

Workshop: **Mediating disputes between citizens and public authorities**

“Fair play on both sides”

By:

Dick Allewijn, administrative judge, mediator and trainer in The Hague, Netherlands. In the past Dick worked as a full time judge. From 1999 on he works only part of his working weeks as a judge in the The Hague District Court. The other part of his working weeks he conducts his own mediation practice. In the latter years he has become one of the Netherlands opinion leaders on mediation in the field of public administration. In 2007 he published his book on this subject, which has now been translated in English. This book, called: “Fair play on both sides, mediating between citizen and public authorities” was published by SDU publishers The Hague, and can be obtained via Amazon.com.

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Mediating disputes between citizens and public authorities, the workshop

Firstly, we gave a short theoretical exposure (in fact a very brief extract from Dick’s book: “Fair play on both sides”). If citizens and public authorities can have disputes, it is likely that they are in some way related to each other. Is there any relation between citizens and public authorities? Our answer is: “yes, there is”. Characteristics of this relation:

- They live in different worlds (Habermas: Life world vs. system world, personal contact vs. distance, facebook vs. no-reply emails, emotion and longing for fairness vs. rules, procedures and longing for legality)
- Mutual trust is not obvious
- Farewell is not an option
- Most of the time the citizen may be accommodating, the public authority may be amenable.

When a conflict occurs in this relation, these characteristics of the relation reflect in the characteristics of the conflict:

- Warm against cold conflict behaviour
- “It’s not fair” vs. “it’s legal”
- One-sided in the beginning
- Public authority takes the lead in conflict resolution through formal procedures (legality)
- True conflict resolution requires informal personal contact (fairness)
- Citizen loses his compliance, public authority loses its amenity

In formal procedures the citizen is the one who complains, the powerful public authority is in the defense mode, in this constellation movements towards each others are not likely to be made. In mediation the public authority gets a human face, not only legality, but also fairness may be discussed. An authority may start to move if the citizen accepts it’s role and task and accepts the

restrictions of the legal framework, if the citizen treats its representatives with courtesy, and if the citizen takes responsibility for his own position and behaviour. A citizen may start to move if the public authority treats him with respect and truly hears his story, if the public authority makes clear that the citizen is treated equally compared with others in the same situation, and if the public authority is transparent and keeps his promises. When both parties start to move, they may restore the relational system: the public authority may be amenable again, the citizen may be accommodating again.

Now in the workshop we took a closer look at the mediators task.

As Roger Fisher spoke: “In order to change one’s mind you have to know what’s in his mind”. Hence, interviewing clients—leading them from their positions to their underlying interests, needs, concerns, beliefs and values—is a core skill for mediators. A comparison that is often made is the peeling of an onion: non-negotiable positions are on the surface, whereas negotiable needs and interests are somewhere near the heart.

The instruction to carefully “peel the onion” also pertains to mediators who work with any public authority. However, many mediators experience difficulty interviewing civil servants about the interests and values underlying their positions. Statements from the conflicting representatives of public authorities tend to be cold, bureaucratic and axiomatic: Rules are rules, this is the way it works, we only apply the law, and so on. Such black and white thinking and talking can overshadow the subtler shades of gray which may actually exist behind these quotes.

What also plays a role in this dynamic is the way the mediator may feel about public authorities. While annoyance about “bureaucratic” forms of thinking, speaking, and behaving may be understandable, such annoyance can obviously interfere in the process of collaborating with civil servants.

In the workshop we presented a model for interviewing civil servants. This happened in a concrete demonstration, where mediators were invited to meet the typical civil servant and the typical citizen.

A free and open interview with the civil servant appeared to give the best chance for generating a solution focused conversation between him or her and the citizen, leading to the restoration of mutual trust. One of the participants came up with the case of a citizen who was summoned to remove a tank out of his garden. “Rules are rules” was the opening statement of the civil servant. Once interviewed by the workshops participants, the underlying interests appeared to be: a clean environment, acknowledgement that the municipality is the body in charge, and citizens taking responsibility for their own matters. “This tank is perfect and I won’t remove it” was the citizens opening statement. Once interviewed her underlying interests appeared to be that she wants to be treated with respect and she asks understanding for the fact that her financial resources are poor at the time. The interest of a clear environment turned out to be a common interest. Participants noticed that on the basis of these interests it’s possible to negotiate solutions with a win/win character.