

Mediation for Commercial Lease Disputes

Presented by Fair Way Resolution

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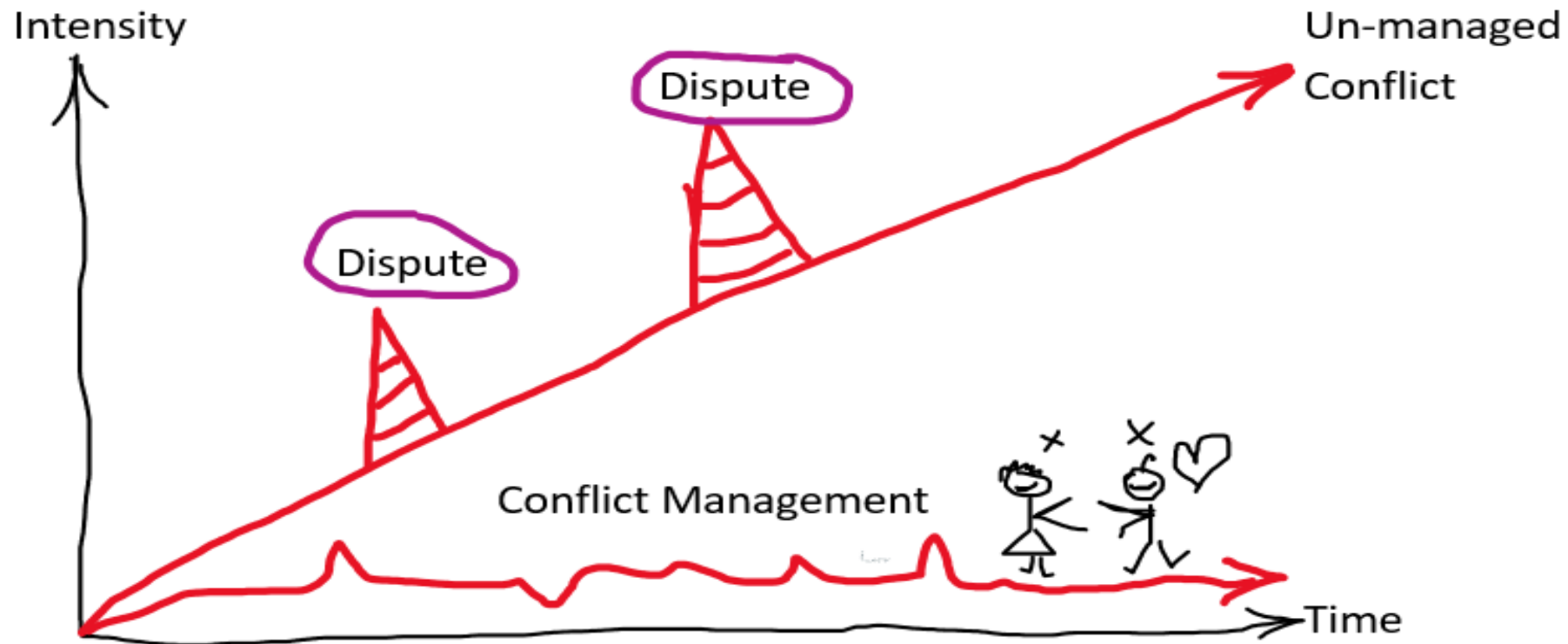
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What we will cover

1. Options for resolving disputes
2. What is mediation
3. The benefits of mediation
4. Initiating mediation
5. Mediation process
6. Preparing for mediation



Conflict Escalation



Disputes in commercial lease agreements

Provisions in deed of lease (ADLS)

Clause 43.1

The parties shall first endeavor to resolve any dispute or difference by agreement and if they agree by mediation.

Clause 43.2

Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to ... arbitration.



What happens in practice



Unassisted
negotiation

Arbitration

Mediation defined

Mediation is a process in which the parties to a dispute, with the assistance of a mediator, the neutral third party:

- Identify and clarify the issues in dispute
- Understand each other's viewpoint
- Develop options to resolve the issues
- Explore the usefulness of each option
- Identify their own solution(s) to the dispute
- Reach an agreement that accommodates the interests and needs of all parties.

The mediator will not:

- give legal or other advice
- Impose a result on either party.
- make a decision for the parties



Benefits of mediation

- Mediator provides a framework for discussions
- Private and confidential
- Assists to eliminate misunderstandings/ communication failures between parties
- Prioritises the commercial relationship
- Parties maintain control of the outcome
- Win/ win outcomes – creative and durable solutions
- Flexible – customization of the process
- Timeliness
- Cost effective



Starting the mediation process

- Can be initiated by either party
- Can be initiated at any stage – the earlier the better
- Parties enter mediation by agreement
- Mediator appointed by agreement (AMINZ, Resolution Institute, NZLS)



How Fair Way can assist

- Get in touch
- Explain the process and our fees
- Engage the other party
- Appoint a mediator
- Prepare for mediation
- Pre-mediation meetings
- Mediation



Private Meeting

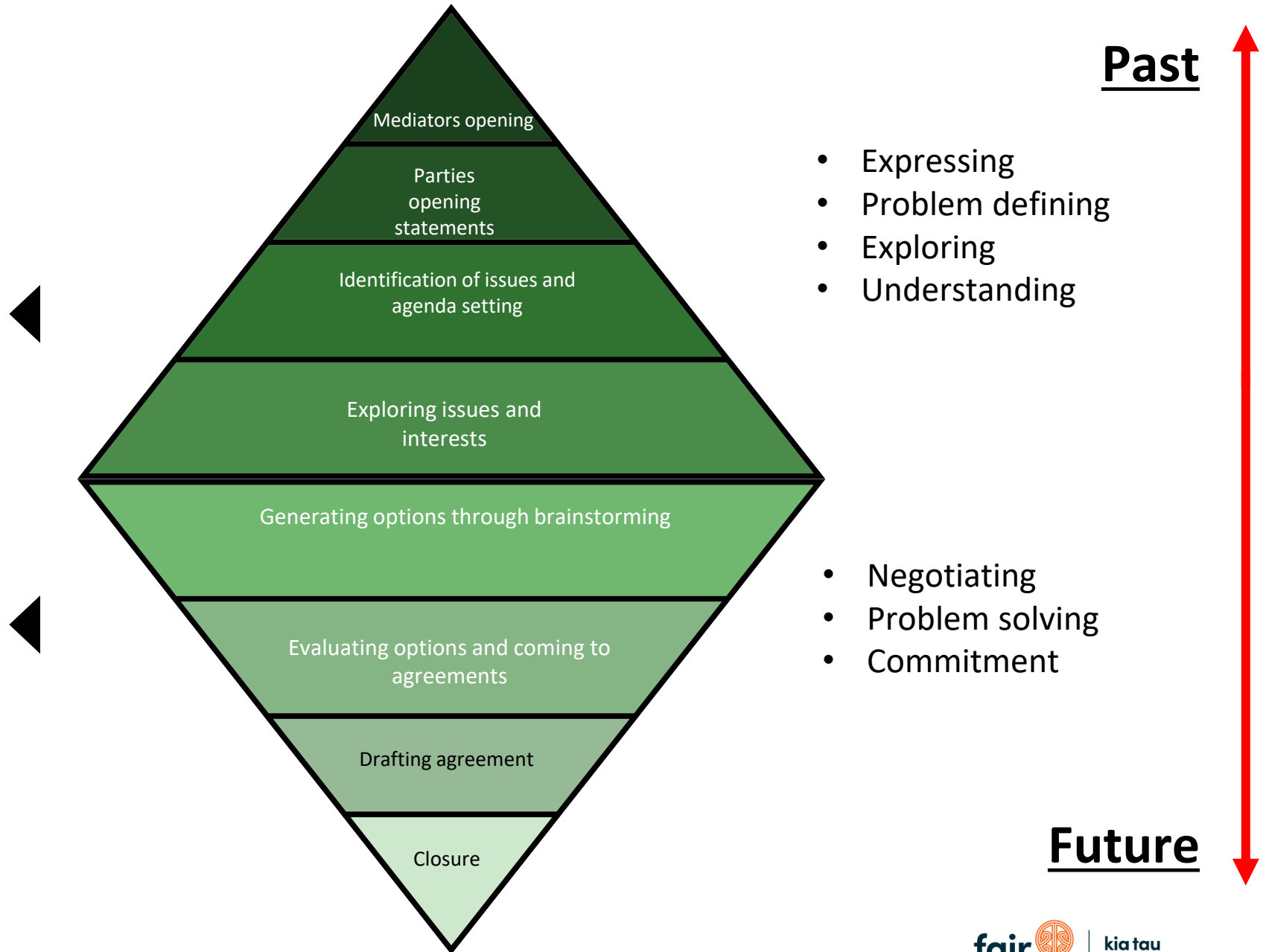
If things are stuck

To discuss private matters

To check best and worst outcomes

To explore options

To coach



Getting ready

Practical considerations

- Timeframe
- Logistics
- Who will attend?
- Authority to settle
- Information needs
- Information sharing

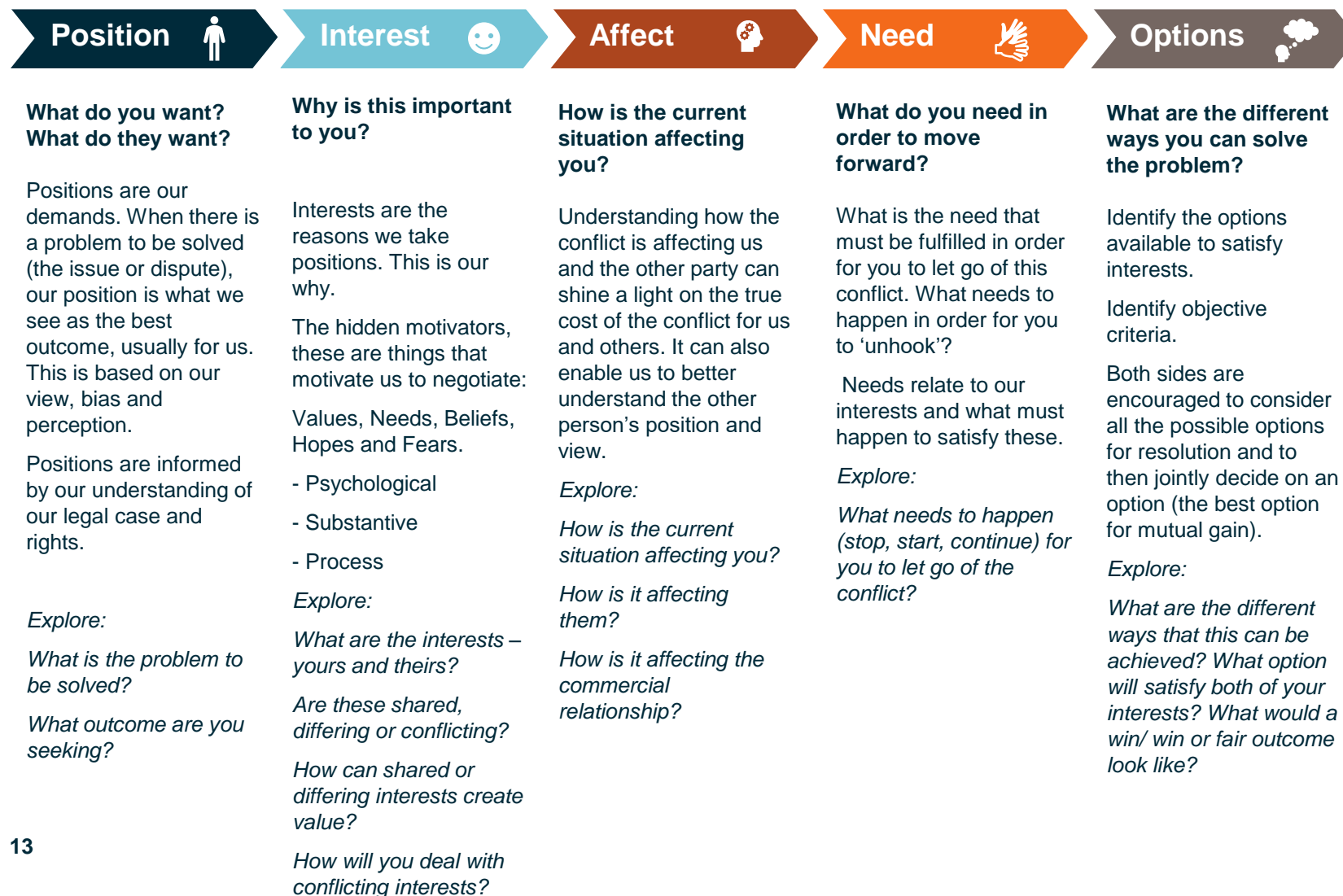


Preparing for mediation

- Wider than knowing your own legal case and rights
- Requires us to look at the dispute from our own perspective and that of the other party
- Requires full exploration of both parties' positions, needs and interests
- Objective assessment of your BATNA (best alternative to a negotiated agreement) - what alternatives do you have away from the table



PIANO



Questions



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