

# Kluwer Mediation Blog

## What does good mediation look like? A consumer's eye-view.

Charlie Irvine (University of Strathclyde) · Thursday, March 28th, 2019



*“Like poets, but with less time”*

### The Deep End

Getting to grips with mediation can leave students and trainees overwhelmed. That favourite training tool, the roleplay, throws most in at the deep end. The sudden immersion forces them to speak, listen and observe while trying to remember models and skills plus a sea of reading and the trainer's feedback. Oh, and all combined with performance anxiety. (See Michael Jacobs' excellent critique of this approach in [“How About Making Mediators More Stupid: A Training Agenda”](#)). This is well-intentioned and even helpful, but I sense that most emerge from their training with the same unanswered question: what does good mediation look like? To expand this slightly: what exactly do expert mediators do and say? How do they work their magic?

Rather than add more tips to the long list already out there (for which I must bear some responsibility: see [Practical Tips for Mediators](#)) I'd like to offer another perspective – the user's. Regular readers will know that I am myself immersed in, and sometimes overwhelmed by, a PhD study of mediation parties. Mediation practice isn't the main focus; in fact I'm researching ordinary people's sense of fairness and justice. However, from time to time, in the stories I hear, I catch glimpses of mediators in action.

## A Consumer's Eye-View

Here's an extract from an interview with a small claimant referred to mediation by the court (in Scotland, where this is a relatively new phenomenon – see [And Finally... Some Plain English from Scotland](#)). Asked if the process was fair this individual spoke highly of “the senior mediator”, then added this passage:

Respondent (R).. *It was a good process. Yes.*

Interviewer (IV).. *Yeah? OK.*

R.. *Yes. It was fair –*

IV.. *And what made it so?*

R.. *The professional way it was done.*

IV.. *OK.*

R.. *Yeah. The controlled environment that it was done in. The clear wording that was used all the time. They had no – the mediator didn't have a challenge from either party, so that helped.*

IV.. *Right.*

R.. *Neither party was challenging to any serious extent. There was never a raised voice, ever. But that's only created if you create the correct environment and I think the mediator did.*

IV.. *OK.*

R.. *And a proper briefing in advance.*

## Sounds So Simple

What does this tell us about effective mediators? At first glance it's simple, trite even: behave professionally, create a controlled environment, explain things clearly and, almost as an afterthought, brief people about what's going to happen. And yet this person's repeated mention of the lead mediator suggests there was something striking about her approach. The claimant clearly felt in very safe hands.

That ‘to do’ list elegantly captures four faces of good mediation: **trust, setting, word choice** and **preparation**. Let's consider each in turn.

### Trust: “the professional way it was done”

The mediator had clearly gained the individual’s trust (and the other party’s – note the reference to no challenges). How did she do this? I imagine in part by her actions. Winslade and Monk, in their 2001 book *Narrative Mediation*, say of trust: “It is primarily an achievement, or a moment-by-moment series of little achievements.” Yet trustbuilding has an equally important negative side – NOT taking actions that betray trust, such as revealing confidences or causing someone to lose face. A nice metaphor for trust is the stalagmite, built in tiny increments yet snapped by a single blow.



Image provided by Pixabay:  
<https://pixabay.com/photos/cave-frasassi-stalactite-cave-2703778/>

At the same time the statement speaks of being as much as doing. Mediators must be seen as trustworthy – “the sort of person you can trust”. I have a hunch that effective mediators share an unwritten code of values, most likely built up by trial and error. Examples would be treating everyone as if they’re well-intentioned (Bush and Folger articulate this in their *Ten Hallmarks of a Transformative Mediator*); assuming that if something’s a problem for one it’s a problem for both; being careful and consistent about what’s confidential and what needn’t be; and the right combination of patience and impatience. It sounds odd but clients tend to appreciate both telling their stories AND being kept on track.

### Setting: “the controlled environment”

This speaks both of physical setting and atmosphere. Effective mediators care deeply about what’s around them. They understand a simple truth: if the room isn’t right, most people won’t notice. But they’ll blame the other party or the mediator if things don’t go well.

By “the room” I mean a raft of factors: the seating (too close, too far away, socially awkward positioning, not comfortable enough, too comfortable?); the lighting (too bright, too dark, sun shining in someone’s eyes, glaring fluorescent light?); the table (small, large, low, high, none?). And of course the temperature! Ijzerman and Semin’s 2009 *experiment* found that warmer conditions induced (a) *greater social proximity*, (b) *use of more concrete language*, and (c) *a more relational focus*. Surely all matter to mediators. My most frantic moments can be the few minutes before parties arrive when I’m shown into a cold, impersonal boardroom dominated by a large, rectangular table pitting one ‘side’ against the other. Cue urgent furniture removal, light dimming

and air-con tweaking.

“Atmosphere” refers to the intangible yet instantly detectable feeling in “the room”. To an extent it wafts in with the parties. Humans are pretty good at detecting atmospheres: warm, cold, wary, angry, defensive. Yet they can also trigger and exacerbate each other, one reading wariness as coldness; another reading nervous laughter as mockery. So alongside the physical environment mediators need to shape the atmosphere. If things are fraught they calm it down. Faced with despair they pep things up, injecting energy and focus. And if someone’s angry and threatening they have the confidence to steer into conflict, curious about what’s behind the behaviour. They use their whole humanity: tone of voice, facial expression, hands, posture.

### **Word Choice: “the clear wording that was used all the time”**

This could be the whole blog. There is something of the poetic about mediators in full flow. Like poets, but with less time, mediators must carefully weigh the precise tone of each word. They can’t wait around for inspiration, which Picasso said “*exists, but it has to find you at work.*” (Thanks to poet [Anthony Wilson](#) for this gem). Mediators too have to keep working, carefully crafting each question, each evocation, each capturing of the moment as an offering, for taking or leaving. If something doesn’t work, try something else. Don’t give up.

It’s hard to say much more. I absolutely hate scripts. The right word, the “*mot juste*”, is rarely planned – it’s a reaction, a response to something said or some look given. It’s both emotional and rational. First, watch and listen; then speak; then watch and listen. When you get it right you know it. When a mediator’s words land the effect is visible and visceral. It can be sudden or it can be gradual. No matter. When done well the atmosphere changes and the conversation flips from confrontation and accusation to the exchange of perspectives, the solving of problems and the saving of face. So hats off to our lead mediator for her “clear wording”.

### **Preparation: “a proper briefing in advance”**

Again much could be said. Because mediation is a mystery to most we need to explain what we’re about. This is not the same as the traditional mediator’s intro. Liz Stokoe, author of “[Talk: The Science of Conversation](#)“, once told our national mediation conference that when potential clients hear “mediation philosophy” (ie impartiality, confidentiality, not-judging) it’s a tumbleweed moment. They zone out. They prefer to hear something more concrete : what’s going to happen, who’ll be involved and how long will it take. Presumably the lead mediator’s briefing did this so well that it seemed almost effortless, hardly worth mentioning except as an afterthought.

### **What Does Good Mediation Look Like?**

This is just a snapshot. The American Bar Association’s “Task Force on Research on Mediation Techniques” produced a 2017 [report](#) running to 69 pages. Very good it is, full of detailed insight and carefully weighed analysis. Yet there’s something appealing about my Scottish consumer’s depiction of a mediator at the top of her game. This small business-person was understated and mostly factual, having to be prompted to reflect on the process. It was a bit like asking someone

fresh from surgery how good the doctor was. You might think the result is all that matters, but people who feel in really safe hands go to great lengths explaining what the doctor did and said that “made all the difference”. It’s as much art as science.

So for new mediators the prescription is straightforward: do as much as you can. Volunteer, observe, co-work, get out there (see the recent [Kluwer Mediation blog](#) for Rosemary Howell’s inspiring tale of three new mediators who have). Each mis-step will lead to learning. Get 50 mediations under your belt; then 100. And sooner or later someone will say about your work “It was a good process. Yes.”

---

*To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).*

### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how [Kluwer Arbitration](#) can support you.

The graphic features a black background with white text and a circular icon. The text reads: "Learn more about the newly-updated Profile Navigator and Relationship Indicator". The icon depicts a magnifying glass over a group of people. The Wolters Kluwer logo is in the bottom left corner.

This entry was posted on Thursday, March 28th, 2019 at 12:11 am and is filed under [Clients](#), [Developing the Field](#), [Experience](#), [Feedback](#), [Language](#), [mediation as a career](#), [Mediation Schemes \(In Courts, etc.\)](#), [Mediation Users/Clients](#), [Personal Development](#), [Research](#), [Skills](#), [Success in mediation](#), [The role of the mediator](#), [Training](#), [Uncategorized](#), [user perspectives](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a

---

response, or [trackback](#) from your own site.