

# The Language of Conflict

## Conciliation, Mediation, Arbitration – What’s The Difference?



Formal approaches to dispute resolution can come in various forms, but picking the wrong approach can make the difference between a happy ending and a trip to a tribunal. So which path is right for any specific dispute?

Of course this depends on the individuals involved, the stage the dispute has reached and nature of the conflict, amongst other factors. However, recognising what each intervention aims to achieve can aid the choice of an appropriate way forward.

After moving on from a generalised definition (see opposite), ‘mediation’ especially can mean different things to different people, from *any* intervention of a third party – at

any stage in a conflict and with any level of formality – through to some quite specific methods for bridging a divide. The following are perhaps the most common of these.

### *Narrative*

This approach encourages the parties to focus on constructing the ‘story’ which they would like to see play out; putting emphasis on envisaging their future relationship and situation, rather than dwelling on what has gone before.

For example, participants might be asked:

### Definitions

#### ***-Conciliation-***

Seeks to encourage each party to agree concessions as a means of settling differing demands or offers, usually by prioritising what is most important for them and what they are most ready to trade.

#### ***-Arbitration-***

A process for settling a dispute facilitated by an independent individual or body which is empowered to reach a judgment to reach closure.

#### ***-Mediation-***

An intervention between disagreeing parties involving a third party, aimed at bringing the dispute to a conclusion which both can accept.

*If you were standing and observing this, what would you see?*

*Imagine you have watched this in a video – what did you actually see and hear?*

*If you were telling this story to someone else, what would you say?*

Similarly, for considering the outcomes individuals desire, the following might be suggested:

*What would make the difference between the way things are in the picture you describe and the way they are now?*

*What would this look like?*

*What would you see, hear, feel?*

Nagao and Page distinguish three elements in the process of conducting narrative mediation: engagement (during which each party presents their own story), deconstruction (where the conflicting issues in each story are highlighted and dismantled, helped by mediator intervention) and construction (in which the new story is put together).

Some time after mediation, a follow-up review is conducted to determine how much of the new narrative has been put into practice.

The mediator plays a very central role in helping the parties to deconstruct and rebuild a new story, employing skills of reflective questioning to help individuals identify the sources of conflict and rationalize why they want to swap the stories they've described with a new narrative.

Our experience with narrative mediation isn't using it as an overarching approach for mediation, but rather as a technique, which can serve a useful purpose at different stages during any part of a DR process. Storytelling can be used with powerful effect during the initial 'Golden Hour' of an emerging conflict, and is therefore equally

relevant managing conflict 'at the front end'.

### *Outcome-based*

As with a narrative, the outcome-based approach puts emphasis on envisaging a desired, target future – the so-called 'future perfect'. It encourages individuals to test their motivation for achieving this new state and challenges them to take small steps towards achieving it. The use of the word 'outcome' is deliberate since this suggests an on-going situation rather than a snapshot event, such as when a particular goal is achieved.

Whilst encouraging individuals to look forward, the approach nonetheless takes account of past experiences which have brought them to their current point, including a mix of what was right and what was wrong in the past; the practice it then encourages is for individuals to do more of what works and less of what doesn't!

### *Facilitative*

As the name suggests, facilitative mediation involves a mediator primarily playing the simple role of facilitator. They may propose a structure for conducting the mediation, but their main contribution is questioning, playing back and helping the disputing parties to move forward and acknowledge when decisions have been taken. This isn't to minimize the value on facilitation, nor its potential effectiveness or advantage over some other approaches.

The mediator usually has less control over the course of conversation than with some other forms of mediation, since

facilitation encourages the parties to choose the approach they prefer for finding a resolution and to determine the way forward which they believe is most appropriate; it requires that they 'own' the outcome of their discussion, with the mediator serving to help them their interchange and decision-making happen effectively (of course this doesn't preclude a mediator making suggestions, for example when individuals appear to be stuck or have no strong feelings about how their discussion should be structured).

### *Evaluative*

In this approach, a mediator acts as both a listener and adviser. They hear the arguments put by both parties, much in the same way that they might be presented to a tribunal. But subsequently, the mediator offers opinion on the arguments presented to them, especially with a view to anticipating how a court or tribunal might respond to them.

Mediators performing this role are normally experienced in law or qualified to consider the legal merits of the arguments presented to them, even extending to making suggestions about how one or both parties may wish to proceed with their case.

The evaluative approach may therefore be most appropriate when it's clear that both parties don't believe that a compromise is possible or one of them seems intent to pursue their cause to the bitter end. However, since it focuses on the strength of legal arguments rather than endeavoring to

diagnose the underlying causes of the dispute or unpack the psycho – emotional turmoil that this may have produced, evaluative mediation may offer only a limited chance of achieving a lasting peace.

### *Judicial*

Judicial mediation has been piloted in the UK recently. Similarly to evaluative mediation but occurring once a case has reached court, mediation occurs in situ at court, where the judge acts in the role of a mediator rather than presiding over the hearing and reaching a judgment. The option to continue to a full hearing remains available if the case doesn't reach an agreement, although the same judge will not preside over the case in such event (Gilhooley, 2009).

### *Transformative*

Introduced relatively recently by Bush and Folger in 'The Promise of Mediation' (Bush and Folger, 2004) and further enhanced by Kenneth Cloke in 'Mediating Dangerously: The Frontiers of Conflict Resolution' (Cloke, 2001) to consider a mediator's role as extending beyond facilitation to one of being a reflective guide who interacts directly in the discussion, the Transformative approach has been described by one commentator as offering 'a passionate, in your face plea for exploring the difficult process of mediation, truly digging into the roots, the skin, the pores of people's, group's and organization's complex' (Epstein, 2009).

The basic intention of the approach is to help individuals reach a deeper awareness of their response to a conflict, with an aim of transforming their thinking and in particular, achieving a better understanding of the other party's perspective. Bush and Fogle argue that by achieving this, individuals may not only find that they can re-evaluate the current situation they find themselves in, but will also have grown as individuals, developing their emotional intelligence and ability to relate to others.

The essential change agents required for transformation are empowerment and recognition of each other; for the mediator, most attention is normally focused on the first of these – making sure that each individual can feel safe to explore their own thoughts and feelings, probing deeply to improve their awareness of personal value systems and core beliefs.

In pursuing a Transformational approach, a mediator might find themselves brushing against the role of a counselor or psychotherapist, contrary to the normal boundaries of their role that might be suggested as being sacrosanct.

The Transformative approach has not avoided criticism. In losing their neutrality, mediators can become party to unwitting criticism, unless both parties are ready to approach the exercise with full openness and honesty. They risk becoming embroiled in the dispute rather than acting to facilitate a resolution, may be criticized for favoring one party over the other (often the

'weaker' side) and may not end up protecting the fairness and integrity of the DR process.

### *Insight*

Not unlike the Transformative approach, Insight Mediation works towards both parties reaching a point of realization that they are on course to achieving a resolution, based on having sufficient insight into the other party's interests and perspective, and so having a shared understanding of what is needed to reach a conclusion.

The approach was pioneered in Canada by Picard and Melchin (Picard and Melchin, 2009). The mediator plays a crucial role in the process in helping each party to achieve an understanding of the underlying nature of their dispute. This usually involves five main stages: contracting (agreeing ground rules, determining the process, and so on), stating hopes and problems, seeking insight (exploring individuals anxieties and reasons why a gulf has opened up between them), collaborating (confronting these anxieties and moving each party to a point where they feel able to co-operate) and making decisions.

### *Problem solving*

Problem solving focuses on joint analysis of a dispute, with each party being guided by specialist third parties in a workshop. The workshop may be structured to examine each stage in the development of a conflict, taking account of the circumstances in which different conversations, actions



or mounting beliefs occurred, and the interpretations and feelings that resulted.

This can be especially effective for helping each party to understand the other's perspective, to check their own interpretation, and when relevant, offering a face-saving context in which to revise their views. Having worked through a comprehensive analysis of the situation both parties find themselves in, there should normally be scope for suggested ways of moving towards a resolution.

The problem-solving approach benefits by its inherent need to involve both parties in a shared exercise of establishing understanding, even if neither may recognize themselves as acting as a team!

### *Conclusion*

Our discussion inevitably summarises the relative merits and applications of a range of approaches available for mediation. What is clear, is that anyone who is called upon to broker a resolution of a dispute shouldn't be lost for options.

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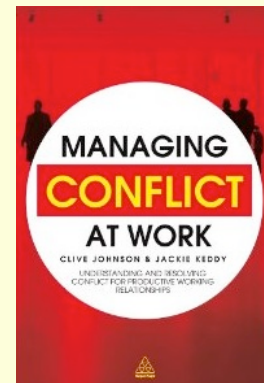
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