

To mediate or not to mediate?

by Lesley Allport

How often have you been faced, as a mediator, with that dilemma of 'How far to push' reluctant participants to engage in a mediation process? Though I have reservations about compulsory mediation the reasons for 'strong encouragement' are often good; many people express reservations based on very little understanding of what is involved or what the potential benefits can be. For others coming on board with mediation means taking some ownership and responsibility for the problem for perhaps the first time.



There are of course those cases that border on the very edges of being suitable for mediation. We all have experience of coming up against those reasons that potentially make a case non-mediatable:

1. safety issues or a significant power imbalance that goes as far bullying or harassment.
2. an inappropriate referral from an organisation really trying to avoid using a more appropriate procedure.
3. one party bordering on depression or mental illness in a way that affects their decision making ability.
4. simply a huge unwillingness to participate.

Once identified the first two are perhaps easiest to deal with. Where people feel threatened and in fear of repercussion mediation is not the right vehicle. Similarly where an investigation or a management intervention is called for, some appropriate feedback to the organisation, within the limits of confidentiality, may be helpful.

The third, though less frequent, is hard to detect, pinpoint and address.

Some characteristics may be: **shifting ground; inconsistency; extreme emotions; lack of confidence; misplaced aggression**

Equally, all of these may be exhibited by people experiencing the impact of being 'in conflict' – working out the difference can be a challenge! Surely the crunch question in these situations is "Does mediation provide the structure and security required to build confidence and calm strong reactions – or is this simply 'not the right time' and/or 'not the right forum'?"

Finally, that last point. We come across a range of responses in those we offer mediation to, from at best, a certain 'wariness', to, an 'extreme adamant' position; "What, sit in the same room as her – I would rather eat my own toenails". Did you ever feel that just the mention of mediation is enough to 'up the ante' and dig that Position several notches deeper? – "Dispute? What dispute? I haven't got a problem!"

And yet – how many of us let it drop there without spending some considerable time using our powers of influence and persuasion to enlighten potential participants as to the benefits of mediation. Why do we do that? I guess as someone who has been through many painful mediations and emerged safely out of the other side (albeit as the neutral third party!), it is impossible not to see those benefits at first hand. From, at the least, a resigned "Ok, I can live with this", maybe even "Actually, it's achieved more than I thought it would" to, at best, an emotional moment of recognition and apology, and a renewed commitment to working together again.

So the dilemma is – how far do we push? When does 'influence' become 'persuasion'? And how far does it matter? As mediators we create an opportunity without which a door remains unopened. For many who get as far as mediation there is a path through the door that offers a far more effective way to settle differences. As a mediator, I want to be able to continue to offer that.



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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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