



Difficult Conversations, Hostage Negotiation and Mediation

North West mediator, Peter Vinden, talks about using his hostage negotiation training in mediation.

If you want to know the meaning of pressure, try negotiating with a hostage taker whose demands are extremely unreasonable and whose motivations are political, racial or based on religious beliefs when a person's life is on the line - then you will really experience what it is to have a difficult conversation!

Negotiations conducted in commercial mediations are invariably about money, so you would be forgiven for thinking that these sorts of negotiations would be less pressured - but so often they are not.

We are living in difficult economic times and the outcome of some of the mediations I am involved in can mean the difference between a business failing or not, personal guarantees being called, wide scale redundancies taking place and other very unpleasant consequences. The techniques for handling extreme negotiations in these sorts of situations are not so different from the skills you need in a hostage negotiation.

The English courts continue to endorse mediation because the statistics speak for themselves, with over 80% of cases settling.

One of the keys to a successful outcome in mediation is in the careful and structured reality testing of the parties in private session. It is these discussions, if handled carefully, that will give the mediator the clues and keys for plotting a successful route through to agreement and a successful outcome to the mediation.

By the time the mediator is ready to have these difficult discussions, temperatures will have been raised, expectations will be high, tempers will be frayed and a pressure cooker atmosphere will be pervading the entire process. See the similarities?

So how do you approach a difficult line of questioning in a mediation without alienating a party?

It is critical that the mediator connects with each party to the mediation. To make a successful connection you will need to demonstrate that you are listening attentively and hearing what is being said.

Starting with an open question is always a good idea.

Encouraging a party to talk about the background to a dispute should help relax the participants into the discussions. Re-playing what you have heard will demonstrate that you are really listening to what is being said and will help to build trust. "So, if I heard you correctly, what you are saying is" is a good way of demonstrating empathy, developing trust, listening and hearing (these last two are quite different).

Rushing into questions that are designed to start negotiations is not such a good idea but there will inevitably come a time when closed questions will need to be put to a party to encourage negotiations to commence.

Expressions of your own personal views should be avoided at all costs. It is not the mediator's job to dictate a settlement position. Questions along the lines of "How would you react if I could persuade Bloggs Ltd to?" could be a delicate way of gauging a party's position and encouraging it to continue with, or enter into, the negotiation phase of the mediation.

Good mediators avoid confrontation like the plague. Parties can be forgiven for venting their anger at you as the mediator but if that happens, don't panic, just keep cool and remain measured, even if you are secretly in a state of abject panic. Allow the party to vent his or her emotion and then gently remind the party concerned that you are involved in the process to try and help with a resolution of the dispute. You are not an obstacle but rather an aid to helping them to achieve a solution.

Keeping cool and hiding your own feelings about the dispute, whatever they are, are essential ingredients to finding a way through to a solution. Don't be frightened of asking difficult questions, but choose your moment and have a strategy worked through in your head so that if you are challenged you can explain and therefore justify why you are exploring a particularly sensitive area.

Finally, if in doubt, leave it out! Don't ever ask a question in a pressured negotiation or mediation unless you have good reason to do so and be prepared to receive an answer that you would prefer not to hear!

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