



A Guide for Parties to Online or remote Mediations

Mediation is a process of negotiation between two or more parties through the medium of or facilitated by an independent third party (the Mediator). It involves the use of a cocktail of different skills and techniques within a very flexible framework. Many of these are more easily utilised in face-to-face communications. For that reason, historically most mediations are arranged in such a way as to gather all parties and the mediator in one location for a period of time (often a day). This enables good communications, enables the parties to focus on the issues without distractions and, with good facilitation generates a momentum which leads parties towards a forward-looking solution.

However, for a variety of reasons, it can sometimes be necessary or is sometimes useful to be able to conduct mediations without some or all of the parties being in the same location.

How does Online Mediation work?

So far as possible a mediator conducting an online mediation will seek to create an environment as close as possible to physical presence, using a mixture of different modes of communication. Clearly one essential feature is that all parties and the mediator need to have good access to suitable means of communication. Access to an internet connection is highly desirable.

- Whilst one-to-one or conference telephone calls enable communication to take place, increasingly video (for those who have access to it) has become the de facto communication of choice for joint meetings and private sessions.
- The mediator will proceed with a mixture of joint (plenary) meetings (with all parties) and private sessions with each party or between representatives (such as lawyers). Zoom, in particular, allows for the use of online private breakout rooms (see below).
- It is important for the parties to ensure that each party can communicate with the mediator by other means (private online chat, email or mobile phone) even where an online video conference is in progress.
- So far as possible, all relevant documents should be shared in advance, or each party will need to be able to email any electronic documents during the mediation or can email the relevant parts of hard copies.
- The parties need to be able to communicate electronically about the drafting of the final settlement agreement.

Confidentiality

The mediator will need to satisfy themselves that the parties understand the importance of maintaining the confidentiality of the process. The parties will be asked to ensure that they inform the mediator of those who will be “attending” and must take steps to ensure that no

others become involved without the consent of the mediator and the other parties. Each participant must therefore ensure that they are able to locate themselves in a private room and have access to a video camera, microphone and that at least one member of that party's group has the ability to draft or amend a settlement agreement.

Communications with the mediator

In order to provide some resilience against failing technology, and in order that the parties and the mediator can communicate separately to each other away from the main conference call/session, the parties and the mediator will need to exchange suitable contact details e.g. telephone numbers and email addresses. The mediator will need these in order to initiate the session.

Preparing for the mediation

There are additional steps, which may need to be taken in advance of the mediation over and above the pre-mediation conversations that might usually take place. For example

- It may be useful for the mediator to have a joint Zoom conference call with the lawyers for all parties beforehand to discuss process, check that everyone is comfortable with the technology and how this will work and double-check that a mediation bundle has been agreed and will be available for all participants;
- The mediator may wish to arrange a call with all participants joining separately, to test communications and check the technology will work on the day.

Starting the mediation

The mediator will explain how to join the online mediation. This may involve dialling in to a conference call or clicking a link to an online session. The mediator will make this clear.

Unless you have agreed in advance to start with a joint meeting, it is likely that you will start in a private session with the mediator. This will help to settle any nerves about the technology and the process.

During the mediation

So far as possible the mediator will recreate the dynamics of a face-to-face mediation and will move from one private session to another using joint meetings as appropriate, exploring the interests and needs of the parties and the means by which they might best be met. Often a mix of communications may be appropriate e.g. video, telephone, text and email.

Be sure that you have refreshments available, as it will not be possible for the host to provide these as would normally be the case.

Using Zoom for mediations

Although it is theoretically possible to use any form of online communication, including telephone, FaceTime, Skype, Whatsapp, many mediators migrate towards the use of Zoom as it has a helpful feature of allowing the mediator to use breakout Rooms to conduct private

sessions with each party or between small groups. However, it is also still possible for all parties to join together in a plenary session.

In case you have not use Zoom previously, here are some quick tips.

What equipment do I need?

We now take it for granted that most people in business will have access to a desktop or laptop. However, if you do not have these or if you are on the move, it is also possible to use a tablet or mobile phone. Note that laptops, tablets and mobile phones usually have cameras and microphones built in. If you are using a desktop, you will need to ensure you have an external microphone and webcam.

You will need unlimited access to the internet, ideally with a strong broadband or 4G connection.


So long as you have a microphone and webcam it should be possible to access the meeting through video and audio. However, if you are in a noisy environment, it may be preferable to use a headset microphone and headphones as this reduces background noise. Headsets can link up either with a wired connection or through Bluetooth, but if you intend to use this, please check the connections beforehand.

Your video and audio connections can be tested beforehand here: <https://zoom.us/test>

In any case, for the mediation itself, for confidentiality reasons, you will need to ensure that you will be participating in an environment of complete privacy.

Download the software beforehand

Zoom is available for use on desktops, laptops, tablets and mobile phones. In the case of desktops and laptops, when you try to join the meeting, Zoom will ask you to allow it to download a small piece of software to your device. If you are using a tablet or mobile phone,

you will need to download the Zoom App.  You may download the software or app beforehand here: <https://zoom.us/support/download> You do not need to purchase any software; all you need is the basic free version as we have the PRO version.

In either case, if you are using a business device, you may need to obtain permission from your IT team to allow software to be downloaded.

The software operates differently on a laptop or PC to the way it operates on a tablet or mobile phone. However, in both cases, you can access the meeting using audio and video if you have the right equipment.

Update your profile and consider your visible presence

If you have not used the software previously make sure the settings correctly identify you with your name and avoid using the name of your device (e.g. Dad's iPhone!). Consider the background to your online image and try to find somewhere which will not be distracting. Dress appropriately!

Joining the meeting

Since the controls on the devices are in different places, it would be sensible to use the device that you intend to use for the mediation itself. The notification of the meeting will provide a Meeting ID.

In order to join the meeting you may click on the link, or insert the Meeting ID into your software. More specific guidance for a variety of different scenarios is available on the Zoom website <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

It is also possible to log on to the Zoom website and enter the meeting ID, but we do not recommend that for mediations as the functionality is more limited.

During the Meeting/Mediation

For a brief outline of the controls which will be available to you during the meeting refer to the Zoom guide here <https://support.zoom.us/hc/en-us/articles/200941109-Attendee-Controls-in-a-Meeting>

These include the ability to attract the mediator's attention by "raising a hand".

Zoom provides a number of excellent short videos which explain how Zoom works. <https://zoom.us/resources>

ASWM Mediators

All mediators on the ASWM Civil/Commercial Panel are accredited with the Civil Mediation Council. Many have undertaken significant additional training or draw on their experience in specialist areas. All have to be able to demonstrate that they are mediating regularly and undertaking regular Continuous Professional Development.