

***How to Master Workplace and
Employment Mediation***
Clive Lewis (Bloomsbury, 2015)

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Clive Lewis has made a significant contribution to the growing body of literature on mediation. His many years of thoughtful experience as a commercial, employment and workplace mediator are strongly in evidence, and if you're looking for a book that brings together a great deal of up-to-date thinking on many aspects of work-related mediation, then this is a good investment.

Be mindful, however, that it *is* an investment; not only in hard cash but also of your time. It is a whopper of a book at some 300 pages, with material of real use on every page. If you want to know how to make the business case for mediation to your board or how to work with advocates during mediation, this is a great book. If you want to examine the context and evidence for the benefits of mediation in the workplace, then this is definitely the right book for you but it won't teach you how to mediate and it may leave you with some odd ideas about workplace mediation specifically.

Lewis is a confident writer and the book is readable and lucid but there are gaps that make me uncomfortable, for example he would be

more compelling as an authority on mediation if he had included the sources for his 'facts' and a bibliography of resources. Mediation already struggles to be seen as more than a 'nice to have' soft option and a better-referenced approach to the facts could only have strengthened the credibility of the book.

As a workplace mediator, I was left feeling this was a rather confusing and contradictory book. I wasn't sure who the target reader is, and I remain unclear about the overall purpose for this work. It has left me with a sense of unease about the direction of workplace mediation. Lewis knows workplace mediation and he knows employment mediation (and indeed he knows commercial mediation); yet, instead of writing a book which brings clarity about the differences across these fields of work, he has blended workplace mediation into the employment/commercial mediation model.

Lewis's background as a commercial *and* workplace mediator is in evidence throughout, and not always with good results. These two forms of mediation have inherent differences and are still being fought over by the mediation profession. I would have liked more of an exploration of these differences in the book. For example, one key point of distinction is the place for emotion in the mediation room, with most workplace mediations welcoming parties' emotions, and most employment mediations rather hoping that emotions are left out of the room entirely (Kelly and Kaminskien 2016). It is therefore no surprise that Lewis is contradictory about the role of emotion in the workplace, in conflict itself and in the resolution of conflict.

The significant exposure Lewis has had to both workplace and employment mediation does not always serve the reader well; despite a useful summary of the differences on page 136, this is a book written from an 'employment mediation' focus, with several (confusing) nods in the direction of workplace mediation, seemingly leaving workplace mediation as something that is 'not quite' employment mediation. So, is mediation about settlement – used repeatedly through the book – or about relationship rebuilding? Does a mediator ask someone to calm down or does a mediator explore and empathise with a party showing distress? Is mediation a formal process, with parties signing things left right and centre, or an informal process led by the parties' needs? Indeed, is mediation about needs or interests? The reader would be unable to answer what are fairly essential questions and, to be fair to Lewis, neither

would most mediation professionals, as this is an ongoing debate across the two fields.¹

An extremely useful and clear chapter is the first, where he talks through what the labour market needs to pursue in terms of employee relations strategies, in order to respond to the changing world of work. He identifies as goals, *inter alia*, consensus not conflict, positive attitudes to change, building transparency, communication, honesty and reliability and clearing the way for the employee voice to be heard. Yet he says very little about how this might be achieved and he could be more helpful in how he positions mediation within these ER strategies. So, for example, further on he says ‘the unwritten rule in many organisations nowadays is that you don’t express emotions’, and leaves the point there.

For me as a workplace mediator, some things were missing entirely, such as what is fairness in mediation, the role of parties’ rank and authority in mediation, the influence of organisational power and the role of mediation as a management tool. I was surprised that there was little to nothing about accreditation, standards, or supervision – surely a key part of the future of mediation in the workplace. The very words and phrases used in the book to describe parties in dispute won’t sit well with most workplace mediators – ‘perpetrator’, ‘perceived aggressor’ and ‘weakening their position in the negotiation’ spring to mind.

The book talks about self-awareness and self-management as a goal for today’s workforce, and it touches on the role of mediation in creating an environment to enable this self-awareness in parties, but it doesn’t invite the reader to self-reflect. Lewis is a confident, articulate (if slightly wordy) writer, but the final area where I think the book could have been made more useful is this: the reader is not invited to engage with the ideas, values and processes of mediation as a human being; there is little to encourage self-reflection or application of the content to the reader’s own experiences and context. Also, for me, there is irony here because mediation done well engages everyone concerned – the parties, the referring manager, the HR and ER manager, as well as the mediator – in exploring our own assumptions, beliefs and values, to arrive at a more nuanced and informed understanding of our self in relation to others. This book does not embody this spirit, leaving readers none the wiser about what conflict at work means to them, their team, or their organisation.

Note

- 1 See <https://en.wikipedia.org/wiki/Mediation>, and note the contradictions in the Wiki entry and the number of variants cited. Also: “Mediation” means any structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator’ (EU Directive on Certain Aspects of Mediation in Civil and Commercial Matters, 2008/52/EC 21 May 2008, article 3(a), appendix G) versus ‘Mediation is based on the principle of collaborative problem-solving, with a focus on the future and rebuilding relationships, rather than apportioning blame’ (from University of Central Lancashire mediation policy).

Reference

- Kelly, E. J. and Kaminskienė, N. (2016) Importance of emotional intelligence in negotiation and mediation. *International Comparative Jurisprudence* 2(1): 55–60.