

# 11 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. None of us 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 work 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. MS Umbreit lists ten:

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

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

Power is rarely equally balanced between 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 people and then intervene to redistribute it more equally. Mediators 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 a mediated agreement may constitute a significant injustice if left unchallenged. 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. Like many other issues, it is a matter for exploring with the parties, and of judgement in the light of the mediator's own experience and understanding.

## Situations Where Significant Imbalances Often Occur

- > Where the number of people on each side is unbalanced  
*Example: one neighbour in a block of flats is 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 dispute between a middle-aged businessman and an unemployed teenager.*

## Situations Where Critical Imbalances Often Occur

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

## 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 some of these 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 suspects 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 each party privately, and if appropriate, raise the issue in the 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 seems to be so large that mediation is not appropriate, the mediator should offer to explore other ways of resolving the issues with all parties involved. Alternative options could include the following:

- > **Legal action:** either civil or criminal.
- > **Arbitration:** carried out by independent expert and legally binding.
- > **Advocacy:** particularly where one party has mental health or learning difficulties.
- > **Practical measures:** e.g. soundproofing or transfer of accommodation.

**This is one in a series of briefing papers on Community Mediation for practising and trainee mediators.**

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