

Preparing for and attending Virtual mediation

One thing the pandemic has done is accelerate change in business practices. All those tasks which we thought had to be done face to face, now seem so much more possible online. Even mediation, which seems so dependent on relationships and face to face meetings, has moved online. For certain mediations, for example where the parties are based internationally and for whatever reason travel is difficult, virtual mediation is likely to continue even after face to face mediation becomes possible again. This article sets out some things to consider both before and during a virtual mediation to get the best out of the mediation day.

Which video conferencing package to use?

There are a variety of different conferencing packages which allow parties to conduct virtual mediations. Obviously, it is most important that the solicitors and clients involved are comfortable that the platform used works for them and fulfils their requirements for cyber-security. From the mediator perspective, the package needs to have the following **functionality**:

1. Allow a joint meeting where all participants can see everyone else;
2. Allow private sessions where the mediator can talk to the party joining remotely and their advisors and everyone on that team can see and hear everyone else;
3. Allow the party joining remotely to talk to their advisors without the mediator being in the virtual room;
4. Allow the mediator to move parties between virtual rooms so that different configurations of different sub-meetings can be set up;
5. Allow the mediator to hold participants in a virtual waiting room before the start of the mediation (so that the mediator can control who meets who and when);
6. Have settings that allow the mediator to decline to admit anyone not authorized to attend from joining the session;
7. A share screen function. Particularly useful in negotiating a settlement document, but it can be useful in illustrating a point a party wishes to make or in sharing a photograph for example.



Points to check in setting up the mediation:

1. Do all parties have access to a computer or laptop to allow them to take part? Although you can join a virtual meeting using a smart phone, obviously the small screen size makes seeing the faces of the other participants difficult, and if there are a number of participants then not everyone will be shown at once;
2. Do all parties have a stable internet connection? Many of the packages will allow a participant to join by audio only, although it is much harder for someone to participate fully if everyone else has visual contact and they don't;
3. Do the solicitors (if on the record in proceedings) or the parties (if pre-proceedings) have access to e-signature or printing and scanning facilities? If not, then it needs to be agreed before the mediation day how the settlement agreement will be entered into;
4. Strict rules need to be agreed beforehand about confidentiality and privacy. All parties need to be comfortable that they know who is in the room, but out of camera, at each location and that those people are bound by the confidentiality provisions of the mediation;
5. All remote participants need to be comfortable in sharing their mobile number with the mediator so that they can be contacted when a private session is due to start.
6. All participants need to be prepared for the mediation to take a little longer than it would if conducted face to face, not least because there is a delay between meetings while the mediator contacts all the participants on one team and gets them to re-join a call, but also because scheduled screen breaks can be very useful!
7. All participants using professional email accounts to join need to check with their company IT administrator that they will be allowed access to a link to the package being used and that it hasn't been blocked as a matter of policy;
8. Consider whether any of your participants have medical, or other, issues which would cause them to struggle with long screen sessions. Notify the mediator of these in advance so that they can structure the day to create scheduled downtime where it is understood parties will be away from the screen. Similarly, if you sense that one of your participants is losing focus during the day, send the mediator a message (WhatsApp or similar is best because not all packages allow you to contact



- a participant by chat if they are in a breakout room with another party) to notify them so that they can programme in a break and everyone knows when parties will be away from their screen;
9. Are any of your participants unsure or nervous about using the conferencing platform? The usual pre-mediation call that a mediator has with each solicitor can be held as a video conferencing call with all participants present to make them feel more comfortable with the process if that would be helpful;
 10. Finally, have a back up plan! Technology isn't infallible and the best laid plans can go wrong. So be patient while those issues are resolved, and if necessary there is always the good old fashioned telephone conference call to fall back on.

Attending a virtual mediation:

1. It is harder for a mediator to build a rapport with a party through the screen than it is in person. Mediation advocates should work as a team with the mediator to facilitate a settlement by helping to reassure their client throughout the process;
2. Make sure you have everything you need prepared in advance. Costs schedules, boilerplate settlement agreements useful documents are easier to source in the office. If you will not be in the office, get them ready in advance;
3. It is easy for a party (or advisor) to get distracted when they are not physically in a mediation room. Make sure everyone on your team is contactable if they step away from their screen;
4. Remember programmed screen breaks are ok. Just make sure the mediator knows when you plan to take them;
5. Different people react differently to on screen communications. For some, it allows them to be more forthright than they would face to face. For others it inhibits their ability to speak. Always try to act as you would in person!

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