

Dealing with resistance in initial intake and inquiry calls to mediation: The power of 'willing'

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Abstract

This article explores how to best deal with resistance during and beyond initial encounters with prospective mediation clients. The study is based on a large dataset of intake calls to community and family mediation services in the UK. Using conversation analytic techniques we studied instances where call takers invited prospective clients to make a first appointment. We found that questions or proposals addressing whether the caller would be 'willing' to mediate generated stronger agreement from the caller than when other formats were used. We discuss how to best establish effective practice, in order to develop better training for mediators.

Introduction

Mediation services specialise in helping people in conflict come to a resolution. But mediators often meet resistance to do so from their prospective clients. Clients may, for example, doubt the usefulness of mediation compared to other services such as going to the police, lawyer or court; in other words, institutions that are more explicitly on the client's side in a conflict. Many clients encounter mediation services for the first, and only, time. Therefore, although their perception of mediation may change during the process, it is all the more important to understand clients' preferences and motivations before the process starts (Shestowsky and Brett 2008). Relevant insights can then inform effective methods of communicating mediation to

clients, both during the mediation process and to secure clients in the first place. Securing clients is necessary to ensure that mediation services are available: without sufficient clients mediation services will neither generate (as a commercial endeavour) nor attract (as a third sector or charitable organization) enough funding to survive.

This paper focusses on one way of dealing effectively with resistance in initial inquiry and intake telephone calls to mediation. One aim in these calls is to convert callers into clients; the intake call may be the only chance a mediation service has to secure a particular client. To achieve this it is essential that call takers are prepared to deal with resistance from prospective clients, and anticipate how they might reject mediation initially.

Influencing client motivation to mediate

For people in dispute the court route can be time consuming and expensive, and they may stand in better chance to resolve the root of the conflict by meeting their challenges through mediation (Hodak 2003; Wall, Dunne and Chan-Serafin 2011). Although mediation as a route to conflict resolution is favoured by the courts in many cases (Lande 2002), this is not in itself a selling point to prospective clients. In order to gain a better understanding of what works (and not) in mediation, it is necessary to study mediators' strategies and their outcomes, which also involves identifying what disputants want and how they interact with the other party and the mediator (Wall & Chan-Serafin 2014).

The mechanisms with which practitioners manage to persuade clients has attracted attention of both psychologists and business-people, resulting in widely known publications on how to increase effectiveness in the negotiation (Cialdini 1993;

Fisher, Ury and Patton 2011). Notions of negotiation techniques seem to vary with context: for clinicians, 'shared decision making' has become an important concept, for example when they engage in difficult conversations with patients about prenatal diagnoses and pregnancy risks (Elwyn, Gray and Clarke 2000). And within dispute resolution, the literature recommends that entry to mediation should be 'non-coercive', or free of explicit coercion (Hedeen 2005). Although based within different types of services, what these different concepts have in common is the focus on client autonomy, engagement and control in the negotiation process; we might also associate these concepts with client 'commitment' in literature on business negotiation (Cialdini 1993).

Within behavioural science, 'nudge' research provides an interesting conceptual starting point for studying persuasion, where interventions improve decision-making while maintaining freedom of choice (Thaler & Sunstein, 2008). Subtle changes in wording can influence people's subsequent behaviours, without explicitly telling them what to do (e.g., Cialdini et al. 2007; Walton and Banaji 2004; Bryan et al. 2013). For example, Bryan et al. (2013) found that participants were more likely to resist cheating if they were advised against being a cheater ("please don't be a cheat") than if they were advised not to cheat ("please don't cheat").

But although widely studied and of core relevance across professional practices, the ground-work for understanding persuasion, as it happens in real interactions, is so far lacking. This is a concern that we wish to remedy in our own research: while most studies of persuasion are theoretically based, we know very little about how (effective) persuasion methods are implemented and responded to in actual encounters as they unfold, for example within mediation practice. While Hedeen (2005) argues for the use of non-coercive techniques to secure mediation

clients, there is little or no research into how *inexplicit* coercion is achieved in actual encounters. Our aim in this paper is not to demonstrate the potential (ir)relevance of different theoretical approaches to persuasion, but instead demonstrate what contributions can be made using a more data-driven analysis. The conversation analytic research we conduct here is not based on assumptions or theories about words and their effectiveness but instead looks at what the participants themselves treat as important in the interaction.

As an example, Stokoe (2013) identified a set of ‘barriers’ that prevent callers from pursuing mediation. One such barrier was explaining mediation to clients, who often lack knowledge of what mediation services are and what mediators do. Many of the explanations make explicit that the service is impartial. The impartial ethos of mediation was found to be in conflict with what the callers want – namely for someone to be on their side (see also Weatherall 2015). Stokoe found that when mediators explained mediation in terms of its ideology, including its impartiality (“we don’t take sides”), callers were likely to reject offers of mediation. Some call takers managed to explain mediation more effectively, and they managed to do so by explaining the process of mediation, rather than its philosophy.

Conversation Analysis and Mediation Studies

Our approach to studying resolution strategies in mediation is based on systematic studies of actual live mediator-client encounters, using conversation analysis (CA) as method (see Sidnell 2011 for an introduction). There is a growing number of conversation analytic studies of negotiation and mediation. These studies attend both to what mediators do, in terms of their techniques and practices, as well as what clients do, in terms of formulating complaints, defences, and so on (for example,

Greatbatch and Dingwall 1997; Jacobs and Aakhus 2002; Trinder, Firth and Jenks 2010). A key focus has been on the issue of mediator neutrality and how mediators do, or do not, display a stance toward the topic of the dispute or toward parties themselves (for example, Cobb and Rifkin 1991; Garcia, Vise and Whitake 2002; Jacobs 2002; Heisterkamp 2006; Glenn and Susskind 2010). This line of work has pointed to a number of inconsistencies between what mediators claim they do in their practice and the evidence in the actual recordings regarding matters such as neutrality (Greatbatch and Dingwall 1989; Dingwall and Miller 2002). This strengthens the argument that we need to investigate the actual interactions, rather than rely on post-hoc accounts or surveys, in order to understand mediation and conflict resolution.

Whereas the studies listed above were based on relatively small (or single conversation) data sets, the current study is based on analyses of several hundred recordings which enables us to identify practices and patterns systematically across a large dataset. This can strengthen the empirical basis for what we want to study: do particular approaches to promote mediation work better than others across the datasets? Stokoe (2013) demonstrated how call takers can anticipate and deflect resistance in the way they formulate their questions and explanations. We take this analysis further here by focussing on questions or proposals that invite a caller to agree to mediate.

Data and method

The data set for this study comprises ~100 intake calls from five family mediation services, and ~200 from five community services, all based in the United Kingdom. All participants consented to have their calls recorded for research purposes, and all

names and other identifying features of the calls were anonymised. The data were transcribed using Gail Jefferson's (2004) system for conversation analysis (CA). This transcription system includes information about the delivery of talk, such as its pacing, overlapping talk, and intonation (see Appendix).

CA examines the overall structure of interaction, in terms of its constituent actions, as well as the specifics of, and patterns in, turn design (how a turn of talk is designed to do something), turn-taking (who talks when), action formation (how actions are formed within and across turns of talk), and sequence organisation (how actions are organised in a sequence) (Schegloff 2007). We looked for patterns across the whole calls, but focussed on component features of calls in which the caller agreed, or did not agree, to participate in mediation. To establish whether a particular practice was more effective than another, we traced callers' resistance and studied the impact of each particular practice on how clients responded. In other words, we did not set out to look for a particular word or practice, but sought to identify good practice from studying how the encounters unfold.

Introducing an Effective Practice

In first encounters with mediation services, one task of call takers is to explain what mediation is. The example below illustrates this. The extract is taken from an intake call to a community service. The caller (C) has articulated her problem with their neighbour and we join the call as M initiates her explanation of mediation. By doing so M both establishes the need for an explanation, and contextualises the upcoming explanation as a possible solution for C.

(1a) EC-37, 5:50-6:44
1 M: .hhh okay, well do you know anything at all about us?
2 (.)
3 M: [Dispute and Resolve,]

4 C: [I um] I don't really no.
5 M: .hh okay well we're a (.) we're a mediation projec- (0.4)
6 project in the:: (.) Stockham area,
7 (0.2)
8 C: Yea[h.
9 M: [.hhh and what- (0.2) we try to help neighbours that are in
10 dispute, [.hhh] what we do first um: send a letter out to=
11 C: [Uhuh.]
12 M: =your neighbour straight away .hhh to say that y- we've been
13 in touch with you, .h[hh and-] asking (0.2) whether they
14 C: [Yeah,]
15 M: would (0.4) .hhh get in touch with us so that we can discuss
16 it with them?
17 C: Yeah,
18 M: If they say- if they phone up and say yes then we make an
19 arrangement to come and see you both separately,
20 [but] with (0.3) but with the aim of: (0.2) eventually
21 C: [Yes.]
22 M: getting (0.3) round a table and discussing matters with you
23 all,
24 C: M[m.]
25 M: [.hhh] to try and come to some sort of an agreement of ways
26 you can go forward.
27 (0.2)
28 C: Right.

M proceeds to explain the process of mediation in line 5 onwards. M locates the service ("Stockham area"), summaries what they do ("we try to help neighbours that are in dispute"), and then unpacks the order of events taking place for someone who chooses to mediate (lines 10-26). The explanation ends positively with "...ways you can go forward".

During and following such explanations, callers have an opportunity to voice concerns or resistance. Instead, C produces 'continuers' such as "Yeah" (lines 14, 17) which display continued interest - at least for now. As mentioned previously, callers are less likely to display resistance when the call takers' explanations are process-based or procedural; resistance is strongest in response to explanations involving the ethos of mediation including its impartiality. Here, impartiality is implicit (M explains that the mediation process involves seeing both parties) but not an explicit part of the explanation ("we don't take sides").

Having explained mediation, M now has an opportunity to invite C for an initial appointment: callers rarely pre-empt such invitations by offering or requesting to come in. This is what happens next:

(1b) EC-37, 6:44-7:09
29 M: Does that sound .hhh like it might be helpful to you?
30 (0.7)
31 C: I- uh- (0.2) it might be but um:: (0.3) I'm not too sure at
32 this stage about (0.6) you know, how long- y- seeing this:
33 girl, [at all,]
34 M: [W' yeah.] Yeah, but you'd be willing to see two of our
35 media[tors just to talk about it all. .hhh]
36 C: [Oh of course. Yeah. Yeah] definitely.
37 M Yeah.=all right my love, .hh um:: (0.5) when's the best
38 time for you to be in.

M asks “does that sound .hhh like it might be helpful to you?”. C’s response takes the shape of what conversation analysts call a “dispreferred” turn (Schegloff 2007). First, the gap of 0.7 seconds indicates C’s reluctance. This is confirmed in lines 31-33, where C offers a weak acceptance (“it might be”, line 31) following some turn-initial hitches (“I-”, “uh-”), and supplies and account for beginning to reject the offer: “I’m not too sure at this stage about [...] seeing this girl, at all” (lines 31-33).

In response to C’s incipient rejection, M adopts a different strategy (lines 34-35), which is to ask a new question in declarative form, *proposing* that C is the kind of person who is ‘willing’ to take the first step into mediation. This time C immediately signals her confirmation, with an enthusiastic stance toward the proposed meeting (line 36). “Oh of course.” corrects any sense of prior unwillingness; C had always intended to see mediators, a stance which is supported by responding in overlap as M produces “media-” in line 35: that is, before M has even completed her turn. “Yeah. Yeah definitely.” further confirms there is no doubt about C’s willingness, and the enthusiasm remains after M has finished her turn (“definitely” is produced in the clear).

So what has happened that changes C's uptake so dramatically? C does not simply and suddenly 'change her mind'. Rather, it seems that asking or proposing that a prospective client is 'willing' to mediate is easier to align with than asking if mediation sounds 'helpful'. We found that if a call taker asks if the caller might find mediation helpful, they often focus on reasons why not. But if the call taker asks if callers are willing, the focus is shifted away from mediation and onto the caller's moral identity. M's reformulation of her question turns out to be very effective: if C regards her neighbour as the kind of person who is *will not* mediate, then asking C if she is the kind of person who *will* is likely to get a yes.

In the next section we focus on some more instances where 'willing' works, as evidenced in the strong positive agreement/uptake from the caller.

Examples showing strong uptake to 'willing'

Example 2, from a call to family mediation, shows how mediation can be sold as a means to an end, while appealing to the caller's sense of goodwill. The caller makes an enquiry regarding his son, who he has not seen for two years. We join the call as the mediator recommends mediation as a service the courts require ahead of any legal route.

```
(2) DG-19, 2:00-2:16
1   M:   They- (0.3) always suggest mediation.
2           (0.2)
3   C:   Yes.
4   M:   Fi:rst.
5   C:   Ye[s. ]
6   M:   [.thhh] Is that s[ometh]ing that you have tried.
7   C:           [Yes. ]
8           (0.4)
9   C:   No. No,=
10  M:   =.h[hh- ]
11  C:   [Noth]ing,
12           (0.3)
13  M:   =Is that something that you would be willing to [do. ]=
14  C:           [I would-]=
```

15 C: =I would be willing to do it.=ye[s.]
 16 M: [That]'s grea[t.]
 17 C: [Just-]
 18 (.) do anything just to try and get to see my son you know,

The mediator presents mediation not quite as an option and not quite as a requirement, but as a strong recommendation (“They- (0.3) always suggest mediation”). However the “always” illustrates that this is a routine practice, not just an option that no one really commits to. After establishing whether/not the caller has tried mediation (line 6), the mediator then asks “Is that something that you would be willing to do” (13), which leads to an explicit agreement from C in lines 14-15, again in overlap before M has finished asking. The caller further ratifies his agreement, claiming that he would do anything to see his son (17-18).

In Example 2, ‘willingness’ is addressed using a yes/no interrogative. In Example 3, similar to Example 1, it is addressed by *proposing* that the caller is willing. C has called on behalf of her son whose ex-partner has prevented him seeing his daughter (C’s granddaughter). M has asked about C’s son’s work status and started mentioning ‘legal aid’ (the UK government controversially removed legal aid to support people going to court and instead uses it for mediation, but few people know about this), when C reports her son saying “I can’t get legal aid”, and that this had added to his worries. Then, in lines 1-5 below M confirms that C is indeed eligible for legal aid, because he is on benefits.

(3) DG-1, 2:35-3:00
 1 M: Now [because] he’s on a benefit he does qualify:: .hh=
 2 C: [Right.]
 3 M: =finan- he is financially eligible. .hhh and what [is]
 4 C: [Uh uh]
 5 M: available is something called <legal aid:: mediation.>
 6 (0.8)
 7 C: [Right.]
 8 M: [.hhh]
 9 (.)
 10 M: Which means w- (.) we will offer an appointment (.) for

11 Wayne:
12 (0.5)
13 M: [Um] who:: um (0.2) I'm sure he would be willing to=
14 C: [Mm mm,]
15 M: =come in and see our mediat[or?] to have a chat?
16 C: [Oh yeah]
17 (0.5)
18 M: [And um] w- what we would do is we'd make an appointment
19 C: [Uh huh.]
20 M: for him.

There is a strong form of agreement from C following M's proposal that "I'm sure he would be willing to come in and see our mediator?" (lines 13/15). As in Example 1, the immediate, overlapping response "oh yeah" indicates that C's son's willingness is certain, and that M needn't have asked. We often observed this pattern: callers respond quickly or in overlap to mediators' 'willing' questions or proposals.

In Example 1 we saw how a caller changed from a "dispreferred", or reluctant, response to straightforward agreement on the basis of how the question/proposal was formulated. In the next example the change is even more dramatic: C agrees to mediate after first having displayed overt resistance early on in the call. M has called C regarding an invitation to mediation that the service has previously sent via letter.

(4) DG-30, 1:00-2:11
1 M: anyway it was just about (making an) appointment for
2 you to come in for a mediation .hhh information assessment
3 meeting.
4 (1.0)
5 C: .hh (.) Right.
6 (0.2)
7 M: [Uhm-]
8 C: [()] (does this-) (0.2) Do you get a charged by
9 these.
10 (0.3)
11 C: .hhh=
12 M: =.hhh [Are you-]
13 C: [Cos peop]le who's went to-
14 M: Sorry,=go ahea[d.]
15 C: [My brother went through- (.) my brother went
16 through a divorce, and he- he says he found the mediation a
17 waste of time.
18 (.)
19 C: .hhh (.) [and] me and my wife just- do not get on.
((16 lines cut about legal aid and costs))
36 M: .hhh Now that info(rma-) (0.2) that meeting is initially

37 with yourself and the mediator;
 38 (0.3)
 39 M: .hhh and the mediator will s- explain to you what the
 40 mediation process is about; .hhh And a[ls]o to tell you what
 41 C: [yep,]
 42 M: your other options are.
 43 (0.2)
 44 M: .hhh Would you be willing to come in to see our mediator
 45 for a chat,
 46 (1.5)
 47 C: Uh:m (0.2) yeah I will, (n-)
 48 (0.2)
 49 C: [yeah.]
 50 M: [.hhh] (.) That- that's really good. Thank you. And- then
 51 what we would do: mister Butter is that we would .hhh extend to
 52 same opportunity .hhh to missus Butter,

M summarises the reason from the call in lines 1-3. We can already notice the weak or resistant uptake from C in line 4 where there is a 1 second gap before C responds with an inbreath and “Right.”. M fails to drive the call forward at lines 6-7, and in 8 C starts to display resistance towards mediation, asking “Do you get a charged by these”. C’s next turn confirms that this question carries negative implications for engaging in mediation. Furthermore, according to C’s brother, mediation is a “waste of time”. C goes on to apply this third-party opinion to his own situation in line 19: “and me and my wife just- do not get on”. This is a way of saying ‘it didn’t work for my brother, and it definitely won’t work for us either’. So far C seems a long way from agreeing to mediate.

M’s ‘willing’ question (44-45) follows an introduction to legal aid eligibility (omitted from the transcript) and a process-based summary of the initial mediation meeting (36-42). After a 1.5 second gap in line 46, C responds “Uh:m (0.2) yeah I will”. This can be heard as a reluctant agreement, and not as strong an agreement as in the earlier examples. However, it is quite a remarkable turn-around from the initial ‘no’ to a firm ‘yeah I will’. And ‘yeah I will’ is a stronger commitment than, say, ‘I might be’. We know that it is the ‘willing’ question specifically that does most to deflect C’s resistance, as there is little prior to the ‘willing’ question which indicates

that C might move to a 'yes'. For example, the minimal "yep" in line 41 does nothing to show that a turn-around is forthcoming.

The effectiveness of 'willing' is supported by our finding that *only* questions or proposals carrying 'willing' will turn a client from a no to a yes. In the next section, we will see examples of alternative formats and how they tend to get weaker uptakes from the caller.

Alternative formats get weaker uptakes

Callers do agree to mediate also if words other than 'willing' are used to invite for an initial appointment, but the uptake/agreement is not as strong. Indeed, none of the cases using alternative formats is followed by C indicating that 'you needn't have asked'/'I was always willing', as we saw in some of the examples above.

Example 5 shows positive agreement following "is that something that you would be interested in. Fay" (lines 10-11).

```
(5) DG-20, 1:23-1:49
1   S:   And then we coul[d c]ontact him,
2   C:           [m- ]
3           (.)
4   S:   .hhh (0.2) to [inv ]ite [him ] to the same process,=
5   C:           [right.] [okay,]
6   S:   =to come by himself.
7   S:   .hhh [init ]iall[y. ]
8   C:   [Yeah.] [Right] okay. Yeah,
9           (0.3)
10  S:   Uhm is that something that you would be
11  interes[ted in. [Fay. ]
12  C:   [.hhh [yeah,] I mean I'm interested I'm trying to
13  get everything sorted out but (.) in the mean time
14  he'[s been this] morning and took my car off u[s and,]
15  S:   [(mhhhh) ] [oh dea]r.
16           (0.9)
17  C:   Yeah I know he's just getting a bit nasty,=[so,]
18  S:           [Righ]t.
```

The onset of C's "yeah" in line 12 is early, indicating that C is positive towards mediation. However, while C says "yeah", and that she is "interested" and "trying to

get everything sorted”, the “yeah” precedes a “but” (line 13), making the initial “yeah” only a weak agreement (Pomerantz 1984), and a preface to moving into complaining about her ex-partner, rather than moving forwards to making an appointment. More work is needed to secure the client; the call is less efficient and takes longer.

Similarly, in Example 6, C agrees to mediate, but reluctantly.

```
(6) FMNE-7, 5:55-6:11
1   M: -> .hhh (.) so- (0.2) would you like to make a refferal?
2           (1.1)
3   C:   ( ) appointment.
4           (0.2)
5   M:   Yes:~?
6           (0.6)
7   C:   Well yeah:, hh
8   M:   Yeah?
9           (.)
10  M:   .hhh I'll need to take a few details from you,
11         but it's fai- it's (0.3) pretty brief, so uh:m (0.2) .hhh
12         I've got your name, it's Keith Mayz
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Conversation analysts have regularly shown that “well”-initiated responses mitigate disagreement and “operate as general alerts that indicate non-straightforwardness in responding” (Schegloff and Lerner 2009, 91). C says “yeah” (line 7), indicating agreement, but it is preceded by a delay in responding (line 6) and “well”, marking an agreement that is not straightforward. Also notice that C does not provide any confirmation following the minimal confirmation in line 7. M pursues further confirmation in line 8 (“yeah?”) but there is no response (line 9). As M proceeds to initiate taking C’s details (line 10), she orients to the possibility that C might lose patience: “but it’s fai- it’s (0.3) pretty brief” (line 11). C’s missing confirmation is therefore problematic for the progress of this interaction.

The only example of something like a turnaround following an alternative format question is Example 7. However, rather than responding to the target question (line 8), the caller seems to respond to M’s following suggestion that C is *not* ‘willing’.

(7) DN-7, 3:46-4:12

1 M: Do you want to- I mean the first step with Listening to
2 Children Matters is that we have an initial meeting with you
3 both.
4 M: .h[hh uhm] to discuss- (0.5) so that- that you
5 C: [Yes,]
6 M: can tell us more about your current situation,
7 .hhh and discuss how the project can- can help you.
8 M: .hhh do you- do you want to go forward with that process,
9 or am I hearing you say that- that all [that ()]
10 C: [I'll be yeah] I'll go
11 forward with i- <I'll go forward with it,>=Hhhh
12 I'm [quite happy-] quite happy to do that, Yeah,
13 M: [Yeah.]

Interestingly, something similar to 'willing' is implied in line 9. M's question, "or am I hearing you say that-", anticipates a rejection from C. This question might be heading towards 'am I hearing you say that you're not willing'. C is quick to project this possibility by producing full clausal affirmations: "I'll be yeah" and then "I'll go forward with it," (lines 10-11). Note that "I'll" is a truncation of "I will"; C's response is that she 'will' go forward, perhaps making explicit that he was being asked if he is willing in M's incomplete turn. In this way M manages to achieve a turnaround from resistance to 'yes', though "I'm *quite* happy" is not as strong as "oh of course, definitely" (Example 1).

Why 'willing' works

The data above show how a caller's sense of 'who they are' – the kind of person who is willing to mediate – is brought to the surface of the interaction, and that this leads to strong, explicit agreements to participate. To further illuminate why 'willing' is so powerful, consider Examples 8 and 9, in which callers themselves orient 'willing' as a relevant concern.

In Example 8, M is explaining mediation in terms of mediation ideology, rather than process (compare to M's procedural explanation in Example 1), using words like 'voluntary' which we have also found fail to engage prospective clients.

(8) HC-2, 1:33-1:54
1 M: Uh (0.5) and (.) we (0.4) it's a voluntary process, .hh so
2 that (.) if your neighbours were (0.4) unwilling (.) to be
3 involved in .h (.) mediation then there (.) there's nothing
4 more (.) we could do.
5 M: [.hh and what-]
6 C: [Right, ()] () (0.3) 'cause they're not (gonna) ()
7 I mean they're- I've seen her out doin the fishwife bit
8 shouting at all the other residents in the street. so that's
9 not gonna work.
10 M: Mm. It doesn't sound very promising,

Here, not only does M refer to mediation as a “voluntary process,” but also spells out the problem of its voluntariness for callers: “if your neighbours were (0.4) unwilling (.) to be involved in .h (.) mediation then there (.) there's nothing more (.) we could do”.

M might have been able to remedy the unfortunate implications of line 1-4 – she initiates a next turn in line 5. However C has already begun to respond in overlap, describing the neighbour's character negatively with the upshot “so that's not gonna work”. We found that callers take every opportunity to negatively characterise the other party, including that they are the “kind of person who won't mediate” (Stokoe 2013). Here, M has provided the basis for C to reject mediation, and indeed C develops M's notion of people who are “unwilling to mediate”. Rather than try to persuade C that mediation could help (line 10), M simply affiliates with C, agreeing that “It doesn't sound very promising,”. So, while callers take opportunities to negatively characterise the other party, presenting them as unreasonable, immoral, and ‘the kind of person who won't mediate’, they also take opportunities to present themselves in the opposite way. This may be why if asked if *they* are willing, callers are quick to agree that they are.

Example 9 also shows the strong kind of uptake questions about willingness

get.

(9) DN-5, 2:40-2:51
1 M: So- (0.6) uhm- (0.6) from what I've told you. does that sound
2 something that you- you want to find out more about, and you-
3 you're willing to try?
4 (1.6)
5 C: I was never not willing to try,

Having explained what mediation is, M asks “does that sound something that you- you want to find out more about, and you- you're willing to try?”. The long delay that follows the question (line 4) indicates an upcoming dispreferred response; a rejection. However, the response is not ‘dispreferred’ because it is a ‘no’, but because C resists M’s question as even relevant to ask: “I was never not willing to try”. This response is similar to the “oh of course” response we saw in Examples 1 and 3, in that it treats M’s question as something that should already have been obvious. But at the same time ‘I was never not willing’ is quite different from ‘oh of course’, in that it shows a more explicit stance in terms of resisting the question as relevant. By responding in this way, C shows quite strongly that his willingness is not the issue here (this is further intensified with the prosodic stress on “not”).

Again we see that ‘willing’ produces strong positive uptakes to mediation, and is an effective practice to convert callers from initial inquirers to clients of the service. When quantifying the effect of ‘willing’ compared to other formats (‘are you interested’, ‘do you want’, ‘would you be happy to’), in cases where mediation could be regarded as appropriate for the client, we found that ‘willing’ is more likely to be followed by a strong uptake than other formats (statistical significance at <0.01, established with a Fischer Exact test: $p=0.0088$). In addition to leading to stronger immediate uptakes, there is also a tendency for calls where the ‘willing’ format is used to lead to more appointments (90%), than calls where other formats are used

(80%) (not statistically significant). Note, however, that these measures do not take into account how the call taker might be able to convince the caller following the target question. The quantitative findings are summarised in Figure 1.

FIGURE 1 HERE

Circumstances where 'willing' does not work

In the cases above, the 'willing' question is sequentially located *after* callers have explained their problem or dispute, and after the mediator has explained what mediation is. However, we found that 'willing' fails to secure positive uptakes of mediation if introduced early in the call before these activities have been initiated and completed. In Extract 10, M asks about willingness immediately after having established that C is available to talk. (line 2).

(10) FMNE-6, 0:56-1:29
1 M: Right. okay, cause you sound like you're in the car.
2 M: .hhh uhm uh wha- what I wanted to check with you mister
3 Board is whether or not you'd be willing to uhm .hhh
4 uh (.) to- to come into the office to uhm have an- uh- a
5 meeting with a mediator.
6 (.)
7 M: .hhh
8 (0.6)
9 C: Uh:: (0.2) well she's just actually- (0.3)
10 Annie Leigh just actually phoned us about it, uh::=
11 M: =Righ:[t?]
12 C: [Abou]t half- half an hour ago?
13 M: Oh o[kay,]
14 C: [Well:.]
15 (0.2)
16 C: Well, (0.4) to be fair, (0.5) we've tried to mediate through
17 solicitors and it's not worked so::: (.) but, (0.7)=
18 M: =Yeah.

M's question is met with resistance from C (lines 9-17). It seems C has already discussed prospect of mediation with his ex-partner and has made up his mind to say "no". Note also that M is not asking "would you be willing", or proposing that the

caller is willing, but “whether *or not* you’d be willing” (line 3). This format, including ‘or not’, opens up the possibility that there may be a problem for C.

Example 11 starts with M checking that the caller can hear them.

(11) FMNE-16, 0:00-0:59
1 M: It’s Family Mediation Core Peace, it’s Mara Hockley speaking.
2 can you HEAR ME all right,
3 (.)
4 C: Yeah I can hear you fine thank you,
5 M: I’ve just uhm picked up a message on the answerphone.
6 uh:m .hh[h I think you were ri-] ringing about a letter
7 C: [()]
8 M: that we’ve sent to you.
9 (.)
10 C: .hhh yes, .hhh uhm .hhh I’m just a w- a- a- I’m
11 just a bit: uhm hhh .hhh uhm (0.7) uh::m:
12 (0.2) .hhh (0.2) the- (0.2) w- w- w- what actually
13 prompted you to send this letter? .hhh (.) uh:
14 (0.3)
15 M: (Yeah) there’s been another referral from uh:: from Cathy
16 I think, uhm that’s- (.) that’s what we’re writing to see if
17 you’re willing to uhm try a mediation (.) proc[ess.]
18 C: [But-] but
19 wha- what about- well- uh- (0.2) well can (0.4) .hhh I
20 still take her to court. and do mediation at the same time.
21 (.)
22 M: Y- you have that option. and obviously uhm you know it’s up
23 [to you.]
24 C: [Yeah-] y[eah- yeah because (I was) .hhh uh-] [this] is
25 M: [there’s- there’s- th:- th]e: [the-]
26 C: my frame of mind,=uh- uh- uh- uh- [let me] speak for a
27 M: [Yeah,] do.
28 C: mo[ment, too.]
29 M: [Yeah, do.]

Following M’s explanation of the reason for calling back (lines 5-8) C immediately displays resistance and scepticism in 10-10, before M goes on to ask “we’re writing to see if you’re willing to uhm try a mediation (.) process”. However, C asks about the court process rather than responds to the willingness question. As in Example 10, the ‘willing’ question also takes weaker, non-polar grammar: “we’re writing to see *if* you’re willing to...”. M also makes reference to C’s partner, implying that she has already spoken to the mediation service. This seems only to support C’s suspicions

about the situation and the extract ends with multiple competitive overlapping turns in which C asks explicitly to “speak for a moment” (lines 26/28).

What emerges here is that early ‘willing’ questions, before the relevance of mediation has been established, have weaker grammatical formats compared to ‘willing’ questions later on in the call, after having explained mediation. This is interesting in itself, as it might show that mediators find it less appropriate to ask, for example, ‘would you be willing to come in for an appointment’ early on in the calls. While we cannot yet be certain that stronger formats would not work early on, our analysis indicates that it is a less appropriate place to do so: callers are less likely to agree if mediation has not been explained to them.

Discussion and Conclusion

We have explored initial encounters between members of the public and community mediation and family mediation services, focussing on how to best deal with, and pre-empt, client resistance to mediate. Our analysis has shown that questions or proposals containing the word ‘willing’ are effective in securing a ‘yes’ response from prospective clients, and also turn callers around from resistance. Furthermore, ‘willing’ gets a more positive immediate uptake from the caller than when alternative words/formats are used. In particular, we found that formats that ask the caller directly ‘are you willing’ or ‘would you be willing’, or propose that the caller is willing, work better than hypothetical formats such as ‘I was wondering whether or not you’d be willing’. However, in our data, the latter formulations exclusively occur early on in the calls, where callers are less likely to agree to mediate in the first place.

This paper shows one way in which a common barrier in mediation, callers’ resistance towards mediation, can be met and perhaps avoided altogether. Stokoe

(2013) showed that the callers resist mediation when it is explained in ideological rather than procedural terms. Yet the present paper shows that, even in the face of resistance, call takers can still turn callers around. Our study therefore demonstrates that the outcome of initial contact with services is directly affected by the words and formulations that mediators use. This has far-reaching implications, first of all for knowing how to deal with prospective clients effectively, and secondly, our research has implications in terms of what method(s) to best use in order to arrive at such an understanding.

Regarding how to best deal with, or persuade, prospective clients, our findings suggest that screening for appropriateness of mediation should be done before attempting to secure appointments, in order to allow for clients to voice concerns early in the call. Appropriateness is established partly through the explanation of mediation, which ought to precede 'would you be willing'.

Regarding methodology for studying mediation encounters, and dispute resolution and negotiation more generally, our study shows, a bit like nudge studies, how subtle changes in language can have significant effects on people's behaviour. But unlike nudge studies, we demonstrate how successful practices are implemented and responded to in talk as it evolves in real time: the 'outcome' of these practices was contained within the interaction itself. As a response to the struggle between achieving both client self-determination and mediation progress (see Hedeem 2005), we have shown how language can influence a client's entry into mediation with subtle, non-coercive means. We argue that this would not be possible without the conversation analytic study we have conducted here.

We have yet to explore whether and how 'willing' works in other conversational contexts, and to our knowledge there is no equivalent persuasion

'word' demonstrated in other service contexts, at least not based on empirical study. However, our study contributes to other conversation analytic knowledge of different practices that make it more/less difficult for a recipient to resist a 'yes' in service encounters (e.g., Llewellyn 2015) as well as to the social scientific study of 'persuasion' more generally.

Understanding effective processes in explaining mediation and establishing willingness is crucial for developing and delivering training for staff, and our findings have been incorporated in CARM ('Conversation Analytic Role-play Method') training for mediators (see Stokoe 2013), so far delivered to more than 100 mediation services in the UK, Ireland and US. We found that, in terms of explaining the process and establishing willingness, initial phone calls and the first face-to-face meeting with mediators both cover similar territory. Therefore we would suggest that intake calls should be considered the first stage of mediation. Effective intake calls result in increased numbers of clients for mediation services, ensuring their survival and funding in the relatively fragile mediation and alternative dispute resolution market.

Appendix: Transcription Conventions

The symbols used in this article are adapted from Gail Jefferson's (2004) transcribing conventions.

<u>Symbol</u>	<u>Definition</u>
.hhh	Inbreath
Spee::ch	Colon indicates a syllable that is drawn out
To-	Dash indicates a word has been cut off abruptly

<u>Very</u>	Underlining indicates stress or emphasis
(1.4)	Numbers in parentheses indicate length of pauses (in seconds)
.,¿?	Punctuation indicates intonation at the end of units of talk. Full stop stands for falling intonation, comma for flat intonation, reverse question mark for slight rise, question mark for sharp rise in intonation.
[yeah]	
[okay]	Square brackets represent overlapping talk
=	End of one turn and beginning of next begin with no gap/pause in between (usually a slight overlap if there is speaker change)

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