

CONTRIBUTIONS WELCOME — OR MAYBE NOT



Leslie Cuthbert provides a detailed breakdown of the different forms of intervention that may occur during a tribunal hearing.

IN AN IDEAL HEARING, an intervention of some kind by the judge or chair, or occasionally another tribunal member, would be unnecessary. Sadly, few hearings in any jurisdiction are ‘ideal’. Whether it is trying to keep a litigant in person focused on the relevant issue, stopping an advocate from overstepping the mark when questioning a witness, or dealing with an inappropriate comment by another member of the panel, interventions are common.

An intervention can be defined in different ways but the Merriam-Webster dictionary describes it as ‘to interfere with the outcome or course especially of a condition or process (as to prevent harm or improve functioning)’.

This article will primarily be of assistance to the chairs of tribunals since their role generally includes undertaking active interventions to ensure a fair hearing. But it will hopefully be of interest and benefit to all members of tribunals, especially where a chair may unwittingly engage in what may be termed as ‘inappropriate’ interventions.

The most well known and authoritative voice in regards to interventions is that of John Heron who identified two styles and six categories of ‘helping intervention’.¹

Heron’s model has two basic styles: ‘authoritative’ and ‘facilitative’. If a helping intervention is ‘authoritative’, it means that the person helping is giving information, challenging the other person or suggesting what the other person should do. If a helping intervention is ‘facilitative’, it means that the person helping is drawing out ideas, solutions, self-confidence, and so on, from the

other person, helping them to reach their own solutions or decisions.

These two styles are further broken down into the following six categories:

- 1 Offer advice (authoritative).
- 2 Give information (authoritative).
- 3 Raise or confront issues (authoritative).
- 4 Deal with the other person’s feelings (facilitative).
- 5 Help them to work through the problem themselves (facilitative).
- 6 Offer support (facilitative).

Authoritative interventions see the intervener taking a more dominant or assertive role.

- 1 Offering advice is a form of prescriptive intervention whereby the intervener explicitly seeks to direct and guide someone else’s behaviour – e.g. giving advice or guidance to a witness, explaining to an unrepresented party what they should do in a hearing.
- 2 Giving information involves the intervener seeking to impart knowledge, information and meaning – e.g. sharing opinions or experience, explaining the background and principles behind the process, helping the other person get a better understanding of the matter.
- 3 Confronting involves the intervener seeking to raise someone’s awareness about some limiting attitude or behaviour of which they are relatively unaware, by challenging them with direct feedback while not making a

personal attack upon them – e.g. challenging the other person’s thinking, playing back exactly what the person has said or done, explaining what you think may be holding them back to help them avoid making the same mistake again. The intervener challenges the other person’s behaviour or attitude. It should not be aggressive confrontation but instead the ‘confronting’ ought to be positive and constructive.

Facilitative interventions involve the intervener enabling individuals to become more autonomous and take more responsibility.

- 4 Dealing with the other person’s feelings, also known as cathartic intervention, involves the intervener seeking to enable the individual to release powerful emotions, primarily anxiety, grief and anger – e.g. helping the witness express their feelings or fears or empathising with them.
- 5 Helping the person to work through the problem themselves, also described as ‘catalytic’ intervention, sees the intervener seek to enable the individual to learn, develop and problem-solve themselves by encouraging self-reflection, self-direction and self-discovery – e.g. asking questions to encourage fresh thinking, encouraging the other person to generate new options and solutions, listening and summarising what they have said.
- 6 Offering support involves the intervener affirming the worth and value of the individual’s qualities, attitudes, beliefs and/or actions – e.g. building up the person’s confidence by focusing on their competences, qualities and achievements or explaining how their contribution is valued.

There are, of course, what equally can be described as ‘inappropriate’ interventions, again falling into two distinct camps: ‘degenerate’ and ‘perverted’.

Degenerate interventions are those delivered in a misguided manner often ‘rooted in lack of awareness, in lack of experience, lack of personal growth, lack of training’.²

Perverted interventions, in contrast, are those which are deliberately malicious and intentionally seek to do harm.

In looking at degenerate interventions, the misguided nature may be because the intervention is:

- a) *Unsolicited* – when the manner of the intervention is overly intrusive or disrespectful – e.g. asking questions when another tribunal member is in the midst of questioning a witness.
- b) *Manipulative* – inappropriate interventions in which the intervener is motivated by self-interest, or any interests other than those of achieving a fair hearing – e.g. intervening simply because they haven’t spoken for a while to demonstrate that they are ‘in charge’ of the hearing.
- c) *Compulsive* – inappropriate interventions in which the intervener projects their own unresolved problems on to the individual during the intervention – e.g. inappropriately criticising or colluding with a party about an issue that is being discussed.
- d) *Unskilled* – simply incompetent interventions because the intervener has never had the training and has no real grasp of the quality, scope or suitability of the intervention.

Degenerate classes of the six categories are:

1 Prescriptive degeneration

Benevolent take-over – involves creating a dependency by giving advice to an insecure individual who instead needs encouragement to be self-directing.

Moralistic oppression – can create rebelliousness by imposing authoritarian ‘shoulds’, ‘oughts’

and ‘musts’ on an individual who may appreciate the rationality of the proposal but who feels impelled to reject what’s suggested because of the way in which it is presented.

2 Informative degeneration

Seductive over-teaching – the intervener excels in excessive information-giving, so that the individual spoken to becomes overly passive.

Oppressive over-teaching – the intervener goes on for too long giving out too much detail, insensitive to any response from the individual.

3 Confronting degeneration

‘The sledgehammer’ – the intervener raises issues aggressively, displacing their anxiety into a punitive personal attack on the individual, rather than on the attitude or behaviour that has caused concern.

‘The smiler’ – the intervener says hurtful things to the individual but in a smiling, friendly or jocular way.

4 Cathartic degeneration

‘Nut-cracking’ – the intervener makes a detailed intervention into deeply buried distress, which the individual is not yet ready to handle, which can prompt an intense or uncontrolled response.

5 Catalytic degeneration

Implicit take-over – the intervener unwarily imposes their own meaning and viewpoint onto the individual’s experience.

‘Scraping the bowl’ – the intervener goes on beyond the point of productive enabling, trying to make the individual find more to talk about on the same subject.

6 Supportive degeneration

Patronising – the intervener congratulates the individual on their self-improvement but in

a manner whereby the individual feels subtly insulted and put down.

Qualified support – the intervener can only give support if at the same time they discreetly remind the individual of the latter’s inadequacy in some respect.

Perverted classes of the six categories are:

- 1 *Perverted prescription* – where the intervener deliberately uses some threat or compulsion to prevent an individual from being able to act in their own best interest.
- 2 *Perverted information* – involves the intervener deliberately misrepresenting or mis-stating matters to undermine the individual’s confidence or point of view.
- 3 *Perverted confrontation* – involves pushing the person to ‘confess’ to things never said or done and might also be described as ‘oppression’.
- 4 *Perverted catharsis* – might better be described as ‘brain-washing’ the person whereby the intervener seeks to break the individual down through extreme mental stress then reintegrate them by means of a number of imposed suggestions.
- 5 *Perverted catalysis* – involves intentionally leading a person into their own undoing by drawing out any self-indulgent and/or self-destructive tendencies they may have.
- 6 *Perverted support* – involves affirming or encouraging unprofessional or corrupted behaviour by an individual.

A real-life example

Some time ago I was chairing a Mental Health Tribunal when another member of the tribunal was being appraised. This individual expressed in advance of the hearing their nervousness about being appraised and demonstrated this during the hearing by beginning to ask a multitude of questions, when invited to do so,

Potential day-to-day problems in tribunals and appropriate interventions the chair might make

Situation	Why	Intervention
An argumentative member.	The person may get satisfaction from dominating the panel.	Don't get upset. Try to find merit in an aspect of what they're saying and move on (offer support).
An over-talkative member.	Perhaps because they are too eager, are a 'show off', are exceptionally well informed or it's just their nature.	Ask them a difficult question or thank them when they take a breath and invite the other tribunal member in (catalytic).
A 'stickler'.	The person may have got fixated on a specific issue or may feel that they aren't being heard.	Consider having the other tribunal member respond (prescriptive) or work through the hypothetical situations looking at the different options regarding the issue (catalytic).
A member who won't talk.	This may be because they are too timid, bored or alternatively feel 'superior' to others.	Ask directly for their opinion after indicating respect for their view and compliment their view (offer support).
A personality clash.	This may simply be a difference of opinion or could be due to genuine dislike.	Consider drawing attention to what you see happening and get them to refocus on the task (confrontation).
Side conversations.	It may be that one of the members is distracted by personal matters.	Don't embarrass them but instead ask them a question or invite an opinion on an issue (catalytic).
A confused member.	This may be due to a lack of understanding or misinformation.	Tactfully restate the comment, or ask the other member for their understanding or provide guidance yourself (provide information).

not all of which were relevant to the central issues for the tribunal to determine. Presumably they did so in an effort to demonstrate to the appraiser that they satisfied the required competencies. This, however, meant that the other tribunal member was getting less of a chance to ask questions themselves and was also diverting us from the key legal questions we had to decide. I therefore invited the other tribunal member to ask their questions first of the parties present before passing over to the member being appraised (as a way of offering

support to the member who otherwise may have felt under-utilised).

Secondly, while I could have intervened in a confrontational way and pointed out that the tribunal member was straying from our core function by asking irrelevant questions, I decided that this might well have had an even greater negative effect undermining their confidence. Instead I chose to offer support and validation in another way by referring back to the questions

Continued on page 17

richly compensated me for blindness. With deafness, it is different. In advancing years I have grown closer to the deaf, because I have come to regard hearing as the key sense. Deafness, by fettering the powers of utterance, cheats many of their birthright to knowledge . . .’

So what can you do if you meet a deaf person? The rules for effective communication are:

- Try to find out the person’s preferred method of communication.
- Minimise background noise.
- Be aware lack of soft furnishings increases echo.
- Good lighting (too bright or too dark can strain the eyes).
- Make sure the light is on your face and there is no shadow – do not stand with your back to the window.
- Stand or sit one to two metres apart but at the same level.

- Look directly at the person (when using an interpreter face the deaf person not the interpreter).
- Keep face and mouth clear.
- Speak clearly, keep a rhythm – there is nothing worse than exaggerated, very slow speech.
- Do not shout, all it does is distort the face.
- Finally, if you have a BSL user before the panel, you need a qualified interpreter. They will have a badge with a yellow border that states NRCDP Registered.

In summary, it is hoped that in future the judiciary’s Learning Management System will provide a forum for posting similar background information and practice tips.

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Continued from page 12

that had been asked which were relevant and by developing them further, where necessary, and by complimenting the member on having raised an important point. This was designed to also enable the member to reflect on the questions they were asking and to maintain their focus. As a result with the next witnesses, after our colleague had asked their questions, the member being appraised asked fewer questions all of which were focused on the relevant issues for us to decide.

Conclusion

A great way to understand the helping/ intervening styles you most often use is to ask your colleagues directly for feedback. A more ‘supportive’ style with a focus on facilitative interventions as opposed to authoritative may, as

might be expected however, often help the members of a tribunal gain confidence and so solve more of the problems for themselves.

Reflect on hearings you have been involved in and consider which forms of intervention were used and how effective they were. In the future, should an issue arise, hopefully you will consider all the different options available to you rather than simply go with your ‘tried and tested’ intervention strategy – maybe the result will be an even better one.

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¹ Heron J (2001) (5th ed) *Helping the client – a creative practical guide*. SAGE publications, London.

² Heron 2001.