aware of the environment's conflicts and identify which conflicts are most present or the most noticed.

The intention of the research was also intended to analyse the bias of these professionals. As the focus of the study is on conflicts related to Bullying and harassment, the aim was to analyse whether these professionals are aware of their bias during mediation, especially if an internal HR professional would be able to conduct a process within the mediation principles such as neutrality and impartiality.

Another concern of the researcher is internal mediation in this type of conflict, whether the parties can remain in the same environment after mediation, and whether the participants believe in the effectiveness of mediation in cases of Bullying and harassment.

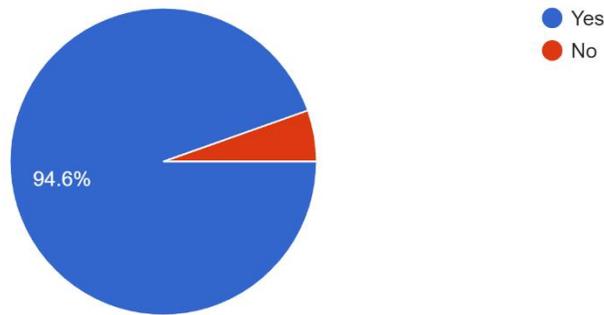
The answers were obtained from professionals from different cultures working in mediation and organisational leaders, obtaining relevant information according to the research objective. Furthermore, the researcher can analyse how these professionals see the internal mediation in the work environment and the bias from the different answers. The seventeen questions were:

### **Location and nationality**

The first question in the questionnaire is about the location of the participants. As 94.6% (35 participants) mostly reside in the Republic of Ireland and 5.4% (2 participants) reside outside the Republic of Ireland. Although most participants reside in the Republic of Ireland, nationality varied between Irish, Brazilian

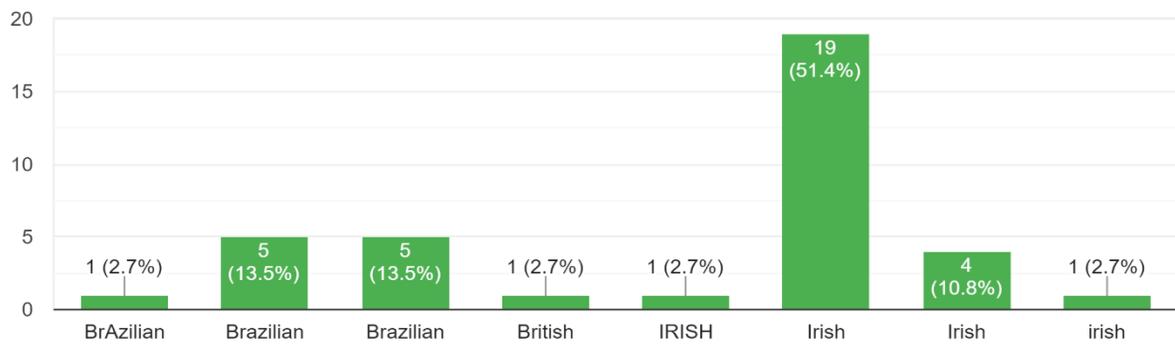
and British. Then is identified that 67.6% (25 participants) of Irish nationality, 29.7% (11 participants) of Brazilian nationality, and 2.7% (1 participant) of British nationality.

1 - Do you live in the Republic of Ireland?  
37 responses



Graph 1 - Location of the participants

2 - What is your nationality?  
37 responses



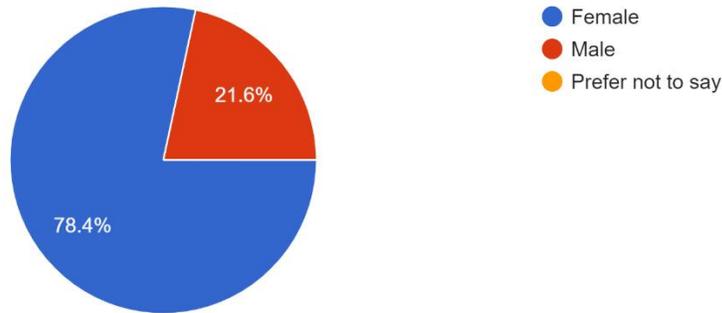
Graph 2 - Nationality of the participants

### Gender of participants

Regarding the gender of the participants, 78.4% (29 participants) identify with the female gender, and

21.6% (8 participants) identify with the male gender.

3 - What is your gender?  
37 responses



Graph 3 - Gender of participants

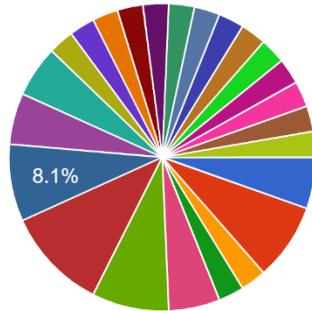
### Industry of work

There was a wide variety of results when asked about the industry in which the participants work, but four areas stood out and had the same amount of answers.

The Human Resources area with 13.5% (5 participants), the Legal and Advocacy area with 13.5% (5 participants). In sequence with the same number of answers are the Education area with 8.1% (3 participants) and Self-employed with 8.1% (3 participants). Hospitality had a percentage of 8.1% (3 participants), the same number as Healthy and Science with 8.1% (3 participants) and Information Technology with 8.1% (3 participants). The remainder with 2.7% (1 participant) in the areas of Pharmacist, Accounting, Construction, Prison Service, Public Service, Social Care, Food Service, Retail and Mediation.

#### 4 - What industry do you work in?

37 responses

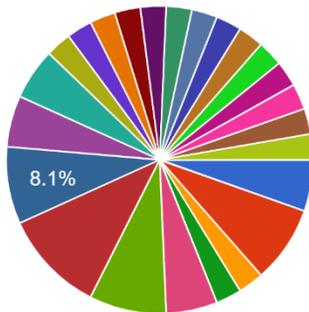


- Information Technology (IT)
- Health and Science
- Pharmacist
- Accounting
- Transportation and logistics
- Engineering or manufacturing
- Digital marketing
- Hospitality or events

▲ 1/4 ▼

#### 4 - What industry do you work in?

37 responses

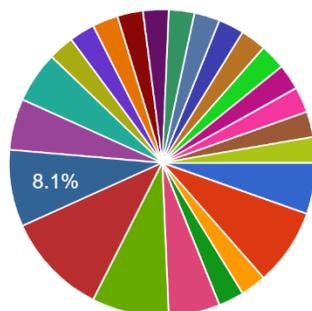


- Legal
- Human Resources
- Self employed
- Education
- Saas
- Construction
- Prison Service
- Self Employed across sectors, having...

▲ 2/4 ▼

#### 4 - What industry do you work in?

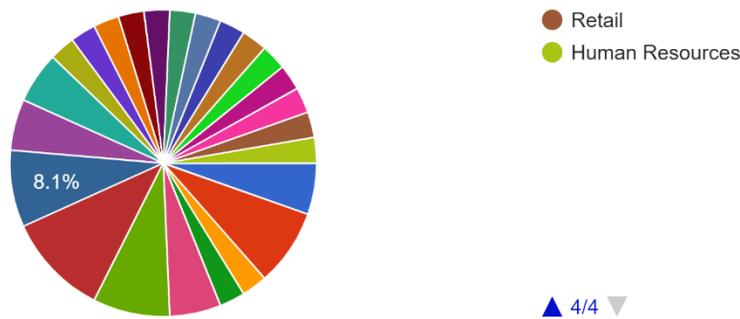
37 responses



- Public Service
- Across all, I am a HR Consultant and...
- Information, advice and advocacy
- Social Care
- Food services
- MEDIATION
- Education
- Retail

▲ 3/4 ▼

4 - What industry do you work in?  
37 responses



Graph 4 - Industry of work

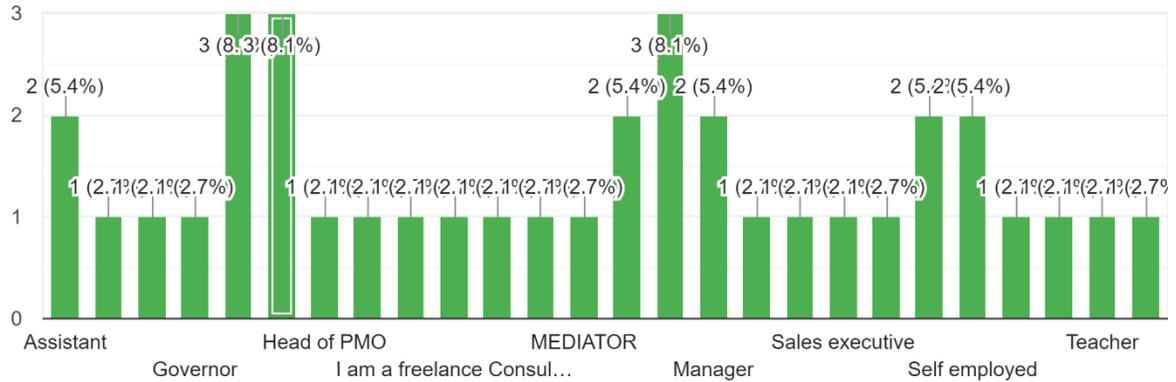
### **The position inside the company**

Regarding the position of participants within the labour industries, 21.6% (8 participants) were identified as part of management, identifying themselves as manager and head of PMO. In the sequence, 18.9% (7 participants) work in the Human Resources department, being a manager and executive. The same participant who identified himself as working in the human resources department also called himself a mediator, so we have 10.8% (4 participants) in the total number of mediators. And 5.4% (2 participants) in a leadership position, such as supervisor and leader.

Finally, 18.9% (7 participants) identified themselves as self-employed and consultants, and it was impossible to identify their activity. Other professions were identified in the total of 21.6% being of varied positions.

## 5 - What is your position in the company?

37 responses



Graph 5 - The position in the company

### Knowledge and performance in mediation in the workplace

Although in graph five regarding work positions, only 10.8% of the participants identify themselves as mediators. Graphs 6 is shown that when asked if they knew what mediation in the workplace is due to the fact that human resources professionals are also the focus of the research, and 54.1% (20 participants) answered yes, and they worked as mediators, followed by 37.8% (14 participants) answered that they knew because they had already studied the subject but did not act as mediators. Moreover, only 8.1% (3 participants) responded that they had already heard about it but were unsure.

The researcher intended to understand whether even those who did not work with mediation knew what mediation is, as in the case of human resources professionals.

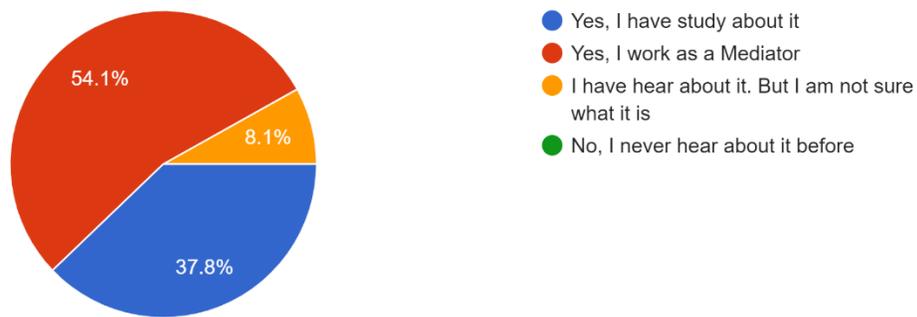
Even though most participants work as mediators, 20 participants (54.1%) are shown in graph 6. When asked if they had already facilitated mediation in the workplace, the numbers grew to 59.5% (22 participants). Moreover, those who have never performed mediation in the workplace were 40.5% (15 participants). What is curious is that the number of participants who have already facilitated a mediation is greater than the number of participants who named themselves a mediator. This leads the researcher

to the possible solution that those who do not name themselves as mediators (that is shown in graph 6) in some way have already facilitated workplace mediation.

The focus of the research was mediators and human resources professionals, and possibly leaders of a corporate environment. In Graph 8, the intention was to understand, even those who had not facilitated mediation until the research, what prevented them from acting as mediators in their organisational environment.

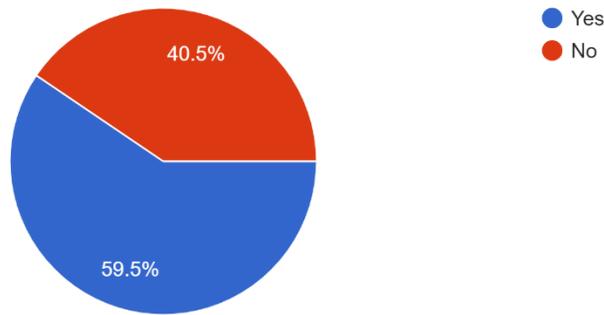
We can eliminate 59.5% (22 participants) because they had already responded (as shown in graphs 7 and 8) that participant performance as mediators and/or had already facilitated a mediation. And, 27% (10 participants) responded that they were interested and trained to facilitate mediation, but they never received any case. Only 13.5% (5 participants) showed interest but could not mediate for not having training.

6 - Do you know what Workplace Mediation is?  
37 responses



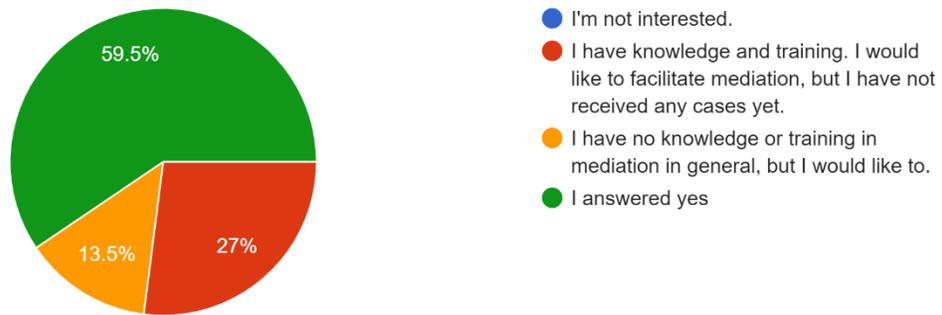
Graph 6 - Knowledge about mediation

7 - Have you already facilitate a workplace mediation?  
37 responses



Graph 7 - facilitate workplace mediation

8 - If you answered "NO" to the above question. What prevents you from facilitating mediation?  
37 responses



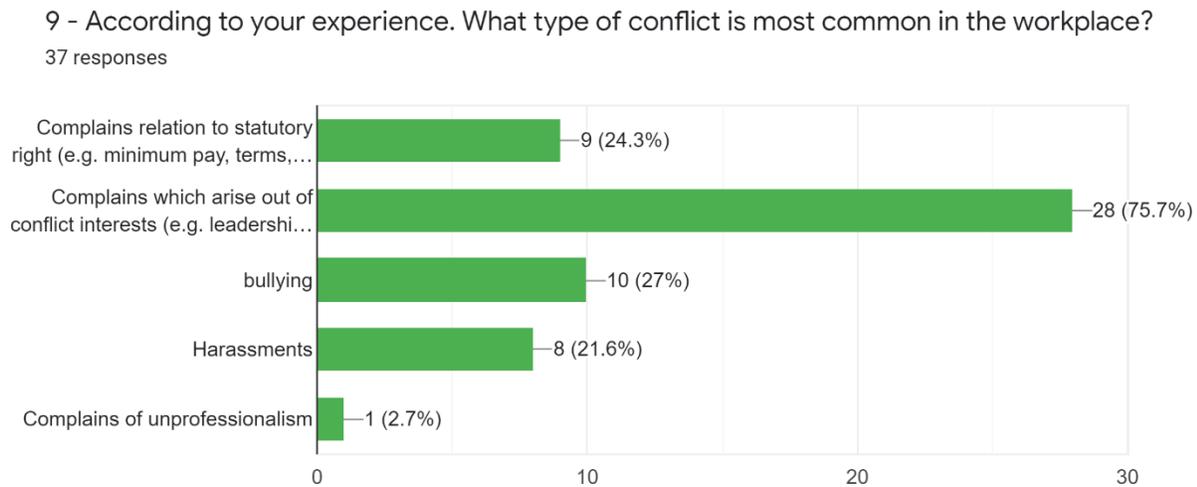
Graph 8 - Reasons for not facilitating a mediation

### Types of conflicts in the work environment

In Graph 9, the intention was to understand which conflict options were the most common in the participants' opinion, among the harassment and bullying options, which are the focus of this research, by adding complaints related to conflict of interest and labour rights complaints. The questionnaire could add more conflict that they thought was necessary and was not mentioned in the questionnaire.

The most prominent response was complaints of conflict of interest (cultural, responsibility, leadership, personality) with 75.7% (28 participants); bullying with 27% (10 participants); rights complaints (payments, working hours, rest breaks ) with 24.3% (9 participants); followed by harassment with 21.6%

(8 participants) and finally, a single survey participant added that complaints of non-professionalism are the most common with 2.7% (1 participant).



Graph 9 - Types of common conflicts

### **Bias and non-bias in conflicts and mediation**

During the literary research that the researcher carried out on bias in mediation, it was found about conscious and unconscious bias and the importance of the mediator's self-knowledge and how much this can affect and influence mediation. Unconscious bias is the most challenging and worrisome, and the few admit they are biased (Marlin, 2017). So in the graphs below it shows the results of how much the facilitators believed that they were aware of their bias and if they believed the claim that it was impossible to be totally non-bias in a mediation.

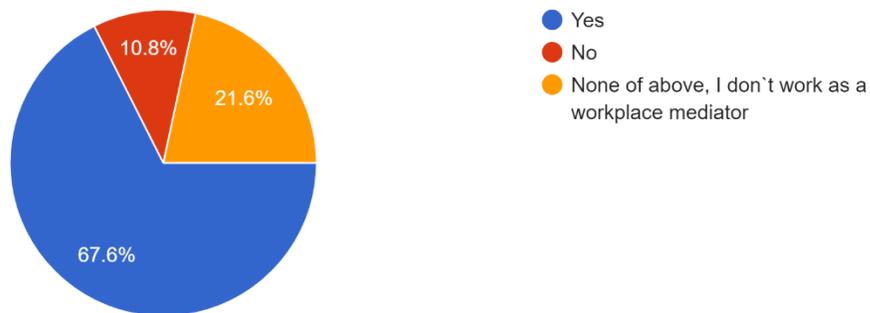
Regarding the bias itself, 67.7% (25 participants) said they were aware of their implicit or unconscious bias, and 10.8% (4 participants) said they were unaware. And 26.6% (8 participants) did not answer being aware or not because they did not act as facilitators.

Although most participants are aware of their unconscious or implicit bias, as shown in graph 10, only

40.5% (15 participants) agree that it is impossible for a mediator to be totally non-bias and 18.9% (7 participants) strongly agree, being a total of 59.4% (22 participants) in total who believe this statement. However, 24.3% (9 participants) do not agree with the statement. Furthermore, only 16.2% (6 participants) showed no opinion about it.

10 - As a professional that works in workplaces conflicts. Are you aware of your implicit or unconscious bias?

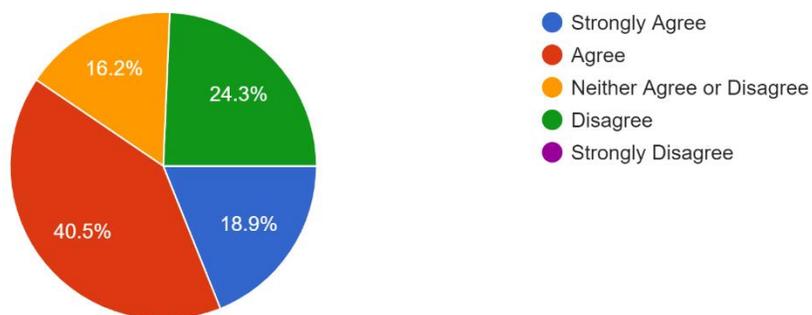
37 responses



Graph 10 – Implicit or unconscious bias

11 - Research shows that it is impossible for a mediator to be totally non-bias in a mediation. What is your opinion about it?

37 responses



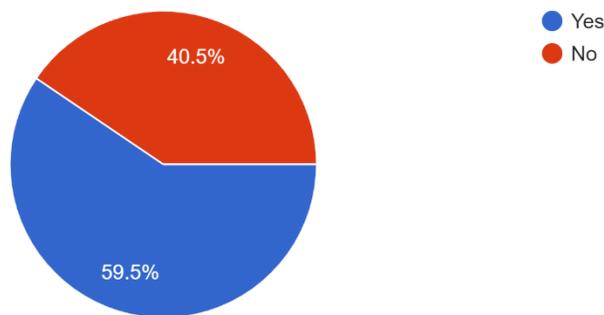
Graph 11 – non bias in mediation

## Human Resources Professional as a mediator

One of the questionnaire objectives is to understand whether the experienced professionals who participated in the survey believed that human resources professionals could carry out an internal mediation following the principles of mediation such as impartiality, neutrality, confidentiality and non-bias. 59.5% (22 participants) answered yes, they believe it is possible to follow the principles. And 40.5% (15 participants) believe it is not possible.

12 - Do you believe that the HR professional can do an internal mediation according to the mediation principles, such as impartiality, neutrality, confidentiality and non-bias?

37 responses



Graph 12 – Human Resources professional as an internal mediator

In participants' descriptions of why they believed it was not possible, some words were repeated more than once, such as "Hierarchy" and "bias".

Participants believe it is not possible when the professional is a direct employee of the company, "*If you are a direct employee Of the employer, then it will be very difficult to be impartial with respect to the outcome of the case*". Another highlighted point that they believe is not possible is confidentiality. The professional hired directly from the company would have to report to their superiors, which could compromise the process "*most report to the senior managers and the senior manages interests will therefore come first*". Another factor noted in the answers is the professional's prior knowledge of the

parties and the company, which could be harmful, *"they have prior knowledge of the individuals in mediation and bring this knowledge with them"*. Another participant wrote, *"allegiances to company and consequences for results will create fear."* And in summary that you can notice in the answers about a human resources professional facilitating an internal mediation, it was suggested that *"an external mediator should do it"*.

On the other hand, some participants believe that human resources professionals can facilitate internal mediation. It is visible in the graph, and they are the majority with 59.5%, the word that was most mentioned in the description of their answers was "training". There was more than one answer, where the justification is that it is a skill that can be learned and trained and thus able to facilitate mediation.

*"Because they already work inside the company, so there is a better understanding of the inside conflicts"*. Curiously, this same statement was also a justification for those who do not believe that the HR professional could facilitate an internal mediation, *"then the benefits of having an internal who knows the organisation and the environment will be clear"*.

### **Bias in workplace mediation**

The intention in Graph 13 was to identify which types of bias the participants considered the most common, and 43.2% (16 participants) consider the bias related to groups, is when the person is more likely to believe in someone who belongs to the same group than someone from outside. 35.1% (13 participants) believe they are cultural, believe that someone from another culture is unusual or disregard them when compared to their own. Moreover, 16.2% (6 participants) believe to be of gender, which is a preference for a specific gender over the other. 2.7% (1 participant) believe it is impossible to say which option is more common, and some people cope better than others. Finally, 2.7% (1 participant) do not consider any of the options a problem but pointed out another type as being the most common, which is against or for managers.

### 13 - What kind of bias is most common to notice in workplace mediation?

37 responses



Graph 13 – Bias in workplace mediation

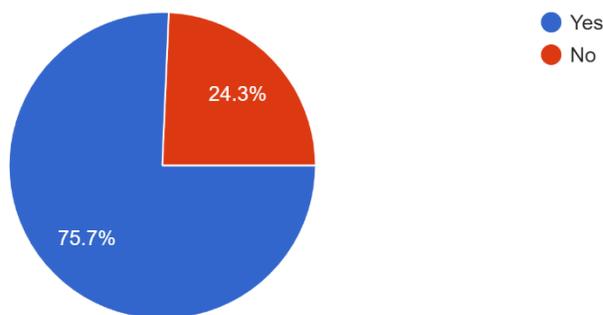
### Mediation in Workplace and Cases of Bullying and harass

Regarding bullying and harassment conflicts, it was asked whether these professionals believed that mediation could be the solution for these cases.

With 75.7% (28 participants) believe that, yes, mediation works in cases of Bullying and harassment. However, 24.3% (9 respondents) do not believe that mediation is the solution for Bullying and harassment.

### 14 - In cases of bullying and harassment in the workplace. Do you believe that mediation is the solution?

37 responses



Graph 14 – Mediation in cases of Bullying and harassment

Participants who answered positively to this question justified their answers, among other reasons, that mediation can work in these cases when there is an intervention at the beginning before the conflict grows more and more. *"I believe that mediation is the solution when it happens at the first signs before it becomes a big problem. Otherwise, mediation would not be effective"* as an early intervention that might work.

Also mentioned was that, in some cases, the aggressor does not know that he is the cause of the conflict; therefore, early mediation can be considered. *"In most cases, the accuser is not aware that they are guilty of Bullying or harassment, and an open frank discussion through mediation can bring awareness and a promise to behave appropriately in the future. These people have gone on to work together satisfactorily thereafter"*.

In principle, allow the parties to understand the impact of negative behaviour and take responsibility for it. *"The mediation allows the parties to talk and listen to each other and is a moment to understand the effects of Bullying and harassment. It might assist to interrupt the patterns."*

On the other hand, those who responded negatively to mediation in cases of Bullying and harassment mostly said that it depends on the case and agree that the company has policies and procedures to follow. *"Need to comply with internal policies in the workplace first and foremost to ensure there is a valid complaint (as opposed to vexatious) and mediation is offered as a PART of the solution offered - for example training and refresh training on bullying\harassment\dignity at work etc. may all be required as part of the solution)"*.

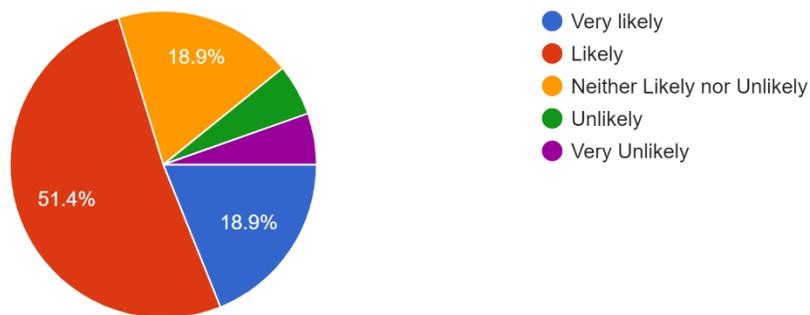
Participants in their response will also show concern about the balance of power, *"allegiances to company and consequences for results will create fear"*; with that, the mediation ends up being a power struggle. Moreover, for these reasons, they believe that mediation alone is not valid for all cases, except in minor conflicts where intervention can work so that it does not grow into something bigger. *"Other times a formal procedure is necessary, in particular, to avoid situation rehashing until the later stage"*.

Participants agree that it is essential that the parties hear other perspectives on the conflict, but other forms of resolution cannot be disregarded in cases of Bullying and harassment. "Other times, a formal procedure is needed, in particular, to prevent the situation from recurring at a later stage."

Then, in an overview for those who voted no, "*Not only mediations, because the perpetrator needs to be confronted and convinced that their behaviour is a minority.*"

15 - Do you believe that the parties can keep work in the same place together after a mediation without the issue arise again?

37 responses



Graph 15 - Mediation effectiveness

Regarding the effectiveness of mediation with conflicts related to Bullying and harassment. 51.4% (19 participants) believe that it is likely that the parties will be able to live in the same environment again without the problem arising again. 18.9% (7 participants) believe it is very likely.

5.4% (2 participants) believe that it is very unlikely, and 5.4% (2 participants) believe it is unlikely. Lastly, 18.9% (7 participants) were unable to decide.

Justification for those who responded likely and very likely is that mediation offers understanding among the parties, and a mutual agreement ensures the coexistence between the parties is healthy again.

"*Mediation works if both parties agree to a sustainable solution. If it doesn't work for one party, then the mediation hasn't worked*". It is added that the final agreement alone may not be enough, but maintenance

of the process to ensure that what was agreed is fulfilled. *"Usually, the design of such a mediation process may include review meetings to support the sustainability of the agreement. Such reviews, I think it can be very difficult for people to trust the issue will not arise again - and therefore find themselves in the same difficulties again"*.

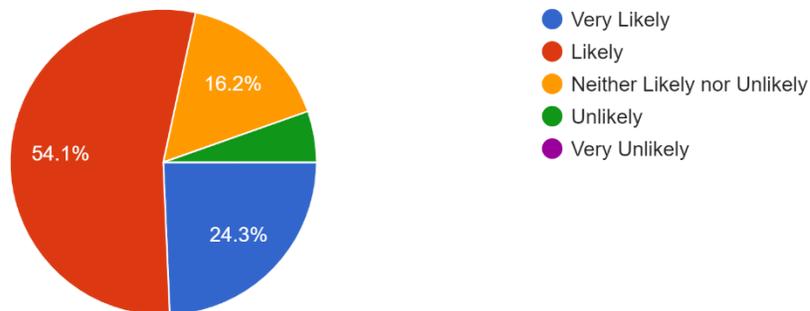
Those who answered unlikely and very unlikely said that returning to the work environment where the conflict occurred can be uncomfortable for those who suffered harassment or Bullying, *"It would be a difficult situation. I speak for myself. I would not be able to see the person who harassed me"*.

Those who did not know how to decide justified that each case is different and, depends a lot on each conflict situation. *"Depending on the case. Sometimes the perpetrator needs to be warned about her negative behaviour"*.

### **Recognition of Bullying and harassment**

The researcher's intention of recognising Bullying and harassment when the outsider is not the victim in the workplace comes because often the target of attacks may be afraid to report or complain about the case to the Human Resources department, especially when it comes from a higher hierarchical level. Regardless of where the attacks come from, whether from a co-worker or a superior, when in a harassment and bullying situation, the victim may be cornered, unable to defend himself or even not know how to do it.

16 - Do you believe it is possible to recognize bullying or harass conflict when you are not the target?  
37 responses



Graph 16 – Recognising Bullying and harassment

The vast majority, with 54.1% (20 participants), responded that the recognition that Bullying and harassment are being carried out without you being the target was likely, and 24.3% (9 participants) said it was very likely, 16.2% (6 participants) ) could not say, and only 5.4% (2 participants) responded unlikely.

In the participants' justifications on why they believe they are likely and very likely, most responded that it is very easy to perceive, especially if the interaction with the target is close. However, some also believe it depends on the situation and the bully, "*It depends on how close I am to the parties and how obvious or covert the Bullying is. Sometimes the parties themselves do not recognise it.*" Another participant mentioned the caution when making false judgments and jumping in, "*Bullying and harassment have definitions. What you cannot see is how each person subjectively feels in each situation until they tell you. Otherwise, you are making assumptions.*"

On the other hand, participants answered that recognition is not easily justified that "the bullies are clever, so it is not easy to recognise *when you are outside the conflict*".

Those who were unable to respond unanimously explained that it is difficult to generalise, depending on the case.

## **Mediating Bullying and Harassment**

In the last question of the questionnaire, the box for free answers was left, with no alternatives, and with unlimited words so that participants could share their experiences about cases of bullying and harassment in the workplace. Thus, a graph was not generated.

The question is based on the issue that according to the Mediation Act 2017, it is certain that mediation is voluntary, and the mediator itself, a neutral third party, does not have the final decision power. Moreover, cases of bullying and harassment are grave matters. The researcher's proposal with this question was to know what professionals working as facilitators in the workplace think about this type of conflict and how to approach it? How to facilitate it? How to deal with the victim/target of the conflict? And their perpetrators. In this question, the research invites the participants to share their experiences. Below are some answers about their positions on the subject:

- i. *"One of the principles of mediation is that if the facilitator feels there is a risk of harm to one or both parties, or a crime is/has been committed, then it needs to be reported and the dispute considered "unmediatable".*
- ii. *"As said, it is the first method in order to resolve a dispute. Mediation is confidential, and all the measures would be taken in order to prevent damages to the employees and to the company's image"*
- iii. *"Yes depends on accusations made. Sometimes I look at a case & hear summary. I will say it's not a suitable situation as some or all of the accusations need to be investigated properly in line with relevant process. However, I would advise that once that's done, certainly a recommendation could be mediation and I would fully support this".*
- iv. *"Yes, there are cases where mediation isn't going to work - e.g. if either party isn't fully committed to the process; if they are not committed to the agreement; if either party feels*

*they 'have to participate or it won't look good for them' rather than the process being fully voluntary"*

- v. *"I think we have to give the parties the mediation option - the consent to this or not will indicate the likelihood of success or not. if both consents are given at the outset then it's up to you to assess always if they are really looking for an authentic outcome or are they just satisfying some tribunal or WRC ruling"*
- vi. *"Circumstances can influence the perpetrators, so only mediation is not enough".*

## Chapter 5 – Discussion

The information collected throughout this study has been critically analysed and is discussed here.

During the study period, it was possible to understand the long history of mediation in our society and where it came from, being an activity carried out in the early days in an informal way, and over the years, it gained credibility and moulded itself to what we know today, being each increasingly popular as a dispute alternative tool, and can be confirmed by the survey that was carried out for this study, where when asked if the participant knew what mediation is, 0% answered no, and within the total of 91.1% work with mediation or study/study mediation and only 8.1% heard about it, but was not sure, the focus of the study was also professionals working in the human resources department in addition to mediators. Mediation is a dispute resolution process where an intermediary helps the conflicting parties to have a conversation and jointly resolve their concerns (Beer, et al., 2012).

Currently, mediation is only one among many alternative disputes that we know and negotiation, conciliation, and arbitration. Since 2017 there has been an act in Ireland that facilitates the resolution of disputes through mediation, known as *The Mediation Act 2017*; through the act, it is possible to have all the information regarding this alternative dispute. According to the Irish Department of Justice, *The Mediation Act 2017* contains provisions for a comprehensive framework to promote the resolution of disputes through mediation as an alternative to court proceedings (Justice, n.d.). Disputes are disagreements regarding a specific incident or problem that has been proven to be difficult to resolve or release (Beer, et al., 2012).

Also, according to the Irish Department of Justice, the purpose of mediation is to offer an effective, efficient and viable alternative, different from what happens in traditional processes, such as litigation, where the process is time-consuming, stressful, and costs higher. Moreover, with the conflicts present in corporate environments and the possibility of using mediation as a way to resolve these conflicts, 59.5%

of the participants responded that they had already facilitated a mediation, of those who had not done it yet, 27% responded that they had not had the opportunity and 13.5% would like it. However, they still do not have enough training to do it. Mediation is a common form of intervention in all disputes such as family, business and industrial (Jenkins, 2013).

One of the objectives of this research was to identify the types of conflicts that exist in the work environment. According to Oxford Dictionary, conflict is a situation where people, groups or countries strongly disagree or are involved in serious arguments. It is also seen as a state of opposition, incompatibility between two or more parties resulting in incompatible interactions or tension (Hussein & Al-Mamary, 2019). Beer and Packard use the metaphor that conflict is a symptom of imperfect human systems like corporations, marriages, and communities. Every aspect of that system causes difficulties. A human system is like an ecosystem, not a machine, so adjusting one part affects the rest (Beer, et al., 2012).

In the research on the most common types of conflicts in the workplace, the results showed that 75.5% of conflicts are related to conflicts of interest, both between co-workers and between employees and employers; these interests may be leadership, personality, culture and even work styles. This type of conflict can be classified as interpersonal conflict, intragroup conflict, and intergroup conflict. What causes these conflicts range from personality differences, lack of information, disagreement with the company's goals to rivalry and competition. In the same question about conflicts in the workplace, bullying was highlighted with 27% and harassment with 18.9%. The result is in line with a recent survey released in the Irish media that almost one in ten company employees has had experience with bullying. Consequently, working days are lost, which is negative for both the company and the employee of attacks. Exposure to bullying is not only associated with a reduction in the health and well-being of the targets, but with the individual and organizational results related to performance and productivity, generating a decrease in creativity and increased absenteeism and turnover, and reducing work

commitment ( Einarsen., et al., 2016).

One of the proposals of this study was to analyse and research the relationship of the human resources professional as an internal mediator in the work environment, viewing this professional as a facilitator in conflicts related to bullying and harassment. However, a question that arises is about the bias of this professional to perform that task. Mediator bias is defined as the mediator's preference, and if these preferences are in accord with one party or the other, it is considered biased in favour. If the mediator is indifferent, then it is considered neutral ( Kydd, 2003). Neutrality and impartiality are fundamental principles for mediation to occur effectively.

Furthermore, there are four significant elements: the non-conflict of interest, equality in the process, neutrality in the results, and the lack of partiality and favouritism (Izume, 2017). When conducting secondary academic research, two types of bias were identified: conscious and unconscious or implicit. Conscious bias is the easiest to identify and can be temporarily set aside so that neutrality is not affected; conversely, the unconscious is the most significant and worrisome within mediation (Marlin, 2017). Moreover, within this question, 67.6% of the participants responded that they were aware of their unconscious bias. During the secondary research, one of the issues raised in the impossibility of the mediator to be totally non-bias, which is something impractical in real life, as it is a disconnect between the aspiration of neutrality and the actual techniques used by mediators (Izume, 2017) 59.4% of participants agreed with this statement as opposed to 24.3% who disagreed.

Khoreva and Wechtler state that human resources managers need to pay attention to the well-being of employees due to various external pressures that can harm them, and because of it, the organizations are also benefited ( Khoreva & Wechtler, 2018) as the decrease in absenteeism and low productivity. Having the HR professional as an ally of employees in the workplace, 59.5% believes that it is possible for the human resources professional to act as an internal mediator following the principles of mediation, the justifications is the statement that the professional is already inside the company and has the best

knowledge of internal conflicts, the same justification was given by the 40.5% of those who believe that the HR professional is not the best choice precisely because he is part of the organization and to be influenced in their impartiality, with an external mediator then most suitable.

Going into the issue of bullying and harassment in the workplace, participants were asked if they believed it was possible to recognize this type of conflict in the workplace when one is not the target. Because, as with harassment, bullying is often not reported due to the victim's lack of confidence when speaking or because they feel ashamed and/or intimidated, and due to protect their physical and psychological health, the only way out is to quit their job (McLay, 2009) and a total of 78.4% believe it is possible to perceive when this type of conflict is occurring, even when one is not the target, and “the closer to the victim, the easier the perception” (a participant's justification). Harassment usually focuses on gender, colour, race, sexual preference or disability; bullying is considered a subcategory of harassment. Although harassment is often more evident and easily recognized by outsiders, bullying is more difficult to recognize. It usually occurs in small and insignificant episodes that occur for an extended period (McLay, 2009).

The discussion that follows is whether mediation really is valid in cases of bullying and harassment and whether it really would be the ideal solution. Bullying and harassment happen due to abuse of power, that is, the parties are in an inherent power imbalance, mediation focuses on the present and future relationship, and unwanted behaviour cannot be "proved", in addition to being a confidential process with this behaviour, inappropriate issues discussed in mediation are not discussed by the company, making the matter more covert (Jenkins, 2013). Another question addressed in the survey was whether the participants believed that mediation is a solution for these cases, and 75.7% of the participants responded positively; 59.5% of this percentage had already facilitated a mediation. The justifications about the question of mediation in this type of conflict were based on the effectiveness of mediation in the early stages of conflicts in the workplace, which the participants also shared is about mediation not being seen as the only form of conflict resolution to bullying and harassment, but as a part of the solution.

If mediation is the only intervention in this type of conflict in the workplace, it can end up being a "Band-Aid" that hides some of the issues and contributes to the exposed behaviour; if the reasons why the behaviour occurred are not discussed, the conflict will continue (Jenkins, 2013).

To end this discussion, the opinions during the primary research about mediation being an ideal process in cases of bullying and harassment is not unanimous. Some have seen mediation as a way for the parties to understand each other and prevent these negative behaviours from occurring again. On the other hand, some believe that mediation alone is not the solution and that other forms of intervention are needed. Mediation is just another tool within a whole process. The concern that arises with mediation being seen as the only option for resolving bullying and harassment conflicts is the victim's health, whether physical or psychological. Following company policies and conducting an investigation, there are times when allegations of bullying and harassment in the workplace warrant a formal investigation (Jenkins, 2013) seems to be the most ideal. If the parties and especially the victim accept, suggest mediation. It is a mistake to believe that workplace bullying mediation can be addressed similarly to any other workplace mediation (McLay, 2009). Within this scenario, is the HR professional really the most ideal as an internal facilitator? During the studies on this subject, we faced a critical issue, which is impartiality, even though it seems feasible for the professional to be familiar with the company's internal issues, to the extent that he would really be totally impartial during the process without being influenced by the company's interests.

## **Conclusion**

This study began with the aim of identifying conflicts in the workplace, especially bullying and harassment. Also, the human resources professional as a facilitator of internal mediation, being a direct professional of the company, but for that, we have to talk about bias.

As seen in the first chapter of this study, where a critical review on workplace mediation is made, mediation is based on three pillars, voluntariness, confidentiality and self-determination. No mediation takes place without the parties agreeing to participate, this includes the mediator, and nothing that was shared in the mediation session can be disclosed, and the parties have complete control of the process and decision on the outcome.

Consequently, for mediation to occur in a fair, effective, and successful manner, the mediator is expected to facilitate the process neutrally and impartially, without interest in the outcome or favouring either party. However, scholars have controversy about the unreality of total non-bias, both the conscious and the unconscious, in mediation. Conscious bias is easy and possible to leave aside for a few moments to support mediation. However, the unconscious is still there and is the most dangerous and challenging, as it is more difficult to identify. So biased, it is an adjective that the mediator cannot be in a mediation and is expected by the parties to be so throughout the process.

Conflicts in the work environment are often seen as unfavourable, but it can also be positive to bring a spirit of cooperation in solving problems and strengthening teamwork. However, there is no positive side when it comes to bullying and harassment; it is an unfair, silencing, and dangerous conflict. Where the victim is emotionally and psychologically affected, whether by fear, intimidation or shame, he ends up negatively and traumatically harmed and unable to defend himself.

The human resources professional as an internal mediator, and the conflict of bullying and harassment, the concern is the balance of power and a lack of punishment. Mediation is not a conflict resolution

process like litigation, where there will be a trial and the final punishment decided by the judge; the mediator does not have the power of final decision, this power belongs to the parties and makes them talk and see others perspectives of the conflict and reach a mutual agreement, that is the objective. So the mediator must balance the power between those involved in the process so that a friendly conversation and negotiation is possible.

Balance of power and gaining the parties' trust without being non-bias is a great challenge for this professional when acting as a facilitator within the company. When this conflict occurs at different hierarchical levels, it seems to be even more challenging.

Among the three pillars of mediation, the one that draws the most attention is confidentiality in the process. In cases of bullying and harassment where there were behaviours characteristic of this type of conflict, whether between colleagues or superiors and had negative consequences, the non-punishment and confidentiality of what occurred may not be the best option. Companies can benefit from these cases to improve their internal policies, not allow this type of conflict to reoccur. Using this bad internal experience as prevention and creating new policies, and not punishing the perpetrator only gives more assurance, so that keep practising these harmful behaviours and hurt more people.

Another issue that arose during the studies is whether mediation is the best option for these cases, and the conclusion is that it is not. Using only mediation to resolve bullying and harassment conflicts may not be the best approach, given the seriousness of the situation and the fragile nature of the victim. Internal investigation to investigate what was reported is essential and follow with other forms of resolution and perhaps punishment that mediation does not fit, and suggest mediation as a way of restoring what happened if the victim so wishes.

Mediating cases of bullying and harassment is already a serious type of conflict that requires a great deal of experience and sensitivity from the professional who will facilitate it. A human resources professional facilitating an internal mediation means having contact with the parties involved in the conflict, which

could affect their impartiality. Ideally, for the process to occur fairly and guarantee impartiality and be free from bias, it is facilitated by an external mediator.

## **Reflection**

At the beginning of the master's, long before reaching the last semester and facing the last expected requirement, I already had a topic that I would use for the dissertation. Even though I have experience working in Brazil in Human Resources as an assistant, it did not help me make the study's development easier.

I was asked to fine-tune the topic so that it is not too broad, which made me lost with so many possibilities. Focusing was not easy, fatigue often wouldn't let me and sleep always said it was enough, and it wasn't. The anxiety hit me several times, and it made me doubt my ability and whether I was on the right path. Research and numerous texts to read required patience and organization.

In addition to my internal obstacles, I had external obstacles. Primary research was a hurdle; as an international student finding people from my research target audience was challenging, I forwarded several emails and messages with very few responses even after the Mediators Institute Ireland responded that they had forwarded my questionnaire to associate mediators. Another external obstacle was time, running against the little time I had to research, read, analyse and write so that everything made sense. More than being a study that can contribute to the community, it was a study for me and my growth, despite the adversities.

I conclude this study with gratitude for the opportunity given to me and with much more expanded knowledge about mediation, bullying and harassment conflicts, the role of bias and limitations on internal mediations and the importance of impartiality and neutrality in these conflicts. As a professional, this study will add to my journey, contributing to my colleagues.

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## **Appendix**

### Interview Transcript

Interview - M.

What I see a lot of complaints is in relation to labour, working hours, overtime. Harassment is also something that catches [...] moral harassment, where the boss abuses the employee, morally demoralizing the person.

Harassment is already a crime, sexual harassment is very difficult to talk about, because it is very serious. There are women who go through it at work, and if a person can deal with it [...] continue in the work environment with that person [ ...] it is difficult to deal with not having the case to analyse. However, I believe that sexual harassment is something very complicated, it would be a case that I would not deal with, now morale is something that we can try to reach an agreement and talk to the party, and the parties have to want it. It depends on the degree of conflict, if it's very serious, I think it's better to file a lawsuit. And we have to know what is suitable for mediation and what is suitable for the judiciary [...] and the sensitivity of the meter and good being [...]

Interviewer - What would be the degree?

M. - Sexual harassment is a serious case, and I would not accept mediation, it is very heavy. Moral harassment, if the parties agree [...] if harassment for communication problems is something that is mediated, now when there are episodes of humiliation, leaving a person in a state where the agreement no longer fits, it's much more serious.

Interviewer - Are you aware of the unconscious bias we have?

M. - The more experience the mediator has, the better he will be impartial because this is a practice. And yes, every human being has their positions and their ideas. What I think is important in the work environment, which would be ideal if you were called an outside mediator and didn't know anyone. When the person does not know, he will know about the case there, listening to each part [inaudible] listening

to the other basic, each one with its position on the situation. And with that, the mediator will lead, using the tools [...] we make a summary, reframing what the person said, being an outsider avoids this partiality.

Interviewer - So, do you believe that the HR professional could mediate within the company in accordance with the principles?

M. - I don't think it's impossible, but the person has to have an experience and really put the partiality aside, pretending that they don't know anyone there to carry out the mediation, it's more challenging for the professional because he's there living with both the parts and many people talk there [...] so it is very difficult to mediate in this situation where you already have in your head what you see of those people

Interviewer - why do you already have the pre-concept for living with these people on a daily basis

M. - That, I think it's possible, but much more challenging [...] if I were one of the parties, I would choose an outside mediator for impartiality, not that an HR person couldn't be, but I think it's much more difficult.

It also depends on whether there is friendship from one of the parties. There is also an impediment.

Interviewer - Which unconscious bias do you think is the most common?

M. - I believe it is gender because women identify with women and men identify with men, in family cases, for example, where a woman speaks of the man, and if it is a case that you identify with, it is very difficult to be impartial, then it is better not to mediate.

Interviewer - Do you believe that after labour mediation, it is possible for the parties to return to live together in the same environment amicably?

M. - I believe, but it has to be a well-done mediation, with many distractions and dealing with all the detailed aspects, it can work, it's a lot of what the parties want. What happens is that there is a lot of lack of communication, and mediation works on it [...] working layers by layers, where one will understand the other's side, and it depends on the willingness of people and the mediation.

Interviewer - How long do the sessions last?

M. - From three to four sessions, a simple two-hour mediation

Interviewer - And how long does a more complex one last?

M. - It can take months, from ten sessions onwards, and many people don't have the patience. They say that mediation is quick, but sometimes it's not the most straightforward way [...] mediation has a therapeutic function, it can treat people's feelings, validating their feelings, at first they become uncomfortable, which over time gives comfort, clearing up the conflict.

If companies encouraged and invested in HR professionals to carry out this type of training for internal conflicts [...] having a conflict, something at the beginning, having this professionally trained within the company to solve it at the beginning and not let it grow, taking small conflicts to be resolved as a form of prevention

Interviewer - Do you believe that conflict can be positive?

M. - Yes, the conflict will always exist because society and people are multiple, but a conflict can make us evolve, and it can be positive in this sense of evolution. Conflict is necessary for the world. The conflict causes discomfort, no one likes to conflict, there are noises of communication, but the conflict is for us to reflect on what this conflict is trying to say.