

Visitor, Complainant, Customer: Motivating Clients To Change In Mediation

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Introduction

It would be nice if both clients and mediator could begin with the assumption that the mediation procedure is being used as intended: to find solutions together to re-establish dialogue, to settle a case, or to put something behind them. For this, sometimes changes in personal behavior are required. However, commitment to mediation and the motivation to make these personal behavioral changes are not synonymous. If a client is willing to participate in mediation (commitment), this does not necessarily signify that he is also willing to change his *own* behavior. Often clients will (silently) hope that the mediator will see the other person as the one who is to blame for the conflict so that only his behavior needs to change.

In a solution focused approach, which is described in much more detail by Bannink (2006ab, 2007ab, 2008abcd), it is the task and challenge of the mediator to assist clients to make changes and help them to leave the ditches they dug themselves into. Therefore this article is not meant for mediators who do not think it is their job or do not want to assist with change of behavior. This article discusses the methods of assessing the clients' motivation to change and how this change can be encouraged, so a positive outcome in mediation is enhanced. In this process the mediator assesses the type of relationship he has with each client to optimize cooperation.

“Visitor,” “Complainant” or “Customer”

Solution focused mediation revolves around four basic questions: What is your hoped for outcome? What difference would that make? What is already working towards it? What would be the next step or sign of progress? The focus in solution focused mediation is on acknowledgment and possibilities: acknowledgment of the impact of the conflict, design of their preferred future by the clients and the invitation to take the steps to get there.

The mediator starts the first meeting by assessing his relationship with each client: does it concern a visitor-, a complainant- or a customer-relationship (see below)? For convenience, the

terms are shortened to ‘visitor’, ‘complainant’ and ‘customer’, although they do not refer to a quality of the client as such, but always to the type of relationship between the mediator and the client. The challenge for the mediator is to invite each client to become (or remain) a customer. It often happens that clients will start mediation from a *visitor- or a complainant-relationship*. This early assessment of each client’s level of motivation is of essential importance for the strategy of the mediator and for any homework suggestions.

In a visitor-relationship the client is mandated (by court, insurance company, employer). The client has no conflict personally. Others have a conflict with *him*. Naturally he is not motivated to change his behavior. Often the mandated client’s goal is to maintain the relationship with the person referring him or to free himself from this person as soon as possible.

The mediator creates a climate in which a call for help is made possible. What does the client want to achieve through his relationship with the mediator? What would the person referring him like to see changed in his behavior as a result of the mediation and to what extent is the client prepared to cooperate in this? Some tips:

- Assume that the client has good reasons for thinking and behaving in the way he does.
- Do not be judgmental, and inquire into the perceptions of the client that make his – often defensive – attitude understandable.
- Ask what the client thinks the person referring him would like to see changed at the end of the mediation.
- Ask the client his opinion on this and what his minimum input might be.

In a *complainant-relationship* the client has a conflict and is suffering from it, but he does not see himself as part of the conflict and/or the solutions. He does not feel the need to change his own behavior; he thinks the other or something else is to blame for the conflict and should change. The mediator gives acknowledgement and asks about his competencies (for example: How do you manage?). He invites him to talk about exceptions: moments when the conflict is or was there to a lesser extent or about the moments when there is already a sign or small part of what the client does want instead of what he does not want. Thus the client is invited to think and talk about his preferred future (without the conflict) rather than focusing on the conflict.

Haynes, Haynes and Fong (2004) state that a mediator can only mediate in the future tense. They propose that he uses future focused questions to initiate change. “Most clients are highly articulate about what they do not want and equally reticent about what they do want. However, the mediator is only useful to the clients in helping them to determine what they do want in the future and then helping them decide how they can get what they want. It is difficult for the mediator to help clients not get what they do not want, which is what clients expect if the mediator dwells with them in the past” (p. 7).

Walter and Peller (1992) describe four strategies that may be applied in a complainant-relationship:

- I wish I could help you with this, but I am not a magician. I do not think that anyone is able to change anyone else. How else might I help you? Or: In what way is this conflict a problem for you?
- Investigating the hypothetical solution: Imagine the other changing in the direction desired, what would you notice different about him? What would you notice different about yourself? What difference would that make to your relationship with him? At what moments is this already occurring?
- Investigating the future if the other is not changing: What can you still do yourself?
- Figuring out the hoped for outcome behind earlier attempts: What do you finally hope to achieve together?

Neighbor A, living on the first floor, experiences noise nuisance from neighbor B on the second floor. Late at night he habitually plays his guitar and walks on the laminate floor. This keeps neighbor A awake so he has become increasingly annoyed by this. He has knocked on the door of neighbor B many times to ask if it is possible to keep the noise down. Neighbor B, however, thinks that he has the right to make music in his own home and according to him walking on the laminate floor does not make a noise. When both present themselves for mediation, referred by their housing association, neighbor A can be characterized as a “complainant” (the other needs to change) and neighbor B as a “visitor” (I have no conflict).

In this mediation neighbor B, when asked what the housing association liked to see changed in order to let him stay, realized that he had to keep the noise down somewhat at night. Neighbor A decided to make the ceiling of his apartment soundproof and pay for the costs himself, since the housing association was not going to pay for it.

In a *customer*-relationship the client is also suffering from the conflict and sees himself as part of the conflict and/or the solutions and is motivated to change his behavior. In the request for help the word “I” or “we” is present: What can I do to solve this conflict? Or: How can we ensure that we re-establish a good relationship or split in the best possible way? A mediation with two “customers” is often “the icing on the cake.”

In the first meeting it is common to find that both clients are “complainants” and think that the other needs to change. The trichotomy between “visitor,” “complainant” and “customer” is a value-free continuum: each position of the client is validated and accepted; the fact that he has shown up at all makes him already a “visitor,” because he could also have chosen not to attend. Cialdini (1984) states that the rule for reciprocation (“much obliged”) and liking the other person (the mediator) are strong “weapons of influence.” Giving compliments to the clients helps in establishing a good relationship.

During a mediation concerning parental access in the context of a divorce the mediator gives both ex-partners compliments for the fact that they have shown up and for demonstrating the willingness to investigate how mediation can help them formulate a good arrangement for their children. The mediator remarks that both parents clearly show the motivation to do the best for their children. Later on she compliments the woman for not wanting to reach an agreement too quickly, since she wants to deal with the conflict thoroughly and make it right. The man is complimented because he, on the contrary, wants everything to be sorted out quickly, but is able

to summon the patience not to rush things. The question asked by the mediator that made a difference to the clients was: Suppose I come across your children in about ten years time and I were to ask them how you managed to settle this conflict in a good enough way, what would you like them to say to me? This question - from the perspective of their children - made them realize that this mediation was not only about themselves, but mainly about their children.

Acknowledgment and Possibilities

One of the principles of motivational interviewing (Miller & Rollnick, 2002) is unconditional acceptance of the client's position. The professional builds a relationship that is based on collaboration, individual responsibility and autonomy. Miller & Rollnick state that the necessity of approaching the client in a non-moralizing way is impeded if the professional is unprepared or unable to defer his own (mistaken) ideas about problem behavior and labels the client's behavior. The professional reacts with empathy, avoids discussions and strengthens the clients' self-efficacy. Miller & Rollnick introduce the (solution focused) term change talk. This is a method of communication used for enhancing the client's intrinsic motivation to change by stressing the advantages of the behavior change. This change talk assists the client in preparing for change. As methods for professionals to elicit change talk, they mention asking open-ended questions, such as: How would you like to see things change? How would you want your life to look in five years time? By inviting clients to talk about their preferred future (their goal), their competences and successes and to look for the exceptions, moments that were or are successful, the mediator will encourage visitors and complainants to transform into customers. Asking competence questions stimulates clients to talk about successes and to give self-compliments, which feeds their feeling of self-worth.

Salacuse (1991) mentions a few rules to ensure that clients are paddling the same canoe in the same direction: first, precisely define the goal and investigate new possibilities for creative solutions that serve the interests of both clients. Also considered important are an emphasis on the positive aspects of the goal and of the relationship, and stressing those moments when agreements are (already) reached and when progress is (already) being made. Salacuse (2000) also discusses the importance of having a vision of the end result. Michelangelo could already see in a block of marble the magnificence of David, as Mozart already heard in his quiet study the overpowering strains of the Requiem. What clients seek is not just help but help with their future: "Whether an advisor is a doctor, a lawyer, a financial consultant or a psychotherapist, his or her mission is to help the client make a better future" (p. 44).

The Death of Resistance

De Shazer (1984) proposes that what professionals see as signs of resistance, are in fact the unique ways in which clients choose to cooperate. For example, clients who do not carry out the assigned homework, do not demonstrate resistance, but are actually cooperating because in that way they are indicating that this homework is not in accordance with their way of doing things. De Shazer assumes that clients are competent in figuring out what they want, and in which way they can achieve this. It is the mediator's task to assist clients in discovering these competences and using them to create their preferred future. "With resistance as a central concept, therapist (mediator FB) and client are like opposing tennis players. They are engaged in

fighting against each other, and the therapist needs to win in order for the therapy to succeed. With cooperation as a central concept, therapist and client are like tennis players on the same side of the net. Cooperating is a necessity, although sometimes it becomes necessary to fight alongside your partner so that you can cooperatively defeat your mutual opponent” (p. 13). In this case the opponent is the conflict. This view relates to the narrative approach (Winslade & Monk, 2000), in which externalizing the conflict, turning the conflict into the enemy, is a much used intervention. If the mediator feels that he is becoming irritated, insecure or demoralized, counter-transference is taking place: the negative reaction of the mediator to the behavior of the client. This may happen when the mediator – wrongly – considers the client a “customer” when it still concerns a visitor- or a complainant-relationship.

Assessing Motivation, Confidence and Hope

Scaling questions about motivation, confidence and hope to change can be used to find out how motivated, confident and hopeful clients are that the mediation will be successful. Asking competence questions (How were you able to do that? How did you decide to do that?) also helps to increase motivation, confidence and hope. Moreover, scaling questions are equally valid for the mediator, who can assess his own motivation, confidence and hope. Questions for assessing *motivation*:

- If a 10 means that you will do anything to reach your hoped for outcome and a 0 means that you will just wait and see, at what point on the scale are you right now?
- When your client gives a high score, for example a 7 or 8, you may ask: Where does this willingness to work hard come from?
- When your client give a low score, for example a 2, you may ask: How did you manage to reach a 2, how come it is not a 0 or 1? The follow-up question could be: What would a 3 look like? And: What is required to move up one point on the motivation scale?
- Suppose you would give your motivation a higher score, what would you notice different about yourself? What would be different in your relationship with the other person?

The mediator can also ask how confident or hopeful clients are that they will reach their goal:

- If a 10 means that you are completely confident that you will reach your hoped for outcome and a 0 means that you have no confidence at all, where on the scale would you say you are right now?
- When your client gives a high score, you may ask: You seem to be the type of person that, once a decision to tackle something has been made, has a strong belief that he will succeed. Or: Where does this high level of confidence (or hope) come from?
- When your client gives a low score, for example a 3, you may ask: How did you manage to reach a 3 despite the situation? What would one point up look like? What is needed to move up one point on the scale? What can you do yourself and what do you need from the other person?
- Suppose you would give your confidence (or hope) a higher score, what would you notice different about yourself? What would be different in your relationship with the other person?

Ms. A (employer) and Mr. B (employee) are at the table of the mediator. Mr. B says: I do not think that this mediation will succeed, the former mediator has also not helped us much. We did make an agreement, but the implementation of what was agreed has never come off the ground. It has only led to more arguments and on top of that I cannot work anymore. The (overoptimistic) mediator ignores this remark (even though Mr. B repeats that it should be up to the judge to take a decision) and before long the mediation reaches a deadlock. The mediator would have done better to validate the doubts of Mr. B by asking scaling questions with respect to his confidence and hope. Then there would have been an opening to increase his confidence and hope. Suppose you would have a bit more hope, what difference would that make? Also the mediator could have asked: How, despite your earlier experience, do you manage to sit here at the table?

Motivation of the Mediator

The mediator also needs to be motivated to help clients reach their preferred future. The responsibility for a good alliance not only rests with the clients but equally with the mediator. If no progress is being made, the mediator can ask himself these questions:

- If I would ask the clients how my contribution has helped so far, even though it may only be a little bit, how would they respond?
- What do the clients see as sign(s) of a successful result?
- How realistic is this result?
- What do I see as sign(s) of success?
- If my ideas and those of my clients differ, what needs to be done in order for me to work towards their goal?
- Where on the scale of 10 to 0 would the clients say that they are right now?
- What should happen for them to be able to achieve a score closer to 10?
- How much motivation, hope or confidence do I have as a mediator that this mediation will be successful? Suppose I would have more motivation, hope or confidence, what would I then be doing differently? And what difference would that make to my clients?

If the mediator is no longer motivated, confident or hopeful that he can help clients reach their preferred future, he should examine what needs to be done to regain motivation, confidence or hope himself. When he has himself a complainant-relationship (he may be irritated or discouraged) and is no longer motivated to re-establish a positive cooperation with his clients, it is advisable that he re-assigns the mediation to a colleague. Norcross (2002) and Wampold and Bhati (2004) found that the persona of the professional and alliance with his client are far more powerful determinants of the outcome of the meetings than the choice of methodology.

Summary

If clients are committed to participate in mediation this does not necessarily mean they are motivated to change their own behavior. Sometimes this change in behavior is necessary to have a positive outcome in mediation. This article describes the relationship between the mediator and each client: is it a visitor-, a complainant- or a customer-relationship? Is the client mandated, does he think that the other is to blame for the conflict and needs to change, or is he

motivated to change his own behavior? The author describes how in the different scenarios the mediator can (continue to) cooperate with his clients and motivate them to contribute actively to their preferred future.

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