

Introduction

Clear communication and understanding are necessary for the success of any mediation. To increase the prospects of agreement being reached, everyone must be aware of the difficulties that have arisen, the meaning of questions asked or answers given in the course of a meeting, as well as the terms of any agreement. This is true in any situation, but special difficulties will arise when people have hearing or speech problems, or where there is no common language between the parties, and it is here that the use of a signer, language therapist or interpreter may be required.

In many situations, such as where the parties share no common language whatsoever, the necessity is clear. In less obvious situations, as with someone who has limited understanding of a language, the issue will need sensitive exploration. If the mediator identifies a potential difficulty in communication, they should explore whether the use of an interpreter, signer or language therapist would be useful. The mediator will be able to help inform the decision, for instance by describing the nature of a mediation meeting and the importance of accurate communication. Some people may be able to “get by” with conversations where the speaker pronounces clearly and slowly, but this may not be sufficient when they or the other party is anxious and under stress. Being unable to fully understand what is happening and being said will only add to their natural anxiety. In the end, however, this will normally be a decision for the person themselves. Do not fall into the trap of assuming someone is “slow” because their grasp of English is uncertain.

Role of the Interpreter

The interpreter should provide an accurate translation of what is being said. This requires an understanding of and confidence in both languages, as well as an understanding of cultural contexts and non-verbal communication. In some cultures, for instance, a nod of the head means yes, in others it means the opposite.

There are certain core points that mediators should be aware of as regards the use of interpreters:

- 1. Confidentiality:** Give careful thought to issues of confidentiality, and make sure that the interpreter is aware of their obligations in this regard. Remember that in many communities almost everyone is known to each other, and that this can sometimes cause problems. Make sure these issues are discussed with the parties to the mediation.
- 2. Speak to the interpreter in advance of meeting with the parties:** Check out their command of the language and culture. Ensure they know any dialect that may be involved. For instance, in many areas of China a range of different languages and dialects are in use. Do not assume that because one party is Chinese and the interpreter is Chinese that they will necessarily be able to understand each other.
- 3. Prepare the interpreter so that they understand the mediation process and their role:** Ensure they appreciate they should translate what is being said accurately, literally and impartially. Interpreters have on occasion been known to translate into what they feel should have been said or what they think the mediators would like to hear, rather than the actual sentiment! Their function is to translate exactly what the mediator, the party or the other party is saying.
- 4. One voice at a time:** The interpreter should interpret everything that is said and therefore it is important that there is only one conversation at a time. The mediator must ensure this happens otherwise there may be confusion and misunderstanding, and the interpreter’s job will be made much more difficult.

5. **Address the party rather than the interpreter:** The interpreter should be an aid to the mediation process and not a party to it. Keep eye contact with the parties and apart from the initial introductions ignore the interpreter unless there is a problem. Tell the interpreter in advance that this is your practice. Try to ensure that the parties face each other when speaking and listening. Be aware of how much the parties are following the discussion. If necessary, check out with them that they are comfortable with the process.
6. **Allow more time for each stage of the mediation:** Mediation meetings using interpreters can take considerably longer. Take more breaks to allow for the greater concentration required. Allow a longer time for responses although this may feel strange or uncomfortable.
7. **Keep language as simple as is possible:** Avoid slang and wherever possible use short, clear sentences. Check out with the interpreter how often they need a pause to translate and let both parties know this. Ensure everyone speaks clearly and pauses as required by the interpreter.
8. **Written/Verbal Agreements:** If the outcome of the mediation is a written agreement, ensure everyone has a draft copy in front of them when checking it over and, where possible, have copies drafted in all the languages used. If the agreement is verbal, take particular care to ensure everyone is clear about what they are agreeing to. It may be appropriate to simply agree verbally and then prepare a written agreement later particularly if the meeting has been long and everyone is tired.

Finding an Interpreter

The way to find and access an interpreter, as well as who pays for their services, will depend on where a mediator is based, who their employing service is, and who has made the referral. Wherever possible, interpreting services should be free to the parties involved in the mediation so as to avoid discrimination in service delivery.

Using an Advocate

Sometimes someone may share a common language with the person they are in conflict with, but may require an advocate to speak for them, interpreting their needs and wishes. This may be because of speech impairment, learning disability or mental health issues. Much of what has been said about interpreters will apply in these cases as well, e.g. the need where possible for the advocate to communicate the wishes of the person in conflict and not what they feel is best. However, this will depend on the level of impairment and every situation will have to be examined on its own specific circumstances, and will need to address the wishes and concerns of the other party as well.

Register of Public Service Interpreters: <https://www.nrpsi.org.uk/>

British Sign Language: <https://tinyurl.com/2s3nvftb>

Advocacy: <https://www.siaa.org.uk/find-an-advocate/>

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