

Mediation Skills

Course Introduction



Andrew Gibson

Course Objectives

- Understand key conflict resolution techniques
- To explore the dynamics of conflict
- To understand the key theories and principles of mediation and alternative dispute resolution
- To understand the process of mediation and its role in organisational process

Course Objectives

- To develop strategies for effective conflict management
- To develop core mediation skills
- To raise awareness of personal biases and assumptions and their significance in mediation / conflict management
- To consider the ethical dimensions of mediation
- Maximise the alternatives to litigation
- Gain practical mediation experience

Key Topics

- Introduction to Mediation & Conflict
- Ethics & Regulatory Framework
- Mediation Skills
- Models of Mediation
- Sustainable Resolutions

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Course Theme



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**Resolution to
conflict requires...**

Some good ideas!



**WHERE
GOOD IDEAS
COME FROM?**







JONATHAN'S COFFEE HOUSE or an Analysis of CHANGE ALLEY
 With a Group of Characters from the Life - *Inscribed to Jacob Henriques.*



To say that Old John (he that is now dead) was
 in a Time that a page out the City of London
 but he, in such being out of the Room
 He is Jonathan's head and pupil into the Room
 "As he" says the Devil - who's good Master Henry
 "I thought I should have you - Jonathan in the Way"

My Friend master Bull in a shape of a Quaker
 Will be Crowned the Wren who was lately a Quaker
 His Treasurer says in the form of a Jew
 He is a general apartment preparing for him
 With Counsel and Omnipotence both in debate
 As if they were holding the Rags of a State

Some Dutch he and for in abundance are standing
 While others Disposed from the Alley are walking
 Some in coats Old Dick and some with me in
 There's room for you all in the Kingdom below
 For sure he is a shame that such soft occupations
 Should suck the best Blood from the best of all Men
 Some more than Lane Court Street

Delicately Engraved by the late Mr. G. Kneller, and published by the Author, at the Sign of the Crown, in Pall Mall, London.

2 May 1765





**A single idea
can often be
dismissed as
impossible!**



If you don't ask the right questions, you don't get the right answers. A question asked in the right way often points to its own answer. Asking questions is the ABC of diagnosis. Only the inquiring mind solves problems.

- Edward Hodnett



Collaboration

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What is Mediation



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What is Mediation?

- Mediation is a process to resolve issues by agreement using an independent, trained and experienced mediator.
- 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.
- A mediator is one who is respectful, concerned, competent and objective working with the parties to help them find their resolution.

What is Mediation?

- A process to help find acceptable solutions which can be if required translated into a written agreement signed by both parties
- It is future focused
- Mediation respects both parties but does not act as a crutch

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.
- A legal process, not an adjudication process

Do not use Mediation...

- As a first solution
- There is a power imbalance
- Case within legal process
- One party is unresponsive ('fishing expedition')
- Criminal activity
- Right versus wrong case
- Parties lack resources to agree
- Arbitration is preferred e.g. construction industry

What is Arbitration...

- Arbitration act 2010
- Law – 8 June 2010
- UN
- Dispute Resolution
- International contracts include clause



What is Arbitration...

- You agree to use arbitration
- You agree on the arbitrator
- You present the case
- 'Fair hearing'
- Confidential – no onlookers or mec



What is Arbitration...

- Can be slow
- Costs depend on type of involvement
- Decision made – binding or non-binding
- If binding – Legal and no appeal

Benefits of Mediation...

- Saves Time
- Low Cost
- Voluntary
- Confidential – away from the public eye
- Sustainable because parties come to resolution jointly
- Parties are in control of the outcome
- Normal dialogue not legal jargon

Benefits of Mediation...

- Customised agreements
- Parties learn in the process
- Process is flexible and creative
- Not prejudicial
- Respectful Dialogue
- Both sides 'win'



Compared to Litigation...

- Should be a final quest for justice
- Expensive
- Slow
- Stressing
- Public
- Adversarial
- You are an onlooker



Principles of Mediation...

- Voluntary
- Non-prejudicial
- Respectful engagement
- Parties work towards their resolution
- Mediator objective, independent, non-judgmental and facilitative

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Why Mediation,
Why Now?



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The Push for Mediation

- EU Directive
- McCarthy Report
- New Court Rules
- LRC Report
- Draft Mediation Bill 2010
- EU Communities (Mediation) Regulations 2011
- Mediation Act 2017



Mediation Bill 2017 - Ireland

- 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;

Mediation Bill 2017 - Ireland

- 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 if the parties, and following the commencement of proceedings, invite the parties to consider mediation as a means of resolving the dispute;
- Provide for the suspension of court proceedings in such cases to facilitate the mediation process;

Mediation Bill 2017 - Ireland

- 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;

Mediation Bill 2017 - Ireland

- Provide that the costs of mediation must be reasonable and proportionate and not linked to the outcome of the process;
- Make specific provision for the involvement of children in the mediation in family law disputes;
- Provide for the introduction of codes of practice for the conduct of mediation by qualified mediators;

Mediation?

“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



Number 27 of 2017

MEDIATION ACT 2017

**Act Signed into Law
by the President
– 2nd October 2017**

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Workplace Mediation



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Cost of unresolved workplace conflict

- Reduced Collaboration
- Poor decision making
- Lowered job motivation
- Absenteeism
- Increased sabotage
- Loss of skilled employees
- Toxic workplace environment
- Reduced productivity





Context of Workplace Conflict

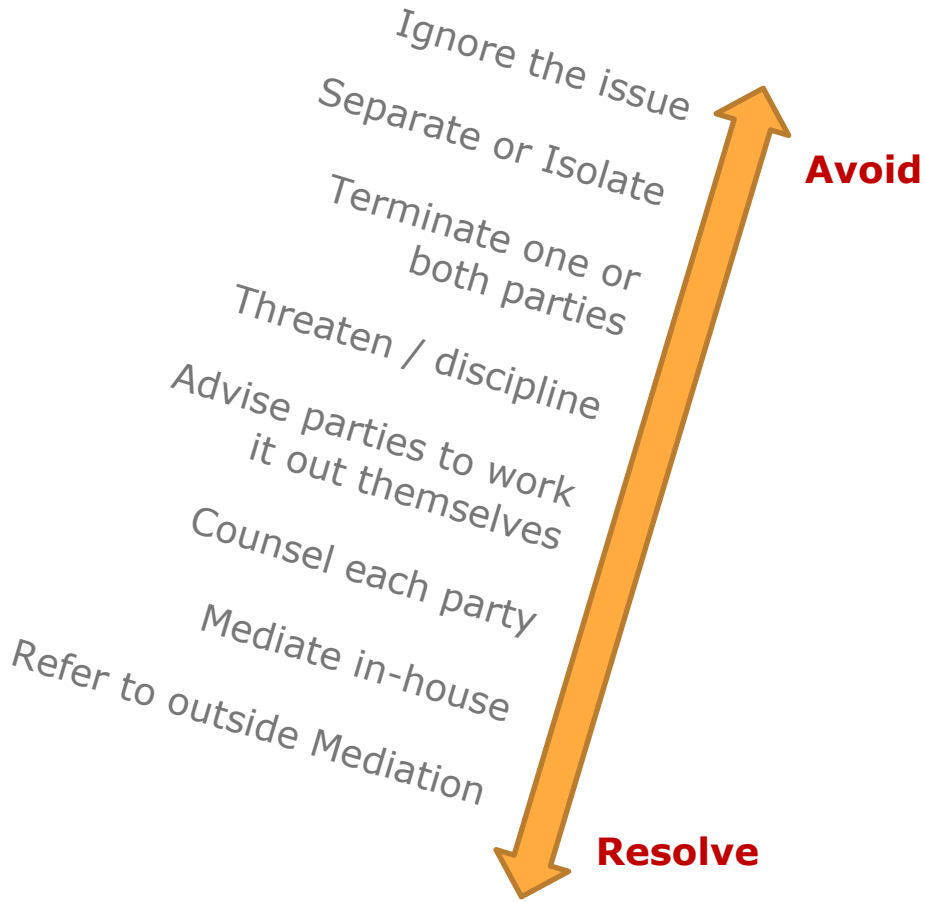
**Manager vs
Employee**

**Employee vs
Employee**

**Employee vs
Customer**

Conflict not always a bad thing...

- Provides clarity to Issues
- Opens our mind to new understandings and opportunities
- Enhance relationships
- Provide a feeling of being valued and understood
- Increased confidence
- Stronger team culture
- Heightened job motivation / performance



Options...

Benefits of workplace mediation...

- Reduce costs
- Confidence in the process
- Improves productivity
- Better communication process
- Builds positive workplace relationships
- Enables leadership role for supervisors / managers

Legal Basis for mediation in the workplace...

- Workplace Relations Commission (WRC) Established 2015
- Workplace Relations Act of 2015
- Offer and promote a workplace mediation service

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Understanding Conflict



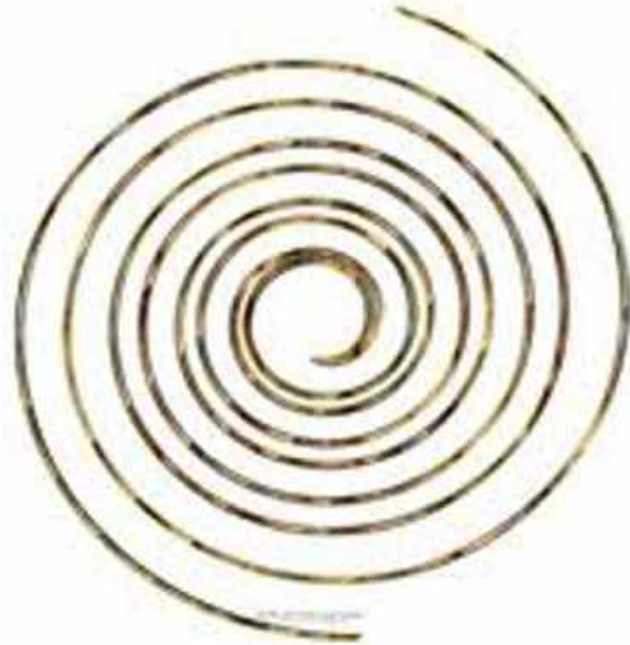
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**How you
understand
Conflict will guide
the way you
mediate!**

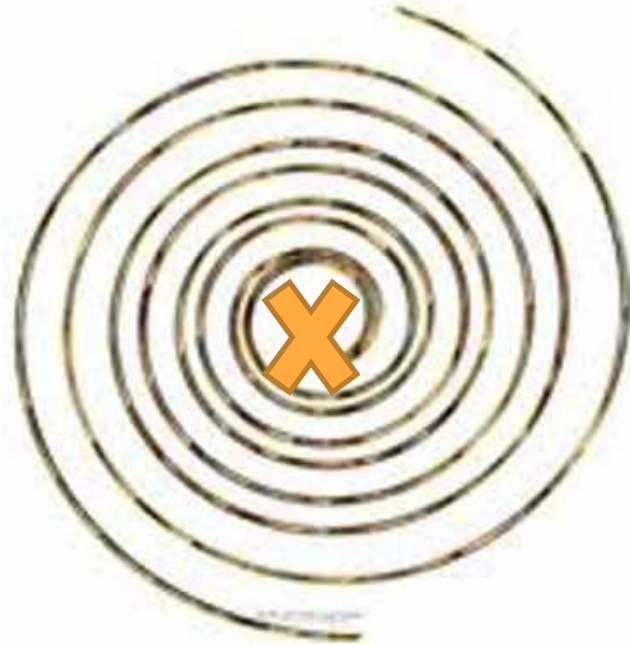




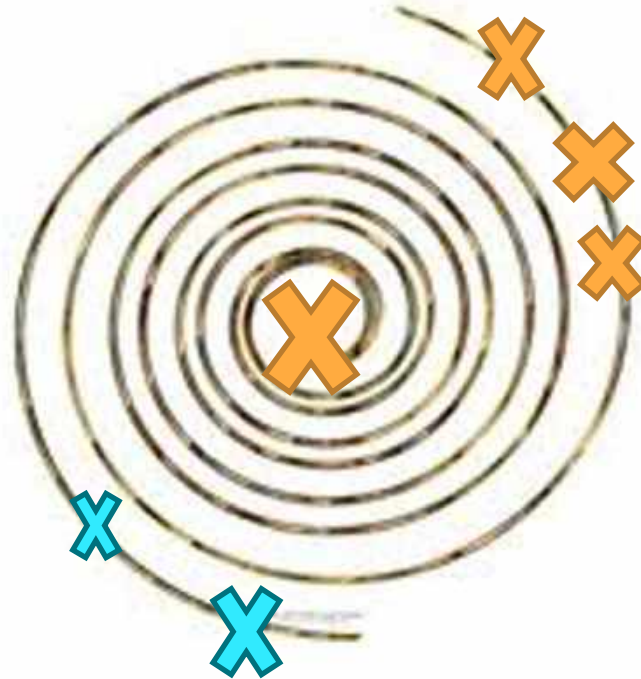
The Conflict Spiral



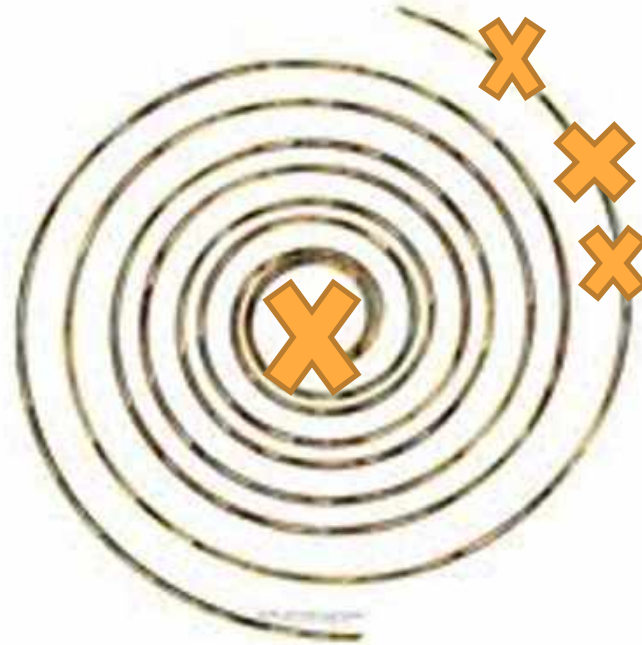
The Conflict Spiral



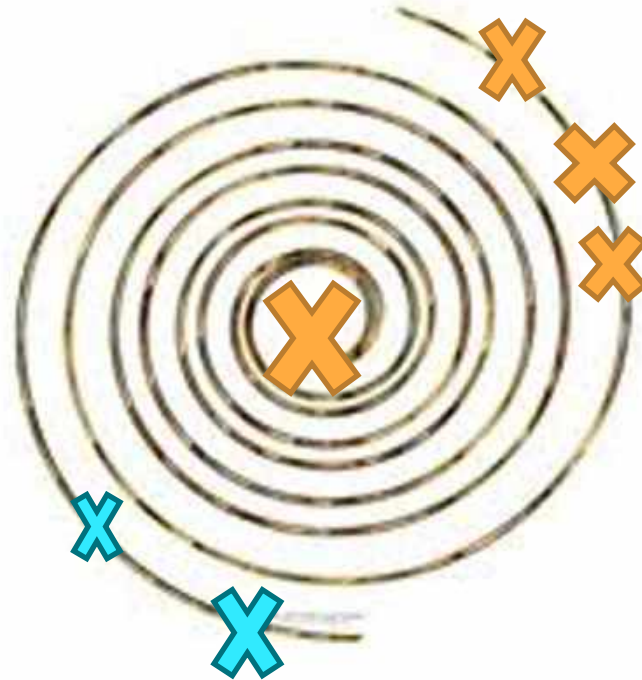
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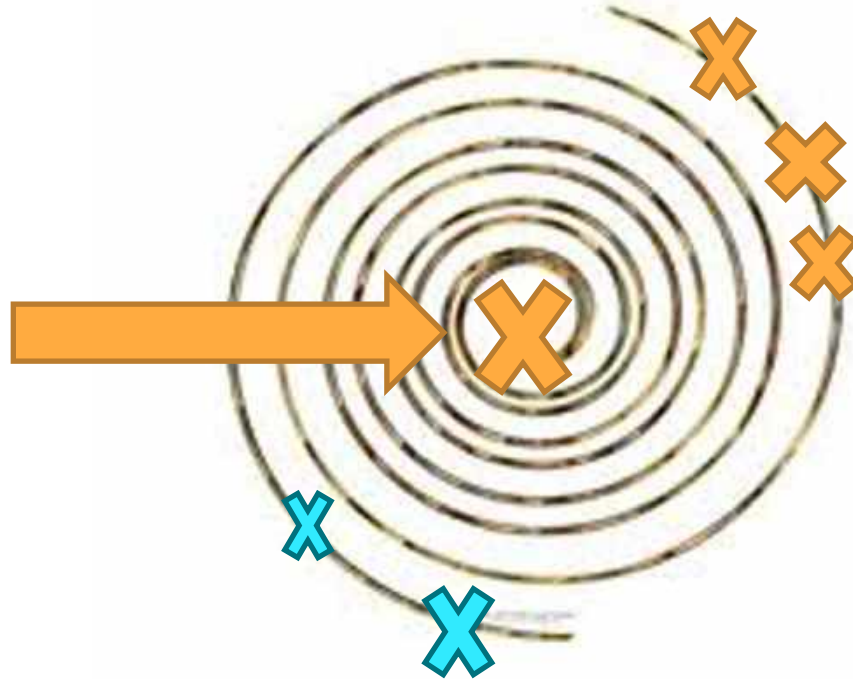
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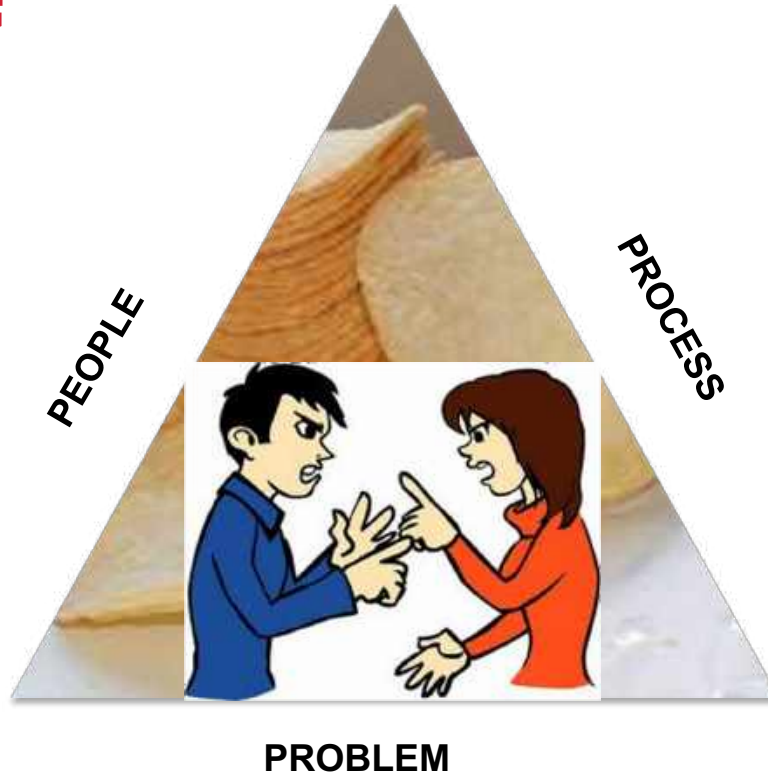
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The Conflict Spiral

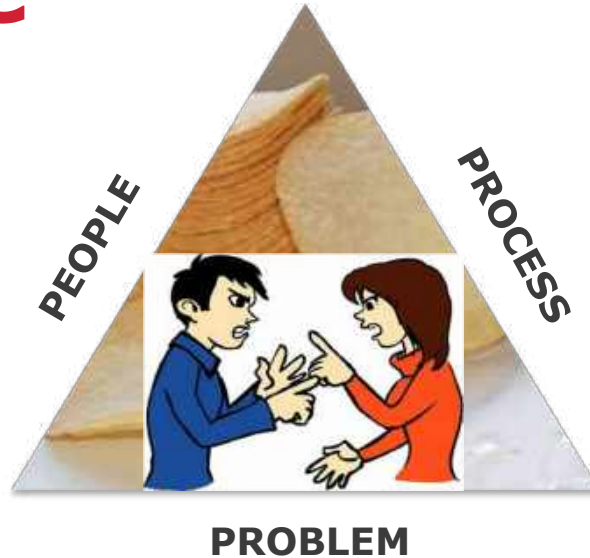


Conflict Triangle



Conflict Triangle

- Past history
- Values
- Behaviors
- Emotions
- Abilities
- Personalities



- How people communicate issues and feelings
- Structures, Systems & Procedures
- Jobs & Roles

- Facts / Positions – Interests - Needs
- Issues
- Consequences of events
- Consequences of outcomes

How does conflict make you feel?

Questions we should all personally ask ourselves...

- Where is there conflict in my life or work?
- What effect does conflict have on me and on those around me?
- How do others deal with it?
- What could I or others do differently?
- How could I use mediation principles in my daily interactions?

Both sides of conflict!

Natural

Inevitable

Necessary



Don't ask for help

To say we are in conflict is to admit a failure!

Attention!



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

Its is our choice to...

Deal
Deny
Dump

Formal Layer
Governance / ADR /
Mediation Experts / Legal

**Tip of
the
iceberg**



Informal Layer
Peer, Manager, or
External Mediation using
Training or Coaching to assist

Automatic Layer
Normal Everyday Conflict Management
& Prevention skills / Ordinary Social Skills



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Emotional Intelligence



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Self awareness is key!



He who knows the universe and does not know himself, know nothing

- Jean De La Fontaine, 1679



Self awareness is key!

The prime derailleur to top executives:

Lack of impulse Control

- Daniel Goleman

What is Emotional Self Awareness?



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 are having on others around you

-Bar-on Emotional Quotient Inventory Technical Manual, 1997

33% are
Related to cognitive
Or technical skills

I
Q

E

Q

67% are
Emotional Intelligence
Competencies

(Statistics based on data from Goleman & Hay McBer)



BarOn Emotional Quotient Inventory



EQ-i^{2.0}

assess. predict. perform.



EQ Framework for Mediation



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Conflict Management



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How does conflict make you feel?

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- Use multiple lines if title is long
- Left align title

“ Most conflicts take place beneath the surface, well below the superficial topics over which people are fighting. They are often hidden from their conscious awareness!

Ken Cloke , 2006



PIN Model

Positions

*What we say
we want*

Interests

What we really want

Needs

*What we really need
(conscious/unconscious)*

Interests & Needs – Not the same thing!

- Interests are things that people move towards because they give you pleasure
- Needs are things the absence of which people try to avoid because it causes pain

INTERESTS Lead – NEEDS Drive

INTERESTS are Perceived – NEEDS are Felt

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Conflict Interventions



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Why Does EQ Matter?

The prime derailleur to top executives:

Lack of impulse Control

- Daniel Goleman

Attention!



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

Its is our choice to...

Deal
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4 C's Model

- Containment
- Conciliation
- Collaboration
- Confrontation

Containment

- Keep a lid on things
- Heading off at the pass
- Keeping everyone happy
- Avoiding issue coming to a head
- Constructing a context that is never 'felt' as a issue

Conciliation

- Give something, making it easier for the 'other'
- Better give in on the battle to keep a handle on the war
- Working out what the person / interest group needs and giving them as much as is required to keep them appraised

Collaboration

- Willingness on both sides to find a better solution
- More than a negotiation – pooling approaches to make it better all round
- Ability to care about the needs of the other and be assertive about one's own

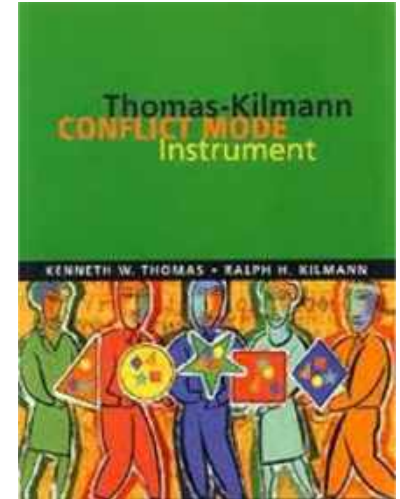
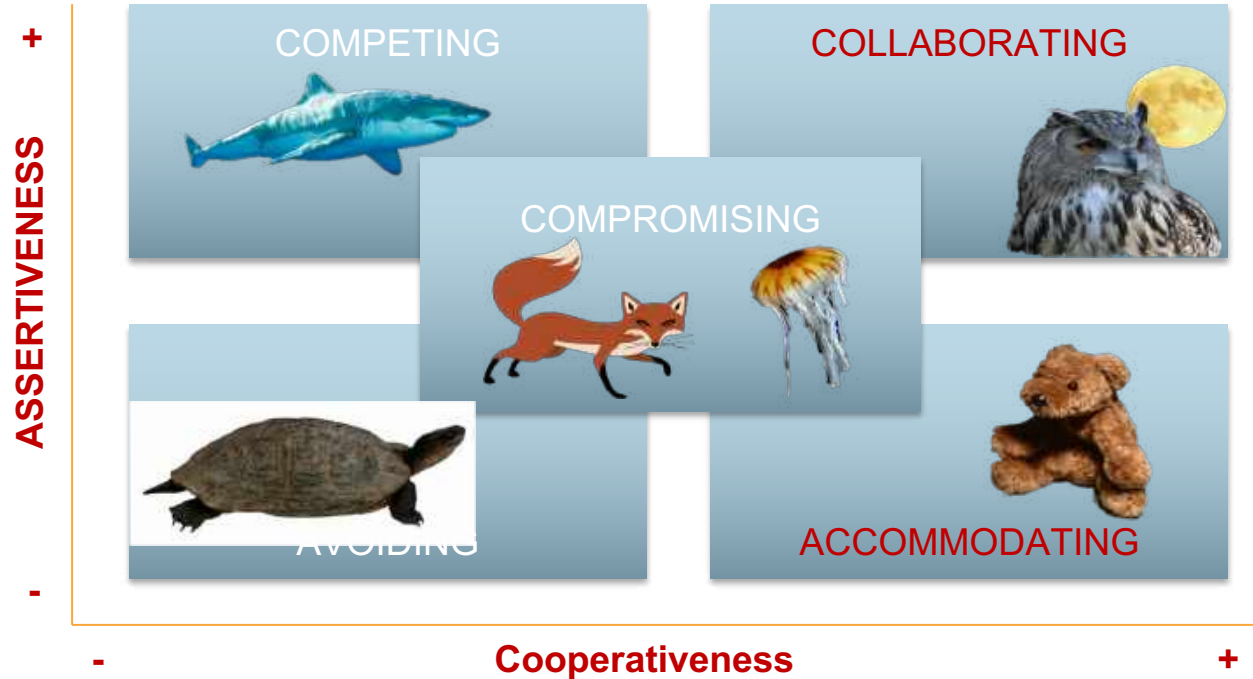
Confrontation

- Dealing head on with the person & issue
- Too much being sacrificed in avoiding the issue
- Come to the end of the line
- It's the only approach that is really respected by some
- The air needs to be cleared

Conflict Approaches...

- Understanding your own conflict style...
- Ability to work with other styles...
- Each Style has its own strengths and challenges... None perfect...
- Know what is healthy conflict and unhealthy conflict...
- Negative conflict – make it work for you, for your workplace
- Thomas Kilmann Instrument

Thomas Kilmann Instrument (TKI)



Persona in conflicts

- Compete – Win / Lose
- Compromise – Split the difference
- Avoiding – What Conflict?
- Accommodating – I don't mind
- Collaborate – Win-Win

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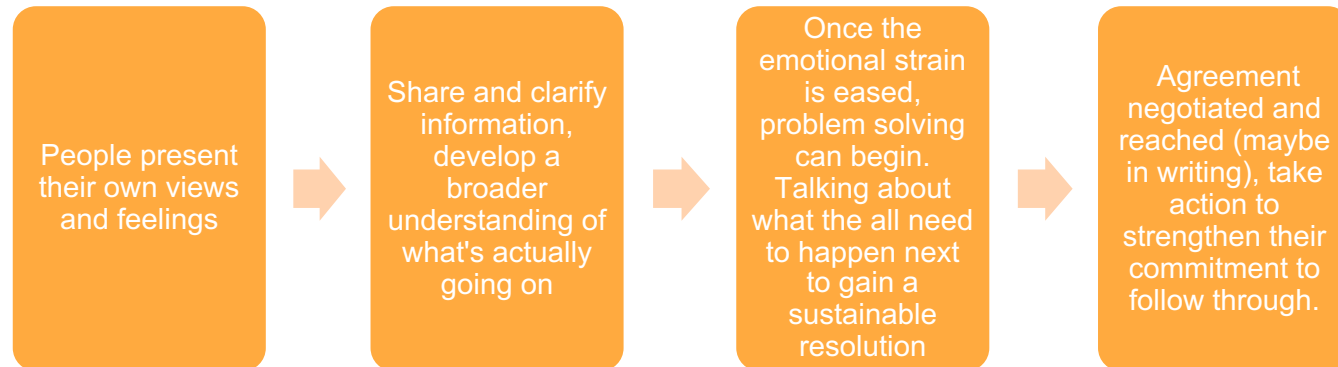
Mediation Model



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The path to resolution...

- Whether a mediation take 1 session, 30 minutes long or dozens of sessions over multiple interventions over years, the path to resolution through mediation follows a predictable route...



Why is the path to resolution so predictable?

- The mediation process is organic – it follows a pattern humans instinctively do when given the right context in which to resolve conflict collectively.
- This does not mean every mediation will be the same! Culture, personality and context will flavour each intervention.
- The process may also be messy and reiterative – but these 4 elements are essential for a sustainable resolution.

Structure?

- Why is a structured process needed?
- How rigid should the process be?

Structure

Stage 1: Exploring the Situation



Stage 2: Reaching Resolution



Classic Mediation Model?



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Who makes a
good mediator



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Who makes a good mediator?

Different disputes require different approaches – different mediator styles!

Mediator generally come from many different backgrounds

- Coaches
- Clergy
- Managers / Supervisors
- Politicians
- Principles / Teachers
- Social Workers
- Parents
- Police

It is worth noting...

Some disputes require specialist expertise and sector knowledge!

Professional Mediators tend to specialise in certain fields of mediation and stick to specific style of mediation.

Certain fields of mediation require specialist training / qualifications and licencing.

Fields of practice...

- Family mediation
- Separating Couples
- Debt
- Elder
- Workplace
- Corporate
- Community
- Consumer
- Education / School
- Employment
- Insurance
- Landlord Tenant

How do people choose a Mediator?

- Recommendation
- Mediator websites
- Industry sector professional bodies
- Professional profiles from certifying bodies

A mediator must be acceptable to both parties!



What criteria should a mediator meet?

The 2017 legislation for Ireland introduced an obligation on mediators to provide the parties with information relating to 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**
- **Empathetic, without judgment**

Important...



Low need for recognition, credit, and your own way!

Role of the Mediator

- Facilitative Mediation Style
- Transformative Mediation Style
- Evaluative Mediation Style
- Caucus or Shuttle Mediation

What is Co-Mediation?

Two heads are better than one!

A team can reflect participants' various identities and backgrounds

- Co-Mediation gives you time to think
- Greater flexibility – different personality
- Different race, gender, age, generation, class or culture
- Learn different approaches
- Gain feedback



What is Co-Mediation?

Communication is key...

- Divide tasks
- Discuss mediation styles – strengths and weaknesses
- Logistics – seating, separate meetings
- Who takes the lead
- Potential difficulties

Breaking for separate side discussions

- Gives time to cool off
- Hear what a shy or fearful person has to say
- Help people think through what they want
- Rehearse how they might bring up a touchy point
- Show more caring than you can in the room

Breaking for separate side discussions

- Receive private information
- Be a sounding board
- Discuss the various consequences of various choices
- Look at offers they might want to make
- Test durability of their agreement

Co-Mediation can help!

- Splitting up so each mediator talks to one of the parties may save time.
- If one party seems in no condition to be left alone.
- One party is on the verge of walking out
- Meeting individual parties together can remove any accusation of bias or inappropriate behaviour by the mediator.
- No implication that each mediator is assigned to one party

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Mediation Skills

Skills required of a Mediator (Part 1)



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Conflict Triggers...

- Pushed into negative emotions
- Feeling of being devalued or diminished
- Threat to social acceptance, esteem & status

A mediator must be able to identify the conflict triggers and help the participants identify a way forward

As a mediator you will also have conflict triggers, you must be able to control them!

Supporting the People, not just the process?

- As a mediator you need to support 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 in to the dispute.
- However, the mediator must provide active support!

Impartial does not mean indifferent?

- Listen carefully with empathy
- Be patient, unhurried, accepting
- Never make a participant 'wrong'
- Reflect back emotion, but do not press for it.
- Prevent hostile exchanges
- Do not try to persuade them of ANYTHING!

Listening

If you can't listen – you can't mediate!

What makes for a good listener?

- Respect the other
- Interested
- Here for you
- Show what you say is important
- Shows empathy when needed



What is the difference between listening & hearing?

Listening

What is involved in active 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

5 Levels of Listening

Level ONE : Ignoring

■ Hearing but ignoring

When should a mediator use this level of listening?

5 Levels of Listening

Level TWO : Pretending

- Giving all the right body language – but our focus is on ourselves
- Listen to the words, but with a focus on what it means to us
- Me, my judgements, My expectation, My interpretations

When should a mediator use this level of listening?

5 Levels of Listening

Level THREE : Selective

- Speed listening – pick up key words attentively and ignoring others

When should a mediator use this level of listening?

5 Levels of Listening

Level FOUR : Attentive

- Full concentration
- Listening to evaluate / sharp focus on the other person
- Listen to more than words – tone, pace, feelings
- Listen to the reaction to your response

When should a mediator use this level of listening?

5 Levels of Listening

Level FIVE : Empathic

- Get inside another person's frame of reference
- See the world they way they see it – you don't need to agree with it!
- You deeply understand them

When should a mediator use this level of listening?

Poor Listening Skills...

- Fact only listening
- Pre-judgement
- Mind wandering
- Shifting the focus
- Interrupting
- Thinking about your next response

Two kinds of listening skills...

Attending Skills

- Eye contact
- Posture
- Gestures
- Non-distracting environment

Responding Skills

- Reflective listening
- Door openers
- Summarising
- Empathy

Listen to what is not being said...





WIAT

Why Am I Talking

Hearing the spoken & unspoken...

- Words & Sentences
- Body language
- Gaps
- Hesitations
- Rushes

Take me through that again please!

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Mediation Skills

Skills required of a Mediator (Part 2)



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Hearing the spoken & unspoken...

- Words & Sentences
- Body language
- Gaps
- Hesitations
- Rushes

Take me through that again please!

Hearing Apology & Praise...

- It shouldn't have happened!
- She's OK at her job!

The Potential Apology?

- Participant A: It shouldn't have happened...
- Mediator: So are you saying that you regret that it happened?
- Participant A: I suppose so... Yes!
- Mediator: Are you able to apologies for it happening?
- Participant A: Well... Sorry!!!

The Potential Praise?

- Participant A: She's OK at her Job!
- Mediator: You seem to be saying Mary is good at her work?
- Participant A: I suppose so... Yes!
- Mediator: Can you tell Mary how you admire her work?

Questions?

Closed Questions – Establish Facts

- Did you collect the children?
- Are you comfortable?
- Would you like a drink?

Minimise the use of closed questions in Mediation – Why?

Questions?

Open Questions – Establish Feeling and Understanding

- Tell us your story
- Describe what happened that afternoon
- Explain how you felt
- Help us to understand what you experienced
- Talk to us about your job

Develop your skill in using open questioning techniques!

Questions?

Probing Questions – Establish reality and detail

- Can you tell us your story, from your perspective?
- Tell us a bit more about the raised voices?
- So what exactly was said and done?

**Use to dig deep – when probing you must encourage
and support in an unbiased way!**

Questions?

Triad Questions – Establish a different perspective

Q. Describe what happened that afternoon

Jim Insulted me in from of the team!

Q. And how might Jim have perceived It?

Jim probably thought I was being unhelpful

Q. And how might a visitor have perceived it?

Visitor might have thought we were petty

Questions?

'W' Questions – Establish reality and detail

- What (1st)
- Who
- Where
- When
- Why (blame, guilt...)

Don't ask why...

- When someone is upset or angry, don't ask "why did you do that"?
- It pushes them into a defensive position of having to give a reason
- Ask them to "tell you more' s as to help you understand **what** happened
- The participants will not hear you until the Know / Feel you have heard them!

Questions?

'EE' Questions – Evidence & Emotion

Sue left my desk a complete mess!

Describe the way the desk was left?

How did the state of the desk make you feel?

I was left out of management meetings!

How did you feel about being left out of meetings?

Questions?

'EE' Questions – Evidence & Emotion

Then I heard that I had not got the job!

What was the impact on you when you heard this?

She has not spoken to me this year!

Can you describe your feelings at not being spoken to by Cira this year?

Questions?

'EE' Questions – Evidence & Emotion

He called me a pathetic plonker!

What effect did this statement have on you?

Silence!

**Mediators must be comfortable
with silence...**

- Brings out the unplanned
- Creates space for thinking / reassessing
- Calms
- Can intimidate!!!

Body Language!

- Disputants begin closed – arms, legs, face, eyes
- Mediator open – hands, face body
- Mediator – leans in, mutual eye contact. Nodding
- Watch for more and more open body language

- Stop any aggressive, loud, pointing, fists...

Discovering our "wrong reflexes"!

Intentional Behaviours:

- Avoiding
- Withdrawing
- Withholding information
- Silent treatment
- Threatening
- Getting others to take sides
- Shouting
- Hostile gestures

Unintentional Behaviours:

- Facial Expressions
- Agitation
- Body posture
- fidgeting
- perspiring

Mirroring!

- Not mimicking
- Like attracts like!
- When your clients unconscious observes something the same or with a lot of similarity he/she automatically feels more willing to be open
- Body language, linguistics & berating are used in mirroring

Develop the art of mirroring in you mediation skill set!

Reframing!

- Take the information that the client has revealed and reconstructing it in a positive and realistic light
- If we change our frame of reference by looking at the same situation from a different point of view, we can change the way we respond to life

Clarifying!

- Removing ambiguity and mistruths
- Being specific, clear and detailed

- Use clarifying questions:

What does it mean to you?

How do you define?

What experience does... if relate to?

What do you perceive about?

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, feeling 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!

Facilitative Mediation!

- Their dispute
 - They decide
 - They agree
-
- Mediator does not suggest, recommend, advise
 - Mediator is impartial
 - Mediator owns the process – disputants own the decisions

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EXPERTS

Mediation Skills

Undertaking a Mediation



Andrew Gibson

How do people find a mediator?

- Advertising / Web Search
- Listing on Mediation Institutions Listing
- Referrals through institutions: Courts, School personnel, HR departments, and social service agencies.
- Solicitor Initiated, parties lawyers may decide a case is now ready for mediation. Layers select a mediator from a predetermined list or set of criteria.

How do people find a mediator?

- Required by contract – some business contracts require mediation be used before arbitration or litigation. A pre-approved mediator may be listed in the contract.
- Standard practice in an industry or within an organisation – HR may have a pre approved list of mediators that the organisation will use in handling internal employee disputes.

Is Mediation always Voluntary?

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

Is Mediation always Voluntary?

- 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...

Is Mediation always Voluntary?

- 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?

Initial contact from a referral source...

Questions that you will need an answer to:

- 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. Fees (if relevant)
- Are there proceedings or charges pending?
- What further involvement does the referring source want to have?

Direct Contact...

- One of the disputants in conflict
- A friend of a disputing party

Disputants may seek out a professional mediator from the private sector, non-profit, or government backed mediation service.

Initial Conversation

- This is designed to help you and the participants decide whether to mediate or not.
- Two step process:
 1. do they want to participate?
 2. Preparing them for mediation

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 the 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 side agree and you feel happy to proceed arrange a pre-mediation meeting with both sides independently.

When approaching the other parties

- Non-initiating parties may reject the invitation to mediate.
- 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 tell them about the dispute, don't tell them what you have already been told.
- Be prepared for a denial of any issue, show empathy

Suitability for 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 there conflict fatigue?
- What has been the history of the parties?

Suitability for mediation

- 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?

Do not use Mediation...

- As a first solution
- Power imbalance
- Case within legal process
- One party is unresponsive ('fishing expedition')
- Criminal activity
- Right vs wrong case
- Parties lack resources to agree
- Arbitration is preferred

Bullying

- Accidental
- Vexatious
- Serial / predatory / deliberate / systematic

- Victim – shattered, incoherent & loss of confidence

Options:

Conflict Coaching for the victim prior to any mediation.

If you have a connection to the parties...

- Can you be fair and impartial?
- Will the parties SEE you as fair and impartial?
- You must be upfront with everyone about any connection you have with any participant.

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Mediation Skills

Pre Mediation Meetings



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Classic Mediation Model?



Pre Meeting

- Mediator and one disputant
- Explain mediation process
- Tell me your story – anything vital I need to know
- Question and outlandish statement
 - I'll never speak to her again
- Sign Agreement

Pre Meeting Location & Timings

- A place that does not belong to one party
- Away from the public eye
- The mediators turf
- Comfortable environment
- Leave time between pre mediation meetings – participants don't cross paths.

Mediation Participation Agreement

- Many mediators prepare to discuss a mediation participation agreement during pre-mediation. This helps to make sure everyone has the some understanding of:

Roles

Conditions

Logistics

Roles

- Confirm everyone's understanding of the mediation scope, their shared goal for mediation and their roles as participants
- Review your role as a mediator, including what you mean by impartial and neutral. You are here to facilitate the mediation in consultation with them. You will not recommend or evaluate solutions or fault, or give legal advice. They are recommended to seek legal advice if they think it is advisable.

Roles

- Disclose any connections you have with the subject matter or parties
- List who will be present at the mediation, including solicitors or union representatives and clarify their role as observers.
- Check that their expectations of you and of themselves are realistic.

Conditions

- Information each side promises to disclose, such as finances
- Confidentiality – who can communicate what to whom outside the room; policy on recording and taking notes.
- What topics will and won't be disclosed at the table.
- How and when they and you can withdraw from the process
- Commitment not to subpoena you or any mediation documents in any legal process
- Liability releases that protect you as a mediator

Conditions

- Place, accessibility, any special needs
- Dates and times (schedule two sessions up front and agree a firm start and end time)
- Fees (payment arrangements)
- Forms (if you have any specific to your mediation practice)

End of the Pre Meeting

- Don't guarantee anything – you need to speak with both parties before you can agree to a mediation.
- Send out an agreement based on the pre-meeting for both parties to sign before going into a joint session

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Mediation Skills

Joint Meeting
Environment



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Classic Mediation Model?



Personal Preparation

- What need to be done by the mediator before the mediation session?
- What materials or equipment will you need for the session?

Preparing Yourself

- Minimise your own stress – you need full concentration on the session
- Remove distractions pre-session
- Be rested
- Plan how you would like to open
- Give yourself plenty of time – Parties often arrive 10-15 min early, know how you will handle this!

Co-Mediation Preparation

- Prepare your mind to use 'we' - naturally and genuinely
- Divide tasks
 - Who will open
 - timekeeping
 - recording on the board or chart
 - writing up an agreement (if required)
 - Who will take the lead

Room Setup

- Set the stage – Waiting area, main room, secondary room
- If you have never used the venue before, what will you have to consider?
 - Arrive extra early
 - Familiarise yourself with the building, facilities and parking arrangements
 - Check-in with facilities staff
 - Make sure your secondary space is also suitable

Organise your materials & supplies

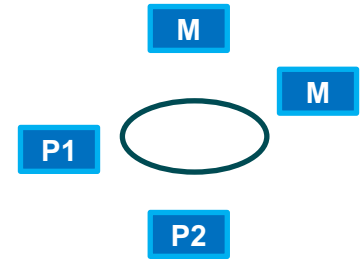
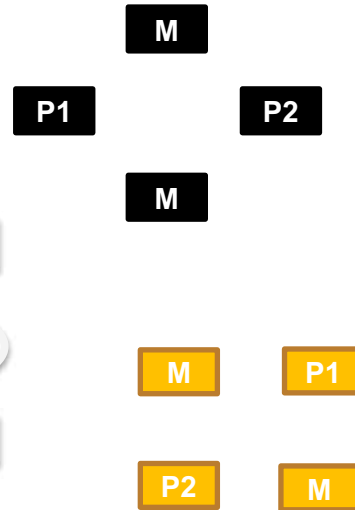
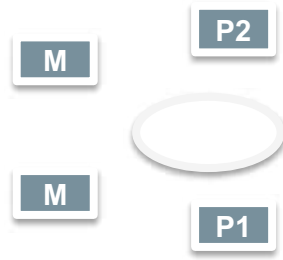
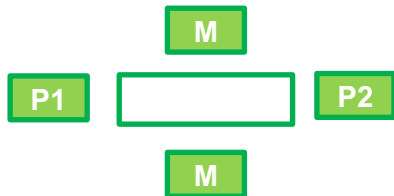
- Pens and paper – for any agreements
- Flipchart and markers
- Laptop and large display if needed
- Any material submissions from the parties required
- Water

Room Layout

- What mood do you want to create – room setup goes a long way to create the right mood
- Mood required will often depend on the subject matter, type of dispute, number of people involved.

Room Layout

- Private & quiet
- Sit in a triangle – solo mediation
- Mediator equidistant
- No participants cornered
- Avoid tables



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Mediation Skills

1st Joint Meeting



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Classic Mediation Model?



Greeting the parties

- Great by name
- Avoid suspicions of bias
- Avoid lively chatting with any given party
- Keep somewhat of a physical distance
- Bring the parties into the meditation space at the same time

Introductions

- Welcome – warmth & affirm courage
- Confirm names again
- Voluntary & confidential
- Purpose of mediation – for you to attempt...
- Mediator – impartial facilitator
- Process – give reminders
- Note emergency exits, toilets, water...

Introductions

- Build a connection
- Talk with the parties, not at the parties
- Create a safe feeling with positivity that is reflecting reality

- DO NOT MAKE PROMISES ABOUT ANY OUTCOME!

Address unspoken questions

- Will the mediator really be impartial?
- Is the mediator capable of dealing with the parties?
- Will I really be listened to?
- Will I be forced to give in and agree?
- Is this just a fishing exercise by the other side?

Ground Rules

- Mutual respect
- At the start we please address each other through the mediator
- Want to be called – use names, not he / she / you!
- No insults, aggression, name calling, language
- Listen without interrupting – notes OK, BUT
- Time out, caucus session if required

Practical Matters and Logistics

- Confirm Timeframe for today's session
- Use of electronic devices
- Recording of the session
- Time to

Confidentiality

- You will keep all information confidential
- Inform the parties what notes and records your both keep and discard
- Reminders about any required reports
- Reminders about any mandatory reporting
- Reminders on you policy of not testifying

Confirm willingness to go ahead!

- Any questions
- Possible adjustments to facilitate the parties if needed
- Ask each side if they willing to give it a try?

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Mediation Skills

Storytelling



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Classic Mediation Model?



What is storytelling?

- Listening to each others perspective
- Chance to speak and to listen
- Chance to relate their experience, speak from their perspective, describe their concerns, express their feelings, make their claims

Mediators Role...

- Ask open-ended questions

- Explain how storytelling works

“We will ask listeners to respect each person’s turn to speak even though it may be hard to listen without responding right away”

“ We will as the speaker to tell us the situation from your own viewpoint”

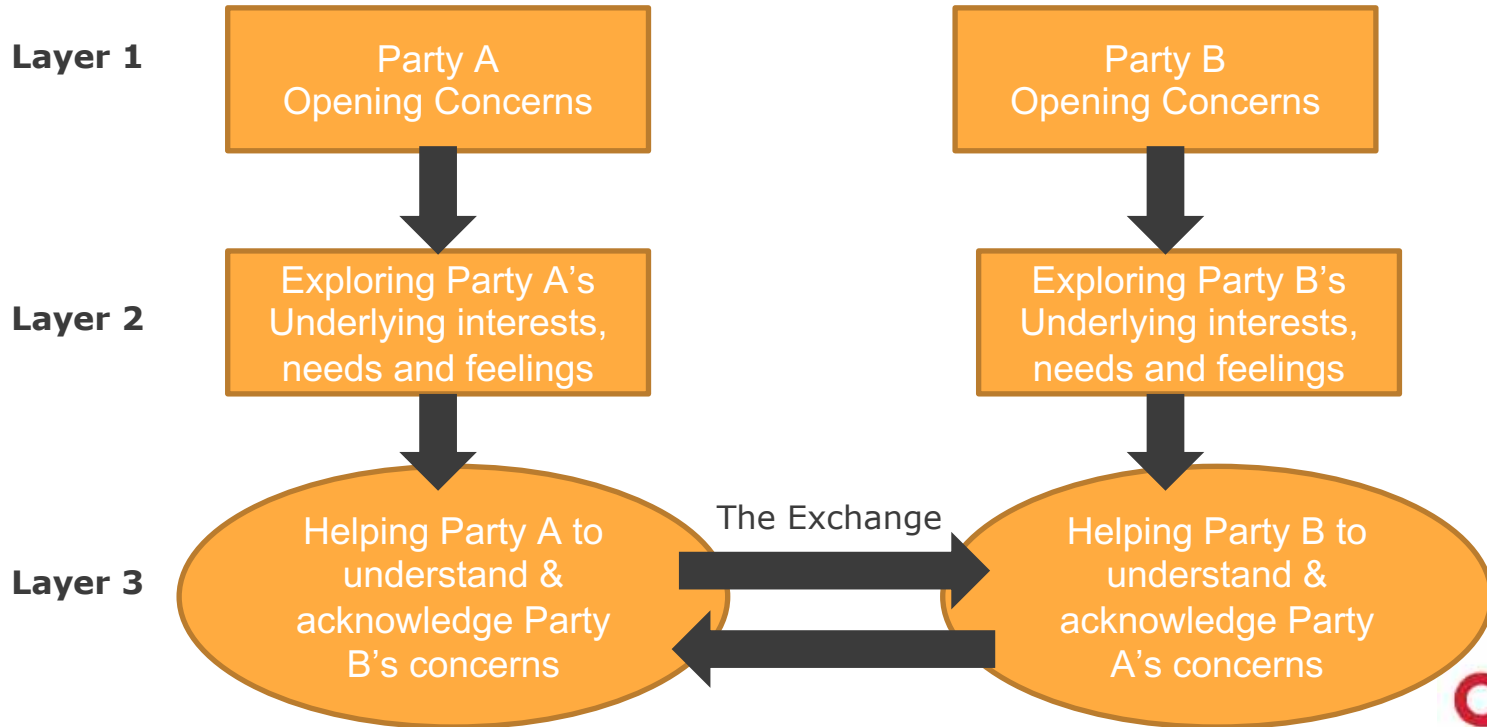
Mediators Role...

- Use an unhurried tone
- Steer minimally
- You select someone to start
- You may need to help the speaker without steering them
- Formally end each speakers turn
- Summarise

Helping the speaker...

- Sometimes speakers start to go off track or don't provide the required detail...
 - You may need more detail
 - You may need less detail
 - They may not say much at all

3 Layers of Storytelling



2nd Layer of storytelling

- Hearing the underlying concerns and interest of each party

- Finding out what matters

- Listen carefully

- Be patient

- Work with the participants, you are not trying to change people's behaviours

- or attitudes

- Focus on what their emotions reveal about the situation, rather than the

- emotion itself

- Don't try and persuade them of anything

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Mediation Skills

Storytelling Layer 3: Exchange

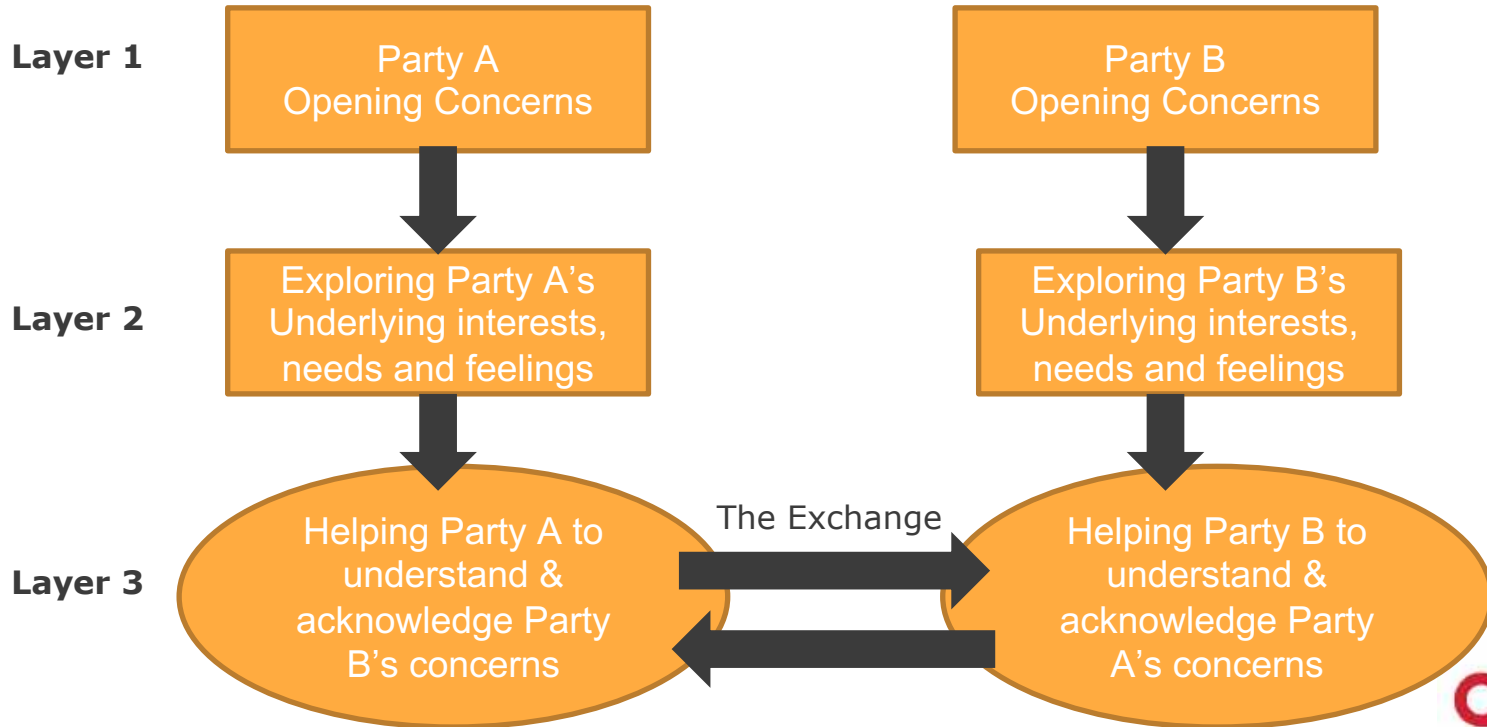


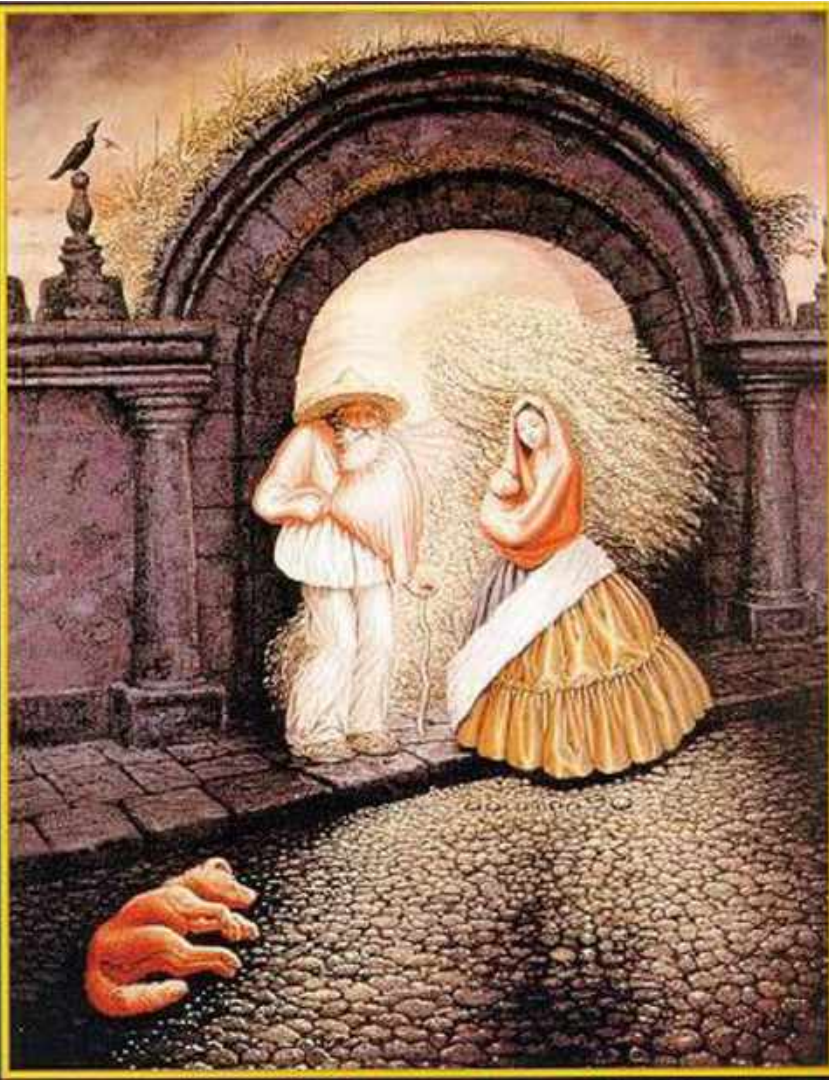
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Classic Mediation Model?



3 Layers of Storytelling





**People must be
willing to allow
themselves to see
the bigger picture!**

3rd Layer of Storytelling

- Invite questions and responses
- Clear up misinformation, gaps
- Explore heat feeling: explore examples of behaviour & impact
- Summers interests and identify needs

Remember:

The mediator must encourage empath and reconciliation, but avoid discussing solutions at this stage!

Mediators Role

■ Manage the process

- Get them talking to each other rather than to you
- Consider using flip charts as visual aids to focus on key issues
- Use your skills: Questions, reflect back points, summarising, framing and reframing
- Gather information for problem solving
- Refrain from discussing solutions!
- Help the parties feel safe

The Process

- Invite questions and responses

 - something they will start talking spontaneously, if at the right time allow it to naturally evolve. If not, the mediator start the engagement process through questions and responses.

- Try to establish agreed facts about the situation and areas of general agreement

- Concentrate on information that will help them move towards resolution.

- Clarify and clarify up any misinformation of gaps in the story

The Process

- Invite questions and responses

- something they will start talking spontaneously, if at the right time allow it to naturally evolve. If not, the mediator start the engagement process through questions and responses.

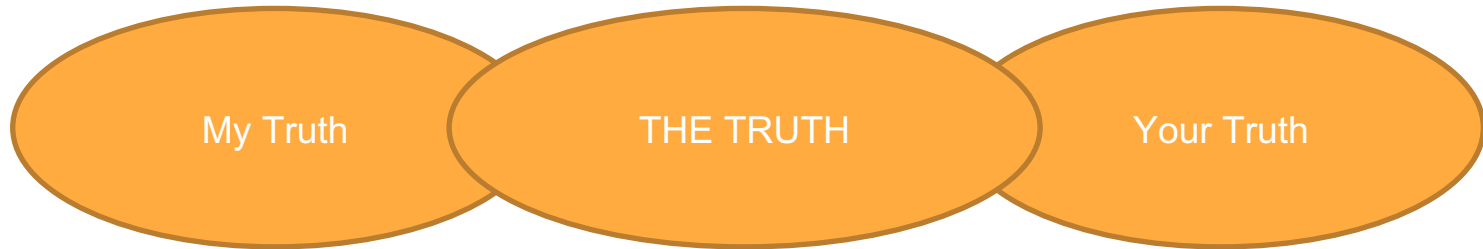
- Try to establish agreed facts about the situation and areas of general agreement

- Concentrate on information that will help them move towards resolution.

- Clarify and clarify up any misinformation of gaps in the story

Look at the detail

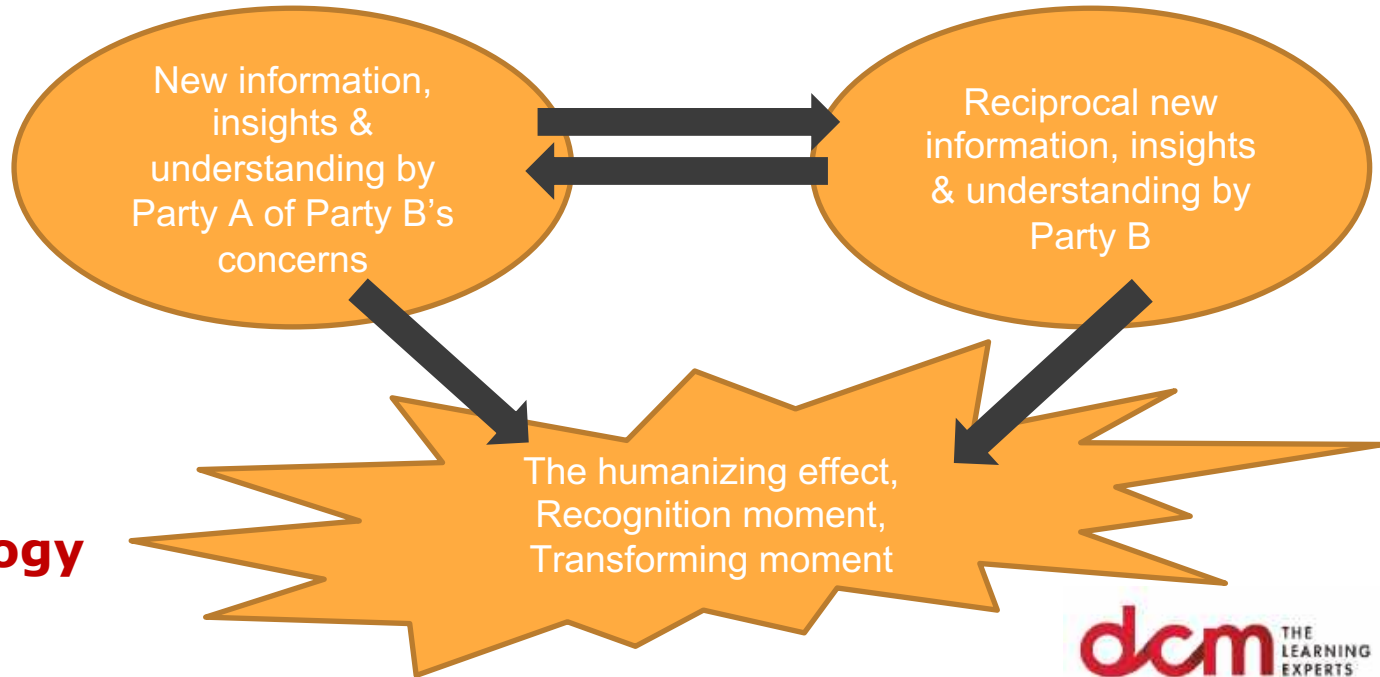
- Ask for information you need to be able to follow the tread of the story
- Ask for facts to establish the story
- Seek information that they can explain and understand together



Humanising Moment

Consolidating new understanding leading to a transformed relationship

Potential Apology



Mutual Reassurance

What will make the parties more willing and able to take the steps required for innovative solutions to the conflict?

- Acknowledgements / Apology
- Symbolic gestures
- Confidence building measures

Framing & Reframing the Issues

- Parties will have their own version, their take on the issues
 - How issues are expressed can ignite, escalate, alienate...
- In mediation the aim is to come to an expression of the issues that enlighten, clarify, respect and aids resolution
- The mediator models the reframing – issues stated in a constructive respectful manner throughout the process!



To clarify and uncover the essence of the meaning, needs & interests from an unproductive framing and present it in a new way to be more easily addressed by the parties

Collins, 2003

Acknowledge their truth

- The perceived reality of the person in conflict must be accepted as being truth for them
- It may be that this truth will alter as a result of increased understanding of the situation or hearing another person's view
- Their perceived reality may turn out to be in fact only one small part of the bigger picture
- Effective reframing aids this process



Taking the bard's out of the bard wire

■ I admire her work ethic but not her coldness

So you admire Joan's work ethic

■ I'm he was heart but it was his own fault

So you appear to be sorry that Joe was heart

■ What she said was totally untrue

It was upsetting to you that Mary was saying things that, from your perspective, were untrue

The potential apology

- It shouldn't have happened

1. So are you saying you regret that it happened?
2. Are you able to apologies for it happening?

- She's ok at her job!

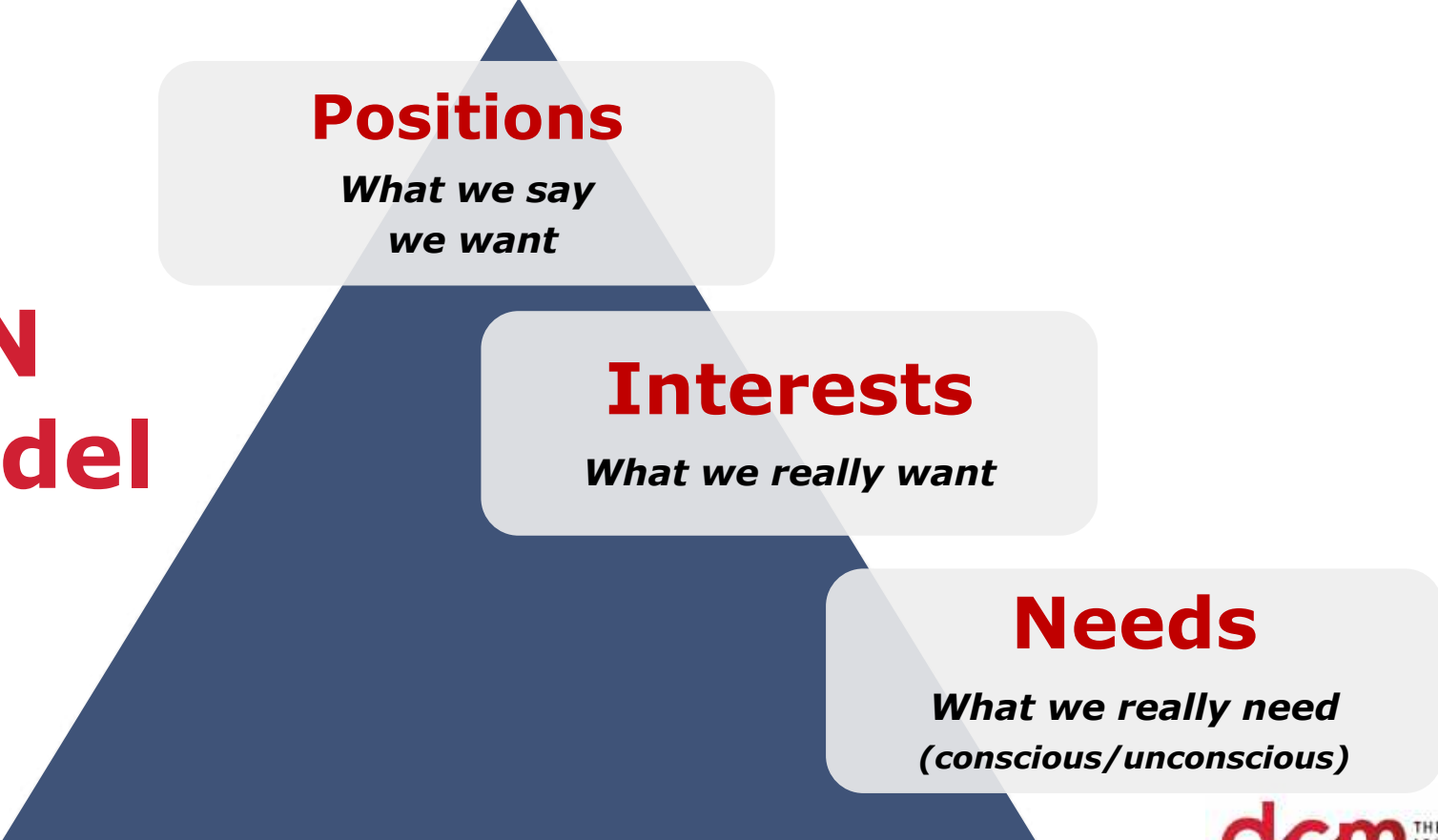
1. So you seem to be saying Helen is good at her work?
2. Can you tell Helen how you admire her work?

“

Most conflicts take place beneath the surface, well below the superficial topics over which people are fighting. They are often hidden from their conscious awareness!

Ken Cloke , 2006





PIN Model

Positions

*What we say
we want*

Interests

What we really want

Needs

*What we really need
(conscious/unconscious)*

Interests & Needs – Not the same thing!

- Interests are things that people move towards because they give you pleasure
- Needs are things the absence of which people try to avoid because it causes pain

INTERESTS Lead – NEEDS Drive

INTERESTS are Perceived – NEEDS are Felt

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Mediation Skills

Finding Solutions



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Classic Mediation Model?



Finding Solutions

- Framing the issues and agreeing these opens up the solution finding phase
- Invite the parties to suggest one of the issues to begin with – use of a flipchart is helpful
- The responsibility for solutions sits with the parties. Resist temptation to suggest a solution – the aim is **their** evolving **their** solution so as to promote a sustainable resolution – not a quick fix!

Mediators skill...

- Group related concerns into a few topics
- Word the topics in language for joint problem solving
- Discuss and get approval of the list as a whole – use clear and acceptable language.
- 5 to 7 topics at most
- Use sub topics

A topic list helps the parties to relax and focus on resolution.

Characteristic of a good topic list

Aid the conversation between the parties as necessary:

- Refocusing
- Redirecting
- Reminding them of their purpose
- Tease out the positives
- Facilitate option building
- Highlight common ground

Collaboration & Brainstorming

- Get several ideas on the table
- Write ideas down without comment
- Get parties to present ideas and discuss (keep your opinion hidden)

Testing for the best option...

- What are the positives to a given suggestion?
 - Any unintended consequences?
 - What are potential roadblocks, glitches?
 - How committed are both sides to this idea?
-
- If the option looks good summarise it out loud and put it on a tentative decision list

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Mediation Skills

Agreements



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Classic Mediation Model?



Detailed Agreement

- Balanced – role of each party in the agreement
- Specific – who will do what, when, how, and where...
- Realistic – can each party deliver...
- Positive – looking to the future with confidence...
- Clear – not legalistic, uses language of the parties

Read out to the parties to verify accuracy and commitment – Give / Send copies to both parties. Congratulate and conclude.

Some things to remember...

- Acknowledge both losses & gains
 - Hard choices, Losses, Intangible gains
- Ease any pressure to agree
 - No obligation to agree, take your time
- Last minute wavering
 - Reassure that it is normal to feel some unease, ask what does not feel right. Side conversation if needed.

Wrapping up

- Reconfirm what will be kept confidential
- Note what has been accomplished
- Invite reflections
- Agree any follow up tasks
- Keep essential information only, destroy all notes and other documents
- Note down you self evaluation points

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Mediation Skills

Online Mediation



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Known as...

- Online Mediation
- Remote access mediation
- Cyber mediation

The Benefits

- Easy to schedule
- Convenient for parties and mediators – different locations on one platform!
- Cost effective and efficient
- No facilities required, no traveling
- Less posturing

The Negatives

- Relatively new approach
- Impersonal
- Only a handful of mediators operating in this way
- Hard to get both sides to agree to use this platform
- Not suitable for all disputes
- Confidentiality can be compromised – can be recorded!
- Poor quality of internet connection

When to Use...

- When a negotiation of issues already established
- Commercial dispute – retailer –v- Consumer
- Insurance cases
- Some workplace dispute
- When supplementing traditional face to face, not replacing for interpersonal disputes

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Mediation Skills

Course Review



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Course Objectives

- Understand key conflict resolution techniques
- To explore the dynamics of conflict
- To understand the key theories and principles of mediation and alternative dispute resolution
- To understand the process of mediation and its role in organisational process

Course Objectives

- To develop strategies for effective conflict management
- To develop core mediation skills
- To raise awareness of personal biases and assumptions and their significance in mediation / conflict management
- To consider the ethical dimensions of mediation
- Maximise the alternatives to litigation
- Gain practical mediation experience

Six Key Components...

One

- What is Mediation
- Why a push for Mediation
- Setting for Mediation

Two

- Understanding Conflict
- Emotional Intelligence
- Positions, Interests & Needs
- Conflict Interventions

Six Key Components...

Three

- Different Mediation Models
- Who makes a good Mediator
- Skills required by a Mediator

Four

- Undertaking a Mediation
- Pre-mediation Meeting

Six Key Components...

Five

- Joint Meeting Environment
- Joint Meeting: Introductions
- Storytelling
- Finding Solutions
- Agreements

Six

- Online Mediation
- Live Demo Review

Award & Assessment...

- Level 6 QQI Mediation Skills 6N4910

QQI certification based on

- Skills Demonstration 50% / 100 Marks
- Learners Record 30% / 60 Marks
- Assignment 20% / 40 Marks

Assessments

Pass	<i>50% to 64%</i>	Know the material to a basic standard
Merit	<i>65% to 80%</i>	Know the material to a good standard, understand its application
Distinction	<i>80%+</i>	Deep understanding, research outside the coursework, reflective and analytical thinking, coherent and concise writing

Assignment 1: Skills Demonstration

This Skills Demonstration requires you to demonstrate your understanding of effective mediation by analysing a given case study and answering the questions provided.

First, you must choose the mediation context that best suits your current role or intended future role - Commercial, Community, Workplace or Family. Next you should analyse the matching case study available in the Appendix and answer the questions below.

- 50 % / 100 Marks

Assignment 2:

Learners Record

A learner record is the learner's self-reported and self-reflective record in which he/she describes specific learning experiences, activities, responses and skills acquired during the course, i.e. What I have learned.

We advise that you use the Learner Record Log in your course workbook to keep a record of what you have learned during the course and how you think this will impact your role as a Mediator in the future. This log can then be used to form the basis of a 1500-word essay under the headings in the table below.

The essay should be written in the first person and describe: -

- What you have learned during the course and during your own research
- How you performed as a learner on the course
- How you will put what you have learned into practice going forward.

- 30 % / 60 Marks

Assignment 3: Assignment

This assignment has been designed to allow you to demonstrate your understanding of each topic in the table below and how it might apply to your real work as a mediator.

Ideally, your assignment should be relevant to your current or previous work environment and practical work-based examples should be given to support your work.

If you are not currently working within an organisation, then you may complete this task in relation to an organisation with which you are familiar. This could include experience working in a voluntary capacity.

- 20 % / 40 Marks

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