



# Risknz

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LUNCHTIME SEMINAR  
6 July 2021**

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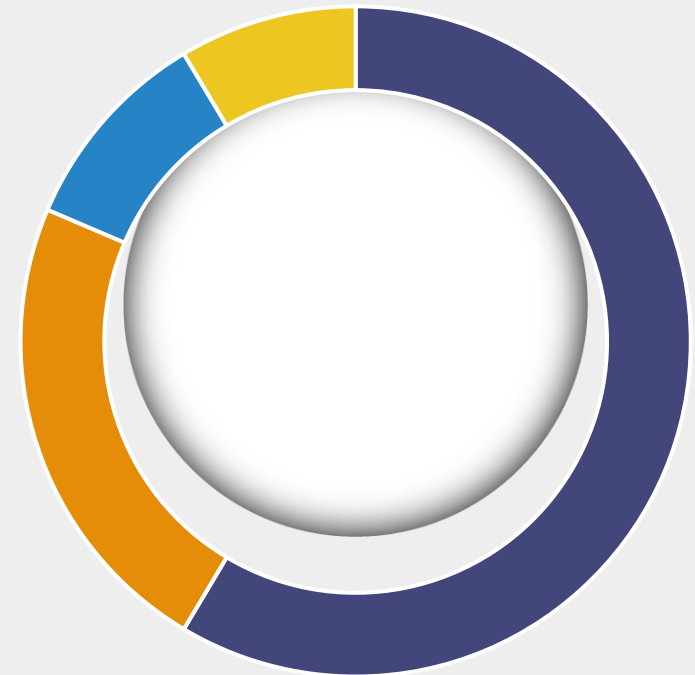
A low-angle, upward-looking photograph of several modern skyscrapers. The central building is a tall, tapering glass structure with a grid-like facade. To its left is a building with a more complex, angular design and a reddish-brown facade. To the right, another glass skyscraper is visible. The sky is filled with soft, white clouds. A dark blue rectangular overlay with an orange corner is positioned in the lower half of the image, containing the title and author information.

# de-RISKING DISPUTES

Penny Mudford  
Arbitrator & Mediator

# de-RISKING DISPUTES

- When is a **d**ispute a **D**ispute
- What are some of the 'red flags' that your project is heading down the dispute path
- When is disagreement constructive and when is it not
- What does de-escalating conflict look like
- What's the difference between arbitration, mediation, and conciliation





# When is a (small d) dispute a (capital D) Dispute

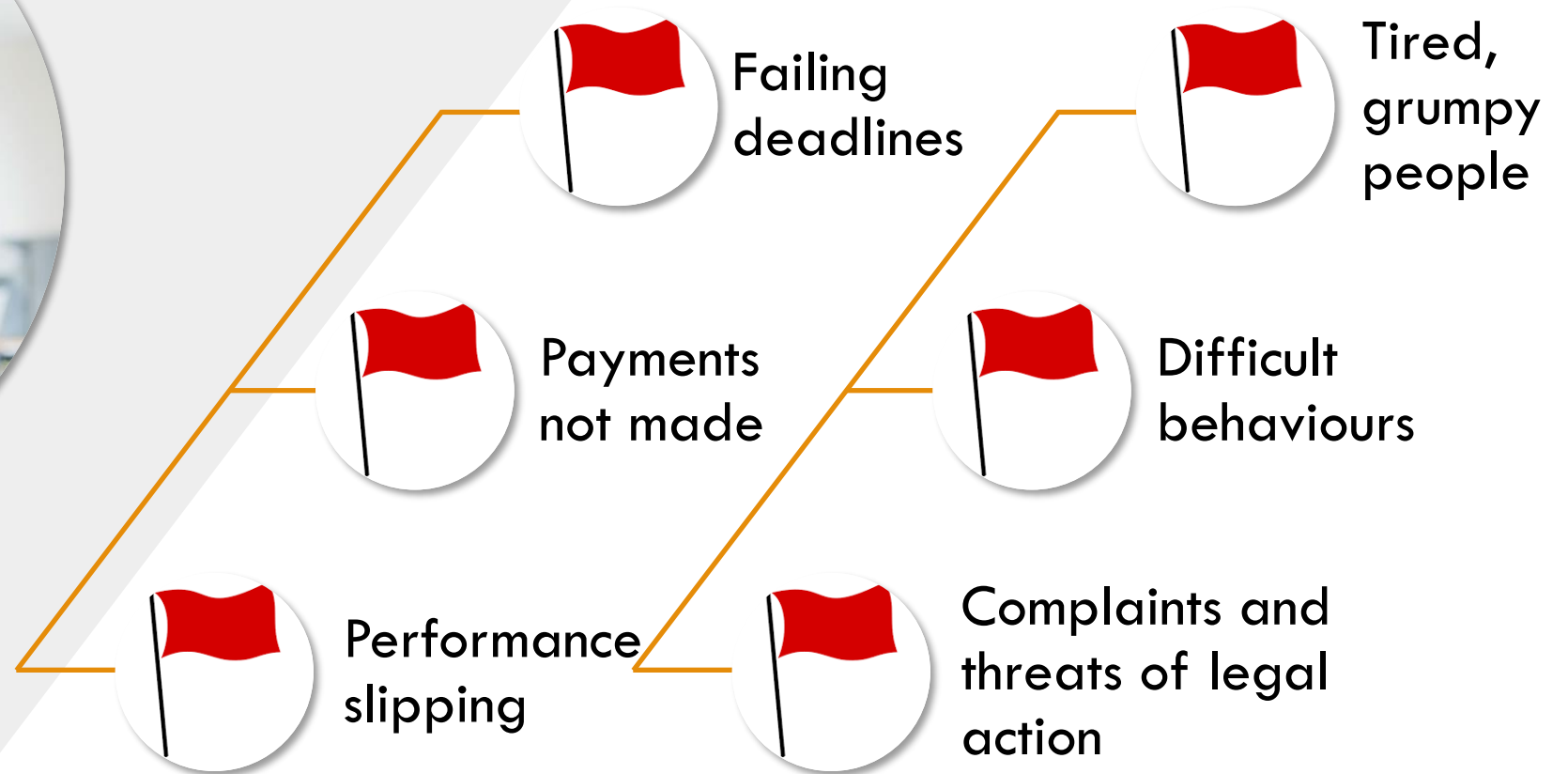
The word 'dispute' is used to cover a wide range of argument and disagreement, of both facts and opinions.

Disputes can range from low level conflict to full-on litigation.

A Dispute (capital D) is generally when notice is given to the other side that matters are disputed – this then triggers dispute resolution under a contract.



# Some red flags that your project is heading down the dispute path





# When is disagreement constructive and when is it not

When it's a signal that something's not right and needs to be resolved

When it motivates people into action

## **... and when it's not:**

When it reinforces bad behavior

When it masks the real problem

When it enables people to uphold fixed positions

When it blocks exploring options for solutions

When arguing stops us from understanding other people

*Arguing without understanding is unpersuasive*



## de-ESCALATING CONFLICT

Conflict is an integral part of disputes

Conflict is driven by misunderstandings, beliefs, and behaviour

*“... incompatibility of goals between two or more parties in a relationship, combined with attempts to control each other and antagonistic feelings toward each other.”*

*Fisher 1990*



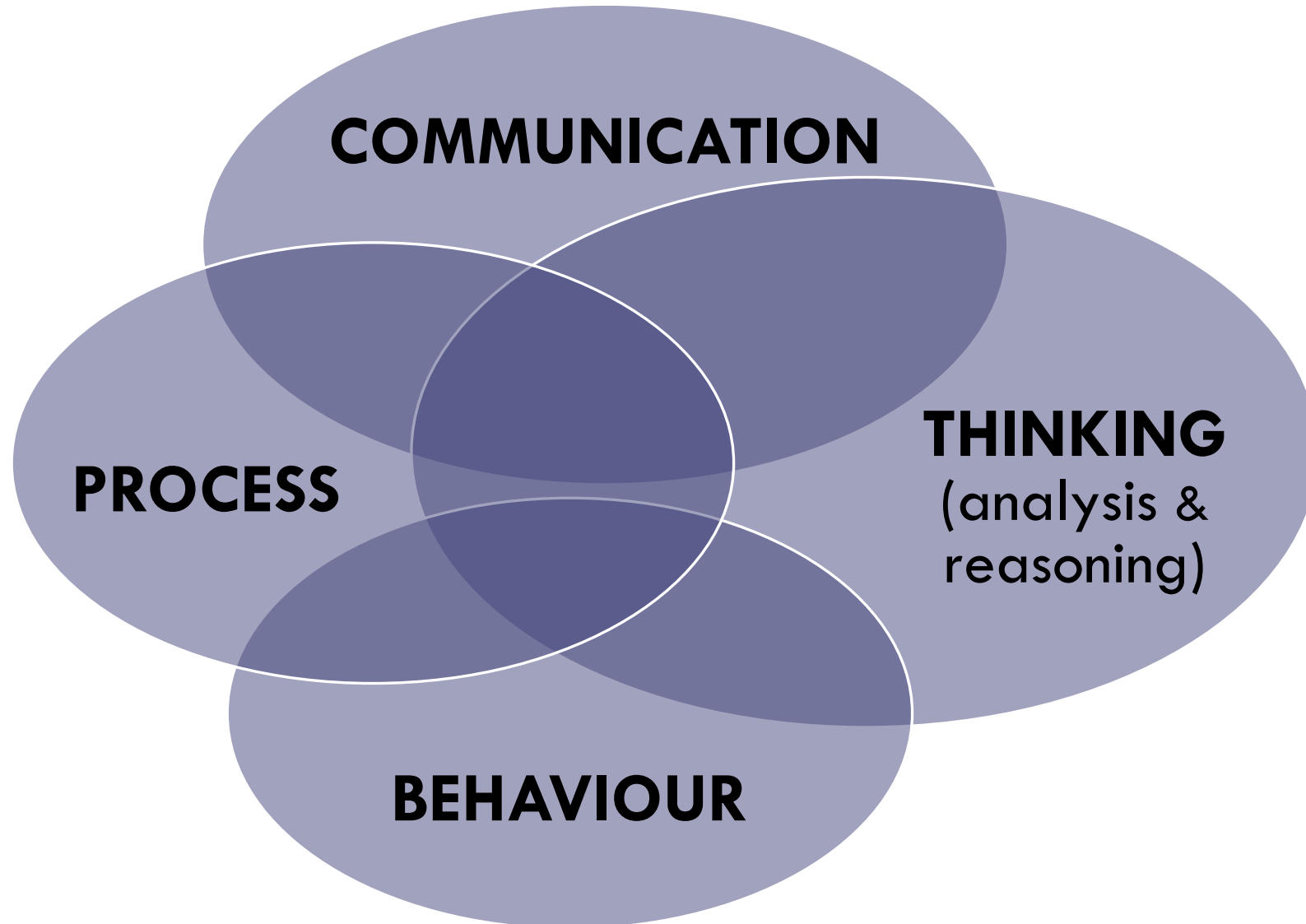


# What does de-escalating conflict look like



- We are able to see the issues for what they are – and separate to people's positions and interests
- Relationships are more constructive
- Behaviours improve – less antagonism
- People engage, rather than avoid
- Problems get solved
- People are more productive and less stressed

# Key elements for de-escalation



# What's the difference between arbitration, mediation and conciliation

## ARBITRATION



An independent arbitrator, or panel of arbitrators, settles the dispute by making a decision.

## CONCILIATION



Starts like a mediation but if the parties are unable to reach agreement, the conciliator is then able to make a recommendation to settle the dispute.

## MEDIATION



An independent mediator assists the parties to reach an agreement about the matters in dispute. The mediator has no power to make a decision.




# What can we do to de-risk disputes



- Make an effort to understand what's going on
- Know whether you have a conflict, a 'd'ispute, or a 'D'ispute.
- Improve communication – both frequency and quality
- Signal there's a problem earlier rather than later
- Use the dispute resolution tools available to you at the time





**“Mistakes arise directly  
from the way the mind  
handles information not  
through stupidity or  
carelessness”**

**Edward de Bono**

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# Risknz

**Thank you for joining us today**