We finished module 2 of our flagship training course last week. One of our participants emailed me the next day:

"I was driving up the road yesterday and mulling over one aspect of the mediation exercise we did. I get that we are facilitating adults to make fully informed autonomous decisions and that they need to make that decision based on their priorities, circumstances and judgement – that is not the mediator's job. Ensuring they can consider all options and think about consequences etc, as well as making them aware of the options, is part of the mediator's job. But what about fairness?"

"I was thinking about the principle of 'fairness' and how it relates to the concept of mediation. When Paula said she would accept a figure which was more than her immediate need (the debt that needed to be paid), she was making a decision about what is 'fair' to her, in contrast to the actual need of the other party. Paula's need to pay the debt is clearly not the same as Paula's need to pay a lower figure. Does this mean that the mediator needs to worry about 'fairness'?"

"I think the idea of mediation is that it is a process that is more accessible than courts. It takes out the size of the wallet as being one of the deciding factors of an outcome as is often the case in court battles. But if we don't consider fairness it does feel that, if you are needing the money, you are more likely to settle for a very small sum, which might not be what you need. If Paula didn't have debt she wouldn't feel so pressurised to reduce her 'wants'."

"I think I am arguing myself into the position that it is the fully informed autonomous decision that is important and that mediator fairness (or at least the mediator's view of fairness) should probably not be the concern. But I am not sure how comfortable I feel about that. Is it just a fact of life that the more 'needy you are' the more likely you are to settle for less? Can someone be a mediator when their instinct is to fight for the underdog?"

I replied:

"A great question and one with which I have wrestled over the years, not least those concerned with 'justice'. And those whose instinct is to fight for the underdog.

Perhaps, if one's instinct is to fight for the 'underdog', then one should be an advocate, not a mediator. That is unless one can somehow set aside that instinct.

"Fairness" is an elusive concept. What seems 'fair' to one may not seem 'fair' to another. How do you decide? By making a judgment based on what you know. But what do you know?

Paula may have a 'sugar daddy' in his Merc outside. She will not tell you. The organisation may have no money or may go out of business. The Tribunal hearing on Paula's claim may be in 2 months.

In any decision, people take into account so many factors, conscious and unconscious. Apparent needs is one. If you test that out and, in particular, test out the BATNAS and WATNAS, what else can you do? Who are you to superimpose your judgment on Paula's? How do you know that Paula is not fully informed? How do you know that Paula's need for money is not the same as Paula's need for debt?

If handled well, mediation offers an opportunity for people to decide what they want to do in their own particular circumstances. But, yes, the even more so may actually get less in money terms on an objective view. But what about the subjective view? If the widow's 'mote' means something meaningful to her, that's what matters.

So, how can a mediator ever have a "view of fairness" that is anything other than subjective or at least heavily informed by the mediator's view?"

This is a provocation. Now, over to you all. Thoughts? Reactions?