

Remote Mediation Best Practice Guidelines

When face-to-face dispute resolution is not convenient or available, our mediators are happy to use online platforms to facilitate mediations.

In our experience, the advantage of platforms incorporating specialist meeting rooms (such as Webex and Zoom) over other videoconferencing systems is that they enable the traditional mediation dynamic whilst preserving confidentiality in an online environment. This is achieved where:

- the mediation or certain parts of it may be limited to identified persons from each side;
- the mediator may meet the parties and their lawyers in separate rooms or hold a joint session with all participants present;
- the mediator may move between the meeting rooms, privately and confidentially, exploring the issues and the possibility of a resolution. The mediator can also move participants in or out of the mediation or use phone contact to initiate discussions with each side depending on the chosen platform;
- meetings can be held between clients, or directly between lawyers, with or without the mediator present.

It is possible to participate in a mediation using the platforms described above, by telephone. However, it is preferable for all parties to participate in the same way. The mediator will usually ask the parties to agree a protocol to ensure the mediation works as it should, and is likely to take the following form:

1. Ahead of the Mediation

a) Approving Participants

No later than two days prior to the mediation, each party shall identify to the Mediator:

- i) The number of participants to be involved on its side and the total number of devices to be utilised;
- ii) An email address and a telephone number for a person responsible for each device, on the basis that person agrees to be contactable by those means for the duration of the mediation.

b) Setup Communication Portals

Many meeting platforms have an instant messaging feature which participants may wish to use. Participants can also use email or other messaging platforms for the same purpose. The parties may wish to set up a WhatsApp or similar group to communicate amongst themselves during the mediation. If desired, this should be arranged ahead of the mediation to avoid interruption.

c) Document Sharing

On many meeting platforms it is possible to share documents via a live 'share screen' function. Any documents that are intended to be shared during the mediation should be saved in a separate folder on an individual's device to avoid any embarrassment or breaches of confidentiality when the screen is shared. The parties should also take care to ensure that there are no other sensitive emails, documents or applications open on the screens to be used to share documents that might similarly cause embarrassment or breaches of confidentiality.

d) Equipment Suitability

- i) Each device that is intended to be used during the mediation must utilise the latest software of the relevant meeting platform to ensure compatibility.
- ii) Each person responsible for a device is requested to briefly meet with the mediator using the relevant online platform agreed upon not later than the day prior to the commencement of the mediation, to check equipment suitability.

- iii) Where practical, participants are requested to use HD/4K enabled web cameras and microphones rather than inbuilt computer cameras and microphones (which provide lesser quality AV output).
- iv) Where practical, participants are requested to connect their conferencing device to the internet via Ethernet rather than WiFi to help ensure faster internet connection and better AV output. Parties must not, unless otherwise agreed and only where absolutely necessary, use public access WiFi as confidentiality may be compromised;
- v) If a party has any concern regarding equipment suitability this should be raised with the Mediator not later than the day prior to the commencement of the mediation.
- vi) The Mediator will send to the person responsible for each device an email invitation to the relevant platform not later than the day prior to the commencement of the mediation. The email will generally include a web browser link to join the mediation with a meeting ID and password.

2. The Mediation

- a) Participants are requested to silence notifications, including by turning off, their desktops, laptops, iPads and phones. This is particularly the case in relation to the device being used for the mediation.
- b) Participants who are not speaking during the mediation should mute their microphones.
- c) Participants should join the meeting at least five minutes before the agreed start time using the joining instructions provided by the mediator.
- d) The mediator controls movement into the separate parties' meeting rooms. One party must not covertly enter or be privy to the communication of the other party's breakout room. Only the mediator can enter the separate meeting rooms and will give due warning before they do so via telephone, instant message or otherwise agree to re-enter the room at a set time.

- e) Prior to the joint session, the mediator will meet with each party in their private meeting room to check everyone is comfortable. Any final issues may be discussed at this stage before the mediator initiates the joint session.
- f) A joint discussion should be led by the mediator between the parties in the convening room.
- g) In most cases, the parties are likely to return to their separate meeting room after the joint session. The mediator may move between the meeting rooms exploring the issues and ultimately the possibility of resolution. All discussions, whether audio, visual, or using instant messaging, remain confidential to the party being spoken to and must not be recorded. Nothing the party shares with the mediator should be conveyed to the other party unless express permission or instruction has been given.
- h) The mediator can create additional meeting rooms to facilitate discussion if separate communication is required.
- i) The parties should be able to communicate directly with the mediator by instant messaging, telephone and email and should do so in particular if they have concerns about the confidentiality of the process.
- j) In the event of technology issues, the mediator will call a break, or continue the process by other means.
- k) All mediations, whether conducted in person or remotely, benefit from being conducted at a moderate and consistent pace. It may be that the mediation day will be more tiring using these systems. The mediator will allow for this with carefully considered breaks.