

Coaching the parties towards resolution

- **an essential skill for the effective mediator**

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Coaching means assisting others to develop or change their behaviours in ways that will influence outcomes positively.

A key skill for the effective mediator is to be able to coach the parties and their advisors, whilst guarding the integrity of the role and the trust of all parties. The mediator adds a dimension to the possibility of resolution through their ability to speak as someone without a stake in the outcome, because of their understanding of the nature of conflict and the psychology of power, and their ability to use and help others to use a wide range of communication and negotiation techniques.

At all phases of the mediation process the mediator can act as a coach to the parties and their advisors - enabling them to improve their communication, make proposals and offers more creative and timely, and generally to participate as fully and effectively as possible - whilst strictly preserving his or her neutral and confidential role.

This paper assumes a 5-phase model in which there is *preparation* before the mediation session followed by an *opening* or introductory phase (where ground rules for the process are established and parties outline their current views), and then an *exploration* phase (where parties' issues, interests and needs are identified) followed by *bargaining* and *concluding* phases. The coaching interventions are headlined below in bold and, although examples are given pertaining to a particular phase, these techniques may be used at any stage of the process.

Modelling and coaching by example

Clients, and also their advisors, need to feel capable and confident in order to make best use of the mediation session. From the very first contact, the mediator has an opportunity to set the tone for the mediation. Flexibility and alertness are essential; the mediator needs to make participation as easy as possible, by minimising surprises and potential embarrassments and by maximising the comfort zone for everyone. The mediator will model relaxation and confidence with the process, optimism, and collaborative, practical problem solving. Thus the mediator coaches by setting an example, by modelling a productive approach, as well as more directly with information, feedback and suggestions.

Visualising

During the preparation phase and before the day of mediation, the mediator may need to coach the advisors in how to prepare their clients for the day, who to include in the team and for what purpose, what documents to produce and in what form, the options they have about how to use any opening statements, and the format and possible shape and use of the day. Sensitivity and creativity are important at this early stage; in some cases, for example, it may be appropriate to enable parties and their advisors, especially those new to mediation, to visualise themselves in the process in order to prepare well. The party or advisor can be helped to imagine participating in the day. Later in the process a party might benefit from experiencing what it will be like when the dispute is settled. Visualising is a classic coaching technique that can be used in depth or in a modified form.

Working with the psychology of power

When handling a dispute where there is a real or perceived imbalance of power, the mediator can assist parties in dealing with the psychology of power, for example by helping a party to recognise and provide what the other party might need in order to believe that the process might be worthwhile. Discussions about who should attend are sometimes part of this assistance – is the person who is coming on behalf of the company senior enough to give a sense of taking the dispute and the representative of the other party seriously? Is someone going to be present in the team who can take an overview, as well as those who are steeped in the history and the detail?

Once the process is underway, it is often helpful, as a precursor to negotiations about specifics, to provide some comfort to one or both teams that this day will be different. This can be done by coaching the parties in the need to paint a different picture for the others and in how to do that; making a global move ('for the purpose of today we are not talking about a 7-figure sum') is often very effective, and where one party has presented a highly entrenched position – often as a result of feeling powerless – helping them to indicate even a general flexibility can oil the wheels of the negotiations, as well as giving status to the party making that move. Where a real or perceived imbalance of power exists, blocking or stonewalling is often the result of a sense of powerlessness. Mediation may provide the first occasion where choice of outcome lies with the parties, and this in itself can be empowering; and some parties will need the mediator's assistance in understanding this difference and in using the opportunity it provides.

Working with lawyers and other advisors

Advisors of all kinds come to mediation wanting to do the best for their clients. The mediator can assist in making their participation as productive as possible, by working with them on the choices they have and the roles they might play at different stages of the process.

For advisors new or fairly new to mediation this is vital in enabling them to approach the day broadly and flexibly, rather than with a purely adversarial style, to support their client's interests. Even for those familiar with mediation, every mediation is different and every client has different needs; the mediator should be active in offering reflections and options to even the most experienced mediation advocate or team.

When working with advisors on their particular role it may be best to do so in private and separate from their client, so as not to threaten the client-advisor relationship and, when it is appropriate to encourage a change of behaviour, to save face for the individual.

Working with different perceptual positions

It is not unusual or surprising that parties in dispute tend to have a one-dimensional approach to the facts, the intentions of others and the possibilities for resolution – all based upon their own needs and perceptions. The mediator can assist parties to stand in the other's shoes and to see all these aspects from other angles, thus increasing the understanding of what might be needed to reach resolution and enabling the parties to think in terms of satisfying the other (an essential element in every successful negotiation) as well as getting what they need.

This important aspect of creating value as well as claiming it is often new to parties, or has got lost along the way. There are physical as well as intellectual ways of achieving expanded insight of this kind for parties – sometimes a discussion works well, on other occasions it is highly effective to ask parties to move and sit or stand

where the other sat or stood, experiencing what they think and feel in this new position. Following this, mediator and party can work together to formulate information, ideas or proposals to convey to the other party that might meet these newly understood needs.

Working with language - framing and reframing

Subtlety of language is an essential skill for the mediator, and framing and reframing are key techniques. The difference between using one word or another in an attempt to convey a suggestion or a request can make all the difference to whether it is heard or accepted.

Without directing the parties to behave in particular ways, it can be helpful to work with them through some of their choices about what tone they want to set, for example, for the opening statements. Helping parties to define what impact they intend, to clarify the possible consequences and to prepare for maximum effect, is an important coaching activity. Later in the process a similar approach might be useful in preparing to convey additional information, a particular stance, or a proposal or offer. In using any of these techniques, the mediator must, of course, make certain that the integrity of the neutral role is preserved and that he or she does not step over a line into an advisory role for one party. The process of information exchange involves the mediator in clarifying what the party wants to convey, helping them to convey it accurately and effectively – this stage may include in-depth coaching on use of language, timing and presentation - and then honouring the sense and the tone of the information when taking it to the other party.

Working with numbers

A mediator who has a facility with and an understanding of numbers can offer invaluable help to parties in enabling the negotiations to be as effective as possible.

Mediators who develop an understanding of the psychology of numbers and are also familiar with risk assessment techniques can offer a variety of approaches and also diagnostic tools to parties. A flexibility in working with numbers – for example, as percentages, as ranges, as beginning with a particular digit or not, as related to the number of digits, as a measure of progress – offers opportunities to manage the momentum of the negotiations. The mediator can share their skill by coaching one or more parties according to need, within a process where there is no binding settlement until it is written and signed by the parties, so long as they do so impartially and for the benefit of all parties and the process as a whole.

Exchanging information for maximum impact

During the exploration and the bargaining phases, the mediator will assist in the tactical exchange of information. The mediator should take the initiative during private sessions to encourage timely exchange of information – whilst being scrupulous about preserving confidentiality where parties do not give permission for disclosure. The mediator, aware of the tone and the emotional temperature in each private room, can also encourage and give guidance on the topic, the timing and the appropriate participants for round the table dialogue, both for information exchange and direct negotiations.

Working with different styles of negotiation

The role of the mediator as coach in the bargaining phase is often pivotal. Mediators need to use their understanding of negotiation styles, techniques and tactics, to assist parties in shaping the framework of the agreement, and in presenting general and specific offers in ways most likely to be attractive to the other party in addressing their concerns and interests. Mediators must exercise their judgement about what to

encourage the parties to exchange, and when and how to do it. Throughout, the mediator must preserve the parties' confidences, and remain impartial as to the level of settlement and other outcomes, and in both cases must be seen to do so.

Coaching parties so that they do not rely on a narrow approach to negotiation, which so often leads to deadlock, is a critical skill.

Some parties might respond well to discussion about the theory of negotiation and the choices available, others might need more practical assistance to make their offers as effective as possible. Every mediator knows that a bright idea presented at the wrong time or in the wrong way dims quickly and is often rejected. A mediator can help the parties to frame offers, for example by suggesting that they begin with or revert to a global approach for bargaining, or that they move to mentioning specific numbers.

Although ideally parties in mediation will approach the negotiations in a collaborative and co-operative style, more often parties take or maintain a positional stance, at least early on in the process. Helping parties to recognise, understand and live with styles of bargaining that are different from their own is often essential to making progress. A mediator who has gained the trust of the parties might succeed in coaching a positional party to operate in a more collaborative way, at least on particular issues or for a period of time. Alternatively, a mediator might work with a party facing a particularly strong assertion of strength from the other side to respond in a way that gains the respect and attention of the positional party – a collaborative stance sustained unaltered in the face of persistent aggression may be counter-productive. It can be helpful, for example, to encourage the more collaborative party to take a tougher stand on the process, setting boundaries for acceptable behaviour or methods of exchanging offers.

Giving feedback

A mediator needs to be courageous and draw on the reservoir of trust he or she builds with the parties in order to provide feedback to them, particularly where the behaviour of one or more of the parties is inhibiting progress.

The *HP DREE* technique for holding a mirror up to a party, to show them their behaviour and its impact and to suggest alternatives, is a highly effective coaching technique. In brief, the technique involves identifying the headline or topic by way of introduction (H), playing back what has been said or done, what worked or didn't work (P), diagnosing why it had the particular impact or effect (D), offering a remedy that might work better (R), providing an example of how to do it differently (E) and an explanation about why that is likely to be more effective (E).

Using the people, the time and the mediator well

The mediator is a process expert and coaches the parties throughout in how to use the time well and how to make the most of the skills and qualities of the people present. Process management suggestions and guidelines offered throughout the day are part of the mediator's role as a coach in how to use the day most productively.

The process of mediation has the benefit of flexibility and yet should be far from haphazard. Assisting the parties to use the time available well, for example by helping them to resist moving to specific bargaining too early, thus avoiding likely deadlock, and later by encouraging them to move on from information exchange and to begin discussing terms, is a regular feature of mediator coaching activity.

Using the people well is another important contributor to the success of the mediation. A mediator can often identify combinations of people in different teams who, if a meeting is set up carefully and at the right time, might make real progress together.

Parties and their advisors are not always certain how they can best use the mediator – whilst not encouraging misuse, of course. The mediator is in the privileged position of often having the widest picture of the dispute and can begin to see where the pieces of the jigsaw of resolution might fit together. A number of techniques are available to the parties from a skilled mediator. For example, the mediator can get the agreement of both parties to indicate the level at which they might settle so that, without exchanging that information and therefore without jeopardising a negotiating position, parties can be given a sense of the size of the gap between them which the mediator can characterise in general terms or even in metaphor. After this parties often feel able to make significant moves towards settlement.

Skills and qualities of the effective coach

As in other coaching contexts, the mediator coach is able to:

- establish rapport and gain trust
- use care and create comfort
- use courage and make challenges productive
- provide choices for consideration
- use advanced language and numeracy skills
- recognise effective behaviours and give constructive feedback
- ask useful questions
- help parties to shift or widen perspective
- motivate behavioural change
- apply theory to the practice of communication and negotiation
- operate as a colleague with all participants, rather than as a performer or a competitor.

The mediator as coach

Experienced mediators, especially, will recognise the risks of this proactive coaching approach and will be alert to the need to retain their integrity and the neutral stance to which they have committed themselves. There is a line over which mediators should not stray in their attempts to assist the parties to settlement – the mediator must be and be seen to be working for the benefit of all parties and not colluding with any, preserving the safety of a process which offers privacy, confidentiality and an opportunity for parties to change their minds (with or without the mediator being present) until settlement is finalised with signatures.

Within this framework, the mediator coaches parties throughout the mediation directly - through sharing experience, theory, practical tactics, techniques and process suggestions, as well as by managing the parties' expectations; and indirectly - by setting the tone, by keeping the energy and enthusiasm going and, generally, leading by example in terms of attitude, use of skills and approach.