

OBSTACLES to mediation

- and possible ways to overcome them....

Mediation is a voluntary process so no one can be forced to engage in a mediation process..... while they can be encouraged or even gently cajoled (if that is felt to be appropriate...), it should be a free decision by all parties involved to engage. Getting people 'to the table' may even be the most difficult part of it all and many mediations never take place because one party says a very clear 'no'. Here are some of the obstacles to people engaging and possible arguments to dispel such opposition.....

●1. Misunderstanding of the mediation process

There are many possible misunderstandings of the mediation process. One fear is that engaging with the other party/parties is already handing over power and losing control. While not a misunderstanding, the need to listen to the other side can be felt to be unnecessary and/or painful (this also relates to 3 below).

☐ You can state clearly that at all stages the process remains voluntary and participants can withdraw at any stage until a possible final agreement or agreements made in stages. You can make sure prospective participants understand the stages a mediation goes through, if necessary giving them written material on this; it may also be necessary to talk about the role of the mediator(s) themselves and the fact that they cannot force anyone into anything.

●2. Power imbalances

This can work both ways. A party which is powerful may not be willing to engage because they feel they have the power and shouldn't have to talk to anyone. A party which is powerless may feel they could not 'win' or gain because of the power of the other party.

☐ It is a mediator's job to ensure a 'level playing field' in a mediation. This may mean doing some work individually with one – or both – parties so they can fully engage with each other.

In terms of persuading a 'less powerful' party to engage you can emphasise the equality in the process and the fact that they can withdraw at any stage. In trying to persuade a more powerful party to engage you can emphasise relationships and how things might look if they refuse to engage.

●3. Fear of losing by engaging

Anyone who has 'an asset' or advantage which would be put under question through mediation may fear losing out. People who have erected a high fence, trees or a hedge (which is objected to by their neighbours because it spoils their view and/or light) may not be willing to engage because they feel they can only lose out by talking about it. Obviously this relates to the issue of power in number 2 above.

☐ You can again emphasise relationships and the voluntary nature of the process at all stages and that if they do not want to concede or change then they are not obliged to do so. You can also talk about the generating of different possibilities (a breakthrough in one mediation on a 'blocking of view' issue came when the party who raised the issue offered

to pay for a professional to look at, and if necessary pay for, different possibilities which would be mutually acceptable or advantageous). The aim is a 'win win' solution.

●4. "I am/we are right, they are wrong"

Certainty in being right can lead to the idea that engaging is pointless. This can also lead to point 6 below.

☐ While some people may believe opponents on an issue raise it because they want to stir up trouble, you can emphasise that different people can see the same issue very differently, and the importance of maintaining good relationships even if they are not (at that stage anyway) willing to compromise.

●5. Acceptability of the opponent

This is different to, but has links to the issue of power imbalances. It is where 'the opponent(s)' is/are not seen as worthy of engaging with.

This could be because of a variety of factors – social, religious, political. In one Northern Ireland example, the case of the Drumcree marching dispute in Portadown the Orangemen who want to march down the Garvaghy Road may be unwilling to engage in a process with Catholic residents because of who might be included in those they would be engaging with, e.g. republican ex-prisoners, and also feel they should be entitled to go where they want. And there may be people on the Catholic side might be unwilling to engage with those they see as political enemies or even bigots.

☐ To get a resolution, people may have to engage with others they would prefer not to. It is their choice – but you can emphasise the possibility of a 'win-win' solution.

●6. Dismissiveness

The other side's concerns are dismissed as trivial with the feeling the other party is getting worked up over 'nothing'.

☐ A small issue can loom large in someone's life, in fact small issues that irritate can be distressing if not dealt with. If one party is dismissive of someone else's concerns, try to get them to think about things that might irritate them. One side's views of the other (point 5 above) can also lead to such dismissiveness – "they're always getting worked up about something...."

●7. Timing

There are a wide variety of issues in regard to timing which can mean one or more parties in a dispute are not interested in negotiating/being involved in mediation. It may 'never' be the right time. Or a situation may be temporary or seen as temporary leading to an unwillingness to engage.

☐ While choosing the right time is important, as a potential mediator you can emphasise that starting engagement – and building at least a working-with-the-issue relationship – is more important than doing nothing and waiting for an ideal time that may never come. However it is also possible that you do have to wait for a time when the sides are willing to engage; the time frame on this could be long and there is nothing you can do except wait.