

**actlaw**  
society

# Preparing a Client for Mediation

**PRESENTED BY CLAIRE NAIDU**

CLAIRE NAIDU & CO

# PURPOSE



Dispute resolution is a key feature of the legal system and mediation is playing an increasingly important role in the resolution of matters, or in the very least, the progression of matters.

The purpose of today's presentation is for you to feel more comfortable with the mediation process and in preparing your client for mediation, whether they are attending themselves or whether you are attending the mediation with them.

# OVERVIEW

01 The mediation process

02 Preparing your client for the stages of the mediation process

03 Preparing your client for your role as the solicitor at the mediation

04 Practical arrangements

05 Knowing the case

06 Preparing documents

07 Understanding your client to assist in helping them prepare

08 Other considerations



CLAIRE  
NAIDU

## ABOUT ME

I have twenty years experience as a legal practitioner. I have worked in a range of areas including family, civil, commercial, and criminal.

I have a Master of Laws with a focus on Dispute Resolution. I have undertaken a range of other studies including Bachelor of Laws, Bachelor of Commerce, training as a nationally accredited mediator, a family dispute resolution practitioner, arbitrator, conflict resolution, and collaborative practice.

As a mediator, I have convened matters involving claims of personal injury, contractual disputes, building disputes, business purchases, disputes involving individuals and the government, human resources and interpersonal and familial disputes.

## CASE STUDY

*I didn't know about the mediation service. Would like to know more about it. Also, I would like to know about the costs involved in mediation. For example, is it a one-time thing or a regular activity till there is some resolution? You mentioned, you could do it for [confidentialised person] and myself? Does each one of the people pays for themselves? Our relationship is practically non-existent now. With the mediation, what is the result which will come? Looking to discuss a bit further.*



# CASE STUDY LEARNINGS

- Not everyone knows about mediation
- Not everyone that knows about mediation know a lot about it
- There are often many questions





ADAPTABILITY

# WILLINGNESS TO LEARN

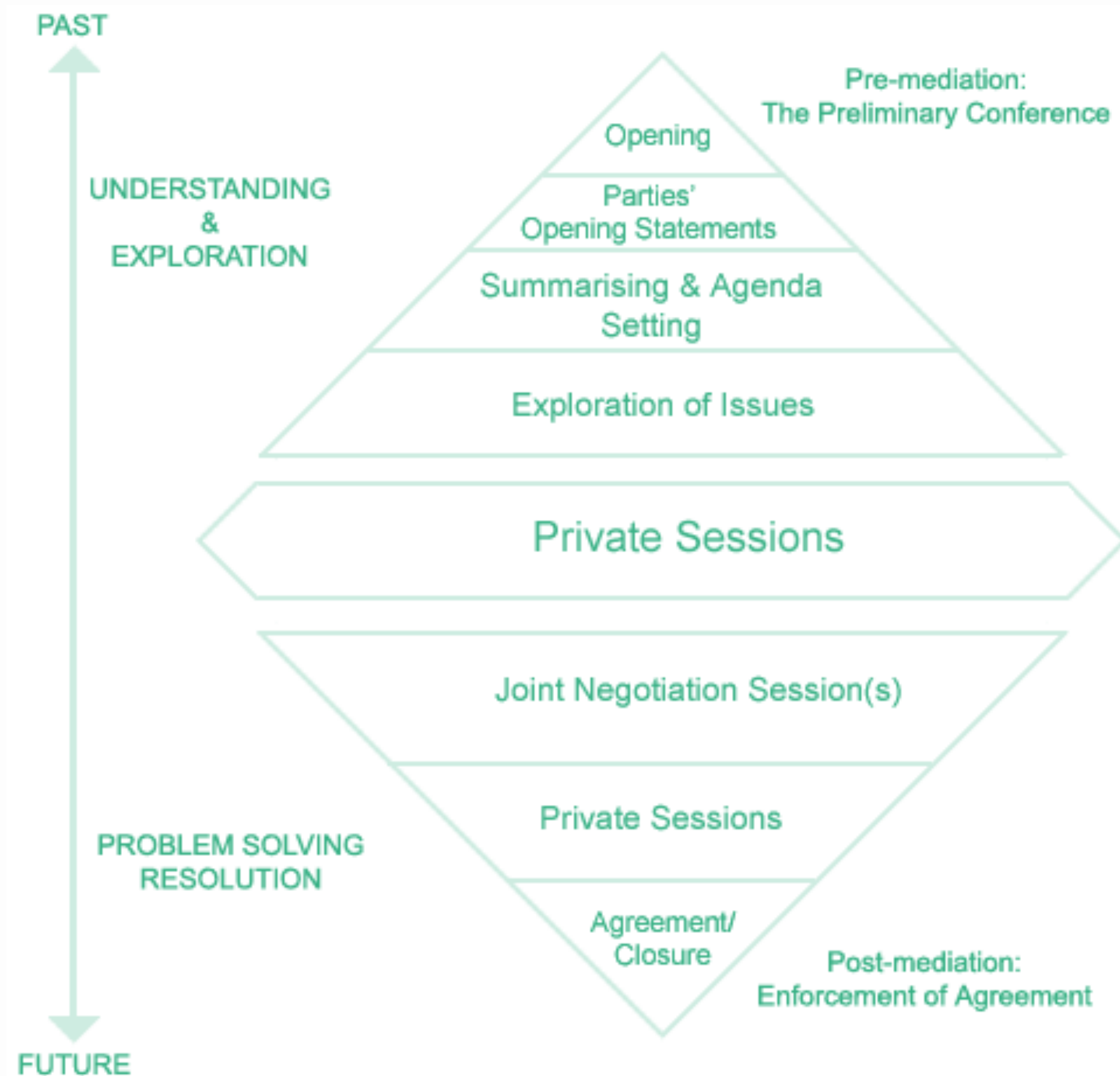
- Openness and willingness for continual learning
- Allowing to be reminded of things
- Learning more deeply
- Continually learning and mastering our craft





# MEDIATION DIAMOND

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# WHAT IS MEDIATION

*A confidential facilitative process, in which the parties to a dispute, with the help of a dispute resolution practitioner (the mediator), endeavour to reach decisions and/or agreements. The mediator does not have a determinative role and does not advise the parties.*



# HOW I SEE MEDIATION:

*The Power and Opportunity of Mediation*

# WHO ATTENDS

Who attends the mediation?

It is common for your client to want to know who will be at the mediation



## **The Mediator**

The mediator is the facilitator of the process and is an essential person required to be present at the mediation

## **The Parties**

Each party is expected to attend the mediation themselves, although sometimes (for example, where a party is insured or is an insurer) another person will attend as a party's representative. The party or the party's representative must have the authority and capacity to settle the dispute.

## **Others**

- Legal Representatives
- Support people

# TYPES OF MEDIATION

## **Facilitative**

The mediator facilitates negotiations and does not impose a decision, recommendations or form or communicate a view.

## **Evaluative**

This type of mediation is where the mediator is more likely to evaluate the matter and inform the parties of recommendations, views and opinions.

## **Transformative**

- Conflict seen as a human interaction issue
- Empowerment of the parties
- Focus on recognition -hearing the other party and/or start to hear their perspective in the conflict interaction.

## **Med-Arb**

This is a hybrid model where parties have the opportunity to reach agreement with the assistance of a mediator. If the mediation ends in an impasse, the parties can move to arbitration.

## **Arb-Med**

This is another hybrid model. The hearing of evidence and running the arbitration, an award is reached and sealed, and then the parties attempt mediation and if not reached, then award delivered.

## **Med-Con**

This hybrid model allows for more facilitative approach in the first instance, but moving to more evaluative if no agreement reached.

# MEDIATION AGREEMENT

**T**he agreement to participant in mediation.



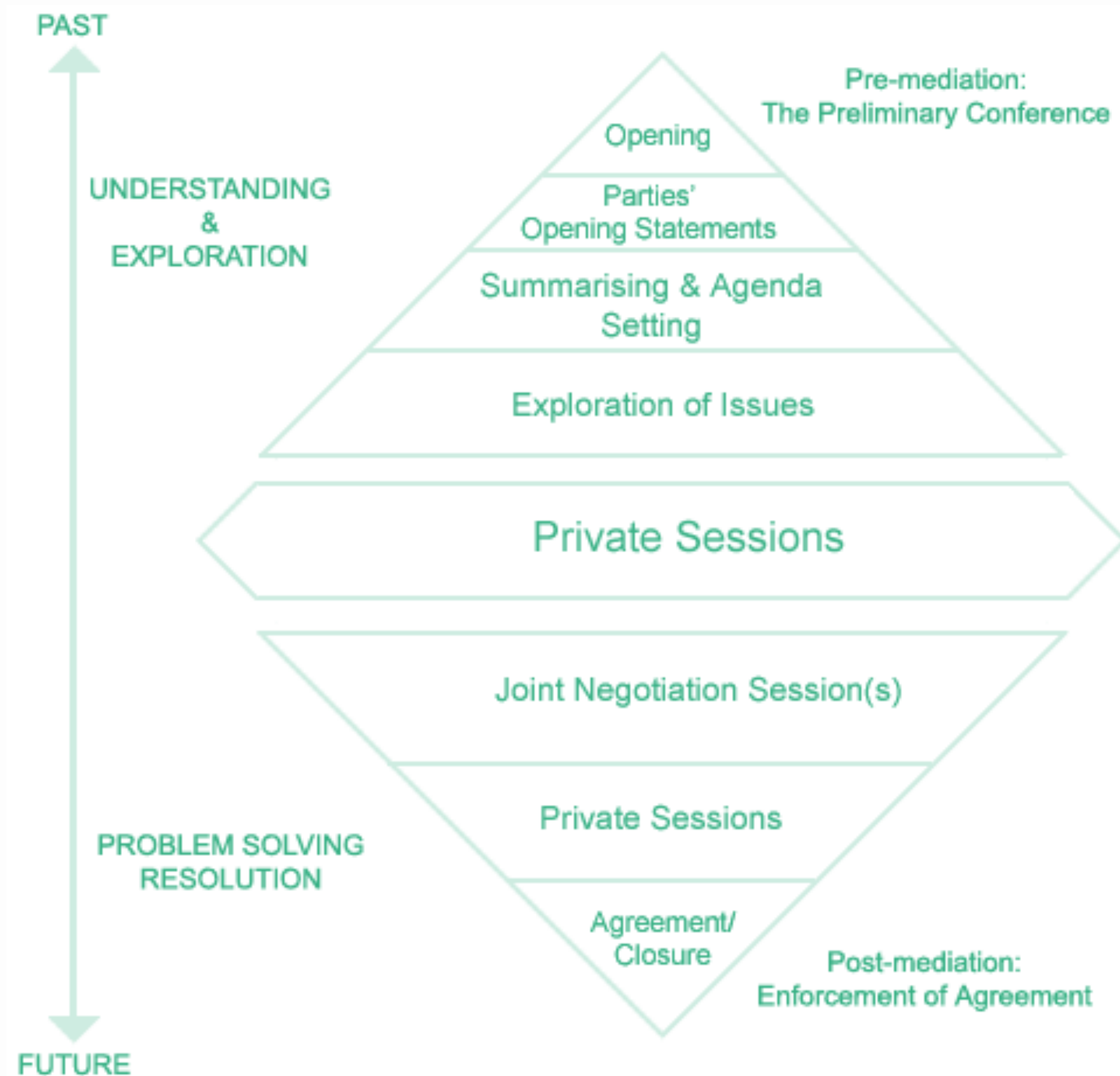


## DIFFERENT APPROACHES

- *standard shuttle v together in the same room*
- *lawyers attending v parties only*
- *barristers and lawyers attending v barristers not attending*
- *in person v video v telephone v telephone*
- *site of mediation - court mediation rooms, lawyers office, chambers*
- *reporting requirements*
- *steps/stages of the process*

# MEDIATION DIAMOND

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# A MOMENT IN TIME

## **Remember a time when. ..**

Remember it with as much details as you can

### **When**

When was it?

### **What**

What was going on at the time?



### **Who**

Who was there

### **Why**

Why were there? What had you been hoping to achieve?

# MEDIATION PROCESS

## **Explaining what Mediation is**

Talk to your client about what mediation is.

## **Role of the Mediator**

Talk to your client about the role of the mediator

## **Mediation Process**

To the best of your ability, talk about the process as you understand. Caveat this with it could be conducted differently and you could talk about some of the different approaches raised in an earlier slide.



## **Confidentiality**

Explain what confidentiality means in the context of this mediation including what limitations there may be.

## **Attendance**

Check to make sure the relevant people will be attending. Are there any requirements regarding notice?

# MEDIATION PROCESS

**Pre-mediation / Preliminary Conference**

**Mediator's Opening statement**



# MEDIATION PROCESS



**Opening Statement by the Parties**

# MEDIATION PROCESS

**Summarising**

**Agenda Setting**

**Exploration of the issues**



# MEDIATION PROCESS



**Private Sessions**

**Joint Negotiations**

**Further Private Sessions**

# MEDIATION PROCESS

**Agreement**

**Closure**

**Post-Mediation**



# IMPORTANT CONSIDERATIONS

**Trauma**

**Trustworthiness & Transparency**

**Collaboration and Mutuality**

**Empowerment and Choice**



**Triggers**

**Safety**





**Preparing for your client for your role**

**Practical Arrangements**

**Venue**

**Timing**

# DISCUSS WITH YOUR CLIENT

**The case**

**Options**

**Counter-arguments**

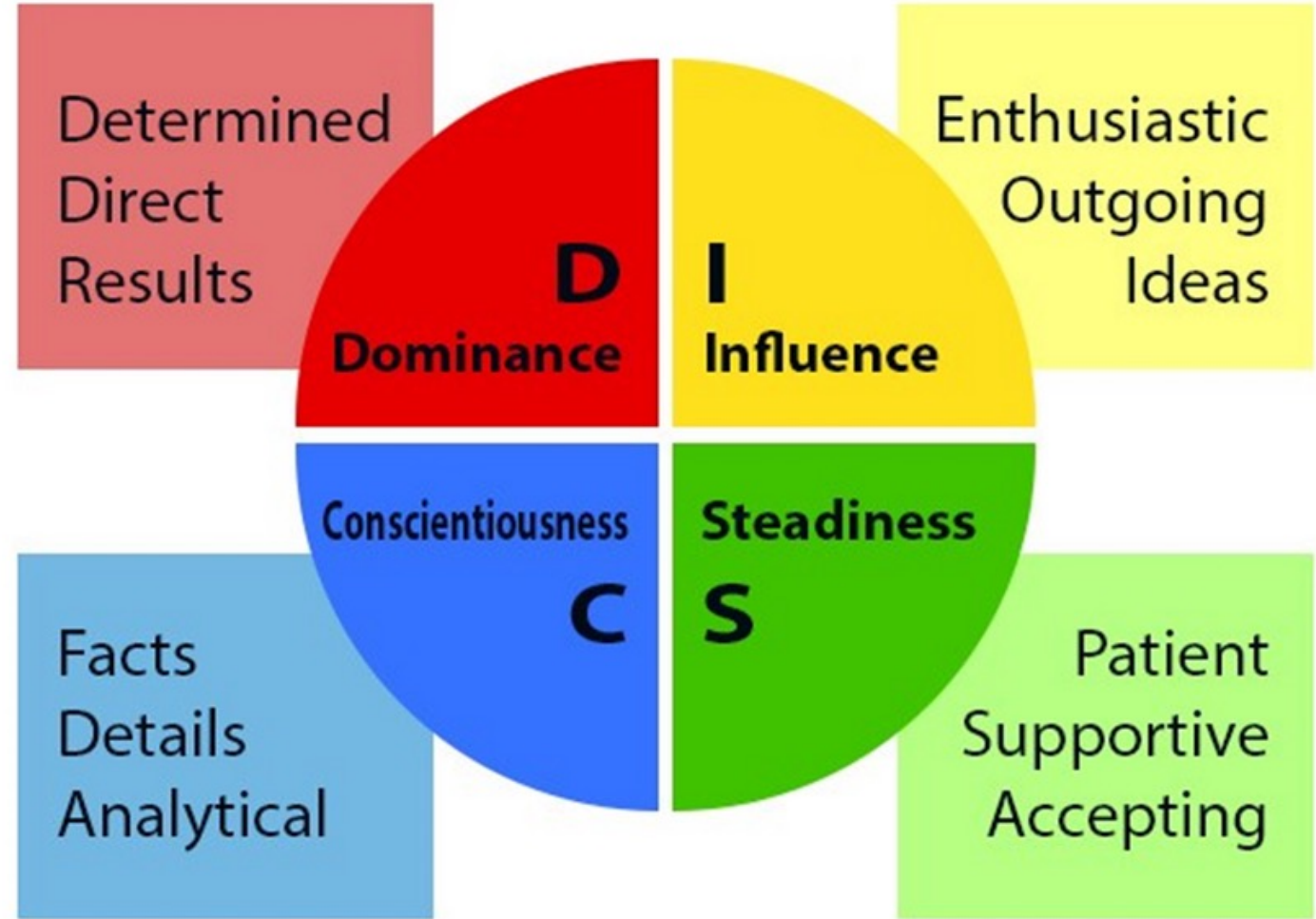
**Costs**

**Objectives**



UNDERSTANDING  
YOUR CLIENT





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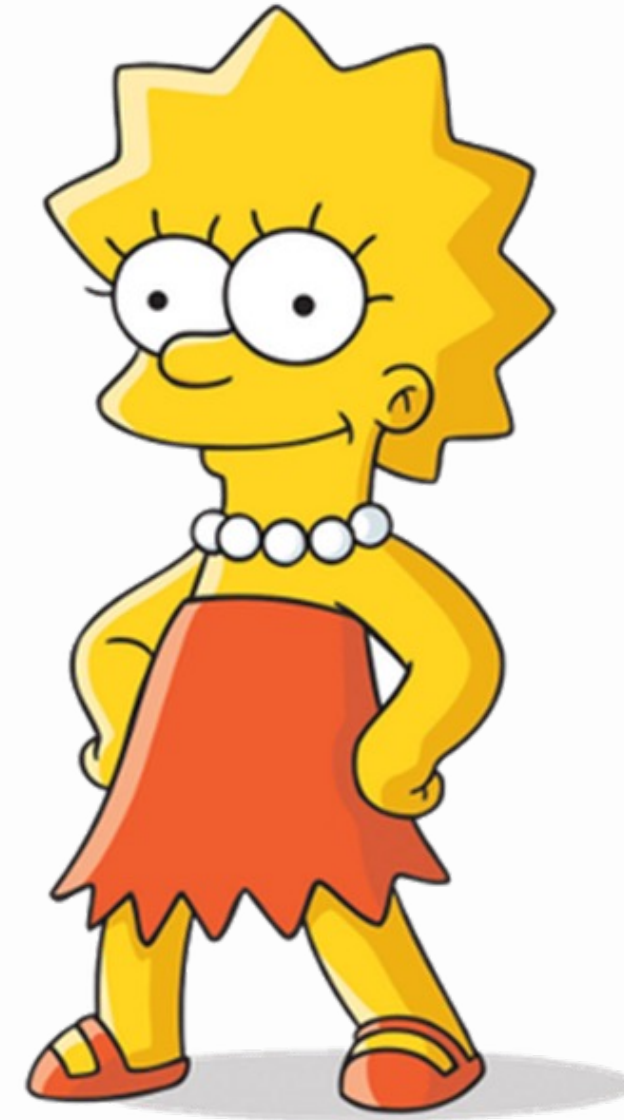
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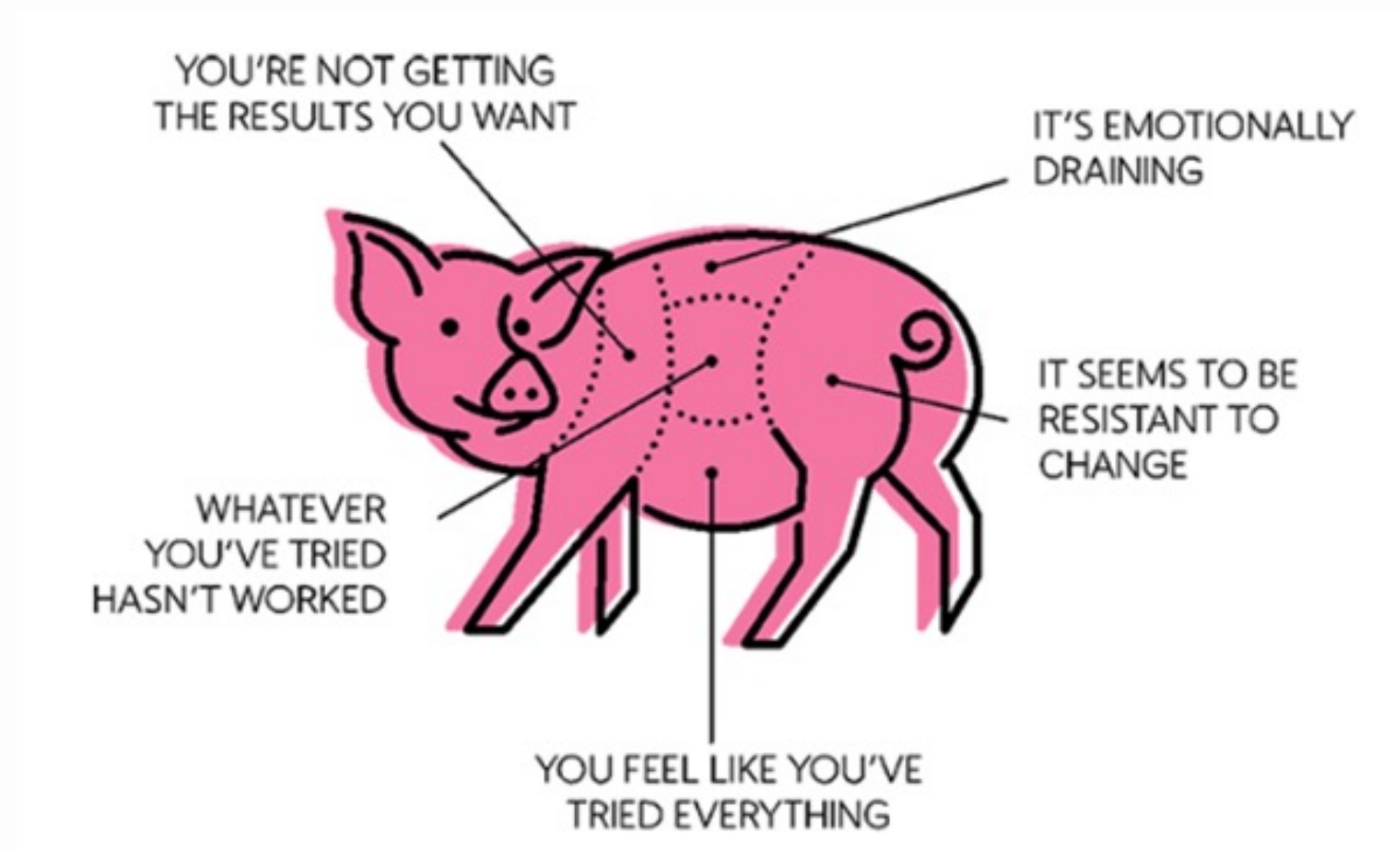
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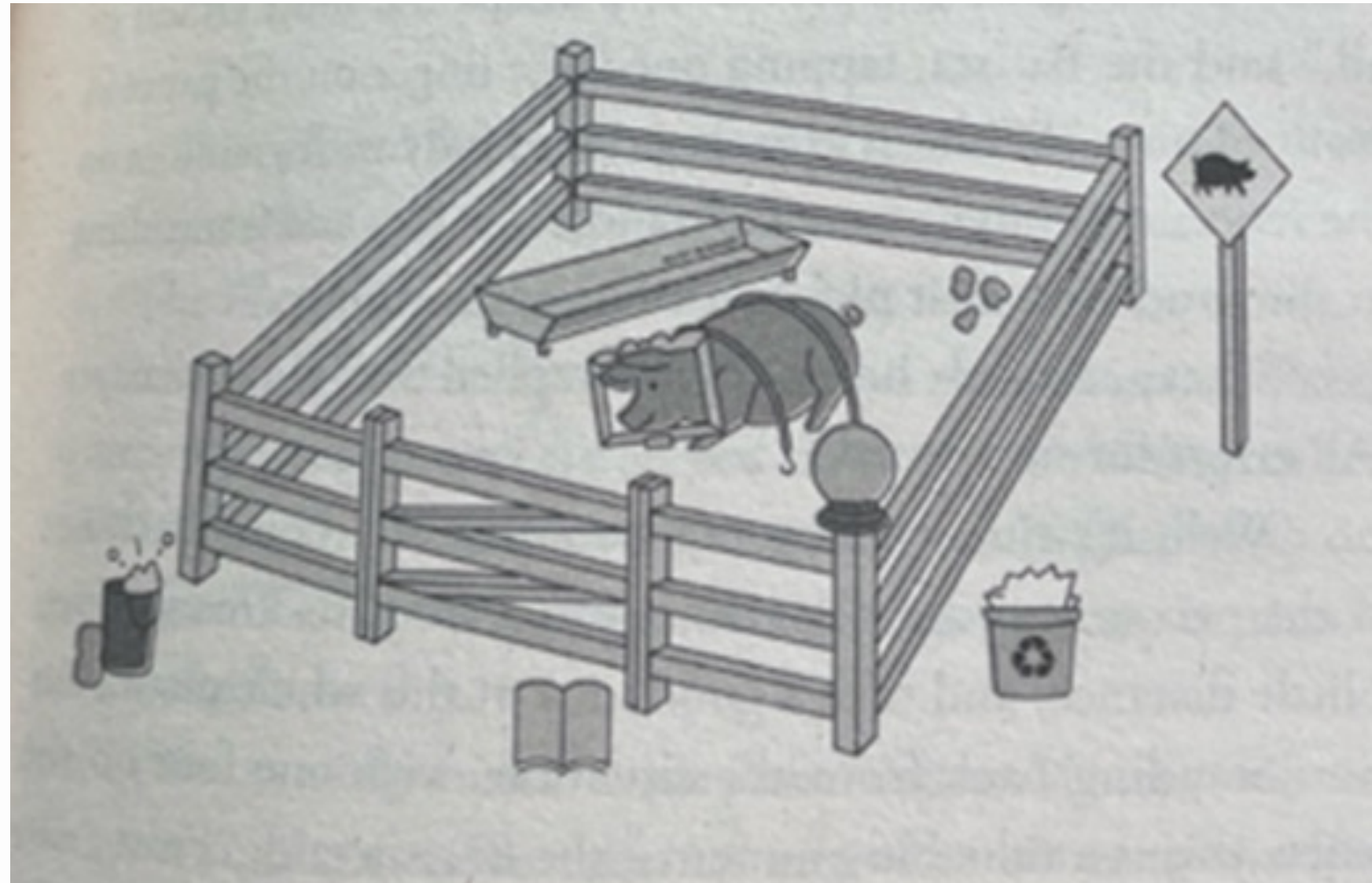




## **UNDERSTANDING THE OTHER PARTY**

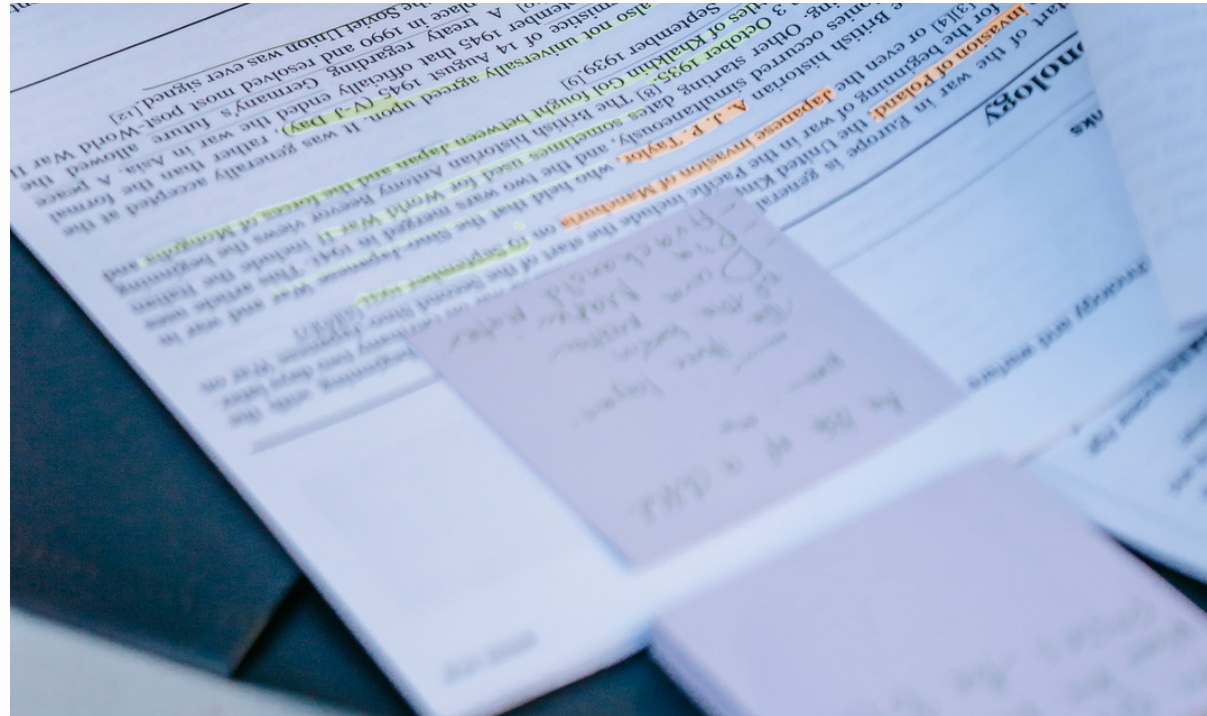


Source: Pig Wrestling: The Brilliantly Simple Way to Solve Any Problem... and Create the Change You Need – by Pete Lindsay and Mark Bawden



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# LOGISTICS AND PREPARATION



01 Review Mediation Logistics

02 Plan for the day



# OTHER TIPS FOR PREPARING A CLIENT

**Managing Resistance to Mediation**

**Briefing Counsel**

**'Minimise 'Buyer Remorse'**

**Obtain Necessary Advice**





## **DUTIES TO CLIENTS**

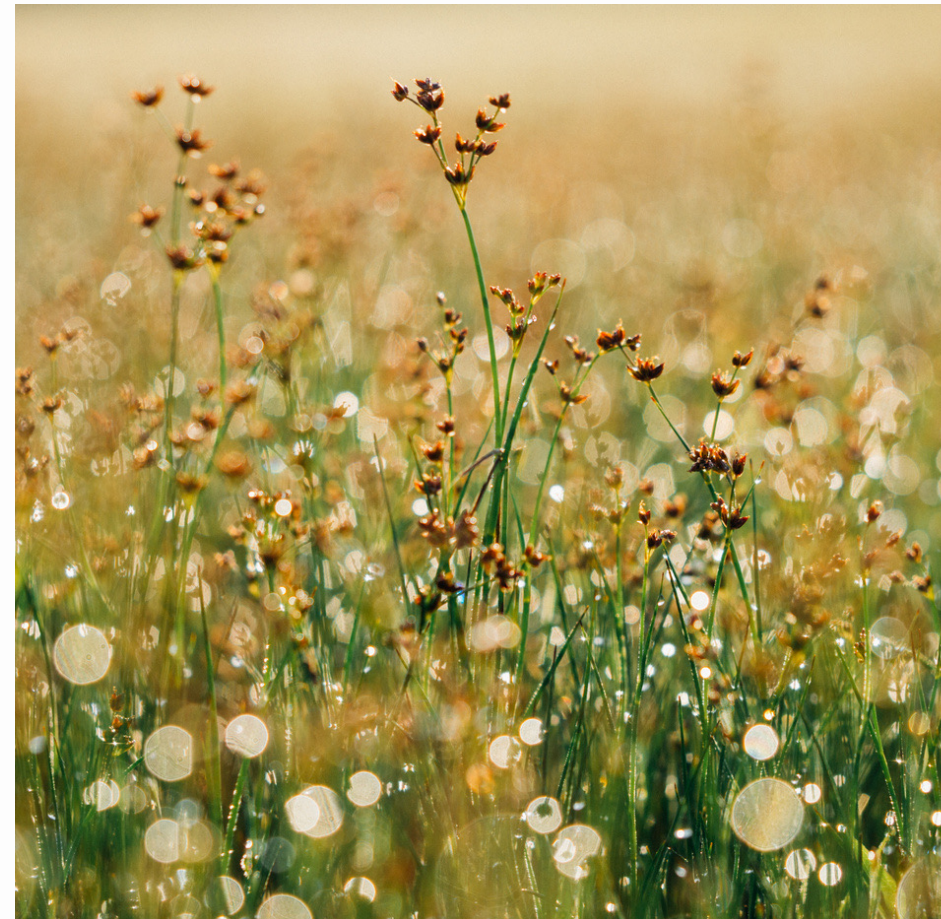
# FURTHER TIPS FOR PREPARING A CLIENT

**Negotiation Strategies**

**Where agreement reached or not reached**

**Emotional and Psychological Preparation**

**Practice Communication Skills**





# QUESTIONS

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