

**Independence, Impartiality and Neutrality in Local Authority Mediation  
Services: High Standards or High Hurdles?**

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**Research dissertation submitted as part of MSc in Conflict Resolution and  
Mediation Studies, Birkbeck College, University of London 2006**

## **Abstract**

In recent years there has been a huge increase in the number of mediation services provided directly by local authorities and statutory agencies. Prompted, in many cases, by government initiatives addressing neighbourhood renewal or anti social behaviour issues, councils, housing associations, police and health agencies have all established services and offered them to their 'customers'. Most are based on the kind of principles which are commonplace in community mediation services. They have at their core, for example, the principles of independence, impartiality and neutrality. This study considers whether these principles provide useful ethical guidelines for mediation practitioners, or if they are obstacles to the provision of effective and relevant conflict resolution services.

Much work has already been done by conflict resolution academics and practitioners in this general area: the principles which govern mediation practice have been dissected and examined by different writers from different angles on many occasions in recent years. This study reviews the relevant parts of this work and its conclusions. The vast bulk of this material, however, is North American in origin. The mediation practice which it examines is fundamentally different from the subject of this study. A limited amount of research has been done in the UK and Ireland and this work will also be reviewed. It is more relevant to this study than the North American work, but it is usually focused on community mediation services. The work of mediation services operating from within and on behalf of statutory organisations has not been considered before.

## Research Summary

Mediation in both the statutory and the community sectors is promoted amongst customers and funders as an independent, impartial, and neutral process. This study was an attempt to establish the extent to which an in-house mediation service, staffed and financed by a host organisation and often operating from the same offices, can claim to be truly independent, impartial and neutral. It attempted to establish the degree to which community mediation services can remain true to these same principles once they receive funding from statutory agencies. The research also considered how the process of mediation itself operates within the parameters set by the three principles. It looked at whether they aid the process, or whether they are a hindrance to effective and relevant conflict resolution practice. The study took the form of a critical analysis and narrative review of existing literature. It focused on the community mediation and the statutory sectors, with particular weight given to the neighbour-neighbour dispute services provided by in-house mediators. Three case studies were used to highlight various points.

The chief conclusion of the study was that conflict resolution work runs the risk of becoming constrained by principle and ending up, in consequence, imposing a model of dispute resolution which can be inappropriate to the particular situation. In bitter, intractable disputes, facilitation and empowerment of the parties is not always what is required. Rather, the skills of the 'conflict specialist' – Mayer's term - are needed to help parties evaluate their options and articulate what they need. There may be a need too for support, coaching, and help with negotiating. This kind of work is already happening. Mulcahy and Summerfield have demonstrated that community mediators are sometimes prepared to set aside their position of neutrality and to act as advocates for the parties. Where they believe a dispute has been brought about by the conditions in which the parties are living, they try and get the disputants to see their problem as a shared one, rather than as a dispute between individuals. They coach the parties to start seeing their property and their landlord as the problem, rather than their neighbour. They provide them with contact names and encourage them to lobby for a change to the conditions which have brought about the conflict.

This approach may appear heretical to those mediators who regard the independence, neutrality and impartiality of the mediation process almost as an article of faith. The argument put forward in the study, however, is that rigid adherence to these principles allows statutory agencies to wash their hands of responsibility for issues which fall within their remit. By remaining impartial and neutral, mediators could be complicit in the personalisation of disputes which are often due to faulty systems as much as troublesome individuals. Poor quality estate design, property construction, or community mental health services are surely systemic faults requiring systemic solutions. Offering individuals the opportunity to resolve 'their' conflict places a heavy burden on those with limited control over the circumstances giving rise to the dispute.

The research puts forward the view that the personalisation of disputes suits many people and organisations. It suits the statutory agencies, which are able to pass on responsibility for sorting out 'difficult' tenants to specialist mediators. Not only does this remove the immediate problem from their desk, it also allows them to avoid looking at wider reasons for disputes which might require the deployment of money

and resources, scarce commodities both. Finally, by offering mediation, and thereby paying lip service to mediation values such as community development and empowerment, statutory agencies are ticking the kind of boxes progressive public bodies should be ticking. The personalisation of disputes also suits a growing band of conflict resolution professionals and volunteers. To some it offers the prospect of employment in a line of work which allows them to put their values into practice.

Rather than personalising disputes in this way, statutory agencies should, perhaps, be taking a more holistic view. Housing bodies and the police, for example, are prepared to take a systemic approach when it comes to dealing with crime; 'design out crime' schemes place more emphasis on prevention by focusing on crime 'hotspots' and, where possible, designing these out of the system. Youth diversion schemes take a similar attitude by heading off problems before they erupt or get worse. Yet this approach is not employed when it comes to conflict. Where are the 'design out conflict' schemes? How much thought is really given both to the design of properties and, once built, to their allocation? It does not require great foresight to know that building properties with poor sound insulation will result in noise disputes, yet it happens. One could foresee, surely, that allocating the flat above an elderly couple to a family with young children, or to a young single man, will result in complaints arising from different lifestyles, but this happens too.

The study attempts to show that, if it is to be relevant and effective, conflict resolution must be flexible enough to deal with a variety of situations. There is a time and a place for relational mediation. There is a place, too, for independent, impartial and neutral mediation services. Yet mediation must also provide what people in conflict want and need. People trapped in war zones are not concerned, in the first instance, with building better relationships with their neighbour. They want security, food, and water. Those who find themselves involved in a neighbour dispute often do not know the name or face of the perpetrator, and have no desire to meet or engage with that party. They may not be particularly interested in being 'empowered' or 'facilitated'. They are interested only in getting the music turned down, the boundary line moved, or the young footballers outside their window shifted. The experience of many mediators is that unless they adapt their practice, they get stuck on the periphery of the real conflicts taking place in neighbourhoods, dealing only with the 'easy' disputes.

The research concludes with the view that the more intractable disputes cannot be resolved through relational mediation alone. Mediators need to be working with a range of partner organisations, and making conflict resolution skills relevant to the work these bodies are doing. The values which motivate individuals to get involved in mediation in the first place, particularly community mediation, are the same values which enable them to see beyond the dictates of policy on anti social behaviour. Many people involved in neighbourhood disputes require help and support. Mediators can be a part of this by developing closer working relationships with partner organisations. If mediation services wish to make sure that a punitive 'asbo' culture does not prevail, they need to be at the centre of the action. They can only do this by proving their relevance. And they can only do this by dropping, when necessary, the principles which threaten to confine them to the edge of the debate, dealing with what Mayer has termed, the disputes that are either not too difficult or not worth the trouble.

## References

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