

Does mediation really need respect?

by Katherine Graham

CMP Resolutions train hundreds of mediators a year who plan to mediate in a variety of contexts: homelessness, SEN, workplace, community, and conciliation. What they have in common is a desire to include 'respect' as a 'ground-rule' for their joint meetings. Their thinking seems to go something like this.

"It makes sense to ask parties to have respect for each other during the mediation session. I need to be able to exert control over the session if the parties get angry and blaming, and I believe that we are all professionals and need to behave professionally in these meetings."

Mediators who aspire to be the best need to really challenge themselves on this thinking, which undermines several tenets of mediation and may indeed only show up their own lack of confidence and ability as a mediator.

One problem is that the principle of respect is very subjective. A loss of 'respect' is what underpins almost all conflicts I have ever mediated. By the time we're in a mediation, respect has by definition almost certainly gone. The mediator needs to explore with the parties, where did respect go? What does it mean for them separately and in their relationship? Any attempt to enforce 'respect' during a joint session is short sighted and will limit the chance of a reengagement between parties in a workable relationship. If a party refers to 'Mrs So and So' rather than 'Mrs Kumar', is that disrespect? Do the party not know her name? Can they pronounce it? Are they in fact doing incredibly well in not calling Mrs Kumar 'that crazy xxxxxxx xxxxxx'? A mediator who steps in to ask the speaker to 'respect Mrs Kumar' will never know this essential information that will underpin the assumptions, beliefs and behaviours of the two in dispute.

The definition of respect varies from one person to another and it is exactly these kinds of nuanced values which, masquerading as 'norms' and 'rightness', so often underpin conflict and need exposing and exploring. And this applies to mediators as much as the parties. There is a real danger that mediators who are attached to the notion of 'respect' will not only be less creative, engaged and dynamic in their responses to high conflict moments; but will also run

the risk of using 'respect' as a disguise for projecting their own values on to parties. Two parties start shouting and one swears at the other. A mediator who turns to the notion of 'respect' may say something like: 'Jayne, we agreed to respect each other at the start of this session, so please stop shouting as this is not adhering to the ground rules'. This is an intervention that has no place in mediation and only has the potential for damage. Why?

The mediator is making assumptions – shouting and swearing may not be considered by these parties as 'disrespectful'; they may just be hitting their stride and getting to what needs to be said, feeling 'safe' in the session to open up and exchange, and suddenly the mediator pours cold water on them with an instruction to "behave!"

The mediator may be experienced by either side as partial. Jayne may feel she is being picked on and judged by the mediator, and the other party may feel 'one up' that Jayne has been 'brought into line' in this way. Neutrality is shot.

The mediator is imposing their will on the type of interaction that will be allowed – only if you agree to talk to each other in a way that I say, will I be willing to mediate between you.

The mediator is shutting people down not opening them up. Why is Jayne swearing? Why is she feeling so strongly? What is going on? These are areas for a mediator to explore. .

Finally, the mediator is clutching at a very weak straw indeed by trying to control the session in this way. Parties who are very angry with each other will find being asked to be 'respectful' at these moments beyond their willingness or ability, regardless of what they 'agreed to' in the early 'ground rule' phase of the mediation. All this does is make them feel embarrassed at their own behaviour, critical and blaming of the other, and is likely to put them 'on their best behaviour' for the rest of the session.

I don't want to mediate people on their best behaviour! They can't sustain that type of interaction, or we wouldn't be here in the first place! I want to mediate people who are being themselves and who are trying to communicate openly and honestly. My role is to be creative and supportive in how I do this – and that means working a lot harder than falling back on 'respect'.



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CMP Resolutions work to Close, Manage and Prevent disputes at work through skills development, mediation and investigation services.

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