



Practice guide for mediators in victim-offender mediation

How can victims be supported
during the mediation process?

Camino

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Berlin 2013



Funded by the Criminal Justice Programme of the European Union.

Imprint

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Introduction

Providing mediators with suggestions on how to foster victims' coping processes as well as advice regarding possible hurdles when it comes to supporting adequate coping strategies, the present practice guide aims to improve the quality of victim-offender mediation (VOM) for the victims involved. It is based on a concept that describes the development and adaptation of certain strategies for overcoming victimization as "coping".

This practice guide has been developed on the basis of the results of the research project "Victim-offender mediation as victim supporting instrument" funded by the European Union within the context of its Criminal Justice Programme; the study relies on comprehensive material obtained by way of interviews conducted in Austria and Germany. In total, 91 victims and mediators were interviewed. Their behaviour during the mediation meetings and the interaction between victims and offenders were monitored by way of participant observation in 34 cases, meaning that the guide can draw on a wealth of profound knowledge, i.e. the victims' experiences regarding the impact of their victimization and their ways of dealing with it as well as the mediators' expertise concerning their means to foster the development of healthy coping strategies on the part of the victims. The study was mainly focused on victims who had experienced some kind of violent crime, since these cases can require special coping strategies. The possibility of future encounters between victim and offender in everyday life was given in approximately half of all cases studied.

Which cases does the practice guide cover?

The present guide covers cases of victim-offender mediation in which a personal meeting of all parties is arranged in a classical setting, bringing together victim, offender and mediator.

In accordance with the study sample, the practice guide is primarily intended to give advice for cases involving some kind of violent crime, but it also provides clues for other cases in which the victims might be emotionally affected due to other circumstances.

Cases of violent crime within the family or among (married) couples have to be excluded, however; here, the special relationship among the parties calls for a different approach.

How is the practice guide structured?

First of all, the present guide gives an overview providing the basic knowledge on "victimization, coping processes and offence situations" that the subsequent chapters refer to. The structure of the latter chronologically follows the substantial logic of the VOM process, from the referral to a mediator, usually on the orders of the prosecution, to

contacting the parties, holding preliminary meetings and undertaking and concluding the mediation itself.

Overview: basic knowledge on victimization, coping processes and offence situations

In criminology, the process of becoming the victim of a criminal offence and suffering the possible consequences of the latter has been comprehensively described as primary, secondary and tertiary victimization. The term "victimization" refers to the direct and indirect impact of the crime, whereas "coping" means the different ways of dealing with and eventually overcoming these consequences (as described in detail in the following sections).

Knowledge not only on victimization, but also on coping processes can help mediators involved in VOM influence the individual victim's process of coming to terms with having experienced a criminal offence, recognize coping strategies, make use of and actively foster them. The coping process can be further supported, if additional structures beneficial to the victim can deliberately be created their influence recognized and deliberately put to use.

Basic knowledge on victimization processes

"Primary victimization" refers to becoming the victim of a criminal offence. Even crimes that do not seem to have any significant impact on victims as seen from an external perspective can cause a serious degree of victimization, meaning that victims feel helpless, defenceless, at someone else's mercy, unable to act. This is particularly true of the victims of violent crime (Kilching 1995, 155ff.). The assumption "the more serious the offence, the stronger the victimization" is feasible; however, it has to be scrutinized in each single case; this should be done by interviewing the victim.

"Secondary victimization" results from inappropriate or insensitive behaviour on the part of other persons or institutions after the offence has been committed. Unfriendliness, seeming indifference, incomprehension, trivialisation, but also any dramatisation or undue anxiety make the victim feel helpless and exposed again; so does ignoring their needs for information, attendance and protection or putting part of the blame for what happened on the damaged party. Secondary victimization can also occur within the context of victim-offender mediation (cf. chapter on the mediation meeting).

"Tertiary victimization" describes the incorporation of victimhood into a person's self-perception (cf. Sautner 2010, 27), meaning that it begins to influence their mental states and the way they interpret their environment. Tertiary victimization results from intra-personal processes that are influenced by primary and/or secondary victimization. It can make victims underestimate their ability to react to threats and avoid what they perceive to be dangerous situations. Apart from social reclusion, they might also sustain psychological damage or even develop a clinical picture involving anxiety disorders, depression or post-traumatic stress disorder (Lamnek 2008, 259).

Basic knowledge on offence situations and coping processes

What influences a victim's experience of victimization apart from the person's individual traits and socially influenced characteristics, is how the situation unfolds during the incident, the offender's behaviour, the difference in power between victim and offender and the options the victim had or was able to make use of to become active and influence the offence situation and the imbalance in power in their own favour. The experiences made in this moment affect their assessment of the dangerousness of future situations and of their own ability to act in situations they regard as uncomfortable, influencing the persons' behaviour. This process is called "coping": Victims develop strategies they hope to enable them to prevent or face a similar or comparable situation in the future.

The larger the gap between the options to act that a victim perceived they had during the offence situation and those they would have considered necessary, the higher the probability that the victim will regard their ability to deal with future situations they find uncomfortable or dangerous to be insufficient. As a consequence, they will avoid certain situations, stop visiting places they consider dangerous and change certain forms of behaviour, resulting in increasing limitations in everyday life and a reduced quality of life. Giving them the possibility to make certain cognitive experiences, such as (re-)experiencing their own ability to act, can help victims of criminal offences develop appropriate coping strategies instead of such limiting ones.

In essence, the challenge lies in changing the victim's assessment of a problem, in this case the stressful experience of victimization, and its impact on future threats. An altered perception also affects the possibilities a person has to control the emotions emanating from a stressful event (*emotional coping*). Cognitive processing of the offence experience, made possible, for instance, if the accused recognizes the injustice suffered by the victim and assumes responsibility for it, allows emotions such as anger, fear or insecurity to subside. Changing the meaning attached to the stressful event also leads to behavioural changes regarding possible future stress situations (*instrumental coping*).

Victims begin to apply coping strategies as soon as they find themselves in an offence situation (*acute coping*). These are evident in their behaviour, but prove to be insufficient due to the obvious imbalance in power between victim and offender. As a reaction to victimization, the damaged parties develop different strategies to tackle the consequences (*continual coping*). Some take a conscious decision to seek assistance, whereas others tend to withdraw. Coping strategies can be *functional*, if they facilitate possible courses of action, or *dysfunctional*, if they reduce a victim's quality of life. Undergoing a victim-offender mediation enables the damaged party to re-assess the offence situation, possible future threats and their own ability to act, laying the foundation for the development of new coping strategies (*coping induced by mediation*).

The more actively a victim tries to come to terms with the experience directly after the incident and the more actively they seek assistance, the more successful their coping strategies tend to be, also within the context of the victim-offender mediation. Knowing which coping strategies a victim developed after the incident allows mediators to make use of and build on them.

Offence situation, coping strategies and possible starting points for VOM

The way an offence situation unfolds has a crucial impact on the degree of victimization the damaged party experiences and on the coping strategies available to them. It also influences the continual coping strategies and the victim's interests and expectations with regard to the VOM. We can distinguish four types of offence situation; this differentiation can provide mediators with clues on how to act during the different stages of the VOM process.

Provoked offence

The victim actively contributes to creating the offence situation, for instance, if mutual provocation is followed by a physical attack on the victim. Victims are aware of the role they played in the situation and most of them know how they could have avoided it. Few negative influences on the coping strategies developed to deal with this type of offence have been found. Sustained damages are usually taken "sportingly". Victims are able to see the incident as a consequence of a conflict. If the latter remains unsolved, the thought of meeting the offender again is often unpleasant or accompanied by feelings of anxiety, resulting in an increased interest in solving the matter and restoring social peace.

Example case: The later victim takes the train home, slightly drunk after a party. On the train, he begins to argue with a fellow passenger, becoming increasingly aggressive. The victim describes the further course of events as follows: *"Well, he roughed me up a bit, he broke my nose"*. The rather serious injuries (fractured nose, two lacerations, a black eye) are shrugged off: *"Those punches were well thrown... didn't look too good in the Christmas pictures"*.

Advocacy situation

The later victim intervenes in a conflict they are not party to, intends to settle a dispute. The attempt to help solve the conflict is followed by an attack. It is these cases in particular that affect victims very much on the emotional level, giving rise to a kind of indignation. The offender seems unpredictable, attacking "blindly", undeterred by any "collateral damage". Expectations developed as a result of cognitive processes have been disappointed, good intentions ignored, even punished. Such victims tend to feel a strong need to see the offender punished and to be rather doubtful regarding a mediation. What is more, they often voice fears, as the accused is perceived to be unpredictable. Most of them do not feel sufficiently recognized in their special role as a mediator and advocate.

Example case: At a street fair, the later victim's girlfriend begins a verbal exchange with a young man, arguing very vehemently, personally insulting the other party. Escalation threatens. The later victim, a police cadet, steps between the two opponents with his arms spread to protect his girlfriend, but also to stop her insults. The offender punches him several times with his fist, knocking him down. The very first blow shocks the victim so much that he is unable to protect himself against further blows: *"At that moment, it wasn't possible somehow, I did not realize it... and then blood was everywhere, too... yeah, well, the situation was just too much for me at that moment"*.

Surprise attack

The victim did not expect a physical attack, the situation was unforeseeable, i.e. could not be assessed by way of cognitive thinking. Regarding their reactions, the victim can only improvise and has hardly any chance to escape the danger. This type of incident comprises spontaneous attacks and different kinds of robbery. For the victim of a surprise attack, everyday actions that did not seem to entail any special danger become associated with insecurity. What is more, they often feel insecure with respect to different areas of action. This is due to the fact that when faced with the offence situation, they were unable to act, and much less able to act in any way that would have made a difference. So the fear of the offender is often complemented by other vague anxieties.

Example case: The later victim and his friends are in the street, on the way home from a birthday party, when a man asks him for a cigarette. Because he does not have any, the offender beats the victim until he is unconscious. This happens so fast that nobody is able to intervene: *"Yeah, well, it came out of nowhere. I saw the fist and then nothing for a while, nothing at all. Everything just went black"*.

Example case: A woman, the later victim, runs a kiosk in a small town in northern Germany. One morning, a young man enters, then a second and a third, who jumps over the counter, *"grabbed me, threw me on the floor and beat me at least 50 times,*

so that I was unable to defend myself or see what was going on inside the shop. I was just screaming and then the other one came over and stole the cigarettes".

Offence situation without direct contact

During the offence situation, the victim has no direct contact with the accused. This type of situation also arises all of a sudden and as there is no obvious opponent, the victim has difficulties in assessing the attack correctly. Victims do not even have a chance to defend themselves directly, which is highly unsettling for them; after the incident, they often keep doubting their own perception for a while. Like the victims of a surprise attack, they feel an insecurity affecting different areas of action, which is due to the fact that during the offence situation, they had hardly any clue regarding the accused that could have enabled them to assess the situation properly and act effectively.

Example case: After a conflict broke out at work, the offenders manipulate the victim's bicycle, causing an accident in which the victim is hurt so badly that she is no longer able to practice her profession. At first, the victim is unsure as to whether she should report the incident at all; although she guesses who is responsible for the manipulation, she then decides to bring a charge against persons unknown: *"[...] I cannot just accuse somebody. At first, I thought, I might be slightly off my head. I thought, maybe I just imagine things. [...] The next day, I reported the incident and I said, they probably thought I was mad or something, I mean I couldn't prove anything".*

Example case: On the motorway from Munich to Strasbourg, the victim is harassed by the driver of another car who keeps tailgating, overtaking and hitting the brake immediately afterwards. The victim fears to die, other drivers call the police. *"My hands on steering wheel were wet with sweat, too, and I kept thinking, this cannot really be happening! One wrong move now... The motorway is packed. You'll end up pushing someone else into the ditch as well. [...] And I was really scared that he would hit me any moment, just like in a bad film".*

Referral to a mediator – extracting useful information from the case file

What has to be done?

Generally, the prosecution will provide the mediators with the file pertaining to a case that has been referred them. At this point, the question whether a victim-offender mediation makes sense in that individual case should be reviewed. Besides, the mediators have to find out which pieces of information contained in the file might be useful when it comes to planning and realizing the VOM and how this information can be harnessed to foster the damaged party's coping processes.

Hurdle: The mediators' assessment of the file information concerning a victim can only be of a provisional nature, since the content of the file has been compiled by the police and the judicial authorities, meaning that the damaged party's perception of the offence situation and its consequences cannot be gleaned from the file. Victims can be regarded as experts concerning their own victimization and the coping strategies they have developed in order to deal with it.

What can be done? The file information concerning the victim has to be confirmed, corrected and completed by the damaged party themselves.

As the information obtained from the file cannot be regarded as a sufficient basis for an informed decision and as the damaged party as the subject of the procedure should play a crucial role regarding any decision as to whether a victim-offender mediation should be undertaken, this question will only be answered after contacting the victim and the accused.

Good to know!

Which pieces of file information can provide important first clues regarding the damaged party's special needs and interests?

The date the offence was committed as important information to be obtained from the file: It is useful to know how much time has elapsed since then and in how far this can be relevant for the victim.

Victims will benefit, if they are contacted as early as possible, because shortly after being victimized, they have not yet completed the process of tackling the offence situation (continuous coping). If they are offered to take part in a VOM, there is a chance that the

development of dysfunctional coping strategies that would reduce their quality of life, such as avoiding certain places or situations, can be warded off.

The more time is allowed to elapse since the offence was committed without the victim being informed about the nature of the further proceedings, the more likely it is that the development of functional coping strategies will be precluded: Victims feel that their concerns are being ignored by institutions representing the rule of law, that they are not receiving any further support regarding their continuous coping efforts, such as bringing a charge, or that these, too, remain ineffectual.

If in this kind of situation, the mediators' office as a public entity contacts the victim on the orders of the judicial authorities, this can re-start stalled functional coping processes. Victims realize that "finally something happens" and that they are given an opportunity to act.

Over time, negative consequences, such as the loss of earnings or high treatment costs or lawyer's fees, can reinforce the experience of being "at someone else's mercy" again as a result of the offence; this goes for the victims of violent crime in particular.

If contact is established in such a situation, the victim might regard this as a break for the better, in the sense of "finally someone takes care of this".

Hurdle: In this kind of situation, there is the risk that the victim might not understand the offer of undergoing a VOM as a break for the better, but simply as "the only way out" of a stressful situation. This rather resigned attitude has to be regarded as an unfavourable condition with regard to the task of encouraging the development of coping processes.

What can be done? When establishing personal contact, mediators should pay careful attention regarding signs of resignation and its causes. If resignation is detected, it is particularly important to point out options that allow the damaged party to become active themselves.

The state of the legal proceedings as important information to be obtained from the file: It is useful to know that legal proceedings can preclude functional coping strategies.

The following unfavourable conditions should be borne in mind:

- The VOM is squeezed in at short notice before the main hearing takes place.
- The prosecution plans to quash proceedings (particularly in the case of minors), if the adolescent offender tries to reach a settlement with the damaged party, whether the victim is prepared to participate in a VOM or not.
- The VOM is (in the case of minors) supposed to take place on the orders of a judge; it is in the special situation of a court hearing that the damaged party is asked about their readiness to participate.

Hurdle: If the victim comes under pressure during the offender-oriented court proceedings or if the victim only agrees to participate, because otherwise the proceedings would be quashed, a rather resigned attitude will result and constitute an unfavourable condition with regard to the task of encouraging the development of coping processes.

What can be done? When establishing personal contact, mediators should pay careful attention and try to detect situations in which the victim might come under pressure due to the state of the legal proceedings and that might cause resignation. Their lawyers usually inform victims about a possible quashing of the proceedings, for instance. In these cases, it is particularly important to point out options that the damaged party can make use of to defend their interests during a mediation meeting.

Ultimately, the decision has to be left to the damaged party: The procedures the prosecution and the court adhere to and the chances offered by the VOM have to be explained to them before they give their agreement to participate, so that they can take an informed decision.

The sequence of events during the incident and the nature of the charge as important information to be obtained from the file: It is useful to obtain first clues regarding the type of offence situation (as described above) on the basis of the description of the incident in the file.

Provisional assumptions can be made regarding the significance of the offence and the victim's expectations in connection with the VOM (cf. categorization of offence situations, 9f.). A provoked offence can, for instance, result in a heightened need for conflict resolution. An advocacy situation might result in the damaged party's need to be recognized in their special role as a mediator in a conflict. A surprise attack might cause the victim to fear any further confrontation with the accused. In the case of an offence situation without any direct contact between the victim and the offender, the victim might want to know what the accused looks like or get to know them. This type of expectation can be taken up in an initial letter; when meeting the victim in person, it might be easier to detect, if information regarding the type of offence has been obtained before.

Hurdle: Neither the description of the offence situation nor the type of criminal offence can be regarded as a sufficient clue regarding a possible traumatization on the part of the victim. The latter is not discernible from the file – at least as long as it does not contain the victim's account of events or a medical diagnosis.

What can be done? Even if, on the basis of the seriousness of the offence and the sequence of events during the incident, a high degree of victimization is assumed, this does not mean that establishing contact is impossible; it has to be done in a very sensitive way, though, particularly with regard to the victim's freedom to decide for or against a VOM. The victims should be given to understand that their reaction to the mediation offer, which will in

most cases be negative or at least ambivalent at the beginning, is understood. At the same time, the possibilities of overcoming victimization by way of undergoing a VOM can be outlined. If the victim is traumatized, no VOM should be undertaken.

Police notes regarding a VOM as important information to be obtained from the file: It is useful to find out whether the police have already mentioned a VOM when interrogating witnesses.

When informing the victims about further procedures, the police sometimes also ask them to agree to a VOM; this agreement is sometimes given under the pressure created by the situation. When establishing contact, it is useful to point out that the participation in a VOM is voluntary and that the victims can interrupt it anytime or reject the outcome (cf. VOM standards as defined by Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung et al. 2009, 7).

Charge and enlistment of a lawyer as important information to be obtained from the file: It is useful to find out whether the victim has taken any active steps after being victimized.

Any activities a damaged party undertakes after being victimized, e.g. bringing a charge or seeking the assistance of a lawyer, can be regarded as an indication for active behaviour after the offence. We can assume that victims who actively seek assistance at this stage will be able to participate in an equally active way during a VOM.

Checklist: Which information should be obtained from the file?

- How much time has elapsed since victimization occurred?
- Are there any special conditions regarding the legal proceedings that might put the victim under pressure?
- Which type of offence situation are we dealing with?
- Which expectations could this special offence situation give rise to with respect to the VOM?
- Is there any need to establish which roles the different parties played during the offence situation?
- Has the victim already agreed to participate in a VOM when being interrogated by the police?
- Has the victim enlisted a lawyer?

Ensuring that contact is established in a favourable manner

What has to be done?

In most cases, the mediators' office will establish the initial contact with the damaged party by way of a letter aiming to arouse their interest in a VOM and to explain that the VOM offers them a chance to (further) develop functional coping strategies and eventually overcome the consequences of the incident.

Good to know!

Most victims have never heard of the possibility of undertaking a victim-offender mediation. It is therefore crucial to explain the VOM process and the corresponding possibilities in a transparent and easily understandable way – in the parties' mother tongues, if necessary (cf. VOM standards 2009, 14).

Which favourable explanations should the letter contain?

Mentioning that the case has been referred to the mediators' office by the judicial authorities and that the offer is free of charge can make the victim feel recognized as a legal subject on the part of the public institutions.

Since victims often describe unpleasant feelings such as fear and insecurity when it comes to meeting the offender, it is crucial to point out that the accused will not be present during the initial or informational meeting and that victims can decide for or against a personal confrontation.

Clearly naming an individual contact person who can accompany the victim through the whole VOM process helps to build trust.

It is favourable, if the letter takes the form of an offer and indicates specific possibilities as to what a damaged party can actively undertake to defend their personal interests.

If the file shows that the police have already obtained the victim's agreement to participate in a VOM, the letter should underscore the voluntary nature of the measure and the possibility to take back the decision.

If the following range of possibilities is mentioned in the letter, most of the common motivations to participate will be covered: receiving compensation for pain and suffering without a lot of red tape, saving on the cost of litigation, being able to talk, ask questions and

voice anger, hearing an apology, confronting the offender, reducing fears, solving the conflict relatively fast, finding peace.

The letter should be easily understandable; it can be a standard letter, possibly be adapted to fit the individual case in question, if the file provides enough information as to the offence situation and the corresponding clues regarding possible motivations.

Provoked offence – Victims of this type of offence often have pragmatic motivations for participating in a VOM, such as avoiding red tape and a court hearing, often accompanied by the wish to resolve the conflict as soon as possible so as to eliminate any danger associated with coming across the offender in everyday life again.

Surprise attack – Victims of this type of offence often want to rid themselves of their fear of the offender; they want to see him, be able to assess him and understand what happened in order to adapt future coping strategies accordingly.

Advocacy situation – Victims of this type of offence often feel the need to resolve the conflict and to underscore their good intention. Often, they also feel a certain need to see the offender punished – not necessarily by way of a court conviction, though.

Offence situation without direct contact – Victims of this type of offence usually want to see the offender and be able to assess him. They also need their perception of the incident to be confirmed and want be recognized as persons endowed with certain rights.

What can be done, if a victim does not react?

If victims do not react, a second letter may be sent, as long as it is still formulated as an offer, i.e. as long as the tone does not sharpen (by suddenly introducing a time limit, for instance) in comparison with the first one and as long as a reason is given, such as the possibility that the first letter might not have arrived.

Hurdle: If a victim does not react, it does not help to jump to conclusions of the type reflected in mediators' hints that a failure to react makes them assume that the problems between victim and offender have been sorted out.

What can be done? This type of conclusion has to be avoided, as it puts pressure on victims again. In order to enable them to take an informed decision, it is, however, important to point out that the file will be returned to the prosecution, if the damaged party decides not to participate in a VOM, and that this will have certain consequences.

Which party should be addressed first?

In the case of serious offences, the offender's readiness to assume responsibility for their actions and to reach out to the victim should be secured before the victim is contacted. This is done in order to avoid further disappointment on the part of the victim, which could arise, if they are prepared to participate in a VOM, but the accused is not.

If the accused is not sufficiently prepared to assume responsibility, either for the whole incident or for parts of it, the mediators have to consider the case unsuitable for VOM. If the case is then returned to the prosecution as unsuitable without contacting the victim at all, this means that the matter is decided over the victim's head in order to protect them from the negative effects of a failed VOM.

What exactly is considered sufficient regarding a partial assumption of responsibility depends on the offence in question and the mediators' attitude. If the protection of the victims is emphasized, stricter limits are set for the accused when it comes to assuming their responsibility; a decision is taken in the victims' interest, but without consulting them. If the victims' self-determination is emphasized, the issue of what is "sufficient" for them can be discussed with them.

Hurdle: If an offender is prepared to assume only part of the responsibility and the mediators still decide to contact and consult the victim on whether they are willing to participate in a VOM under these conditions, this favours the victim's self-determination; the victim, however, runs the risk of being further victimized by the accused during the mediation meeting.

What can be done? If the accused is completely or for the most part unwilling to assume responsibility, priority should be given to the protection of the victims and the case should be returned to the prosecution as unsuitable in accordance with the VOM standards. It is not necessary to consult the victim.

Hurdle: If a victim, for instance someone who came up with the idea of undertaking a VOM themselves, insists on a mediation meeting, although the accused is not sufficiently prepared to assume their responsibility, they run the risk of being made to feel insecure regarding their assessment of the incident again, of being "shown up" by the accused and thus victimized again.

What can be done? In the case of a surprise attack, an advocacy situation or an offence situation without any direct contact, the responsibility for the offence clearly lies with the accused. The victims' perception is not negotiable. If the accused is not prepared to assume responsibility, undertaking a VOM should be rejected. If the accused only assumes part of the responsibility, a mediation meeting can be organized with reservations. In order to protect the victim, it has to be pointed out that the meeting might foreseeably take a negative turn. In case a mediation is undertaken under these conditions, the mediator has to decide beforehand in which exact situation to interrupt or postpone it.

Other forms of establishing contact

Apology letters written to the victim by the accused, if encouraged by a mediator, should only be possible, if the victim has been consulted and given their assent. Mediators should read these letters in order ensure that the content does not insult the victim or put them under pressure. The letters have to be sent via the mediators' office, so that the victim can be sure that the offender does not find out their address (at least not this way).

Hurdle: An apology letter can cause further anxiety on the part of the victim, create a serious amount of moral pressure and make victims feel "they have a duty" to participate in a VOM. If their motivation to participate is focused on the offender, their own interests are relegated to the background, which precludes the development of coping strategies.

What can be done? Any apology letter by the accused should be accompanied by the mediators' explanation that there is no such thing as an implied duty to participate in a VOM. Victims should always be able to see the chances a VOM offers them.

Checklist: Which points have to be taken into account when establishing contact?

- Is the letter transparent and easily understandable?
- Does it point out that the offer is free of charge?
- Does it mention that the accused will not take part in the preliminary meeting?
- Has the range of possible motivations been included?
- Can any specific motivations be taken up on the basis of the offence situation in question?
- Does it explain that participation is voluntary?
- If the police have already obtained the victim's agreement to participate, does the letter mention the possibility to take back the decision?
- Has the accused been contacted first?
- Have they assumed responsibility first?
- Should the victim be consulted on whether a VOM should be undertaken?
- Should the victim be asked to accept an apology letter?

What is favourable regarding the initial conversation and the preliminary meeting?

What has to be done?

The initial, merely informational conversation can take the form of a telephone conversation or of a personal meeting. It serves to explain the advantages of a VOM and the corresponding options to become active and develop coping strategies to the victims with the aim of motivating them to participate in a VOM. If a victim signals at an early stage that they are prepared to participate, the informational conversation will either turn into a preliminary discussion aimed at preparing the realization of a VOM or a preliminary meeting will be scheduled at a later date so as to give the victim time to reconsider their decision. The preliminary meeting serves to prepare the victim for the accompanied mediation meeting with the accused. If necessary, several preliminary meetings can be held with the victim.

Good to know!

It is useful, if the informational conversation takes the form of an offer without any fixed expectations regarding the results.

Victims of serious crime are often scared or react in an ambivalent way when a possible meeting with the accused is mentioned. They need time to ponder whether they want to overcome the incident and its consequences by way of an accompanied mediation meeting. Hearing that the accused will not be present during the preliminary meeting comes as a relief to them. The victim can decide, is given enough time to reach a decision and is informed about alternatives to a classic setting, as possibilities such as an indirect VOM are mentioned as well.

A preliminary conversation is taking a favourable direction, if mediators manage to make the victim see their options to become active and take control, which can help them optimize their coping strategies and control their emotions, also with regard to the mediation meeting.

For those victims who have decided to participate in a VOM, a preliminary meeting to prepare them for the mediation meeting has proven to be an important next step, even in the case of a provoked offence. If they start the mediation meeting with specific ideas as to what goals they want to reach and if they know the mediators will support them in reaching them, if necessary, they have good prospects of developing functional coping strategies. The

preliminary meeting enables mediators to find out about victims' expectations and individual coping strategies, which in turn enables them to support them during the mediation meeting.

It is useful to point out possible ways of action during the preliminary meeting; this helps victims imagine how they could actively proceed.

In this respect, mediators should mention the limited time frame available for undertaking and concluding a VOM as well as the fact that, in contrast to court proceedings, it allows victims to become active and decide themselves which course to take. They should explain that a VOM allows victims to speak with the offender, to see what they look like and to find out about the background of the incident or to solve underlying conflicts, if necessary. Mentioning that they might be able to get financial compensation without having to clear a lot of red tape (victims fund; if given) tends to motivate victims to participate. Ultimately, the fact that undergoing a VOM can enable victims to deal with offender in everyday life again is also important information to them.

Hurdle: A mediators' strategy of painting a "detering" picture regarding the victim's participation in the court proceedings (having to testify, being questioned by the other party's lawyers etc.) can cause anxieties. The dominance of motivations such as fear and avoiding an unpleasant situation (the hearing) diminishes the chances a VOM offers in terms of becoming active and gaining control, reducing the chances of developing coping functional strategies.

What can be done? The positive aspects of a VOM in comparison to the court proceedings should be underlined; negative aspects of the latter should, however, not be mentioned, especially if the court proceedings already seem threatening to the victim.

Information regarding the attitude of the accused can be helpful for the victim

The information that the accused assumes responsibility, wants to apologize, resolve the matter and compensate the victim for the damages, if possible, has a relieving effect on victims and motivates them to participate in a mediation. This kind of admission confirms the victim's perception of the offence situation and paves the way for negotiation.

Hurdle: Information regarding the offender's willingness to cooperate can create moral pressure on victims to participate in a VOM, relegating their own interests to the background.

What can be done? When informing victims about a favourable attitude regarding the incident on the part of the accused, mediators should point out that the other party's willingness to apologize cannot be the only reason for them to participate in a VOM. Mediators should rather encourage victims to ponder in how far an apology could be relevant for their personal process of coming to terms with the offence.

When they are told that the accused assumes responsibility for the incident, some victims develop the notion that they could use the mediation meeting to lecture, change or educate them in order to avoid further offences or be better protected in case they meet them again.

Hurdle: If mediators underscore any positive developments on the part the offender, such as their betterment or possible change due to a mediation, this can preclude coping processes on the part of the victim, whose concerns are relegated to the background.

What can be done? Mediators should point out that the betterment or education of the offender is not an objective of the VOM nor a task the victim should pursue. Victims should be encouraged to focus on their own motivations and interests in a VOM.

It helps, if mediators can argue drawing on assumed motivations on the basis of typical offence situations

Some clues on such relations:

Victims of a provoked offence are often interested in solving and settling the conflict.

Hurdle: In cases of serious provoked offences, the victims had their share in causing the escalation. The conclusion that the roles of the parties could be less important or interchangeable is, however, problematic.

What can be done? Even if a victim contributed to the situation that provoked the offence, the latter comprises as an unjustified infringement of the rights of another and has to be treated as such.

Victims of offences that arose from an advocacy situation attach a special value to their protector's role in the conflict and often feel a need to see the offender punished, based on individual ideas of retributive justice.

Hurdle: Mediators see the main objective of a VOM in establishing social peace. Focusing on this objective can mean that they are running the risk of paying insufficient attention to the victims' needs, which might rather consist in being recognized as a victim, imposing limits or demanding some kind of compensation from the offender.

What can be done? Mediators should find a sensitive way to ask victims to state such wishes, without implying that they might not be what the VOM is for. If a need for punishment is voiced, they can try to find adequate means for compensating it or explain that it cannot be fulfilled. Meeting the victims' wish for compensation must remain a goal, though.

Victims of a surprise attack are particularly interested in meeting the offender in order to be able to assess them.

Victims of an offence without direct contact feel the need to find out about the offender and their motivation for committing the offence. Those victims have a particular need to feel that their perception of the incident is taken seriously.

It is favourable, if mediators use the preliminary meeting to offer victims a reliable personal relationship.

The victims experience understanding for their victimization and the corresponding needs and feelings and come across mediators who assure them that they will support them during the mediation. Giving the victims moral support is favourable for the development of functional coping strategies. Feelings of fear and anxiety become more controllable (emotional coping).

Hurdle: Victims talk to mediators trusting that the information they provide will remain confidential; offenders, on the other hand, need not know everything about the victim. If during the mediation meeting, a mediator reveals confidential information provided during the preliminary meeting, the victim might feel shown up in front of the accused. Secondary victimization might result.

What can be done? Mediators should generally use the preliminary meeting to ask victims whether any of the information they provide should not be revealed to the accused. This has to be obeyed later. It enables victims to better distance themselves or impose their own limits.

It is favourable, if the preliminary meeting is used to reassure the damaged party by informing them how the mediation meeting will go and how they can act.

With regard to the victim's task of tackling the mediation meeting with the accused, it is important to discuss the sequence of events during the VOM with the victim. Mediators can, for instance, show them the room in which the meeting is supposed to take place or ask them where they want to sit. This improves the victims' security regarding their own behaviour (instrumental coping).

If the victim is considering demanding financial or symbolic compensation, this should be discussed with regard to its appropriateness in order to avoid any failure during the mediation meeting.

Victims who might find the mediation meeting hard to bear can be asked to bring another person for support.

Checklist: Which issues are important with respect to the preliminary meeting?

- Which effect did the initial letter have on the victim?
- Have the police or the court already contacted the victim?
- How did the victim experience the offence situation?
- Does the victim know the accused?
- Did the victim have its share in provoking the offence?
- Which consequences did the incident have for the victim?
- How active did the victim become after victimization?
- Which motivations can be taken up?
- Which expectations does the victim have regarding the mediation meeting?
- Is their demand for compensation realistic?
- How well prepared is the victim with regard to the mediation meeting?
- How much support will the victim need during the mediation meeting?
- Are there any issues the victim does not wish to discuss in front of the accused during the mediation meeting?
- Has the victim been told that it is possible to interrupt the mediation meeting anytime?

Ensuring that the mediation meeting takes a favourable form

What has to be done?

Mediators work as impartial guides who keep the mediation meeting on course and try to establish a balance of power between the parties. They try to initiate a dialogue between the parties, acting with as much restraint as possible so as to allow the parties to become active themselves and interact in a self-determined way. If necessary, they support the damaged party when it comes to voicing their concerns.

Good to know!

It is favourable, if the loss of control the victim experienced during the offence situation can be balanced off by an active, self-responsible participation in the VOM process. The mediation meeting offers special opportunities for this. If the experienced injustice is admitted, if the accused apologizes and/or offers to make amends, the victim can feel recognized as an individual and as a legal subject. The normalization of the relationship with the offender and the resulting cognitive perception that their behaviour is predictable is an important aspect. It enables the victim to re-assess their own ability to act and can help them develop functional coping strategies for tackling possible future situations.

How can favourable conditions be created for the mediation meeting?

The classic setting of a VOM – mediator, victim, offender – can constitute a situation that is overtaxing for the damaged party, particularly if they are not able or not really used to defending their own interests. In this case, mediators will encourage the victim to bring a friend, partner or family member for their personal support. For reasons of balance, this always goes for the accused as well.

It is favourable, if friends, partners or parents participate in the mediation by adding information – with the victim's permission – wherever the latter might come across communicational limitations or by describing injuries resulting from victimization that the victim themselves might have difficulties to express.

Hurdle: Parents, partners or friends who identify strongly with the victim and who start to discuss with the accused or the mediator by themselves, over the victim's head, can preclude the development of coping strategies on the part of the victim, as their action on behalf of the latter restricts the victim's own activity.

What can be done? If they begin to interfere too much, the parents, partners or friends are asked to restrain themselves and let the victim speak. They can also be seated a little way back in order to avoid too much meddling.

Hurdle: The presence of lawyers during the mediation meeting can preclude coping processes, as their objective of formally representing their clients' interests, possibly also during the subsequent civil or criminal proceedings, can limit certain ways of interaction between victim and offender: Victims tend to leave it to their lawyers to become active, which is counterproductive, as it does not help normalize the relationship between victim and offender.

What can be done? Lawyers should not be present during the mediation meeting. They can give advice in the run-up to the mediation and, if the parties wish so, become involved during the final part, when it comes to setting up or reviewing the agreement. Besides, it is not recommendable to leave the victim alone with the lawyers of the accused, as the latter could use the opportunity to obtain arguments in favour of their client for the subsequent civil or criminal proceedings, which they could then use against the victim.

How can a favourable beginning of the mediation meeting be ensured?

Mediators start the mediation meeting on a positive note by underlining the parties' willingness to participate.

Hurdle: If the mediators begin with an introductory appeal emphasizing the fact that it is finally possible to establish social peace or their pronounced pleasure regarding the fact that the parties have met in order to settle their dispute, they anticipate the negotiation process, precluding the independent development of coping strategies.

What can be done? It helps to point out that the further negotiation and its results are in the hands of the present parties; this makes them feel responsible. It is also favourable to mention that there are no fixed expectations regarding the results of the process.

As the victim was in the weaker position during the incident, mediators should give them a slight advantage during the mediation meeting, asking them to begin by giving their perspective on the sequence of events during the offence. This should be pointed out to the victim during the preliminary meeting (as one victim complained that the request came as a surprise to them).

Asking both parties who wants to begin requires a certain consensus between victim and offender, enables the parties to establish contact quickly and gives them an early opportunity to negotiate the further course of the conversation themselves. It can be a favourable strategy, if the parties seem to be about equally strong regarding their ability to defend their own interests and if the offender is prepared to assume responsibility for their share of the offence situation.

How can mediators ensure that the interaction between victim and offender takes a form that furthers the development of functional coping strategies?

Some typical forms of interaction between victim and offender can be outlined on the basis of the typical offence situations mentioned above:

In most cases involving a provoked offence, direct interaction between victim and offender develops relatively fast. As the victim had a share in provoking the conflict and its escalation, the offender will point this out to the victim. The damaged party is not as afraid of the offender as they would be, for instance, after a surprise attack. Usually, the victim will also admit their share of the responsibility, building bridges for a negotiation.

It is favourable, if mediators stay in the background as much as possible, limiting themselves to supporting the "building of bridges", if necessary.

Hurdle: The notion that the roles tend to become blurred or even interchangeable during the sequence of events of an incident cannot be confirmed without reservation; this is particularly true of cases involving physical injury (cf. corresponding explanation regarding the preliminary meeting).

What can be done? It helps to draw a clear distinction between verbal insults and physical attack and to confirm the victim's perception. It is important to point out that the moment the violent offence was committed the incident became punishable under criminal law.

In the case of an advocacy situation, the accused will often refer to having been provoked by "a third party". If they offer this as a justification for this type of offence, they do so at the expense of the victim, who will feel they are dealt with unjustly again, all the more as they played the role of a "protector" in the offence situation. Victimization often leads to a high degree of insecurity in these victims, because during the offence situation, the offender was perceived to be unpredictable. Due to high normative standards, some of the victims feel a need to see the offender punished.

It helps, if mediators support the victim and emphasize their special role, as soon as offenders try to diminish their responsibility by pointing out that they were provoked by others.

When dealing with cases of surprise attack, it can often be observed that the accused try to legitimize their actions, up to the point of describing themselves as victims. Some victims react with irritation, some with understanding or even offering comfort. This kind of offender-oriented reaction distracts them from defending their own interests and precludes functional coping strategies.

It helps, if mediators question the offender's role as a victim. They should check the victim's compassion, which would become a dysfunctional factor, if the victims of a surprise attack began to neglect their own interests. This can also happen due to the fact that the damaged party wants to curry favour with the accused in order to protect themselves during possible

future encounters. It helps to keep the conversation focused on the offence and the consequences it had for the victim.

Further typical situations regarding the interaction during mediation meetings are not related to the type of offence:

In some cases, the offender is not willing or able to communicate with the victim during the mediation meeting, which is hardly helpful for the development of functional coping strategies: The victim does not have an interlocutor and cannot find out what the accused thinks or what made them commit the offence. The offender remains unpredictable, a normalization of the relationship is impossible.

It is favourable, if mediators manage to motivate the accused to participate and to engage them in the conversation by asking questions. If the mediator and the victim have to carry most of the conversation without the accused, the parties should be asked if they wish to continue the meeting under these circumstances.

If during a mediation meeting, a situation arises in which the victim begins to lecture the accused, this is usually done to underscore their own position as the normatively correct one, to raise their status above that of the accused, shedding the victim's role. It is hardly a successful strategy on the part of the victim to try to reduce the future threat the accused supposes and protect themselves by way of giving them advice.

Mediators should not encourage a victim's tendency to lecture the accused. If the lecturing is caused by the victim's need for protection, the conversation should be steered towards the topic of the victim's immediate interests, such as the form a future encounter might take.

How can a mediator ensure that the apology takes a favourable form?

Speaking about the offence, explaining how the victim experienced their victimization and the fact that the accused assumes responsibility for the incident or parts of it increases the credibility of an apology for the victim. The offender should offer it verbally and by handshake, allowing the victim to accept or refuse it.

Under certain circumstances, especially if an appropriate compensation is agreed upon, even a pro-forma apology on the part of the accused can be favourable. The victim accepts the apology on the understanding that the offender at least makes a gesture of admitting the injustice or that they have to officially recognize the injustice done to the victim. The official acknowledgement of the injustice makes some victims feel superior to the accused.

Hurdle: If the offender apologizes to the victim by handshake directly after entering the room, the victim is caught unawares and will accept the apology almost automatically, without having sufficiently dealt with the incident, the victimization and its consequences.

What can be done? In case an apology is made too hastily, it is favourable, if mediators put its acceptance into perspective and propose to go through the required clarification process during the subsequent mediation meeting and to ask the victim to accept the apology again afterwards.

How can mediators ensure that the agreement takes a favourable form?

In most cases, preliminary meetings have prepared victims for introducing the issue of whether they wish to receive financial compensation for the damages sustained and the amount they imagine. Often, the accused has been informed about these expectations on the part of the victim in the run-up to the mediation meeting. The appropriateness of the victim's expectations and the offender's willingness to compensate them have been ensured during preliminary meetings.

It helps, if victims notice during the mediation meeting that their demands are being taken seriously by the offender and that negotiation is possible. A consensus (partly) accommodating their expectations also means that the injustice they have suffered is recognized and that responsibility for the damages or part of them is assumed.

Hurdle: If the victim feels that the compensation offered by the offender – financial or otherwise – is insufficient in relation to the damages sustained, this precludes the coping process: Their victimization is not recognized and can even increase.

What can be done? Mediators should therefore always ask victims if they are satisfied with the outcome of the mediation and with the agreement reached. It is favourable, if the agreement is not signed immediately, giving the victim time to reconsider. In case of doubt, the possibility of re-negotiating it can explicitly be mentioned.

If a victim's demands are highly excessive, mediators must carefully try to correct this.

In the case of offences involving serious physical harm, it can be regarded as beneficial to the victims to include a paragraph stating that – regardless of the agreement reached regarding compensation for pain and suffering as well as for property damage – potential future claims for damages (due to further medical treatment, for instance) remain untouched.

Limitations exist, where a victim's health has been permanently damaged or a lifelong inability to work cannot be redressed by way of a mediation or an apology or if an offender with a low or no income is unable to make an appropriate financial compensation. In such cases, the development of favourable coping strategies is limited, but not excluded: Here, too, settling the conflict, possibly reaching a normalisation of the relationship between victim and offender and the fact that the accused assumes responsibility for the offence support the development of functional coping strategies.

Checklist: What has to be borne in mind with regard to the mediation meeting?

- Is it necessary to show the room to the victim beforehand?
- Have appointments been made in such a way that the victim and the accused cannot run into each other unaccompanied directly before the mediation meeting takes place?
- Is it necessary to ask the victim to bring other persons for support?
- Do the persons supposed to provide support have interests of their own or support the victim where necessary?
- Can the meeting be started on a positive note without anticipating the outcome?
- Has the victim been asked if they are able and prepared to begin the mediation meeting describing their perception of the incident?
- Is it necessary to discuss who played which role during the incident?
- How can an apology the accused made to hastily be repeated in the course of the meeting?
- Have the roles lawyers are supposed to play during the mediation meeting been discussed?
- How can it be avoided that the victim is left alone with the lawyers of the opposing party?
- In which way can the meeting be interrupted and postponed, if the accused fails to participate?

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