



# Mediation

## QQI Level 6 6N4910

### Course Manual

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# Introduction

Welcome to the Mediation course from DCM Learning.

This course manual is designed to help you to take notes as you work through the interactive modules, exercises and videos that make up this course. This can then be used to assist you in preparing your assessments, as well as being a practical ‘aide memoir’ for you in your role in Mediation.

You will also see that several activities are built into the text in this document. These activities are designed to reinforce your learning and they do not have to be submitted.

At the end of this course, you will develop the knowledge and skills to carry our effective medication in a range of contexts.

Within this manual, you will find your detailed course topics along with additional information to further expand your knowledge and understanding.

**NOTE: This manual is for your use and does not need to be submitted to your tutor.**

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# Introduction to Quality and Qualifications Ireland (QQI)

QQI – Quality and Qualifications Ireland is an independent state agency responsible for promoting quality and accountability in education and training services in Ireland. It was established in 2012.

QQI's mission is to:

- promote the enhancement of quality in Ireland's further and higher education and training, and quality assure providers;
- support and promote a qualifications system that benefits learners and other stakeholders.

QQI's role as directly stated is to:

- promote, maintain and develop the Irish National Framework of Qualifications (NFQ), a 10-level framework for the development, recognition and awarding of qualifications in Ireland;
- approve programmes offered at a variety of schools, colleges and further and higher education and training institutions. These programmes lead to qualifications (QQI awards) listed in the NFQ, which are recognised internationally;
- regulate and promote the quality of programmes offered by schools and colleges leading to qualifications in the NFQ for the benefit of learners, employers and other interested parties;
- ensure that providers\* offering national qualifications provide a positive, high-quality experience to international learners coming to study in Ireland. We will do this by authorising the International Education Mark (IEM);
- provide academic advice on the recognition of foreign qualifications in Ireland through a service called NARIC Ireland – the National Academic Recognition Information Centre. We also provide advice on the recognition of Irish qualifications abroad;
- inform the public about quality assured education and training programmes and qualifications through a database of programmes and a register of providers;
- advise the Minister for Education and Skills about national policy on quality assurance and improvement in education and training;
- manage a national scheme for the quality assurance of English language services (Accreditation and Coordination of English Language Services – ACE)

## The National Framework of Qualifications (NFQ)



Qualifications frameworks describe the qualifications of an education and training system and how they interlink. National qualifications frameworks describe what learners should know, understand and be able to do based on a given qualification. These frameworks also show how learners can move from one qualification, or qualification level, to another within a system. Over 150 countries are now developing, or have developed, a national qualifications framework.

The Irish NFQ, established in 2003, is a framework through which all learning achievements may be measured and related to each other in a coherent way. The many different types and sizes of qualifications included in the NFQ are organised based on their level of knowledge, skill and competence. Because all NFQ qualifications are quality assured, learners can be confident that they will be recognised at home and abroad.

Quality and Qualifications Ireland (QQI) has the responsibility to develop, promote and maintain the Irish NFQ. QQI also facilitates the recognition of foreign qualifications.

This course is at Level 6 on the NFQ.

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# Introduction to Mediation

## What is Mediation?

### Definition:

Mediation could be described as a negotiation that is facilitated by a trusted neutral person – a mediator. The mediator helps the disputing parties to understand their dispute from one another’s perspective and develop effective communication to improve relations. This approach hopefully provides an environment whereby the parties can resolve the dispute in full or part by agreement.

In addition to resolving a dispute mediation can be effective in avoiding disagreements escalating into full-blown disputes. The aim is to help the parties come to their agreement in a safe, confidential and cost-effective context without unnecessary recourse to the often expensive and acrimonious legal route.

*“The facilitative or conciliatory model of mediation views conflict as something to be overcome, and the parties capable of doing so through active listening and describing their feelings. The mediator becomes a largely inactive supporter of the process, who empathically models and facilitates their interactions. It is the parties responsibility to reach settlements that may or may not address the underlying issues, depending on their interest in addressing them”*

**Ken Cloke, Mediating Dangerously, 2001**

### What mediation is not!

Counselling – The depth of understanding required from the parties’ account of their situation is sufficient only to allow movement to the next stage – to move onto finding options for resolution. Mediation should not be used when the following is true...

- As a first solution
- There is a power imbalance
- Case within the legal process
- One party is unresponsive (‘fishing expedition’)
- Criminal activity
- Right versus wrong case
- Parties lack resources to agree



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## **Confidentiality**

As a process mediation is as confidential as the parties involved agree it should be. The process takes place behind closed doors and away from any public area. Before, during and at the point of reaching an agreement the parties have control and must agree on the level of confidentiality.

If third parties are involved and have a stake in the outcome of the process (such as an employer), these parties may also at the outset have a say in what reporting of the outcome is made. However, the details of what was said during the process remain confidential.

Where mediation does not result in agreement and resolution, parties have all other conflict resolution processes open to them, including the court. However, information about the discussions that happened in mediation cannot be used as evidence, nor will a mediator be called to give evidence.

## **Voluntary**

While we advocate that mediation is voluntary, in reality often people find themselves in mediation because a judge, employer or other authority requires them to attend. To what extent does this negate the voluntary nature of mediation? Sometimes this is referred to as 'mandatory mediation', however, this is limited to the requirement to attend. The decision by the parties to engage in the process and work toward an agreement sits with them, no one will force them to do so. Engagement is their choice; they choose to engage to not. However, if an agreement is not reached and the process not given support, it could have negative consequences for the parties.

In reality, many people would not even consider mediation if there was not some kind of pressure to do so. New court rules, and government legislation does put a degree of pressure for mediation to be tried.



**My notes on What is Mediation?**

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## Why Does Mediation Work?

Mediation provides structure and a safe environment for difficult situations. The process focuses on what matters to the parties involved and allows them an opportunity to tell each other how they feel, their frustrations and hurt. The process is open and allows the parties to discuss whatever they feel they need to find closure and a solution, the discussion is not limited to a stated concern. Mediators explore parties' interests and help them identify and express their needs. A mediated discussion can help the parties see different perspectives, thus when negotiating agreement parties can do so with less friction and misunderstanding.

Mediation works best when the following is true...

- Parties realise that the cost of continuing the dispute is too high – mentally, emotionally, physically, reputationally, and even financially (to name a few).
- The parties genuinely want to resolve the situation and are willing to cooperate with each other to achieve this
- Everyone in the process has decision making authority and ability
- Parties have the desire and ability to stick to agreements and promises
- Parties are able to express themselves in an appropriate way.

### Is mediation recognised in Ireland by the State?

On the 2<sup>nd</sup> October 2017 after a long process of review and consultation, the Mediation Act was signed into Irish law by the president.

The legislation made way for mediation to be utilized more fully with the backing of the courts and government agencies. Key points of the legislation include...

- Introduce an obligation on solicitors and barristers to advise parties to disputes to consider utilising mediation as a means of resolving them and where court proceedings are launched, requires parties to proceedings to confirm to the court that they have been so advised and have considered using mediation as a means of resolving the dispute;
- In family law cases, parties will be required to attend an information session on mediation;
- Provide that a court may, on its own initiative or on the initiative of the parties, and following the commencement of proceedings, invite the parties to consider mediation as a means of resolving the dispute;

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- Provide for the suspension of court proceedings in such cases to facilitate the mediation process;
  - Contain general principles for the conduct of mediation by qualified mediators;
  - Provide that communications between parties during mediation are confidential;
  - Provide that parties to the mediation determine among themselves the enforceability of any agreement reached during the mediation process;

*“Bill entitled an Act to facilitate the settlement of civil disputes by mediation, to specify the principles applicable to mediation, to specify arrangements for mediation as an alternative to the institution of civil proceedings or to the continuation of civil proceedings that have been instituted; to provide for codes of conduct to which mediators may subscribe; to provide for the recognition of a body as the Mediation Council of Ireland for the purposes of this Act and to require that Council to make reports to the Minister for Justice and Equality as regards mediation in the State; to provide, by means of a scheme, an opportunity for parties to family law proceedings or proceedings under section 67A(3) or 117 of the Succession Act 1965 to attend mediation information sessions; and to provide for related matters”*

**Last updated: 02 Oct 2017**

**Sponsored by: Minister for Justice and Equality**

**Source: Government**

**Originating House: Dáil Éireann**



**My notes on Why Mediation Works**

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## Benefits of Mediation

Settling disputes through mediation can save money, eases the court load and more often than not it leaves parties in a better state of mind. There are several other significant benefits of mediation and they include:

- **Greater Control** - Mediation increases the control the parties have over the resolution. Each party is directly involved in negotiating their own agreement and no settlement can be imposed upon you. In comparison, dissatisfaction is often experienced in court where parties have little choice but to accept the judgement made, which they may not be happy with.
- **It's confidential** - Unlike the potential publicity of court proceedings, everything said at the mediation is entirely confidential to the parties (unless specifically agreed otherwise).
- **It's voluntary** - Any party may withdraw at any time.
- **Convenience** - The mediation is arranged at a venue convenient to the parties, who each have their own room as well as a separate room for joint meetings. The Mediator listens to everyone's view, talks to the parties privately and together, guiding them towards a settlement.
- **Reduced Costs** - Generally the cost is greatly reduced in comparison with trying to settle the matter through court. Traditional litigation is very expensive and the total cost is highly unpredictable.
- **Faster outcome** - Because mediation can be used early in a dispute, an agreement can usually be reached quicker than if pursuing through the courts.
- **Support** - Mediators are trained in working with difficult situations. The mediator acts as a neutral facilitator and supports each party through the process.
- **Preservation of Relationships** - Whether it may be a business or family dispute, preservation of relationships can be a key benefit of mediation. Mediation helps participants focus on effectively communicating with each other as opposed to attacking each other.<sup>1</sup>

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<sup>1</sup> "8 Benefits of Mediation – The Liberty Group." 24 Apr. 2018, <http://thelibertygroup.com.au/8-benefits-of-mediation/>. Accessed 9 Sep. 2020.



**My notes on Benefits of Mediation**

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## Principles of Mediation

The following principles are intended to apply to all types of mediation, albeit, Workplace, Community, Family and Commercial, however, it is recognised that in some cases the application may be affected by the law or contractual agreements.

The mediation principles are set out to perform three major functions:

- Serve as a guide for conduct as a mediator
- Inform the mediating parties
- Promote confidence in mediation as a process for resolving disputes.

### Principle 1. Self-Determination

As a mediator, you should recognise that mediation is based on the principle of self-determination by the parties. It requires that the mediation process relies upon the ability of the parties to reach a voluntary, uncoerced agreement to settle the dispute.

### Principle 2. Impartiality

The mediator shall impartially conduct the mediation. The concept of mediator impartiality is central to the mediation process. A mediator can only mediate those matters in which they can remain impartial. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is duty-bound to withdraw from the mediation process.

### Principle 3. Conflicts of Interest

As a mediator, you must disclose all actual and any potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator will need to decline to mediate unless all the parties choose to retain the individual acting as mediator.

### Principle 4. Competence

A mediator can only mediate when the mediator has the necessary qualifications to satisfy the expectations of all parties involved. Any person can be selected as a mediator, provided that all parties are satisfied. However, all parties must be aware that training and experience in mediation are necessary for effective mediation.



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### **Principle 5. Confidentiality**

As a mediator, it is vital to maintain the expectations of all parties' confidentiality. The mediator cannot disclose any matter that a party expects to be confidential unless permitted by all parties unless it is required by the law or public policy.

### **Principle 6. Quality of the Process**

Mediation should be conducted fairly, diligently, and in a manner consistent with the principle of self-determination by the parties. As a mediator, you should ensure a quality process is in place to encourage mutual respect among the parties. The quality process is a commitment by the mediator mediate in fairness. A quality process must include adequate opportunity for each party in the mediation to participate in the discussions and the parties can decide when and under what conditions they will reach an agreement or terminate a mediation.

### **Principle 7. Fees**

All mediators must fully disclose and explain the basis of the fees. All parties involved should be provided with sufficient information about the fees from the outset and be able to determine if they wish to retain the services of the mediator.

If as a mediator you charge fees, the fees should be reasonable and consider the mediation service, the type and complexity of the matter, the expertise and the time required. It is better practice, to reach an understanding of fees, to set down the fee arrangements in a written agreement signed by all parties and the mediator.

### **Principle 8. Obligations to the Mediation Process**

All Mediators have a duty to improve the practice of mediation. Mediators would be regarded as knowledgeable in the process of mediation and therefore, have an obligation to use their knowledge to help educate the public about mediation by making mediation accessible to those who would like to use it; to correct abuses, and to improve their professional skills and abilities.



#### **Learning Activity:**

Watch - TED Talk | William Ury – The walk from “no” to “yes”

[https://www.ted.com/talks/william\\_ury\\_the\\_walk\\_from\\_no\\_to\\_yes](https://www.ted.com/talks/william_ury_the_walk_from_no_to_yes)



**My notes on The Principle of Mediation**

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## How Does Mediation Legislation Affect Workplace Disputes in Ireland?

The Workplace Relations Commission (WRC) was established on 1 October 2015 under the Workplace Relations Act 2015. It took over the functions of the National Employment Rights Authority, the Labour Relations Commission and the Director of the Equality Tribunal. It also took over some of the functions of the Employment Appeals Tribunal (EAT). However, the appeal functions of the EAT were transferred to the Labour Court, which is now the single appeal body for all workplace relations appeals.

The main functions of the WRC are to:

- Promote the improvement of workplace relations, and maintenance of good workplace relations
- Promote and encourage compliance with the relevant laws
- Provide guidance in relation to compliance with codes of practice
- Conduct reviews of, and monitor developments as respects, workplace relations
- Conduct or commission relevant research and provide advice, information and the findings of research to Joint Labour Committees and Joint Industrial Councils
- Advise the Minister for Business, Enterprise and Innovation in relation to the application of, and compliance with, relevant laws
- Provide information to the public in relation to employment laws other than the Employment Equality Act (information about this Act is provided by the Irish Human Rights and Equality Commission)
- Employment rights issues: The WRC may offer a mediation service to facilitate the resolution of employment rights complaints or disputes without the use of adjudication. They may only be referred for mediation with the agreement of both parties to the complaint or dispute. Where a complaint/dispute is not resolved, it will be referred for adjudication. Find out more in our document about workplace mediation.
- If you have made a complaint about your employment rights and you have agreed to participate in mediation you may be offered the Early Resolution Service (ERS) which is part of the Mediation Service. The ERS contacts the parties to the dispute by phone with

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the aim of mediating a resolution. If the dispute is not resolved by the service, your complaint will be sent without any delay to the adjudication service.

- Internal workplace issues: The Workplace Mediation Service aims to resolve workplace disputes and disagreements, particularly between individuals or small groups. This confidential service, which is provided by officers of the WRC Conciliation and Advisory Services, gives employees and employers who are in dispute with each other an opportunity to work with a mediator to find a mutually agreed solution to problems, such as a breakdown in a working relationship or issues arising from a grievance and disciplinary procedure.<sup>2</sup>

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<sup>2</sup> "About the WRC - Workplace Relations Commission."  
<http://www.workplacerelations.ie/en/what-we-do/wrc/>. Accessed 25 Sep. 2020.



### Further Learning:

Many learners have found Mediation to be a helpful skill for the workplace especially for those already or trying to gain a managerial or supervisory position. DCM Learning have a range of additional courses which, when combined with Mediation, can further develop potential career opportunities;

- Level 6 Supervisory Management covers workplace legislation in depth as well as conflict management, motivational theories, team development and record keeping practices.
- Level 6 Effective People Management will provide key skills and knowledge to effectively manage a team, as conflict may often arise this course combined with mediation will enable the learner to manage this often difficult situation with ease.
- Level 6 Coaching is hugely beneficial to those managing the performance of others as this course focuses on giving the learner the skills to help an employee to take responsibility for identifying their own goals, assessing their own strengths and areas for development and identifying their own solutions for moving forwards and developing an engaging team.
- Train the trainer is a useful QQI Certification for management as it not only qualifies you to deliver training but when combined with the Training Needs Identification and Design course enables the learner to identify training gaps within an organisation, plan and develop courses to be delivered.
- Each of the QQI Level 6 Mediation, Coaching and Train the Trainer courses enable learners to work as independent and external professionals in these fields giving the opportunity to work independently with organisations and individuals alike.

For more information on these courses and your further learning options, please do not hesitate to contact our team.



**My notes on How Mediation Legislation Effects Workplace Disputes in Ireland**

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## Values and Ethical Standards

This section articulates a common set of values upon which mediators and conflict managers build their professional work. The Code is intended to provide both the general principles and the rules to cover professional situations encountered by mediators. It has as its primary goal the welfare and protection of the individuals and groups with whom mediators work. It is the individual responsibility of each mediator to aspire to the highest possible standards of conduct in research, teaching, practice, and service.

The development of a dynamic set of ethical standards for a mediator's work-related conduct requires a personal commitment to a lifelong effort to act ethically; to encourage ethical behaviour by students, supervisors, employers, and colleagues; and to consult with others as needed concerning ethical problems. Each mediator supplements, but does not violate, the values and rules specified in the Code of Ethics based on guidance drawn from personal values, culture, and experience. The following General Principles are aspirational and serve as a guide for mediators in determining ethical courses of action in various contexts. They exemplify the highest ideals of professional conduct.

### Professional Competence

Mediators strive to maintain the highest levels of competence in their work; they recognise the limitations of their expertise; and they undertake only those tasks for which they are qualified by education, training, or experience. They recognise the need for ongoing education in order to remain professionally competent; and they utilise the appropriate scientific, professional, technical, and administrative resources needed to ensure competence in their professional activities. They consult with other professionals when necessary for the benefit of their students, research participants, and clients.

### Integrity

Mediators are honest, fair, and respectful towards any individual forming part of their professional activities in research, teaching, practice, and service. Mediators do not knowingly act in ways that jeopardise either their own or others' professional welfare. Mediators conduct their affairs in ways that inspire trust and confidence; they do not knowingly make statements that are false, misleading, or deceptive.

### Professional Responsibility

Mediators adhere to the highest scientific and professional standards and accept responsibility for their work. Mediators understand that they form a community and show respect for other mediators even when they disagree on theoretical, methodological, or personal approaches to

professional activities. Mediators value the public trust in sociology and are concerned about their ethical behaviour and that of other mediators that might compromise that trust. While endeavouring always to be collegial, mediators must never let the desire to be collegial outweigh their shared responsibility for ethical behaviour. When appropriate, they consult with colleagues in order to prevent or avoid unethical conduct.

### **Respect for People’s Dignity and Diversity**

Mediators respect the rights, dignity, and worth of all people. They strive to eliminate bias in their professional activities, and they do not tolerate any forms of discrimination based on age; gender; race; ethnicity; national origin; religion; sexual orientation; disability; health conditions; or marital, domestic, or parental status. They are sensitive to cultural, individual, and role differences in serving, teaching, and studying groups of people with distinctive characteristics. In all of their work-related activities, mediators acknowledge the rights of others to hold values, attitudes, and opinions that differ from their own.

### **Social Responsibility**

Mediators are aware of their professional and scientific responsibility to the communities and societies in which they live and work. They apply and make public their knowledge in order to contribute to the public good. When undertaking research, they strive to advance the science of mediation and to serve the public good.<sup>3</sup>

### **Ethics and code of conduct**

Professional Mediators are bound by the code of conduct as set out by their accrediting organisations. Codes of conduct and ethics vary based on organisation affiliation and geographic jurisdiction.

Generally accepted codes of practice should include...

All promotion of services should be within the law and presented truthfully and accurately. This includes the promotion of the mediator’s background, experience, qualifications, professional affiliations. Before undertaking a mediation the mediator should supply the aforementioned information to allow potential clients to make an informed selection and appointment.

The mediator will only accept an appointment to a case they genuinely feel they are competent to serve in and are legally allowed to do so.

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<sup>3</sup> "Code of Ethics – World Mediation Organization." <https://worldmediation.org/code-of-ethics/>. Accessed 10 Sep. 2020.



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Mediators must always conduct a mediation in a fair and impartial manner, avoiding bias or prejudice in favour or against any party. Any possible or perceived conflict of interest must be disclosed prior to accepting an appointment.

Mediators will fully explain the characteristics of the mediation process and style being used. All terms and conditions surrounding the mediation must be explained fully to all parties and agreed.

Fees and expenses will all be agreed prior to the commencement of any mediation.

Mediators will keep confidential all information acquired in the course of acting as mediator confidential unless compelled to make disclosure by law or by some governmental agency.



**My notes on Values and Ethical Standards**

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## Alternatives to Mediation

Mediation is a solution to resolving a dispute however there are other alternatives available for parties to consider;

### Litigation

Mediation is seen as the primary alternative to litigation however if mediation is unsuccessful or the dispute is too complex or heavily associated with law litigation can be the only solution.

Litigation is when a case which is proceeding through the traditional court process, and not through alternative any other dispute resolution.

One of the main advantages of litigation is that it is conducted through the courts and therefore becomes part of the public record. For this reason, the final judgment provides a clear line in the sand. Another advantage is that there is no getting around the fact that dispute resolution is a two-way process. This is especially problematic when the other party is uncooperative. Litigation helps solve this problem, with court-mandated deadlines and requirements making it far more difficult for parties to ignore. Depending on which side the party sits, in the courts, the rules of what constitutes evidence is much stricter. If one side of the conflict has a strong case, this is a clear advantage and leaves no room for them to be tripped up by speculation.

When it comes to the disadvantages of litigation, first and foremost, litigation is an expensive process for all involved parties. Both sides of the case can expect to pay from €250+ p/hour for a solicitor and €350+ p/hour for a lawyer. Another disadvantage to be considered is the time it can take for a solution to be determined. Depending on the complexity of the case parties can expect to wait up to 2+ years before a final decision is made by a court judgement.

Whilst there are alternative routes to explore for dispute resolution litigation in most cases is a last resort.

### Arbitration

Is typically a binding process that replaces the full trial process with multiple (often three) chosen people to serve as judges in your case

Arbitration is generally conducted with a panel of multiple arbitrators who take on a role like that of a judge, make decisions about evidence and give written opinions (which can be binding or non-binding). Although arbitration is sometimes conducted with one arbitrator, the most common procedure is for each side to select an arbitrator. Then, those two arbitrators select a third

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arbitrator, at which point the dispute is presented to the three chosen arbitrators. Decisions are made by a majority vote.

Arbitration and mediation are similar in that they are alternatives to traditional litigation, and sometimes they are used in conjunction with litigation (opposing parties may first try to negotiate, and if that fails, move forward to trial). Both arbitration and mediation employ a neutral third party to oversee the process, and they both can be binding.

Arbitration can be strongly considered as an alternative to litigation as it is often faster than litigation in court, and a time limit can be placed on the length of the process. A contributing factor is that arbitration can be cheaper and more flexible and less formal than court. Unlike court rulings, arbitration proceedings and arbitral awards are confidential and are not released to the public.

There are, however, some strong disadvantages to arbitration as a method of resolving a dispute. If arbitration is binding, both sides give up their right to an appeal. That means there is no real opportunity to correct what one party may feel is an erroneous arbitration decision. Another disadvantage is that rules of evidence can prevent some evidence from being considered by a judge or a jury, but an arbitrator may consider that evidence, and in some cases, if certain information from a witness is presented through documents, there is no opportunity to cross-examine the testimony of that witness.

### **Collaborative Family Law**

Unlike mediation, collaborative law allows you to attend arranged meetings with your solicitor or legal representative. Financial and arrangement around children are subject generally handled through collaborative law. You and your ex-partner will be negotiating with each other with the help of your legal representatives. Legal representatives on both sides must be trained in collaborative law.

Collaborative family law is a way to negotiate in a series of face-to-face meetings with your partner as well as through correspondence in an attempt to avoid going to court.

Other professionals including psychologists or counsellors can be invited to join the meeting to support both parties in reaching an agreement.

If you are able to reach an agreement your solicitor may draw up a consent order. Collaborative law can be a very expensive process.

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## **Conflict Coaching**

Conflict Coaching is a way of supporting individuals or groups with their unresolved conflict, preparing for future conflict, building conflict resilience and conflict management capacity. It is used in workplace, family and community settings. The process combines conflict resolution and coaching techniques.



**My notes on Alternatives to Mediation**

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# Understanding Conflict

Conflict is formed when something important is threatened and creates initial tensions:

- Human dignity
- Physical safety
- Psychological needs
- Financial security
- Social status
- Personal reputation
- Professional worth
- National pride
- Community concerns
- Religious faith

When looking in on someone else's conflict situation the dispute can seem irrational, or just plain trivial! Why do people fight about small seemingly petty matters? Why can't they just let go? Why can't they talk it over and move on?

All conflict is driven by fear, issues of identity, self-worth and power. Conflict causes people to lose the ability to see things from any other perspective other than their own or the one that supports their perspective. The struggle is really over whose version of truth and reality will win out.

People become emotionally embroiled in conflict when threatened, emotion descends like fog blinding the parties in conflict to reason and objective thinking.

To understand what is at the core of conflict we have to understand people are only seeing things from their perspective, it's all about them and their loss. This is why we hear the statements and sentiments as listed below...

- |                                       |  |
|---------------------------------------|--|
| ● This is humiliating                 | ● My kids could get hurt                       |
| ● Their lies could ruin my reputation | ● I hate feeling intimidated                   |
| ● Our people deserve respect          | ● They betrayed me                             |
| ● I might get fired                   | ● I need my privacy                            |
| ● No one will listen to me after this | ● I won't belong anymore                       |
| ● I'm losing my influence             | ● We can't pay our bills                       |
| ● This will bankrupt me               | ● He is making decisions without consulting me |
| ● She thinks I'm stupid               |  |

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## The Conflict Spiral

Early intervention in conflict is required to avoid the effects of the conflict spiral. When parties find themselves in conflict many of the ways people communicate and act escalate. The result is that conflict spirals out of control unless someone takes the steps to resolve conflict in a positive way. While at the core of the conflict an issue arose that was specific, as time goes by with no intervention the person is seen as the problem - not the issue. Specific issues turn more generic, communication becomes more indirect, and interaction becomes negative with the other parties. Reactions by both become exaggerated and they react negatively to anything the other person does. This leads to a total lack of trust on both sides, leading to more and more hostility. New issues are seen by others as pettier in nature, but to those involved, they are major reinforcing incidents.

1. Problem emerges
2. Sides form
3. Positions harden
4. Conflict extends beyond immediate context-may seek additional support
5. Objectivity lost
6. Sense of crisis
7. Factions form
8. Uncertainties arise about outcome
9. Fewer options
10. Problem intensifies

At times managers and others trying to help resolve the issue overly focus on the peripheral conflict manifestations and do not focus on the original root cause of the problem. Only when the root cause issue is addressed will hostilities subside.

Root cause issues often include: Feeling taken for granted, overlooked, ignored, used, belittled.

Time is the enemy; early intervention is key.





**Learning Activity:**

Reflect on a time where you have faced conflict, how it escalated and if early intervention had occurred, what difference it would have made?



**My notes on The Conflict Spiral**

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## Conflict Triangle

When trying to understand the context of a conflict and its contributing factors we must examine three key areas...

People – Who is a direct participant in the dispute?

*Personalities, emotions, relationships, past history, social contact*

Process – How are they in dispute?

*Interactions are shaped by their environment – rules, hierarchy, laws, norms for communication, decision making modes*

Problem – What is the dispute about and why?

*Particular concerns, needs, values that ignite and drive the dispute.*

Mediators must consider and attend to all three areas throughout the mediation process. No lasting resolution will result if the needs of the conflict triangle are not addressed.

See module 4 for a discussion on the way a mediation must Support people, Facilitate the process and navigate effective problem-solving.

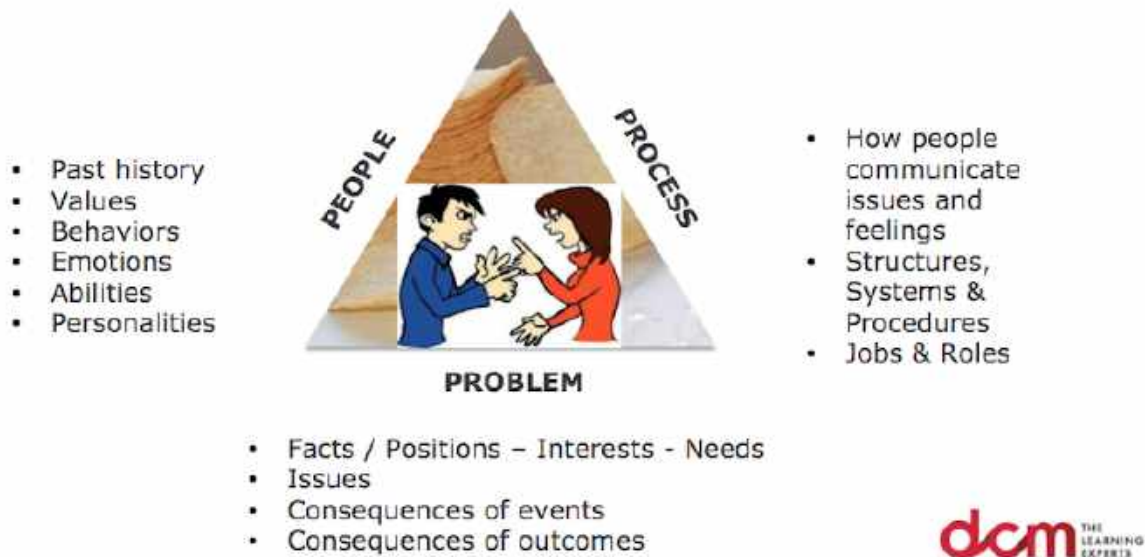


Figure 1.1 The Conflict Triangle



**My notes on The Conflict Triangle**

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## Emotional Self-Awareness

According to the Bar-on Emotional Quotient Inventory Technical Manual, 1997

Emotional self-awareness is the ability to recognise your feelings, differentiate between them, know why you are feeling these things, and recognise the impact your feelings have on others around you

Conflict can impact our emotional self-awareness. Conflict is not just a set of problems, it's an emotional experience. Having a heightened Emotional Intelligence (EQ) will help a person understand where conflict is impacting their emotional state. Conflict coaching is a process to help develop positive emotional strength which can help counter conflict fatigue or a power imbalance between disputing parties. Often conflict coaching is engaged when a person is not able or ready to enter the mediation process.

A mediator should have a good understanding of the field of emotional intelligence and a strong EQ of their own. During the mediation process, a mediator will work at understanding the EQ levels of the participants in order to facilitate the process effectively.



Figure 1.2 Emotional Intelligence Wheel



**Learning Activity:**

Using the following links research the topic of Emotional Intelligence and then write a one-page summary with references on why it is important for a Mediator to be aware of their own EQ as well as investigating this with their clients.

<https://www.reuvenbaron.org/wp/the-bar-on-model/the-ei-conceptual-aspect/>

**Recommended Reading:**

<https://www.amazon.co.uk/Conflict-Coaching-Management-Strategies-Individual/dp/141295083X>



## Your Choices

It is up to us how we personally handle the feelings and behaviours that arise from the conflict that makes the difference – whether we use it negatively or positively!

It is our choice to...

- Deal with the conflict
- Deny we are in conflict
- Dump the conflict as the problem and responsibility of others

Once the parties in conflict recognise that whatever they do the choice is theirs, they have to take responsibility for their actions and the positive or negative outcomes.

If the decision is to deal with the conflict, a number of options become available to the person or parties.



Figure 1.3 The PIN Model (1)

In order for people to be able to resolve conflict effectively, they must first shift their thinking, speech and actions to a place that focuses on true needs.

Disputants often focus the dispute on positions – things they say they want. Often these are unreasonable demands that don't factor in the reality, constraints or needs of the other party.

While both sides in a dispute are focusing on and talking about their position no movement will happen on either side, both sides become more entrenched in their positions.

Movement away from positions is the only way to find agreement.

**INTERESTS** Lead – **NEEDS** Drive

Interests are things that people move towards because they give you pleasure

**INTERESTS** are Perceived – **NEEDS** are Felt

Needs are things the absence of which people try to avoid because it causes pain

In order for a resolution to be acceptable and sustainable everyone's needs must be met, and the interests can be negotiated. Mediation works on the basis of a win-win resolution process, the mediation must make sure that each party's basic needs have been met and then they move the process to negotiate the interests. If the basic needs cannot be met, the mediation process will come to an end without resolution.

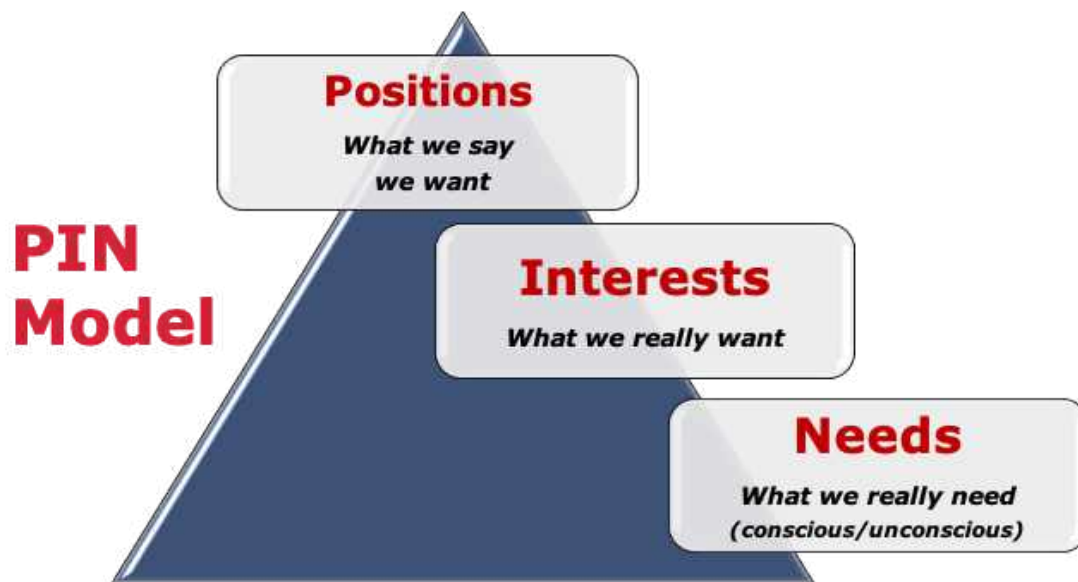


Figure 1.4 The PIN Model (2)



**My notes on Emotional Self Awareness**

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## Managing Conflict

*“Anyone can become angry – that is easy. But to be angry with the right person, to the right degree, at the right time, for the right reason, for the right purpose, and in the right way – that is not at all easy.”*

**Aristotle**

Conflict is going to happen whenever you have people with different expectations. This makes conflict management critical in mediation, it is important to obtain the necessary tools to manage conflict efficiently to prevent escalation and the matter becoming worse essentially causing mediation to fail.

### 1. Stay Calm

What starts people escalating is their anger. Most people stop listening to understand and become angry instead, in order to argue back. Remaining calm is essential for performing as a mediator. To remain calm, it helps to look at the bigger picture. When a conflict arises in a mediation session, one of the most beneficial things you can do is to ask partaking parties to refrain from raising their voice, take a 5-minute break, explain the reason for the anger in a calm clear manner, and most importantly if foul language is at play remind all parties this use of language cannot be tolerated in any mediation sessions and you will be forced to prematurely end the session as the expense of both parties.

### 2. Listen to Understand

Psychologists tell us that anger is a secondary emotion and that it is usually triggered as a defence mechanism to cover up hurt or fear. When someone is angry, there is usually some hurt or fear that he/she is embarrassed about, or perhaps even unaware of because the anger is so all-consuming. In order to diffuse people's anger, you must listen to them. Hear them out. Let them go until they have run out of gas. Let them vent as long as they can until they begin to calm down. You then will see a person start to slow down some and begin to feel safe enough to finally tell you what the real cause of the anger is.

The best thing you can do to get people to the point where they are willing to show some vulnerability and trust you with some of the real reasons why they are upset is to engage in "Active Listening." Active listening means giving them active physical and verbal signs that you are with them and understand what they are saying. Simple things like nodding and saying, "Uh-huh" or "OK, go on" can make the speaker feel as if his/her story is welcomed by you and that you want to continue. On the phone, people hear dead silence and cannot read your reaction

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to their complaints and thoughts. Given that we all sometimes fear the worst, people tend to shut down and stop feeling it is safe to continue telling their story.

The most useful phrases in this part of the process (what mediators call the "Opening Statement") are questions such as, "Can I ask you - what about that bothered you so much?" or "What about that was so important to you?" These invite people to go deeper into the problem and tell you what the "real" problem is.

### **3. Attack the Problem**

Your points will be heard more clearly if you can depersonalise your comments and point only at the issue. Rather than accusing people of "always messing things up," it is better to say, "We'll have to take a closer look at why this keeps happening."

### **4. Avoid the Blame Game**

Generally speaking, figuring out whose fault something does not do any good if the goal is to fix a problem. It is a diversion and sometimes a costly one because if a person feels blamed, he/she often checks out of a conversation. The trick to resolving clashes is to focus on problem-solving, rather than pointing fingers.

### **5. Focus on the Future, Not the Past**

Rather than focusing on what went wrong or who should have done what, the secret to dispute resolution is to treat it like problem-solving and focus on what can be done to resolve the problem. Once that is done, all parties can look to the past tense to analyse what went wrong.

### **6. Ask the Right Kind of Questions**

Questions such as "Why is that?" or "What did you think it would be?" make a person who you are talking to the defensive. They inherently question the person's judgment or opinion, as well as coming off as curt. More often than not, people ask these short, direct questions, the type that can sound like a police officer's interrogation or a lawyer's cross-examination.

### **7. Be Creative**

Brainstorm. Remember that everything is negotiable. Feel free to think outside of the box in order to expand the pie. Make it so that no idea is too far fetched. Being creative with resolutions takes longer, but can yield a true win-win solution.

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## 8. Celebrate Agreement

Once an agreement is accomplished, both the mediator and partaking parties deserve a good pat on the back. There is nothing wrong with celebrating the resolution of a dispute that could have been destructive, and assuring the disputing parties that the agreement finalises the dispute.

Utilising these tools takes patience, practice and generally requires changing old behaviours. However, if people are on the front lines, using these simple tools would resolve most disputes at the mediation level, keeping them out of the legal department.

### **TKI Conflict management styles:**

As a mediator understanding your own style will help you manage your impulse control. Understanding the disputing parties' personas will help you facilitate the mediation process in an appropriate way, meeting the needs of all parties.

The TKI questionnaire identifies five distinct conflict styles and provides people with conflict-management solutions. By helping individuals understand their default approach in conflict, it encourages the exploration of alternative ways to handle different situations.

- Competing – the desire to win one's own concerns
- Accommodating – satisfying the concerns of the others
- Compromising – Splitting the difference
- Collaborative – Satisfy both – win/win
- Avoidant – Indifferent to either side



### **Learning Activity:**

See appendix 1 for the complete TKI assessment to determine your own conflict mode.



### My notes on Managing Conflict

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# Mediation Contexts & Styles

## The Context of Mediation

Mediation can be used in a variety of contexts, and is fundamentally a conflict resolution skill which may occur in day to day life however the most common contexts in which mediation would be required are;

- **Workplace Mediation** - A dispute between two employees, and employee and a boss etc.
- **Commercial Mediation** - A builder has overcharged and the disputing party wishes to challenge the additional costs, service has been provided and the disputing party is dissatisfied, in some cases debtor collection tackling a party's refusal to pay for services rendered etc
- **Community Mediation** - A neighbour is challenging the boundaries of a newly installed fence, escalating noise levels or anti-social behaviour ect
- **Family Mediation** - A dispute amongst family members regarding inheritance, the decision of care of an elderly family member ect

### Workplace Mediation

Often it is the requirement of an HR Manager to be skilled in Mediation as a non-bias impartial member of a company. When Mediation is combined with HR qualifications, this allows the HR department to work effectively avoiding litigation matters which can be extremely costly to a Company or Organisation however as the HR department is funded by the Company through an employment contract it can be a grey area to be seen as non-bias to not have the Company's best interests at heart.

### Commercial Mediation

Commercial Mediation is one of the most popular Mediation contexts, as it specialises in the resolution of commercial disputes and deadlocked negotiations, from small claims to disputes valued in the billions. Offering a much cheaper solution to dispute resolution and offers a flexible process conducted confidentially giving both parties ultimate control of the decision to settle.



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## Community Mediation

Community Mediation is a way of resolving disputes which may include issues such as:

- Noise
- Anti-social behaviour
- Abuse or threatening behaviour
- Rubbish
- Parking
- Tall trees or hedges
- Boundary disputes or access problems
- Children's behaviour
- Privacy
- Pets

Its aim is to avoid the need for lengthy and expensive legal proceedings. It is also more flexible as the law does not recognise all the issues arising between neighbours. However, trying mediation does not prevent parties from using other procedures later if no agreement can be reached.

## Family Mediation

Family Mediation is particularly appropriate and effective in family disputes and can assist in the resolution of differences which occur during;

- Marital breakdown
- Contract disputes
- Custody issues
- Disagreements over the division of assets

There are considerable resources of free Mediation services in the family arena. Family Mediation can be specifically designed to cater to the needs of children involved in the dispute. Family conflict can be deeply upsetting and extremely stressful and it is important for the Mediator to be highly skilled seeking a resolution which can be difficult for all parties to agree to for example the regularity of custodial visits with children. It can be common for Imposed outcomes in Family disputes to often lead to further conflict issues more likely to proceed with litigation.



**Learning Activity:**

Write down a scenario (fiction or nonfiction) of one of the contexts discussed, whereby mediation would have been a useful tool for conflict mediation.



**My notes on The Context of Mediation**

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## Mediation Styles

Below is a description of some commonly used mediation styles.

### Facilitative Mediation

The mediator structures a process to assist the parties in reaching a mutually agreeable resolution. It works on the basis that it's their dispute and their agreement. The mediator uses skills in asking questions; validates parties' points of view; searches for interests beneath positions taken by parties, the mediator and process assist the parties in finding and sustainable options for resolution. The facilitative mediator does not make recommendations and does not give his or her own advice or opinion.

The mediator is in charge of the process, while the parties are in charge of the outcome. The process is mainly based on joint sessions with all parties present. As each side listens to the other parties' points of view, greater and more accurate understanding is gained. At times throughout the process (as needed) caucuses are also used.

### Transformative Mediation

The Transformative style of mediation is based on the values of empowerment of each of the parties. It requires recognition of each other's side of the needs, interests and values. The aim of the mediation process is to transform the relationship of the parties, not just come up with an agreement to solve a problem. In transformative mediation the parties will determine the process and outcomes of the mediation, the mediator follows their lead finding ways to connect the parties as the process evolves.

This concept was pioneered and named by Folger and Bush in their book *The Promise of Mediation* in 1994.

### Evaluative Mediation

An evaluative mediation process assesses the merits of a case and assists the parties in reaching a resolution. The mediator might make a formal and informal recommendation, based on the agreed outcome. The mediator may also predict how a court or judge would view the agreement. A key focus of the mediator is the legal rights of the parties, rather than needs and interests. Often the mediator will use separate meetings with parties 'shuttle meetings' during the process, meeting the parties individually with their legal representative present.

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The legal representative of both sides usually works together to select a mutually acceptable independent mediator. It would be assumed that the selected mediator would have a legal background or substantial knowledge and legal experience in the area of the dispute, because of these most evaluative mediators are lawyers.

### **Narrative Mediation**

Narrative mediation takes a very different stance to conflict. Focusing less on negotiation and more on how people make sense of the world. By telling stories of events and by giving meaning to these events people construct their own reality. People in conflict will tell conflict stories that help them make sense of the situation, the other person and themselves. Conflict stories can be limiting and paralysing. Narrative mediators believe that for every conflict story there is an alternative story that can make cooperation and trust more available. Narrative mediators help parties rewrite new and more constructive stories.

Facilitative mediation is the backbone upon which every mediation is built and is the focus on this course. Once you have gained further experience and training you may wish to explore the other approaches.



**My notes on Mediation Models / Styles**

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## The Classic Mediation Model

Regardless of the chosen style, the approach must be framed in a structured forward-moving process. During this course we will use the facilitated mediation style and the classic mediation model.

The classic mediation model breaks up a mediation into 6 key stages as seen below.



We will explore each stage in more detail as we look at Mediation in Practice in the next section.



**My notes on The Classic Mediation Model**



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## Choosing a Good Mediator

As no two disputes are the same, no two mediators are the same. People have been mediating since people have been finding themselves in disputes. One observation made is that a ‘mother’ probably gains the most experience in mediation when raising children and helping siblings ‘play nicely’.

A mediator comes from many different backgrounds and sectors of society. Some backgrounds lend themselves to being a mediator once they learn effective mediation strategies;

- Coaches
- Clergy
- Managers and supervisors
- Politicians
- Social workers
- Principle and teachers
- Parents
- Police
- Therapists

Watch a teenager with their peers and you will see mediation happening between groups of friends on a regular basis.

It is true that some types of disputes and mediation require more specialist expertise and sector knowledge, and professional mediators do tend to specialise in certain fields of mediation based on their specialist training and qualifications. But anyone can learn the skills to help people at an automatic level deal with conflict.

Common specialised fields of mediation include but are not limited to:

- Family
- Separating Couples
- Debt
- Elder
- Workplace
- Corporate
- Community
- Consumer
- Education / School
- Employment

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- Insurance Claim
  - Landlord-Tenant

### **How do people choose a mediator?**

Each mediator has a different combination of personality, style, experience, knowledge, skill and areas of practice. Most people choose a mediator based on a recommendation from a state agency, business associate, legal representative.

Some mediators advertise or use a website, but in reality, any short bio is just a reflection of what a mediator thinks about themselves – useful but not objective.

Profession Mediators have an obligation to prove they are experienced, skilled, trained and certified to work in their chosen mediation field. When talking to a potential mediator they should be able to provide references, and up to date feedback from clients and referring bodies. They should also be able to show they are certified and recognised by a professional body such as the International Mediation Institute (IMI).

Any mediator selected must be acceptable to both parties to the dispute.

### **What criteria should a mediator meet?**

The 2017 legislation for mediation in Ireland introduced an obligation on mediators to provide the parties with information in their training and qualifications.

A Mediator should be expected to have:

- Strong people skills
- Ability to be Directive
- Confident enough to confront
- Comfortable with high emotion, arguments, tears
- Respected and trusted
- Patient
- Empathic, without judgement
- Low need for recognition, credit, and your own way

### **Skills required by a Mediator**

Conflict Triggers – everyone has triggers, something that puts us into negative emotions. Triggers create feelings of being devalued and diminished they threaten our social acceptance, esteem

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and status. A mediator must be able to identify the conflict triggers and help the parties identify a way forward.

As a mediator you will also have conflict triggers, you must be able to control them while in a mediation setting. This is why spending time developing your understanding of and command of your Emotional Intelligence, is a key skill held by an effective mediator.

A mediator must have the skills required to support the people, not just the process. Supporting the participants to enable them to say what they need to say, hear the other parties, and begin to cooperate with each other. At the same time, the mediator must remain detached to avoid playing favourites. You must not allow yourself to be pulled into the dispute.

Remember being impartial is not the same thing as being indifferent! The facilitative mediator must be able to:

- Listen carefully with empathy
- Be patient, unhurried, accepting
- Never make a participant 'wrong'
- Reflect back emotion, but does not press for it
- Prevent hostile exchanges
- Not trying to persuade participants of anything!



**My notes on Choosing a Good Mediator?**

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## Useful definitions and terms

- **Joint Meetings** – all parties will come together for the mediation process facilitated by the pre-selected mediator
- **Caucus** – Separate conversations or private meetings with each party, during or between sessions. They can be used to help parties figure out how to talk about a difficult subject or decide whether to share information with the other side. Participants in the mediation are usually happy to talk when alone with an attentive mediator, but such meetings should be brief and only used sparingly when required.
- **Shuttle Mediation** – parties do not meet in joint sessions with each other. The mediator moves back and forth between the parties building consensus and agreement. The parties may or may not come together for the final agreement to be signed. Full trust must be placed in the mediator by both sides, the mediator needs a very strong skill set to work in such a way. Commercial disputes often use shuttle mediation, at times also domestic cases where emotions are running too high for a joint meeting.
- **Court Mandated Mediation** - Mediation is typically defined as a voluntary process, it can be mandated by a court that is interested in promoting a speedy and cost-efficient settlement. Only when parties on both sides see the benefits of engaging in the process, does mandate mediation prove successful.
- **Co-mediation** – Two mediators working together to facilitate the mediation process
- **Concern** – Their problems and complaints
- **Interpretation** – Meaning they give to the information they present
- **Position** – Their public stance, demands and requests even threats
- **Interest** – What really matters to the person, what future they want
- **Topic** – A subject that must be addressed in order to gain resolution

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# Mediation Skills

## Building Rapport

Rapport is defined as ‘the state of being relaxed with, and responsive to, another person’.

The ability of the Mediator to build rapport with the parties is critical to the well-being of the Mediation relationship, and therefore to the likelihood that the Parties will be successful in achieving their resolution.

When you meet someone for the first time how do you feel about them? Are you immediately at ease, or are you unsure, rather cautious, and even suspicious? What is the explanation for ‘connecting’ immediately with some people, and taking an immediate dislike to others? These questions raise interesting issues about the establishment of rapport in a Mediation context.

It is suggested that at an unconscious level we are influenced, either positively or negatively, by a person’s appearance, language, voice or behaviour, and furthermore that we have ‘sensed’, to a greater or lesser degree, our common interests. This typically happens within minutes of the first meeting.

Within seconds of meeting someone, we begin the process of ‘marking people down’, depending on their appearance, voice, and body language. This process comes from our need to establish if this person is a friend or foe, and is an unconscious process.

This may be the explanation of why dress, appearance and stance have such significance in rapport, as these provide the initial data that we use to ascertain response to the person. It is said that people like people who are like them.

## Judgement

This is the moment when we place the other person into a box that is designated as good, bad, interesting and so on. The need for stereotyping and generalisation affects most of our relationships. However, while we are doing our thing, other people are doing it for us!

The message for us therefore is that we need to put our best foot forward in the rapport stakes if we are to make our mark. Within the first few minutes of meeting us, it is probable that people will have decided if we are credible professionals. It is in these early moments that we lay the foundations for a successful Mediation venture...or not!

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## **Confidentiality**

The issue of confidentiality needs to be addressed from the very start of the Mediation relationship. The material that the Mediator and parties work on is to be treated with the utmost sensitivity and respect.

Some mediators consider it appropriate to make a statement of confidentiality, such as, “As your mediator, I will not disclose the details of our conversation without your permission”.

## **Eye Contact**

The first point of contact in most new meetings is via the eyes.

Eye contact, or lack of it, also has an impact during the ‘discounting’ process; poor eye contact can turn people off. Experience tells us that it can communicate a lack of interest, whether real or not, intended or unintended.

We can communicate very powerfully with our eyes; however, some people have difficulty maintaining eye contact. Others, meanwhile, overly use eye-contact and appear to stare. This can be mistakenly interpreted as aggressive and can cause the receiver to feel uneasy. Personal appearance is important too. Appropriate dress, general hygiene and style of hair can help with the initial impact we make.

## **The Handshake**

We also make assumptions about a person from a handshake, or indeed other forms of greeting. A handshake can initiate feelings in someone about us as soon as the first contact

For example, a limp, loose, ‘disinterested’ handshake can evoke in our assumptions that the other person is unemotional and distant, or disinterested. The handshake can be used to signal a person’s intention to dominate, or it can imply a desire to reduce anxiety and resistance.

## **The Power of Your Smile**

It is critical to smile when meeting a party for the first time. Smiling conveys an attitude of openness and acceptance to the person, inviting them to also be open.

It helps them relax and move to a positive place. A good Mediator smiles naturally, but it may take practice for some of us. Make a habit of smiling, and remember to smile with your whole face but don't overdo it and be sensitive to the subject at play!

### **Intelligent Questions**

It is not often we get the chance to be really listened to and we tend to think very favourably about anyone who listens attentively to our story. By asking intelligent questions we can help enhance the parties feeling of safety, as the person they are talking about is themselves!

### **Body Language**

Body language lends a great deal to the congruence and authenticity of what we say. Various studies have suggested that if both people in the conversation are totally congruent, some '55% of their communication will be body language, 38% will be based on tonality of voice and only 7% will derive from the words themselves'.

For example, if someone is exhibiting one or more of the following behaviors, they will likely be disengaged, disinterested or unhappy:

- Arms folded in front of the body.
- Minimal or tense facial expression.
- Body turned away from you.
- Eyes downcast, maintaining little contact.



Figure 1.6 Closed Body Language



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Positive body language can help you to engage people. Here are a few tips that can help you to do this:

- **Have a positive posture** - Sit or stand upright, with your shoulders back and your arms unfolded and at your sides or in front of you. Don't be tempted to put your hands in your pockets, or to slouch, as this will make you look disinterested.
- **Keep your head up** - Your head should be upright and level. Leaning too far forward or backward can make you look aggressive or arrogant.
- **Use open hand gestures** - Spread your hands apart, in front of you, with your palms facing slightly toward your audience. This indicates a willingness to communicate. Take care to avoid overexpression, or people may pay more attention to your hands than to what you're saying.<sup>4</sup>



Figure 1.7 Neutral Body Language

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<sup>4</sup> "Body Language - Communication Skills From MindTools.com."  
[https://www.mindtools.com/pages/article/Body\\_Language.htm](https://www.mindtools.com/pages/article/Body_Language.htm). Accessed 25 Sep. 2020.



Figure 1.8 Open Body Language



**Learning Activity:**

How might an effective Mediator demonstrate awareness of verbal and non-verbal body language?

## Communication skills

To be an effective communicator and to get your point across without misunderstanding and confusion, your goal should be to lessen the frequency of these barriers at each stage of this process with clear, concise, accurate, well-planned communications.

Let's look at the process in action:

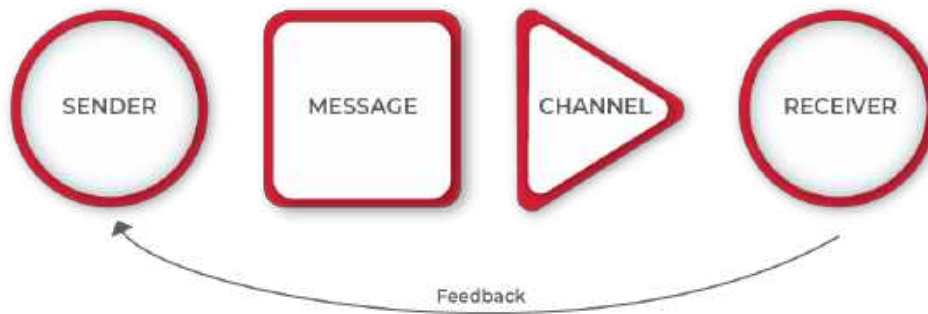


Figure 1.8 Communication Channel

The purpose of communication is to get your message across to others. This is a process that involves both the sender of the message and the receiver. This process leaves room for error, with messages often misinterpreted by one or more of the parties involved. This can cause unnecessary confusion and counter-productivity. In fact, a message is successful only when both the sender and the receiver perceive it in the same way.

By successfully getting your message across, you convey your thoughts and ideas effectively. When not successful, the thoughts and ideas that you convey do not necessarily reflect your own, causing a communications breakdown and creating roadblocks that stand in the way of your goals - both personally and professionally.

In spite of the increasing importance placed on communication skills, many individuals continue to struggle with this, unable to communicate their thoughts and ideas effectively - whether in verbal or written format. This inability makes it nearly impossible for them to compete effectively in the workplace and stands in the way of career progression.

Getting your message across is paramount to progressing. To do this, you must understand what your message is, what audience you are sending it to, and how it will be perceived. You must also weigh-in the circumstances surrounding your communications, such as situational and cultural context.



**My notes on Building Rapport**

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## Listening Skills

During the mediation process, the participants are encouraged to listen to each other, the mediator is required to set an excellent example to all parties. The mediator must be able to listen at the appropriate level and not only to what is said but also to 'hear' the things not said.

The mediator is listening to many levels at once to hear where parties are in their feelings, interpretations and understanding. They need to hear where they are out of sync with reality or failing to move past positions to interests and needs and to hear their progress on the journey to possible humanising.

There's a great deal of information conveyed in a participant's tone and pacing that the mediator can hear, especially after getting to know the storytelling style and approach from a pre-mediation meeting.

Listening is a talent that each of us is given in some measure. People who become mediators tend to be gifted listeners, to begin with. But listening is also a skill that can be trained and developed. Masterful mediators have taken their abundant gift and have brought it to a high level of proficiency.

Most people do not listen at a very deep level. In everyday listening, we listen mostly to the words. The focus is on what is said. Think of all the arguments you've been in where the crux of the fight was over the precise words that were used:

*"That's not what you said" –*

*"It's what I meant" ....*

*But "It is not what you said"*

We get caught up in our own feelings; we take things personally; we listen at a superficial level as we evaluate and judge what we're listening to. When people are in conflict they tend to only hear what they want to hear and put their own interpretation on what is being said. A mediator needs to listen intently and help the other parties also do the same with a correct understanding and an open mind to a different point of view.

### Aspects of Listening

Two key aspects of listening in mediation, attention and awareness, are what we do with our listening. In other words, they indicate the impact of our listening for the participants. As a

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mediator, you need to be conscious not only of your listening but the impact you have when you act on your listening. You may be listening, but if you don't show it, how will the participants know?

If you are not aware of your own listening, how can you give the correct signals to your participants, to encourage them to talk more and feel safe in doing so, invite them to make decisions, and to help them hear what they themselves are saying?

### **Levels of Listening**

There are 5 levels of listening:

- Level 1: Ignoring
- Level 2: Pretending
- Level 3: Selective
- Level 4: Active
- Level 5: Empathic

These 5 levels give the mediator an enormous range and, ultimately, a greater capacity for listening.

**L** = Look interested, get interested

**I** = Involve yourself by responding

**S** = Stay on target

**T** = Test your understanding

**E** = Evaluate the message

**N** = Neutralise your feelings

### **Active Listening – Our Default in Mediation**

The term Active Listening is often used to describe listening that builds connections, shows empathy, and encourages people to open up. It is designed to get better information, gain a fuller

understanding of others' perspective and position, and avoids making assumptions and jumping to conclusions.

<b>Awareness</b>	<b>Factors</b>
Give full attention	Use eye contact, check for open body language, minimise interruptions.
Ask clarifying questions	If unsure of the meaning, or you feel the other parties may be unsure, ask a clarifying question.
Repeat back context	There's a lot of work involved in listening; so repeat back what you heard to check for understanding. You may need to summarize and/or paraphrase when doing so.
Reflect feelings and observations	Let the participant know that you empathise with them by acknowledging their feelings as they describe their situation, or tell their story. If you observe something in their voice, or a physical gesture, as they describe certain things, let them know.
Summarise information	Over the course of a mediation process, you should summarise what you've heard regularly. A lot of words can be spoken in a short space of time!



**Learning Activity:**

How might a Mediator demonstrate active listening skills?



### My notes on Listening Skills



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## Asking Questions

The ability to ask great questions is one of the most important skills for a mediator to develop. A well-worded question, asked in an appropriate manner, can significantly shift a person's thinking.

Simple questions often have the greatest impact, because they tend not to interrupt the participants' thought processes or conversation flow. They have a clear purpose, and they can influence without control. They do not restrict options, convey judgement, create defensiveness within the participant, or elicit the 'correct' answer.

### Questions that Follow Interest

These are questions that enable the parties to move forward in their own thinking and choices, and questions that help to clarify what the parties are saying. These questions often begin with the '6 wise men' of

*What, Who, Where, When, How and Why?*

#### The 'Why' Question

Be careful not to overuse the 'Why' word as there are some associated risks in doing so:

- It feels like a request to 'justify'
- It elicits reasons and excuses
- It can result in defensive behaviours
- It is a vague question.

### Power of Questions

Asking powerful questions will naturally evolve from the listening process. They have the power to encourage the parties to look at something in a different way, to get the parties to acknowledge the unacknowledged and to add clarity. Sometimes good questioning will lead the parties to realise the difference between their position, interests and needs.

Why are these questions powerful? Powerful questions have the ability to:

- Shift the person's thinking from problem to solution
- Elicit creativity in the parties
- Challenge the parties to think differently
- Generate forward movement

- Empower the parties to act.

See appendix two for a bank of sample questions often used by Mediators

### **Hearing the spoken and the unspoken**

Your skill as a mediator is shown by being ‘present’ to the people in the process. Giving full attention means listening and observing with your mind, heart and intuition. You should not be planning your next response when you should be listening to what is currently happening around you.

The mediator is listening for not just what is said but also the unspoken; Gaps, shifts in body language, hesitations, rushing through statements. The skilled mediator knows when to let things go, but also when to pick up on these things and asks...

*‘Can you take me through that again please?’*

**Silence** - Mediators must be comfortable with silence, know when to fill the space and when to leave the silence be. Silence can bring out the unplanned, creates space for thinking/reasoning, it can calm a situation. But be careful that the silence does not intimidate or make people feel judged.

**Body Language** - Everyone seems to be an expert in body language these days. People have a habit of over or incorrectly interpreting body language. Do not overinterpret the parties’ body language but recognise they will be over-interpreting each other’s and possible yours. Set a good example with a good open posture, appropriate facial expressions, eye contact and gestures.

As parties come to the mediation process, we do not expect them to be displaying excellent positive and proactive body language – they are in conflict with the person they are sat with! But as the process develops watch for signs of improvement in their body language or signs of it retracting again.

A mediator must, however, protect the parties and the process by stopping any aggressive and loud gestures (pointing, fists, aggressive or intimidating looks), a mediator may use a caucus discussion to address these issues if they persist.

**Reframing** - Reframing means offering a new perspective that might help the parties think or feel differently. The mediator takes the information that the participants have revealed and reconstructed it in positive, realistic and helpful language. Reframing can include...

- 
- Rewording
  - Checking out interpretations
  - Plain tactful descriptions
  - Flipping it – turning a negative from the past to a positive for the future

If we change the frame of reference by looking at the same situation from a different point of view, we may be able to help the parties change the way they respond and behave!

**Clarifying** - A mediator makes sure to remove ambiguity and misinformation by clarifying points that do not seem to make sense. This helps the parties be specific, clear and detailed. We can use clarifying questions to help the parties be more descriptive and helpful when expressing themselves.

- What does it mean to you?
- How do you define?
- What experience does... relate to?
- What do you perceive?

**Summarising** - Recapping what has been said with clarity and direction. The summary is not a statement of fact about what was said, it is an opportunity to clarify with the speaker that the thoughts, feelings and viewpoints they have expressed have been heard accurately. It needs to ensure that the ownership of what has been said remains with the speaker!



**Learning Activity:**

How might an effective Mediator demonstrate good questioning skills?



**My notes on Asking Questions**

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## Negotiation Skills

Negotiation is a dialogue between two or more people or parties intended to reach a beneficial outcome over one or more issues where a conflict exists with respect to at least one of these issues.

Whilst Mediating negotiation skills play a vital role. It is important at this stage to remain non-bias and mutual. Negotiation isn't always relating to a financial settlement, you will often be required to negotiate a mutual agreement to resolve the dispute.

### Six Steps for Negotiating

1. Give thought to how you structure your offer to make it more appealing to the other side, are there areas of the dispute which are important to the other side where you can agree or concede in order to create momentum and goodwill?
2. Avoid describing an offer as the last offer or "bottom line". This approach can close the door even if the other side counters with something very close to what parties would be willing to accept. If you are not prepared to eat your words you could miss out on an amicable agreement/settlement.
3. Recognise that it is not all about money, at least not all the time. Sometimes a simple acknowledgement of what has transpired or an apology can go a long way to meeting an emotional need of the other side.
4. Be persistent in your pursuit of an agreement or settlement. The mediation process can be slow and frustrating, but having reached this point of the process it is important to push through.
5. If an agreement or settlement is reached make sure you get it in writing with as much detail as possible to later distribute this to all disputing parties.
6. If a comprehensive agreement or settlement cannot be obtained, look for opportunities to settle a smaller aspect of the dispute. If possible, try to leave the mediation with some aspects of the dispute resolved and some agreement on the route forward. This will give you some much-needed momentum and increase the chances of reaching an agreement down the road.



**Learning Activity:**

How might an effective Mediator demonstrate good negotiation skills?



**My notes on Negotiation Skills**

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## Handling Difficult Behaviours

Difficult behaviour takes many forms. It includes gossiping, going over a boss's head, foot-dragging, ignoring requests, refusing to talk, being rude, yelling, ignoring, harassing, and much more.

At the core, most conflict is about needs that have not been satisfied—not just physical needs, but also psychological and procedural needs. Difficult behaviour is often a result of psychological needs for control, recognition, affection, and respect.

- **Stay centred** - When we lose our self-control and restraint the situation does not improve. In fact, it is more likely to get worse. Decisions made in the heat of the moment are seldom the best and lack the benefits of our creativity. Our challenge is to slow down, and resist a knee jerk reaction. Staying steady, stable and grounded gives us the strong foundation we need to take on the most difficult behaviour.

When we indulge ourselves by taking it personally (forgetting that offence is 10% given and 90% taken) we start playing negative internal tapes in our head. We tell ourselves that the person is bad, unreliable, beyond reason. The danger is that these labels become self-fulfilling, and do not give any benefit of the doubt. Rather than putting our energy into problem-solving, we feel smug blaming the other. We forget that it takes two to make things worse.

- **Reality check** - An important question to consider as soon as possible is whether the behaviour is really causing performance problems. If it is not, and left alone things will not get worse, then leaving things often makes sense. As we reality check it is important to consider the impact of the behaviour on others and not just ourselves.
- **Focus on behaviour** - This is the key to dealing with difficult behaviour. As tempting as it is to focus on the person this should be avoided. By separating the person from the behaviour it enables one-to paraphrase “Getting to Yes” is to be hard on the problem and soft on the person.
- **Listen** - Listening is widely acknowledged as a core communication skill that affects the ways we prevent and resolve conflict. When dealing with people whose behaviour is getting to us we should make a special effort to hear the other person out. Even when you disagree! This enables you to validate the psychological needs of the other and to let them know that you can imagine how they are feeling.



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In addition to validation and empathy, asking open and closed questions, rephrasing and summarising, and using “I Statements” are all key listening activities.

- **Give feedback** - A common problem with difficult behaviour is that the person is unaware that his or her behaviour is causing a problem. At other times the extent of the impact is not comprehended. By giving timely feedback about specific behaviour misunderstanding can be avoided and expectations clarified.
- **Use performance management techniques** - This is an important preventative technique. A common format is the yearly performance review. It should be used on an ongoing basis and whenever expectations are not clear. The goal is to make sure that responsibility is placed where it belongs. For example, with naysayers, it is crucial that responsibility for involvement be returned.

Where there has been discussion about performance expectations, a physical record that documents the fact of the meeting, the content and any agreements should be generated.

This is a useful set of questions that can be used to guide an effective discussion:

- Where are we now?
- Where do we need to be?
- How will we get there?
- What do you need to do?
- How can I help?

In addition to using the above techniques to prevent and resolve difficult behaviour, we should be mindful of things we can do to limit the chances of being perceived as difficult ourselves. Matching our actions with our words, and our words, with our tone and body language, is important. Incongruencies lead to suspicion and mistrust. Consistent decision making and achievable promises and commitments will also go a long way.



**My notes on Handling Difficult Behaviours**

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## Self- Awareness

As a Mediator your levels of awareness must be high in three main areas, self-awareness, awareness of others and environment awareness.

- **Self Awareness** - Being self-aware is the ability to see our true selves without blinders. This is the first step in being true to one's self. It requires empathy, patience, strength, humility and love. One of the hardest things to do is see one's self as fallible but that is what we are.
- **Awareness of others** - An understanding and consideration of your awareness of others need to be strong as a Mediator. Whilst you may assume a Mediator works primarily between two individuals, you may be required to work with a group of individuals. Another aspect of importance to consider is how you will have an impact on someone or a group of people, and the importance of remaining non-bias and mutual.
- **Awareness of Environment** - An important aspect of environmental awareness would be to consider the mediation environment for the individual(s), is the facility fit for purpose, are the individuals comfortable? Can confidentiality be maintained? Taking these elements into consideration will ensure a safe and encouraging Mediation environment.



**Learning Activity:**

List what factors you feel will be relevant for a Mediator when it comes to Awareness of:

Awareness	Factors
Yourself	
Others	
Environment	

Awareness in the above areas will enable you to utilise the knowledge, skills and attributes required of a Mediator.

**Social Categorisation and Stereotypes**

Impartiality - Literally “one who goes between,” by definition a mediator is impartial and must maintain their impartiality. Mediators must not discriminate based on social background and must avoid stereotyping parties in the mediation either in their mind or by their actions, not allowing bias or prejudices to overcome them. They must also remain detached for the outcome of the mediation. Mediators guide the process, but the parties do the work of coming up with solutions.

Working with a co-mediator can assist in overseeing perceived bias or imbalance. Having a mediator pairing from different cultures, races, genders, backgrounds can so collaborate across social categorisation.

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In order to make sure mediation is inclusive the mediator will give attention to;

- The venue used for the mediation
- Tim and duration of the mediation suitable for all
- The level of emotion being expressed is acceptable and appropriate for all participants
- Using language that connect and resonates with both parties
- It the mediation seeking harmony or is it seeking fairness
- Is the mediation goal or process orientated



**My notes on Self Awareness**

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## Mediation in Practice

Preparation, reconstructing and understanding the conflict, defining points of agreement and dispute, creating options of agreements, developing an agreement

Effective preparation for mediation can significantly improve the likelihood of reaching an agreement, and even the terms of the settlement. Some points to bear in mind are: -

- **Who needs to be there?**

Is a vital point and key to obtaining confidentiality, whether the disputing parties are a group of people or individuals, the lead member of each side of the dispute should be the only attending parties.

- **Brief your clients thoroughly**

Explain in detail how the day will operate as to give each siding party time to prepare, and avoid catching anyone off-guard, here a pre-planned agenda is a useful tool.

- **Know your case**

After conducting your pre-mediation meetings with each siding party it is important to review each factor discussed and know the situation inside and out.

## Undertaking Mediation

### How do people find a mediator?

Depending on the form of dispute people search and find a mediator in two distinct ways:

1. Direct Contact
2. Referrals

Individuals involved in the dispute may seek out a professional mediator via web searches for an independent private sector mediator, by contacting non-profit mediation services or government-sponsored mediation services. Remember, just because one party is interested in participating in the mediation does not mean both sides do, or even that the other side is aware

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the initial contact is being made. Both sides must ultimately agree on engaging in the process before any mediation can start.

Many people are referred to mediation, referrals often come from:

- Friends and family
- Solicitors
- Courts
- HR Departments
- Social Service Agencies
- Government agencies

### **Is mediation voluntary or mandatory if parties have been referred to mediation?**

People sometimes find themselves in mediation because a manager, a judge or agency has sent them there. This could mean a mandatory attendance at mediation, but not mandatory engagement or agreement! So, mediation is always based on voluntary engagement with the proves.

Mandatory mediation can cause ethical issues...

- Participants can feel pressure to engage.
- Participants may not want to show vulnerability and could be on the defensive.

If a mediator accepts a mandatory mediation, they need to let the participants know the latitude they have. The following questions would need clarifying at the outset...

- Can they choose to leave the mediation at any time?
- What will the referring source be told about the discussion or any agreement?
- What will the referring source be told if no agreement is reached?
- Does using mediation limit any other future avenue of resolution?

Some mediations find that they can build a good relationship with a referral source that regularly makes contact or passes on your details. Work closely with such a source but maintain appropriate boundaries so that no conflict of interest could be raised with the relationship. You could work with the entity to help them educate and screen suitability for mediation before



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referring them to you, this would also make sure the parties in dispute are prepared to enter mediation and are willing to do so.

Generally, you will want the following information to be provided to you from any referral source...

- Why do they think the parties could benefit from mediation?
- What have they told the parties about mediation?
- Are they suggesting, persuading, pressuring, or requiring the parties to go?
- What interventions has the referral source already been tried? Any other useful background information?
- Do they agree to your policies on reporting back, on confidentiality, on voluntary participation, on Fees (if relevant)?
- Are there proceedings or charges pending?
- What further involvement does the referring source want to have?

Once the mediator has the above information, they will then need the contact details of the parties, so they are able to make direct contact. From this point, the conversation the mediator has with the parties is generally the same as if it were a direct contact.

### **The Initial Conversation**

When having an initial conversation with the first party in the dispute the mediator is aiming to ascertain if they and the case is suitable for mediation, the mediator also wants to provide enough information to allow the parties to decide if this is the right approach for them and if they are happy with the choice of mediator.

This conversation addresses two steps;

Step 1: Do they want to participate?

- Listen to them outline the basics of the situation
- Explain how mediation might work

- 
- Discuss time commitment and costs (including who pays, when and how)
  - Address their concerns
  - Assess whether mediation is appropriate

#### Step 2: Preparing them for mediation

- Get the contact details of who else they feel will need to be involved in the mediation
- Find out if the others are open to the idea and if they are aware this initial contact has been made.
- Contact the other party and go through stage one with them.
- If both sides agree and you feel happy to proceed, arrange a pre-mediation meeting with both sides independently.
- Arrange for a pre-mediation meeting if both parties agree to proceed in principle and you are happy to proceed.

Remember, the mediator is not able to make any commitment on proceeding with the mediation based on just a conversation with one side. The other party needs to be consulted before any decisions and commitments can be made. The none initiating party or other referred party may reject the invitation to mediate.

When contacting the 2<sup>nd</sup> party the mediator will do the following ...

- Explain your purpose in contacting them and how you got their details
- Explain your impartial role and assure confidentiality
- Don't tell- ASK!
- Use neutral language – they then tell you about the dispute, don't tell them what you have already been told.
- Be prepared for a denial of any issue, show empathy, end the conversation if needed but leave it open for them to reinstate contact.





### My notes on Undertaking Mediation

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## Suitability for Mediation

After the initial conversation with the parties involved in the dispute, the mediator should ask themselves the following question to ascertain suitability for entering mediation...

- Are the parties able to get involved in the process – are there any mental health issues?
- Are there medications or other barriers to informed & competent engagement?
- Will the participants have to interact together in the future?
- How long has the conflict lasted?
- How intense is the conflict – is their conflict fatigue?
- What has been the history of the parties?
- What other efforts have been made to address the conflict?
- What did or didn't work in these efforts?
- How genuine is the desire for mediation?
- Is there significant power imbalance between the parties?
- Will any agreement prove lasting?
- What has been the history of the parties?

The mediator must give serious consideration to the suitability of the parties and the case before they agree to enter mediation. A pre-mediation meeting would be a good way to fully grasp the case and the party's ability to engage in the process.

Do not enter mediation in the following instances...

- As a first solution
- Power imbalance
- Case within legal process
- One party is unresponsive ('fishing expedition')

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- Criminal activity
  - Right versus wrong case
  - Parties lack resources to agree
  - Arbitration is preferred

Ultimately mediation is probably not suitable if the participant is not able to grasp the actual issue needing resolution or understand their legal options moving forward. Also, in cases involving serious threats of violence or a history pathological, abusive or addictive behaviour is evident.



**My notes on Suitability for Mediation**

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## Pre-Mediation Agreement

The mediation agreement plays a crucial role in the mediation process. It is a way of saying, “This is what we’re all doing here; this is how we have to conduct ourselves; these are the ground rules that we have to agree upon in order to make this work.”

### What goes into a pre-mediation agreement?

A mediation agreement can be made verbally or confirmed through a document. If working as a private mediator you will need to draft your own agreements. These are between the parties and the mediator. Despite differences in wording or specifics, the agreement has two main purposes.

1. **To protect the mediator** - What if a mediator is called as a witness in court to testify about what took place in mediation? What if one party wants the court to know something the other party said? What if one party wanted evidence revealed that wouldn't otherwise be admissible? The mediation agreement has to protect the mediator from having to give evidence or testify. This safeguards the mediator's neutrality and the confidentiality of the mediation process. When the mediator is protected in this way the parties are also served better by the process because no one can use the mediation to gain an unfair advantage. The mediator also has to be protected in case one or both of the parties don't like the outcome. What if, after the fact, one party decides he/she was pushed into a resolution? The mediator is protected from liability.
2. **To explain the process** - The agreement might talk about mediation as an interest-based mediation, the goal of which is to narrow the issues, identify the problems, figure out what's really at stake and talk about possible solutions. It would tell parties that the process was consensual and that parties are free to leave any time they choose. Essentially, it will lay out the terms of the process.

Central importance to the process is confidentiality. Again, if the mediator could be called on to testify or disclose what has happened in mediation, no one would ever say anything!

Confidentiality also needs to be established between the parties and the mediation agreement covers this.

The mediation agreement tells participants they are going to be involved in a somewhat flexible process, but one that does have parameters. It is one of the crucial documents involved in mediation and usually gets discussed and signed at the very beginning of the mediation unless there were pre-meetings or when counsel is involved they may have already advised their clients of the meaning of the agreement and obtained a signature.



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### Sample Pre Mediation Agreement

This agreement to mediation is made on .....day of.....20...

Between.....(Party A) and.....(Party B)

and.....(Mediator)

The parties have agreed that their disputes or differences shall be considered and have asked the Mediator to facilitate a dialogue.

The Parties now agree;

1. The mediator will be neutral and impartial and will not impose an outcome on any party or make any decision for any of the parties.
2. The Mediator hereby accepts the appointment and agrees to conduct the mediation
3. The Parties bind themselves to pay the Mediator's fees and expenses
4. Each party agrees to take part in the mediation in good faith.
5. The parties and the mediator will not disclose to any person not present at the mediation any information given to them during the mediation unless required by law or agreement to make such disclosure
6. Each party has come voluntarily and may leave voluntarily
7. The parties agree that the mediator will not be liable for any act or omission in the performance of the mediator's duties and obligations under this agreement unless the act or omission is fraudulent.
8. The parties hereby confirm that they have full authority to settle the dispute

Signature of Party A: .....

Signature of Party B: .....

Signature of Mediator: .....



**My notes on Pre-Mediation Agreements**

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## Pre-Mediation Meeting

A pre-mediation meeting is a preliminary meeting between the mediator and each of the parties prior to the joint session. This can be considered quite a controversial mediation tool.

Traditionally, mediators will be instructed to meet with both parties at the same time in a joint session without a pre-mediation meeting. The main reasons found for avoiding a pre-mediation meeting is fear of collusion between the mediator and one of the parties. This concern is warranted in those cases in which mediators take a strong directive role. However, on the contrary, when the pre-mediation is used as an opportunity for parties

1. To vent without the views on the dispute causing further issues
2. Openly explain their side of the “story”
3. To be coached on how to better negotiate their own agreements, the pre-mediation can be especially effective.

As a mediator to get the most from the session as well as ensuring that you are setting the framework for a successful mediation it is important to be prepared:

- Put the pre-mediation date and time in your calendar and issue a formal invite to the party in the form of a calendar invite/email/text, find out details about parking and transportation and contact information and pass this information on.
- Many mediators have an intake form they will ask the party to complete in preparation for pre-mediation. This will give the mediator a step ahead, and not spend meeting time gathering basic information.
- Think about what’s important to know. There may not be time or need to hear every single detail of your story, so what’s the key?
- Ask the party to compile a list of any questions to bring with them.



**Learning Activity:**

Watch the “Pre-Mediation Meeting Demo” course video;

Do you feel facilitative Mediation is suitable in this case?

Give the reasons for your answer.

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List out Ruth's Positions, then write out a summary as you would have given verbally in the room.

What would you feel would be the main challenges to gaining agreement during the mediation?



**My notes on Pre-Mediation Meeting**

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## Joint Meeting Environment

A well-designed mediation process will initially provide a safe environment in which to explore possible solutions and will also promote mutual understanding by helping the parties gain insight into what is important to the opposing party. When their informational needs are met, people are naturally more inclined to be at their best. These shifts in perspective—the building of new mental models—make reaching an acceptable resolution possible.

Aside from the well-designed and planned mediation process the physical environment can play a key factor in the success of the mediation session, there are different options to choose from all of which as a Mediator you must consider before carrying out the mediation meetings;

### Face to Face Mediation

Despite the context of the mediation i.e family/ workplace/ commercial/ community. The mediation meetings must remain as neutral as the mediator themselves, the room should not contain any reading materials, distractions or political posters and remain as basic and plain as possible.

The mediator must choose a location mutual to all parties, and if possible a location they are not familiar with to avoid any arrogance of familiarity.

More importantly, the location must meet the confidentiality requirements set out in the agreement and not within earshot of the public, workplace colleagues etc.

All parties must feel comfortable, ensure there is comfortable seating, easy access to a toilet, and clean drinking water.

As a mediator it is also important to sit in a mutual position, it is advised to not sit behind a desk, on a higher chair, have a laptop open or be distracted which one or all parties are talking.

### Online/Virtual Mediation

There are many reasons a party may require mediation to be carried out online;

- Geographically they are not able to travel to the mutual location
- Due to illness, they may be unable to travel

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- If they feel threatened in any way, the party may feel safer to proceed with mediation at a safe distance

Online mediation is a useful tool to overcome roadblocks which otherwise would have prevented the mediation process from happening at all.

When mediation is carried out online, the mediator is able to reduce costs for saving on travel expenses. The mediator is also able to work outside typical working hours from the comfort of their own home which is also a benefit to the parties involved. As a mediator offering an online mediation solution, it propels the mediation into the technology world portraying your services as current, up to date and readily available.

Online mediation is not without its disadvantages, as a mediator you cannot be 100% certain no-one else is in the room is hiding behind the camera. By asking each partaking party to ensure no-one is in the room and confirm the same, you are asking them to commit to maintaining confidentiality which by agreement they must adhere to. Communicating through online mediation can be tricky, it is important to ensure before the session commences that each party has a substantially good quality wifi/internet connection to avoid interruptions, loss of audio or feed. As a mediator, it may be difficult to build rapport as well as you would have done if you had met the parties face to face.

### **Telephone Mediation**

A telephone mediation works exactly like a face to face mediation. The rules of confidentiality still all need to be observed and exercised. The process itself is usually done through a series of consecutive and joint conference phone calls. In essence a mixture of both.

The mediator will conference both, all parties into the call. Deliver their opening statement and invite position statements. As in actual mediation, at some point, the parties will be spoken to separately. The mediator will at this stage, end the conference call, and have a private separate call with one of the parties. The mediator thus uses a series of separate calls, as well as conference calls, when they wish to speak to all parties

Some argue typically, a telephone mediation is best suited for straightforward and uncomplicated matters. And for those disputes which are relatively small in terms of the financial value being claimed.

Logistics, where parties are too far apart geographically, using telephone mediation is particularly helpful. As this cuts out the travel time for the parties and the mediator. As well as the expense of hiring a neutral venue, attendance costs of solicitors, and the headache of syncing of diaries.



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Whereby it is often easier to find a suitable time and date which all parties can arrange/make if it is to be over the telephone. Again flexibility also is a key benefit of these types of mediation services.

As with online, telephone mediation is not without its disadvantages;

There can be a wider disconnect between parties without any visual whatsoever, certain things can easily be misunderstood and as with online a strong telephone connection is vital. As with online again, you cannot be 100% certain no one else is listening in and it can cause building rapport to be more of a challenge than if it had been done face to face.



**My notes on Joint Meeting Environments**

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## First Joint Meeting

### Meeting the Individuals

A Mediator will welcome each person as they arrive and set them at ease, but at the same time not get too chatty with individuals, to ensure impartiality.

Sometimes participants can be late, perhaps because they are stuck in traffic, and if they arrive and see the mediator in a friendly conversation with the other party this can raise a question mark over neutrality. All parties must ensure that everyone understands the importance of turning up on time as lateness (even if justified) can fuel fires.

If for any reason, someone doesn't turn up and they are not obtainable by phone, the mediator should wait longer than they normally would, while reassuring the other individual that they have been trying to contact the person who's missing. If the decision to cancel the mediation session is made, the participant who did turn up may want advice. It is vital the mediation is careful with sympathy or suggestions to maintain impartiality.

### The Opening Statement

The mediator is the first person to speak during this joint meeting.

Opening comments will set the platform for the mediation session. This time must be used effectively, establishing the mediator's role, presence and authority to control the process of mediation. It is important to remember that people may not take in the information fully, as they may be tense, sceptical, nervous or even upset.

Mediation, although a much-used label, is often little known as a process, and those who decide to take part may still have a negative perception of it. It can also seem daunting because the session will require participants to be truthful, even owning up to mistakes.

Your opening is important, as it establishes the atmosphere of the session, explains the nature of mediation and role as mediator, and establishes the all-important ground rules which provide the foundation for success.

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For Example;

1. Welcome the other people and make introductions.
2. Explain the purpose of mediation.
3. Explain the role of the mediator and emphasise that the role is to be impartial and non-judgmental.
4. Highlight that both parties are here to consider how to improve the situation and compliment them on their willingness to take part.
5. Remind them how long the session will be; if they say they cannot stay that long, do not press the issue. You could say 'Let's see how far we get by **X** and then check in on how much time you can stay', and mention the opportunity of multiple sessions.
6. Explain that what is said at the session will remain confidential and ask everyone to keep this rule.
7. Outline the other ground rules (only one person speaks at a time, no interruptions, participants are to maintain a respectful interaction and the role of the mediator if the session gets out of control).
8. Outline the mediation process briefly. It is important to emphasise that each participant will have equal turns to speak without interruption.
9. Explain to participants that if they come to an agreement, the agreement will be noted; everyone will sign it; they will each be given a copy, and a typed copy can be sent to them.
10. Explain that, if needed, the mediator may hold separate meetings to speak to the individuals.
11. Check if there are any concerns or questions about the process and then ask if they agree to start the session.

### **The Mediation Dialogue**

Each individual will now have the chance to tell their story and express their feelings without challenge or interruption. It is also an opportunity to start to build an overview of the situation.

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- Ask individuals to respect and listen to each other when the other person is speaking/responding; they are welcome to make a note about any point they want to raise.
  - Listen to anything new the other person didn't know.
  - Invite someone to start or just pick the most agitated or upset person. If that listening makes comments, stop them from interrupting and remind them that they will also have a fair chance to give their point of view.
  - It may be required to restate the ground rules explicitly and insist they stop if they keep interrupting.

For example;

*“Liz, Sally is talking; you will have your turn/you have had your turn”*

*“Mike, I realise it's hard to listen to. Please write down what you want to say; I will give you your turn”*

After each person has had their chance to speak, check if there is anything more they want to mention and then thank them. Do not ask them any questions or summarise at this stage; just thank the person who spoke.

If someone is reluctant to speak, encourage them so that you get the information. If people are repeating themselves to excess or being long-winded, step in positively but firmly.

### **Keeping Control of the Dialogue**

Once everyone has spoken without interruption, you can now open the discussion. This part of the mediation process can seem quite messy and chaotic at times. However, if the mediator waits out the roller coasters of emotions, they will run out of steam. All the mediator needs to do is maintain the structure and keep control by acting as gatekeeper and facilitator.

For example;

*“Clare, can you hold that thought; I want to hear John's reaction to what you have just said, then we will get back to you.”*

---

The mediation dialogue is the opportunity for each person to respond to what was said and to perceptions and feelings, and to ask questions. It is during this time that a picture starts to develop regarding the obstacles, core issues and possibilities for moving forward.

As the dialogue progresses, it becomes an open discussion which will help each person see and acknowledge the other's perspective and needs, and can lead to resolving specific concerns and issues and moving towards an agreement. The mediator now has to keep control of the discussion of intense feelings and views, which are often quite polarised.

During this time, the mediation is assisting the individuals to build rapport, helping them to listen attentively to each other and keeping emotions within boundaries. As this goes on, it's important to watch out for seeds of agreement, whether these are non-verbal or verbal cues. These seeds will be useful reminders as individuals move to find common ground.

### **Managing the Mediation Process**

Sometimes, a discussion may go off at a tangent or individuals are either talking at once, interrupting each other, becoming increasingly rude or not sticking to the ground rules. It is at these moments that the mediator will have to bring the session back under control.

Here are some ideas that may help you with this:

- Use confident, firm assertive voice and gestures
- Use an individual's name, while looking at them directly
- Keep to short sentences – *'Hold it there!'*
- Stand up and put open palms out
- Refer to your opening statement
- Take a break!
- The mediator may need to hold a separate meeting with the disruptive individual, describing their behaviour, its impact and the consequences for the meeting. The Mediator will need to speak to them, outlining what they need them to do to continue the mediation.

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For example;

*“Dave, you have interrupted Tanya many times, even when I have asked you to stop.”*

*“You said you were keen to work things out so that your team can get back to normal, so you must let him have a chance to finish.”*

*“I understand you’ve been frustrated by the interactions to date, but accusations aren’t going to help.”*

If the parties reach an agreement, the mediator will likely put its main provisions in writing and ask each side to sign the written summary of the agreement. If the parties didn’t reach an agreement, the mediator will help the parties determine whether it would be fruitful to meet again later or continue negotiations by phone.



**Learning Activity:**

Watch the “Joint Mediation Meeting Demo” course video;

Do you feel facilitative Mediation is suitable in this case?

Give the reasons for your answer.



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Write out your introduction to the joint mediation session.

If HR (the referring agent) had or required a post mediation report who would you have altered your introduction to include this? Be specific in what you would say.

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Identify the Positions, Interest and Needs of both Niamh and Ruth...

Identify 3 questions you could use to try and connect the parties and move them from their positions to the interests and needs.



### My notes on First Joint Meeting

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## Seeking a Potential Apology

Despite the potential, an apology is not the cure-all for difficult mediation cases. Sometimes an apology would be ineffective, or even inappropriate. Here are five factors that can help to decide if an apology should be sought in the mediation case.

- **Does a side have hurt feelings?**

If a side has hurt feelings, the mediator should at least ask the opposing side to think through the idea of apologising. Some purely corporate disputes do not have an emotional side, and in those cases, apologies are not relevant. Most disputes, however, do.

- **Is the opposing party actually sorry?**

In general, apologies are underused at mediation, sometimes they are, quite simply, inappropriate when the party does in fact not feel sorry for what happened — for example, when the one side of the party does not believe he/she is the one who caused harm— it may actually hurt the mediation cause if the party mumbles a clearly-insincere apology. Heartfelt apologies help, but casual, insincere ones may cause offence.

- **Can your party member make a sincere-sounding apology?**

It is important to consider if the party member has the “people skills” to communicate a sincere apology. If an apology comes across as insincere, it may backfire.

- **Has the defending party taken steps to make sure that the conduct will not happen again?**

Apologies are most effective when the person apologising can give a concrete explanation of what went wrong and what steps are being taken to make sure that it never happens again.

- **Is the hurt party going to be able to accept an apology?**

Mediations, where one party was so upset with the other that it did not even make sense to put them in the same room for the opening statement, will indicate the other side is not ready to accept an apology, it may not make sense to give one. Be careful, though, that you do not underestimate the power of a sincere apology when feelings run high.



### My notes on Seeking an Apology

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## Closing Mediation Agreements

The closing of a mediation process is an important final step. It is the last opportunity that the mediator has to ensure that all of the concerns and interests of the parties, including relationship issues, have been addressed. This can significantly impact the parties' substantive and psychological satisfaction with the process and impact their adherence to any resolution achieved.

A mediation process may close in three different ways:

- With agreement
- With partial agreement
- Without agreement

### With agreement

In concluding a mediation process where the parties have reached a resolution on all issues, it is important that the mediator ensures that the parties clearly understand the specific terms of the resolution arrived at. Time should be spent working through the details of the proposed solution to ensure the parties have a clear understanding of what is being agreed to and that it is achievable. The terms should be detailed using clear language and in a written agreement signed by the parties. Care must be taken to ensure that the parties are fully aware of the next steps required, the timelines and who bears responsibility for any actions to be taken.

If the parties will have an ongoing relationship, such as continuing to work together, the mediator must ensure that they have had a full opportunity to communicate openly and respectfully and that all opportunities to repair and restore the relationship have been provided throughout the process. The closing can be an opportune time to work through any final issues or concerns and rebuild trust between the parties.

It is important that the parties obtain psychological satisfaction and have a feeling of being heard and acknowledged in the process so that they may move forward from the conflict or dispute. Often during the mediation process, an apology may be important to a party. It is a party's own decision whether to apologise or, conversely, to forgive. However, if an apology is to be given, a mediator can assist the party in making the apology effective and understood by the other party. Reconciliation will allow them to interact more positively in the future.

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At the conclusion, the mediator should commend the parties for their genuine and good faith efforts at open communication. Further, the mediator should relate optimism that the agreement is positive and provide encouragement for their future interactions if their relationship is to continue.

In summary, in closing a successful mediation process, the mediator should ensure that the substantive, procedural and psychological or relational elements have been addressed. Further, cultural issues should be considered by the mediator throughout, particularly during the closing. There may be certain steps or formalities at the conclusion that are important to a party because of their cultural background.

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### Sample Mediation Agreement

**Date** \_\_\_\_\_

**Participants** \_\_\_\_\_ & \_\_\_\_\_

**Mediator** \_\_\_\_\_

The two participants feel that they had had a successful and rewarding dialogue and mutually agree with the following:-

#### Agreements

John accepts that Margaret is his manager and will show respect for her position from today by being on time for and positively contributing to all team meetings.

Margaret accepts that John is an important member of her team and from today will listen to his suggestions in full without interrupting him or making flippant remarks about his suggestions.

John will use Margaret's name in all discussions with colleagues and will cease using nicknames for her.

Margaret will ensure that all team meetings have a purpose and an agenda and will last no longer than one hour at a time.

John accepts that Margaret feels personally insulted by his telling blond jokes in her presence and will cease doing so immediately.

Margaret accepts that John's performance should be ranked as a 4 rather than a 1 and will rewrite his performance review form by the end of this week and will discuss it with John before submitting it to HR

Margaret will speak to HR this week and put it on record that John is a suitable candidate to be considered for promotion and she will get HR to confirm this with John by email or phone

This agreement is confidential and this document will not be shared with any other parties except HR who have funded the mediation process.

We agree that this is a full, fair and accurate description of our agreement

Signed \_\_\_\_\_ & \_\_\_\_\_



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## **Partial agreement**

If mediation is concluded with only partial resolution, the issues resolved should be clarified and understood and, if the parties are agreeable, a partial agreement should be set out in detail and signed by the parties. The mediator should then focus on and clarify what issues remain and encourage continued effort by the parties. Further options should be proposed to the parties, such as a further mediation session or an evaluative type of mediation. Thus the mediator should attempt to ensure that the momentum and progress made in the mediation is not lost.

Further, the mediator should acknowledge the parties for their efforts and the progress made in partially resolving the issues. The mediator should also express optimism that the remaining issues can be resolved and conclude the mediation in a positive, hopeful manner.

## **Without agreement**

If the parties were unable to reach a satisfactory resolution, the mediator should focus on and provide praise and encouragement for any constructive discussion and progress made. The mediator might again review with the parties their interests and provide some guidance around any issues for them to consider further. If genuine, a mediator should express optimism that the issues are resolvable and provide the parties with some of the various options available to them.<sup>5</sup>

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<sup>5</sup> "Closure of a Mediation - CRS Atlantic - Mediation, Arbitration ...." 27 Apr. 2016, <https://www.crsatlantic.com/closure-of-a-mediation/>. Accessed 25 Sep. 2020.



**Learning Activity:**

Based on your understanding of the case shown in the live demo's, list any potential blockers to a sustainable resolution, what would be likely to derail any agreement reached?

What questions would you ask in order to get Ruth and Niamh to think about the above derailers and discuss potential ways of overcoming them?

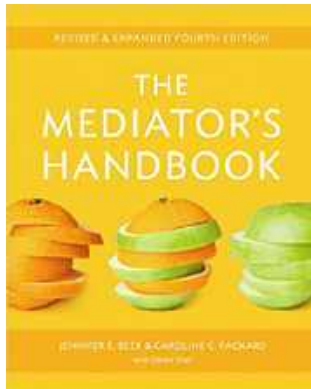
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Write out what you would say as your concluding comments for this mediation.



### My notes on Closing Mediation Agreements

## Further Reading and Resources

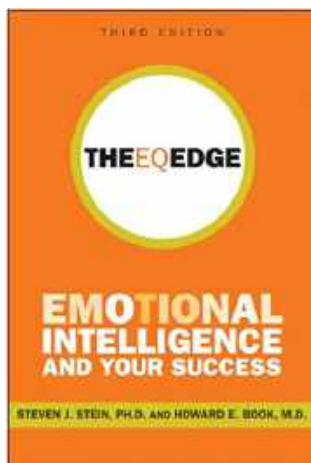


**Title:** The Mediator Handbook

**Author:** Jennifer E. Beer & Caroline C. Packard

**ISBN-10 :** 0865717222

**ISBN-13 :** 978-0865717220

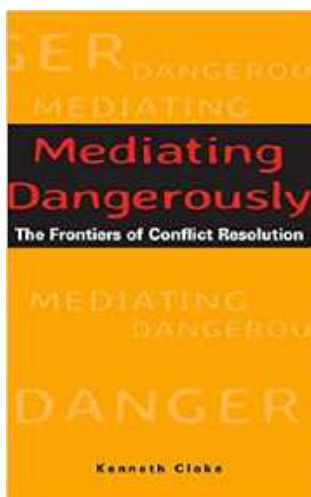


**Title:** The EQ Edge: Emotional Intelligence and Your Success

**Author:** Steven J. Stein, Howard E. B

**ISBN-13 :** 978-0470681619

**ISBN-10 :** 0470681616

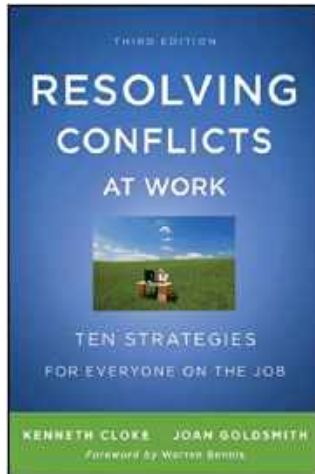


**Title:** Mediating Dangerously - The Frontiers of Conflict Resolution

**Author:** Kenneth Cloke

**ISBN-13:** 978-0787953560

**ISBN-10:** 0787953563



**Title:** Resolving Conflicts at Work: Ten Strategies for Everyone on the Job

**Author:** Kenneth Cloke, Joan Goldsmith

**ISBN-10 :** 0470922249

**ISBN-13 :** 978-0470922248

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# Appendix 1 - Thomas Kilman Conflict Mode Instrument





# Mediation

## QQI Level 6 6N4910

### Thomas Kilman Conflict Instrument

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## Instructions

Consider situations in which you find your wishes differing from those around you. How do you respond to these situations?

In the table you will find a wide range of statements, please circle the “A” or “B” to the statement which is relatable to your character of behaviour.

In many cases you may find neither “A” or “B” is typical of your characteristic or behaviour, nonetheless please select the response which you would most likely use.

## Conflict Mode Questionnaire

1	A	There are times when I let others take the responsibility for solving problems.
	B	Rather than negotiate the things we don't agree on, I try to stress the things we DO agree on.
2	A	I often try to find a compromise in situations.
	B	I attempt to deal with all of theirs and my own concerns.
3	A	I am usually firm at pursuing my goals.
	B	I might try to soothe the other's feelings and preserve the relationship.
4	A	I will try to find a compromise solution.
	B	I sometimes sacrifice my own wishes for the wishes of the other person
5	A	I constantly seek the other's help in working out a solution
	B	I try to do what's necessary to avoid useless tensions
6	A	I try to avoid causing unpleasantness for myself
	B	I try to win my position
7	A	I try to postpone the issue until I have had some time to think it over
	B	I give up on some points on exchange to benefit others
8	A	I am usually firm in pursuing my goals
	B	I attempt to get all concerns and issues immediately out in the open
9	A	I feel that differences are not always worth worrying about
	B	I make some effort to get my way
10	A	I am firm in pursuing my goals
	B	I try to find a compromising solution
11	A	I attempt to get all concerns and issues immediately out in the open

	B	I might try to soothe the other's feelings and preserve our relationship
12	A	I sometimes avoid taking positions which would create controversy
	B	I will let the other person have some of their points if they let me have some of mine
13	A	I often propose finding middle ground
	B	I will often press to get my points made
14	A	I will usually tell my ideas and then ask for others
	B	I try to show logic and benefits of my position
15	A	I might try to soothe other's feelings to preserve our relationship
	B	I try to do what's necessary to avoid tension
16	A	I try not to hurt others feelings
	B	I try to convince the other person of the merits of my position
17	A	I am usually firm at pursuing my goals
	B	I will let others have some of their positions and for me to have some of mine
18	A	If it makes the other person happy I might let them maintain their views
	B	I will only let them maintain their some of their positions if it means I can maintain some of mine
19	A	I attempt to get all concerns and issues out immediately in the open
	B	I try to postpone the issue until I have had some time to think it over
20	A	I attempt to immediately work through differences
	B	I try to find a fair combination of gains and losses for all
21	A	In approaching negotiations, I try to be considerate of the other person's wishes
	B	I always lean towards a direct discussed of the problem
	A	I try to find a position that is intermediate between mine and theirs

22	B	I always asset my wishes over others
23	A	I am very often concerned with satisfying everyone's wishes
	B	There are times when I have let others take responsibility for solving a problem
24	A	If the others position seems very important to them I will try to meet their wishes
	B	I try to get the other to settle for a compromise
25	A	I try to show others the logic and benefits of my position
	B	When approaching negotiations I try to be considerate of the other person's wishes
26	A	I tend to be the one to propose a middle ground
	B	I am nearly always concerned with meeting all our wishes
27	A	I sometimes avoid taking positions which may create controversy
	B	If it makes the other person happy I will let them maintain their views
28	A	I am usually firm on pursuing my own goals
	B	I usually seek the help of others in working out a solutions
29	A	I propose middle ground
	B	I feel that differences are not always worth worrying about
30	A	I try not to hurt others feelings
	B	I always share the problem with other people to work out the problem together

## Scoring

Circle the letters which correspond to the letter you circled on each item of the questionnaire and then add the total number to each column (each A or B = 1).

	Competing	Collaborating	Compromising	Avoiding	Accommodating
1	-	-	-	A	B
2	-	B	A	-	-
3	A	-	-	-	B
4	-	-	A	-	B
5	-	A	-	B	-
6	B	-	-	A	-
7	-	-	B	A	-
8	A	B	-	-	-
9	B	-	-	A	-
10	A	-	B	-	-
11	-	A	-	-	B
12	-	-	B	A	-
13	B	-	A	-	-
14	B	A	-	-	-
15	-	-	-	B	A
16	B	-	-	-	A
17	A	-	-	B	-
18	-	-	B	-	A
19	-	A	-	B	-
20	-	A	B	-	-

21	-	B	-	-	A
22	B	-	A	-	-
23	-	A	-	B	-
24	-	-	B	-	A
25	A	-	-	-	B
26	-	B	A	-	-
27	-	-	-	A	B
28	A	B	-	-	-
29	-	-	A	B	-
30	-	B	-	-	A
	Competing	Collaborating	Compromising	Avoiding	Accommodating
Totals					

The profile of scores indicated how you handle conflict as an individual depending on the conflicts of situations you face. Depending on the total for each mode there is a low and high level, 0-12 is low and 12+ is high.

---

## **Mode of Conflicts**

### **Competing**

Is assertiveness and unco-operativeness - as an individual you pursue your own concerns at the other person's expense. This is power orientated mode which you where you deem appropriate to win your own position. You employ standing up for your rights, defending a position which you believe to be correct and simply trying to win.

### **Accommodating**

Is an unassertive and cooperative mode. When accommodating an individual neglects their own concerns to satisfy the concerns of others, there is an element of self-sacrifice and obeying another person's orders when you would prefer not to or yielding to another person's point of view.

### **Avoiding**

Is an unassertive and uncooperative mode as the individual does not immediately pursue their own concerns or those of another person. By not addressing conflict and avoiding it takes the form of diplomatically sidestepping the issue and postponing until a better time or simply withdrawing from a threatening situation.

### **Collaborating**

Is both assertive and co-operative. Collaborating involves an attempt to work with another person to find some solution which fully satisfies the concerns of both parties. It means digging into an issue to identify the underlying concerns. Collaborating between two persons might take the form of exploring a disagreement to learn from each other's insights.

### **Compromising**

Is an intermediate in both assertiveness and cooperativeness. The objective is to find a mutually acceptable solution which partially satisfies both parties. It falls on the middle ground between competing and accommodating. Compromising gives up more than competing but is less accommodating. It addresses the issue more directly than avoiding but doesn't explore as much as collaborating. Compromising might mean splitting the difference, exchanging concessions or seeking a quick middle-ground position.



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## **Appendix 2 - Sample Questions Used By Mediators**

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## Mediation Style Questions

The following are samples of internalising questions which are designed to cause the disputee to stop, think and potentially move / shift position

1. Tell me why you are here and what you would like to achieve?
2. What words or outcome would you like to achieve today?
3. How do you think tomorrow's conversation might go?
4. How do you see this issue being best resolved?
5. Can you describe those values that you hold dear?
6. What would you say you both agree on?
7. What might your colleague not know about your perspective on this situation?
8. Is there a way you could both be right and how is that?
9. Can you imagine how the two of you might reach a better understanding and resolution of your positions?
10. Can you describe your relationship before this difference?
11. Is there anything else that you feel may be useful for me to know?
12. You have explained your position clearly. What do you think her position will be?
13. If that is what you want, what do you think he might want?
14. What might be grey areas in the position you are adopting?
15. If you get agreement at this mediation, what will it do for you?
16. Have you a request to make of him right now?
17. Is there anything else that you feel you need to say?
18. This may be uncomfortable for you but it might be helpful if you could tell us more about what happened and the effect it had on you
19. Tell me one thing you would like her to acknowledge you for?
20. Tell me something, an interest or a value, that you have in common?
21. What was she attempting to say to you in that statement?
22. What way do you want your life to be in six months?

- 
23. What would you like him to have done instead?
  24. Can you describe three things you can do to resolve the conflict?
  25. What relationship do you want or need to have with one another?
  26. Tell me something significant for which you respect her?
  27. In what ways do you feel responsible for resolving this difference?
  28. What has not been discussed that you feel might be important?
  29. Can you describe how you felt when that happened and why you felt that way?
  30. Is there something else that perhaps you are not yet telling us?
  31. Can you describe what happened in the lead up to this incident?
  32. If someone did that to you, what might they need?
  32. What did the other person say or do that particularly provoked you?
  33. What might have happened to cause her not to hear and understand you?
  34. Is there anything that either of you feel that you might like to apologise for at this time?
  35. What would you do differently if you had it to do over again?
  36. If you want things between you to be resolved in a mutually satisfactory way, what would that be and how might you facilitate that?
  37. How would you describe what you and the other person disagreed upon in that situation?
  38. On a scale of 1-10 how would you rate this conversation? What would have to happen for it to score a 10?
  39. What have each of you learnt from today's mediation?
  40. When going home and thinking about today's mediation meeting, what will you regret not having said?