

Meeting Notes

Date: 4 June 2025

Speakers: Eve Pienaar and Laura Kerbey

Topic: How the Mediator Communicates and Adapts the Environment and the Process

Key Learning Points

Understanding Neurodivergence in Mediation

- The term "Neurodivergent" is an umbrella term covering various conditions with significant overlap.
- An individual's position under the Neurodivergent umbrella can shift based on environment, stress levels, and other external factors.
- Experiences and behaviours may change throughout the mediation day—ongoing check-ins are essential.

Language and Framing

- In the UK, many prefer identity-first language (e.g., "autistic person") over "has autism."
- The term "ASD" (Autism Spectrum Disorder) is not universally accepted; some prefer "ASC" (Autism Spectrum Condition).
- The autism spectrum is non-linear; individuals may shift along it depending on sensory and environmental factors/ during the course of the mediation process.

Communication and Environment

- If a Neurodivergent person is struggling to communicate, the issue may lie with the environment or communication method.
- Adjusting the environment can enable Neurodivergent individuals to make best use of the mediation process.

The Double Empathy Problem (Dr. Luke Bearden)

Autistic individuals may struggle with:

- Reading between the lines
- Managing sensory distractions
- Overcoming misconceptions about autism

Neurotypical individuals may struggle with:

- Forming positive first impressions of those who are Neurodivergent
- Recognising and understanding Neurodivergency
- Imagining the experience of those with sensory issues

Misunderstandings can arise when one or both parties are Neurodivergent.

Monotropism and its implications

- Monotropism: Focus on a single area of interest or routine.
- Poly-tropism: Typical of Neurotypical individuals—multiple areas of focus.
- Monotropic individuals may find deviations from routine distressing.

Practical Applications in Mediation

- Allow time-outs to help parties regulate.
- Pre-meeting briefings can reduce anxiety and improve comfort.
- Lawyers should brief mediators on client needs (e.g., the presence of a representative).

Neurodivergent people may benefit from:

- More preparation time before the mediation takes place
- Information presented in alternative formats (e.g., key documents isolated from large bundles)
- Explicit confidentiality protocols
- Being asked directly what accommodations they need (e.g., routine breaks)

The Anxiety Bucket Analogy

- Behavioural responses may stem from unseen stressors.
- ND individuals may have "leaky buckets"—stress accumulates quickly and does not dissipate easily.
- Identify what fills and empties a client's "stress bucket" (e.g., public transport may be a stressor some Neurodivergent people, so they may arrive at the mediation already feeling overwhelmed).

Mediation Stages

Preparation Stage

- Ensure the bundle includes only relevant documents.
- Consider a secondary bundle for client reference only.
- Use discreet signals (e.g., tapping the lawyer's shoulder) to indicate the Neurodivergent person's need for a break, without having to interrupt the room.

Bargaining Stage

- Frame offers in formats that may be more accessible to Neurodivergent people (e.g., visual aids, spreadsheets, verbal explanations).
- Be clear about timescales—vagueness can cause anxiety.
- Maintain neutrality as the mediator and keep parties updated if you spend more time with other parties.
- Draft settlement agreements clearly and ensure mutual understanding of what has been agreed.

- Neurodivergent parties may benefit from having an advisor present to provide necessary support and advice where the mediator is unable to do so.
- If a party is overwhelmed, consider suspending the mediation with the consent of parties involved, with a view to re-starting when all parties ready to do so.