

POWER IMBALANCES IN MEDIATION

What is Power?

Power is the ability to influence events or outcomes, and to have an effect on the perceptions and actions of others. Nobody lives in a state of complete powerlessness (although we may sometimes feel like it), and all of us wield power positively or negatively in our day-to-day relationships.

For people in a situation of conflict, power is very important. Mediators will strive to assist parties in dispute to work collaboratively and will intervene to attempt to neutralise threats or intimidation, but nevertheless each party will be aware of and use their own power and each will have formed a judgement about the power of the other.

Sources of Power

Power does not exist of itself. It comes from having a resource to use as a lever to help get what you want. In most cases, power involves an ability to utilise wealth, violence or superior knowledge, but there are other sources of power.

Source	Example
Formal authority	judge, housing officer
Expert/information power	expert witness, technician
Associational power	"he looks just like my father"
Resource power	bank, oil company
Procedural power	court clerk, bureaucrat
Sanction power	traffic warden, teacher
Nuisance power	vandal, salesman
Habitual power	"things are always done this way"
Moral power	priest, philosopher
Personal power	charismatic leader, mediator

In the context of mediation, power will often be unstated or unclear, and more than one kind of power may be held by the same individual. Parties to conflicts can also either underestimate or overestimate the amount of power held by either themselves or the other party.

Power Imbalances

Rarely, if ever, will power be equally balanced between the parties to a dispute. Even if it were desirable, there is no way a mediator would be able to measure the distribution of power between parties, and then intervene to redistribute power more equally. Mediators, however, are not primarily concerned with obtaining justice for both parties in the sense of an outcome judged to be 'fair' or 'equitable' by the mediator or some outside agent: the end outcome of a dispute should in the normal course of events be agreed between the disputants without reference to values or measurements proposed or imposed by others.

In some cases, though, the imbalance of power will be so great that mediation may be hindered without intervention by the mediator to combat it, or in more extreme cases may simply be inappropriate altogether. There is no standardised formula available to mediators to decide whether intervention is necessary or whether the imbalance is great enough to make a case unsuitable. It is a matter for judgement in the light of the mediator's own experience and understanding.

Thinking about Power Imbalances

Although there is no standard formula to assess power imbalances, the following guidelines may be useful in thinking things through and working out a course of action:

Situations where Significant Imbalances often occur

- > Where the number of people on each side is unbalanced
Example: a neighbour in a block of flats being complained about by five others
- > Where one party has personal skills/resources substantially greater than the other
Example: a dispute between an eloquent and confident care worker and a resident with mild learning difficulties
- > Where one party has detailed technical knowledge/information not held by the other
Example: a dispute between a group of residents and a soundproofing contractor
- > Where one party has sanctions available
Example: one neighbour can legally block convenient access for the other
- > Where there are clear alternatives to mediation for one party
Example: one neighbour is keeping pets in contravention of their tenancy agreement
- > Where one party is perceived to have higher status
Example: a neighbour dispute between a white, middle-aged businessman and an unemployed black teenager.

Situations where Critical Imbalances often occur

- > Where one party has substantial sanctions available
Examples: an employer/employee dispute, a landlord/tenant dispute
- > Where one party is intimidated/threatened by the other
Example: situations involving domestic violence/racism
- > Where one party has no interest in resolving a dispute
Example: a committed homophobe living next door to a gay couple

Behaviours indicating Power Imbalance

Often the behaviour of one or both of the parties will indicate a power imbalance. The following may indicate problems:

- > One party is very reluctant to consider mediation but won't give reasons
- > One party is very anxious and withdrawn
- > One party concedes issues very easily
- > One party aggressively refuses to negotiate/modify demands
- > One party issues threats

It is important to remember, though, that all of the above behaviours can be displayed in situations where power is not a substantial issue, and can indicate something as simple as nervousness. Again it is a matter where the mediator must use experience and judgement.

Mediator Tactics and Responses

If a mediator detects a power imbalance which is likely to hinder successful mediation but not necessarily prevent it, there are some interventions which may be useful:

- > Talk to both parties about the issue before a meeting, and if necessary get the issue out in the open during a meeting.
- > If access to information is an issue, check how the least informed party can become better informed.
- > Ensure that both parties are able to be heard and that their interventions are balanced
- > Check with both parties that any agreements reached are realistic and positive.
- > Ensure both parties understand the strength of genuine jointly agreed decisions.

If a power imbalance is such that mediation is not appropriate by the mediator and the mediator and the parties agree then the mediator should consider signposting alternatives. e.g. legal action, arbitration

Further Reading:

Liebmann, M. (ed.) (1998) Community and Neighbour Mediation. London. Cavendish. p183-196

Relevant Legislation: No directly relevant legislation