

# scottish mediation

## Mediating Skills for Successful Common Grazing



**Engaging Positively with Conflict**

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# ASSUMPTIONS

Sometimes when we have a bad experience with someone this can start to cloud our judgement about their motives and we can make assumptions about their behaviour based on our own reactions rather than what was actually happening. The next time we meet we are already anticipating a problem which might make us react differently to the way we normally react with someone else. This can escalate and lead to poor working relationships – and when we have to work with someone this can become a disaster.

Attribution Bias Theory talks about this type of assumption – ‘the fundamental attribution error’ - the difference between an action we either take ourselves or by someone we like compared to the same action taken by someone we don’t like.

If we or someone we like does something – e.g. cancels a meeting - then we attribute that action to ‘external’ factors – they were busy or had an urgent issue to attend to, they are a good person really and didn’t mean to cause any upset.

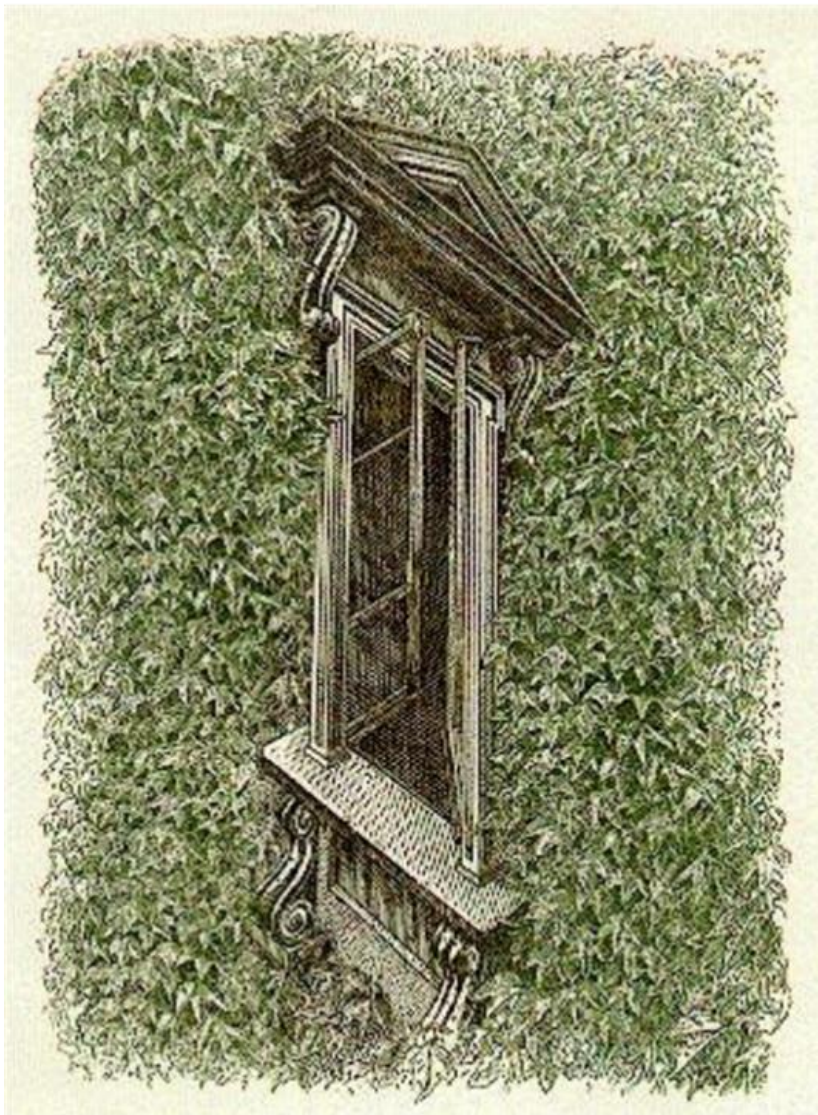
If someone we don’t like does the same thing – then we attribute that to ‘internal’ factors – they didn’t think a meeting arranged by me was important and knew that cancelling would upset me and they are a bad person.

This can affect our ability to make clear and accurate judgements which can lead to conflict.

# PERCEPTIONS

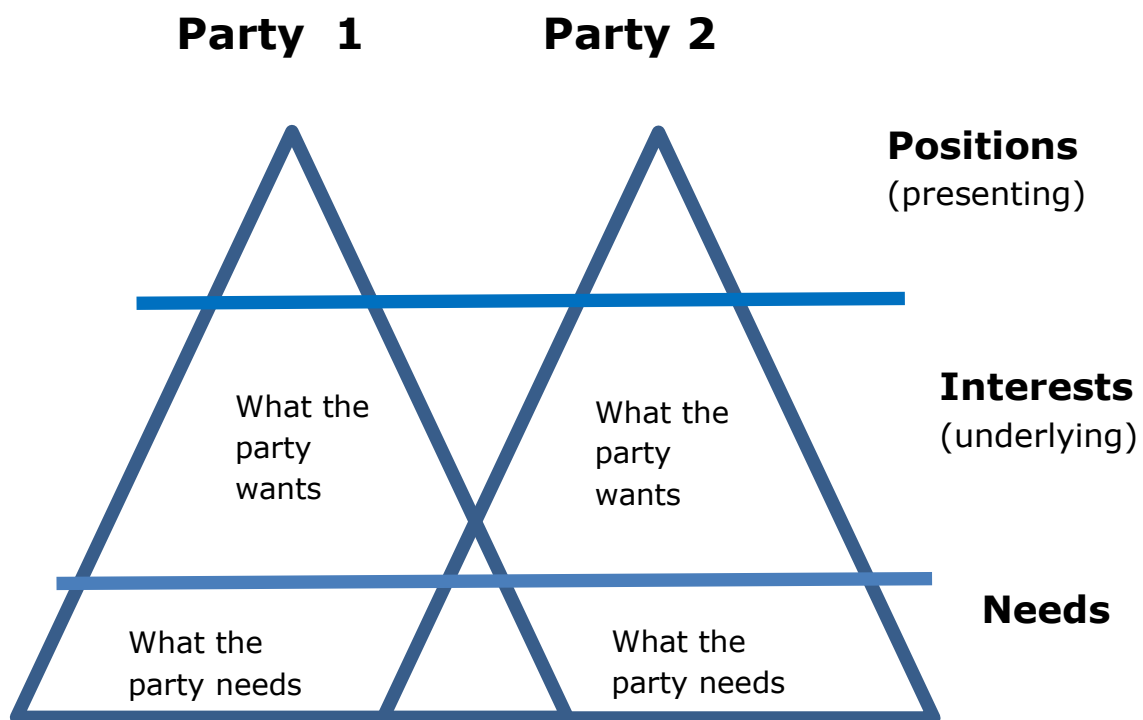
This is a visual illustration of the positions people take which are based on their perceptions – they see the problem/complaint from their own point of view.

Look at the picture below – if you look at the top of the picture the window appears to open outwards, if you look at the bottom of the picture the window appears to open inwards. The image is the same but the perception changes depending on the viewer's focus.



## Engaging Positively with Conflict

# POSITIONS, INTERESTS AND NEEDS



## Engaging Positively with Conflict

In conflict situations people often have “positions” which can be very far apart, deeply entrenched and apparently irreconcilable.

If you can identify the underlying interests of each party you can identify whether there are any areas of complementary interests or shared interests which may form the foundation for reaching an agreement.

Helping the parties to identify, acknowledge and start to discuss their interests rather than their initial positions will help to focus on possible solutions.

In addition, it is helpful to identify what basic human needs are important to each party .

These are very often the drivers for the conflict – we call them FLASHERS!

Any solutions that take these needs into account are more likely to be acceptable and successful.

#### **Needs – Conflict drivers**

- **F Fair**
- **L Listened to**
- **A Acknowledged**
- **S Security**
- **H Heard**
- **E Esteem**
- **R Respect**
- **S Shelter**

### **Engaging Positively with Conflict**



# ACTIVE LISTENING

**Good listening is a two way thing – not just passively absorbing what is being said.**

NON VERBAL COMMUNICATION	Gestures, eye contact, nods
ENCOURAGING	Please tell me more.. You were saying earlier .. Could you explain how you felt
ACKNOWLEDGING	I understand..., I see..., that sounds important to you
CHECKING	You seem to be angry.. Am I right in thinking that you said..
CLARIFICATION	I am not sure that I understand.. Did you mean..
AFFIRMATION	Thank you very much for meeting with me.. I know that it is not easy but you are doing well..
EMPATHY	It sounds like it has been a difficult time for you.. I realise that you are getting impatient/angry/upset..
ASKING A VARIETY OF QUESTIONS	Using open questions
REFLECTING	So you say you want him banned – why is that? You are clearly upset about his/her behavior. What is it that particularly upsets you?
SUMMARISING	So you are saying.. If I could just summarise quickly what I think you have said...
TIMING	Questions and answers should be at an appropriate pace that makes the parties at ease
BALANCE	Good balance between both parties as well as balancing the need to explore the past along with moving forward
TONE OF VOICE	It's not what you say, it's how you say it!
REFRAMING	"She doesn't like me and she never listens" to "So you would like Mary to take more interest in your concerns and to take time to listen to you?"

## Engaging Positively with Conflict

## Which is best? - Face to Face/telephone/ letter/email/ text?

If you are on the telephone you can't use verbal clues to "read" the reaction of the other person and communication can be more difficult. When someone is speaking on the telephone their body language will still reflect their mood and feelings. It happens unconsciously and that animation can transfer through your voice.

Apparently we have more muscles from our shoulders up than from our shoulders down! Movement of muscles will affect the sound of the voice. If we smile our voice is lighter, higher and indicates happiness. If we show anger on our faces the muscles affect our voice too and it will be deeper and more stressed.

Breathing patterns play a major role in how words are spoken. And restriction to your breathing starts when you sit down. This is because our normal reaction is to lower our head and shoulders. When our shoulders and chin are dropped the words are more muffled. This could give someone listening to us the impression that we sound unhappy, unconcerned or even bored and uninterested. Sitting up straight can make a difference or you could even try to stand up!

	<b>Benefits</b>	<b>Disadvantages</b>
<b>Face to Face</b>	<ul style="list-style-type: none"> <li>• Immediate</li> <li>• All non- verbal communications available</li> <li>• Easier to establish Rapport</li> <li>• Can respond to questions and give reassurance</li> <li>• Can share documents</li> </ul>	<ul style="list-style-type: none"> <li>• Travel time</li> <li>• Suitable accommodation</li> </ul>
<b>Video</b>	<ul style="list-style-type: none"> <li>• Immediate</li> <li>• Can get an idea of reactions</li> <li>• Can establish rapport</li> <li>• Can respond to questions and give reassurance</li> <li>• Saves time and travel</li> <li>• Individual is in "safe" space</li> <li>• Can share documents</li> </ul>	<ul style="list-style-type: none"> <li>• Technology issues</li> <li>• Potential for distractions – other people</li> <li>• Usually needs to be shorter than face to face</li> <li>• Confidentiality</li> <li>• Appearance anxiety</li> <li>• Less personal</li> </ul>

### Engaging Positively with Conflict



<b>Telephone</b>	<ul style="list-style-type: none"> <li>• Immediate</li> <li>• Can get an idea of reactions</li> <li>• Can establish rapport</li> <li>• Can respond to questions and give reassurance</li> </ul>	<ul style="list-style-type: none"> <li>• Don't know situation that other person is in</li> <li>• Not aware of distractions</li> <li>• Can't use non-verbal clues to "read" the reaction of the other person</li> <li>• Tone becomes even more important</li> <li>• More difficult to show you are listening</li> <li>• Reflecting and summarizing are even more important</li> <li>• Usually needs to be shorter than face to face</li> </ul>
<b>Letters</b>	<ul style="list-style-type: none"> <li>• Time to consider before responding</li> <li>• Time to frame questions and statements carefully,</li> <li>• Able to set out complex issues</li> <li>• Provides a permanent record</li> <li>• Avoids confrontation</li> </ul>	<ul style="list-style-type: none"> <li>• No visual clues</li> <li>• No way of knowing reactions</li> <li>• Less personal</li> <li>• More difficult to diffuse emotions</li> <li>• Tone can be misleading</li> <li>• Easier to respond aggressively</li> <li>• Can be too brief</li> <li>• Process can be protracted</li> <li>• Can seem official and /or threatening</li> </ul>
<b>Emails</b>	<ul style="list-style-type: none"> <li>• <i>Same as letters</i></li> <li>• Quicker than letters</li> <li>• Easier</li> <li>• More informal</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Same as letters</i></li> <li>• raises expectations of a quick response</li> <li>• Risk of sending to wrong person!</li> <li>• Risk of sending before fully considered</li> </ul>
<b>TEXTS</b>	<ul style="list-style-type: none"> <li>• <i>Same as emails</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Same as emails</i></li> <li>• Very brief and difficult to get tone right</li> </ul>

**If you have a difficult situation it is worth considering whether you can move from written to telephone or face to face.**

### Engaging Positively with Conflict

## NEGATIVE LISTENING HABITS

THE FAKER	All outward signs are there, nodding making eye contact and giving occasional uh huhs. However the faker isn't concentrating on the speaker. The faker's mind is elsewhere
THE INTERRUPTER	The interrupter doesn't allow the speaker to finish and doesn't ask clarifying questions or seek more information. The interrupter is too anxious to speak and shows too little concern for the speaker.
THE HAPPY HOOKER	When the speaker says something the happy hooker steals the focus and then changes it to their own point of view , opinion, story or facts. Favourite hooker lines are "oh that's nothing , here's what happened to me.." "I remember when I was..."
THE REBUTTAL MAKER	This listener only listens long enough to make a rebuttal. Their point is to use the speaker's words against them. At their worst they are argumentative and wants to prove the speaker wrong and themselves right. At the least the person always wants to make the speaker see the other point of view.
THE ADVICE GIVER	Good advice is sometimes helpful. However at other times , this behavior interferes with good listening because it does not allow the speaker to fully articulate their feelings/thoughts;it doesn't help the speaker to solve their own problems; it prohibits venting ;it could alos belittle the speaker by minimizing their concerns with a quick solution. Well-placed advice is an important function of leadership however advice given too quickly or at the wrong time is turn-off to the speaker.

### Engaging Positively with Conflict

## TYPES OF QUESTIONS

OPEN	who, what ,where,when,why
CLOSED	did you, was it
PROBING	can you tell me more about
LINKING	when you mentioned x, can you please tell me more
EMPATHIC	how do you think that makes X feel?
HYPOTHETICAL	what might be possible, Imagine you are in a meeting tomorrow how will you react to each other
FOCUSED	How often .... How would you....
CLARIFYING	Am I right in thinking that the situation arose from x, y and z
REALITY CHECKING	How do you think this might work

## Questions to help to understand underlying interests and needs.

How were you affected by that?

What was it like for you when it happened?

What reaction did that generate in you?

What is the worst thing about all of this for you?

What is the impact on you?

What is the one word that would adequately describe the impact on you when that happened?

What is the one word that could describe your feelings?

How are you coping with this?

What are you worried might happen if this impact continues into the future?

You mentioned that you could not take it any more. What was it that you couldn't take any more?

What is it like for you to be in a place where you say you can't take it anymore?

You said that was the last straw? What was it that you felt was the last straw?

What were you worried might happen at that time?

What did each of you need most from the other at that time?

What was it you considered unfair ?

What is your biggest worry now?

What is the worst thing that could happen?

What is it about this that is important to you?

What would you need from x to move forward?

What is really at the root of the issue for you?

## SING

When dealing with conflict most people will ask about the facts of what happened however to resolve conflict you need to look forward and not back – you can't change what has already happened but you can look at solutions for the future. In order to do that you need to have information about how the situation has affected people and what they want for the future.

SING is a useful check to ensure that your questions have covered all aspects of a conflict –

**Scenario** – tell me about what has happened

**Impact** – How is this affecting you? How do you feel?

**Needs** – What do you need to happen to resolve the situation

**Goals** – What do you want to happen next? What would be a good outcome for you?

## WINA

A form of reframing (see below) for expressing interests in a less aggressive or threatening way.

**W**hen you....

**I** feel...

I **N**eed you to ...

Can I **A**sk that you .....

Using the principle of WINA , with slight changes to the wording , it can also be used as -

1 ) A summarising and feedback tool - to clarify and check understanding and pass information between people e.g. -

Can I just confirm that ..

- When xx happens
- You feel xxx,
- What you need is xxx
- And you are asking xx

And this can then be feedback to another party as

- When xxx happens ,
- X feels ,
- what s/he needs is xxx
- and s/he is asking xxx

2 ) A questioning framework to get the information you need e.g

- Could you confirm what the exact problem is ?
- How is that making you feel ?
- What is it you need to happen ?
- What are you asking xxx to do ?

### Engaging Positively with Conflict



# REFRAMING

Reframing is restating what someone has said in a less threatening way without compromising the truth of the statement. It usually focuses on impact and the future. It can serve as the basis for a question or when feeding back information to the other party.

There are many ways in which you can reframe a statement but there are some tips-

- Use reporting verbs – “You are saying” “ you mentioned ”
- Use the person’s name rather than “he” or “she”
- Replace “but” and “however” with “and”
- Avoid negative adjectives
- Ask for specific examples
- Ask about impact
- Focus on feelings
- Separate the deed from the doer
- Use the passive voice rather than an active voice.

## **Example from Casestudy**

*“I can’t stand ignorant newcomers who know nothing about crofting coming in and riding rough shod over those of us who have been using this land for years ”*

### ***Reframing***

You might first of all ask some questions - Can you be a bit more specific about your concerns? How is this affecting you? What would you like Donald to do in the future.

### ***Reframe***

*So you are saying that you would like Donald to respect your experience and discuss any changes with you.*

# Exploring Options

## Magic Wand

Ask each party what they would change if they had a magic wand. What they want might not be realistic but if you then ask them how that would make them feel (tapping into their needs and also thinking back to the words we associated with conflict.) you can then ask them to think about what else might happen that could make them feel similar feelings.

For example –

John – I want him banned from using the common grazing for his cattle

Q – How would you feel if this happened?

John – I would feel relieved , less frustrated and stressed and would have more time to concentrate on my other work.

Q If you can't evict him what else would you need to happen to ensure that you felt less frustrated and irritated and had more time for your other work?

## Stop – Start – Continue –

This technique not only helps to open up options but can lay the foundations for that continuing relationship.

Each party to identify, for themselves and for the other party –

\*something they should stop or change

\* something they should start doing

\* Something they should continue to do

This very much focuses on the future and specific actions that might help and the fact that they identify some things to continue provides a more positive focus and perhaps makes them realise that there is something worth saving. It can be a useful basis for negotiation. If you can share the responses it helps to give them an insight into the other party's interests and needs.

## Identification

Identify the specific issues that need to be resolved and try and make them as specific as possible.

## Quick Win

If possible pick one that looks as if it will be relatively easy to reach agreement on. This will give everyone a feeling of progress and confidence that other issues might also be resolve.

## Engaging Positively with Conflict

# Reaching Agreement

Try to ensure that any agreements are SMART

S – specific

M – measurable

A – achievable

R- realistic

T- timebound

Consider confidentiality and agree who needs to be told what about the agreement. Include something about how similar issues arising in the future can be handled to avoid them escalating in the same way

# MEDIATION

## What is Mediation?

Mediation is an effective way of resolving disputes by enabling people to make their own decisions about how to move forward. It is a flexible process and can be used in a wide variety of situations.

Mediation involves an independent third party, the mediator, assisting people to have a discussion to help them find a solution. The mediator helps people work out and express what their issues are and then consider what the options are for moving forward. These options are then discussed and used to work out an agreement.

Mediation is very flexible and the mediator will decide on the best approach depending on the circumstances however most mediations fall into five stages –

**Stage 1 – Introductions** – includes the mediator setting out the ground rules for the mediation such as –

- Willingness to find a solution essential , if both parties are willing then mediation is very likely to be successful
- Can take breaks
- Speak respectfully to each other
- Confidentiality
- Mediator won't take sides
- Agreement may or may not be in writing

**Stage 2 - Uninterrupted time** - both parties are able to tell their stories without interruption. The mediator will summarise and reflect back what has been said to ensure that everyone has a shared understanding of the issues.

**Stage 3 – Exchange** –the mediator will move on to find out how they are feeling about hearing the story from the other perspective. The parties can respond to the points raised and the mediator will facilitate a discussion that should lead to them beginning to understand each other's perspective and move the focus from positions to interests and needs.

**Stage 4 – Exploring Options** – the mediator will summarise and identify points of similarity and use problem solving tools to encourage the parties to consider potential solutions to the issues . It is the parties who come up with solutions.

**Stage 5 – Reaching agreement** – the mediator ensures that the agreement is SMART - Specific, measurable, achievable, realistic, timebound. The agreement will include agreeing as to what can be disclosed and to whom and how they will deal with any future incidents. The agreement may or may not be in writing.

## Engaging Positively with Conflict

## What are the benefits of mediation?

Mediation:

- helps people to solve problems that they are facing
- is confidential, unbiased and voluntary
- encourages early resolution of disagreements
- puts the people involved in control of the outcome
- is less formal than grievance and complaints procedures or employment tribunals
- is less stressful
- can be cheaper
- can resolve disputes quicker
- shows willingness to resolve disputes amicably

## Is mediation successful?

Yes – most mediations are successful in reaching agreements. The parties are in control of finding a solution and this makes it more likely that agreements will be adhered to and that ongoing relationships can continue and develop.

## How much does mediation cost?

The costs of mediation vary and depend on the type of mediation involved, the type of dispute and who is providing the mediation. For mediations arranged through the Scottish Mediation Helpline, the cost is likely to be £100 per hour. The length of time the mediation will take is likely to depend on the complexity of the dispute. Before you agree to go ahead, a mediator will be able to give you a more accurate idea of time and costs for the mediation.

Currently we have a temporary Covid 19 Service which can offer free or reduced cost online mediation if the issue has been created or exacerbated by Covid 19 restrictions.

## How do I arrange a mediation or find out more?

**Website** - [www.scottishmediation.org.uk](http://www.scottishmediation.org.uk)

**Helpline**- 0131 556 8118/ [admin@scottishmediation.org.uk](mailto:admin@scottishmediation.org.uk)

## How can I find out about training to be a mediator?

You will find a list of training providers in the Scottish Mediation website – <https://www.scottishmediation.org.uk/wp-content/uploads/2020/01/Training-Providers-2020.pdf>

## Engaging Positively with Conflict