

Newcastle BPC Forum

Online Mediation – the Mediator’s Perspective

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Introduction

- New medium, new approach?
- Conventional v Online mediation
- Twelve practical points



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A new medium, new approach?

- On Monday 23<sup>rd</sup> March 2020, we were told to stay indoors and work from home.
- Mediations booked were cancelled, as no longer legally possible.
- Eventually they went ahead online, usually by Zoom, and were successfully resolved.



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### A new medium, new approach?

In between lockdowns, there have been some in person mediations, but these require:

- much larger meeting rooms and other social distancing changes.
- Ensure all attending feel safe.
- Moving in and out of rooms becomes problematic.
- Managing behaviours, ensuring social distancing.



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### Conventional mediation involves:

- Limited interaction before the session
- Delays and difficulties in arranging a date and a place feasible to everyone
- Mediator greets each side separately
- Formal joint opening session (large room usually needed)
- Presenting documents, drawings, plans, photos or evidence



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### .....Conventional mediation involves:

- Separate private sessions, "shuttling" to and fro
- Occasional side meetings or full joint meetings, physically moving rooms
- Agreement of terms
- Drafting session by the parties' lawyers with the Mediator



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## Online Mediation is the same, but different...

- Nobody needs to travel
- Easier to fit into busy diaries
- As Andrew Cawkwell says, easier to get decision makers to attend
- Screen Share gives documents and photos more impact
- Less time wasted by those attending
- As Andrew Entwistle explains, easier to deploy your experts economically



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## Online Mediation is different – remoteness...

- Paperwork is a problem – how will you execute the Mediation Appointment, and the Settlement Agreement?
- Use a signing programme such as Adobe or Docusign. Or if you have time, copy and paste your signature onto a word document, cumulatively circulated. Exchanging part and counter-part also a possibility.
- N.B., EVERYONE attending must sign the Mediation Agreement for confidentiality purposes.



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## Online Mediation is different - Remoteness

- Remoteness is also problem
  - because the Mediator isn't meeting people in person, so the process of getting to know people, build trust, and establish authority is more difficult; and
  - because there is little "body language" from a screen image;
- We can fix this, by increased preliminary activity.



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## Pre-Mediation meetings are VITAL

First sessions online (or by phone) with the lawyers to understand their take on the case, and any requirements or concerns they have.

Senior Counsel, Womble Bond Dickinson:

*"Rob dealt very effectively with our mediation by Zoom. I found the pre-mediation Zoom call that he arranged with the solicitors particularly helpful. This meant we knew what to expect and could confidently guide our clients through the process."*



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## Pre-Mediation meetings are VITAL

Second sessions online (not phone) with the whole team if possible – especially lay clients, make sure they're completely comfortable with everything:

- check wi-fi strength, kit being used, premises,
- Show how waiting rooms and breakout rooms are used
- Discuss position statements, openings, joint meetings, confidentiality
- Gather mobile phone numbers, in case of connectivity problems
- Gradually build familiarity and trust.



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## Twelve Practical Points

1. WHICH PLATFORM??? Zoom, Teams, Blue Jeans, Google, etc..
2. Whatever you use, make sure everyone is comfortable with it. *Most Mediators like Zoom Pro.*
3. Show everyone how Breakout Rooms work and are private.
4. Explain that you will be using a Waiting Room, and why.
5. Explain that you will be "Locking" the meeting - but give out your mobile number in case someone crashes out.



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## Twelve Practical Points

6. PRESENTATION – is about credibility, authority and respect. So, think about background, lighting, setting your camera so you can speak towards it. Practice!
7. Switching between rooms is much quicker online, so use that to build momentum
8. Building empathy works well on screen, if you use re-framing and feedback, demonstrating comprehension and appreciation



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## Twelve Practical Points

9. Screen Sharing is powerful; do plan how you will use it, (e.g., in opening session)
10. Expect Breakout Rooms to be used not just for the parties' private sessions, but also for sub-meetings of lawyers, lay clients, technical experts or decision makers.
11. Switching everyone back into the main room repeatedly can create a sense of impetus particularly where tasks are given out, questions set, and then answers presented.



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## Twelve Practical Points

12. The settlement –
- Have a draft ready with all the parties' names and addresses
  - Include all the boiler plate clauses (F&FS, confidentiality, etc)
  - Include a definition of "the Dispute"
  - Use Share Screen (or other software) to amend text
  - Consider execution (electronic) by the lawyers on behalf of the parties, witnessed by the Mediator.
  - Exchange Part and Counterpart for simplicity.



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QUESTIONS???

  
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