

**Notwithstanding current travel and meeting restrictions, mediations are continuing to take place during lockdown but on a remote rather than “in person” basis.**

With growing delays and demands on courts and tribunals across the country caused by the Covid-19 pandemic, opting for a virtual mediation ahead of issuing any court proceedings or whilst waiting for a hearing date could well be the better choice for those litigants wanting a prompt resolution of their dispute at limited cost.

Whilst it would be natural to be hesitant about the effectiveness of a remote dispute resolution process, our experience has shown that initial reservations can be overcome and that, on the whole, a virtual mediation runs much the same as a physical one, and provided it is well organised can work just as well. Moreover, virtual mediations have the additional advantages of zero travel costs and the convenience of attending from the comfort of your own home or home office.



### Practical Considerations

Below we set out some practical tips from our experience for consideration at each stage of a virtual mediation.

## Before the Mediation

#### Documents

- Ensure electronic mediation bundles have been prepared and sent to all parties, including the mediator, at least a week before the mediation to allow adequate time for preparation. Whilst electronic copies (which can be in a simple PDF format) are most common, if a party requires a hard copy then adequate time should be allowed to prepare this.
- Ensure the mediation agreement has a provision for electronic signing.

#### Organisation

- Know who will be organising the platform the mediation will be hosted on. This will most likely be the mediator and the advantage of this is it keeps the mediation neutral and is one less concern for the parties.
- If possible, select a mediator with prior experience of hosting a virtual mediation as this will undoubtedly aid the process.
- Only have the right people attending. This applies to clients and lawyers on each side and will avoid delays and cluttered communication.
- The mediator will have to send out the invite to all relevant participants so ensure that correct email address details have been provided.

#### Platform

- Know what virtual hosting platform you will be using on the day.
- In our experience, the advantages of some platforms over others are the function of breakout rooms for each of the parties and their lawyers. These rooms are private and confidential to those specifically assigned to the breakout room, which is ideal for intra-group discussions. However, understand the limitations of each platform as some presently can limit the number of people visible on a screen.
- Be sure to test out and familiarise yourself with the platform and its functions at least a couple of days before the mediation and ensure you have a stable internet connection. Ideally the mediator should be encouraged to arrange a ‘dry run’ with the parties beforehand, and included within his/her price for the mediation.

#### Intragroup discussions

- It is important to arrange technical back up beforehand so that each side has a range of options for intra-group discussion.
- Establish what platform you will use, e.g. email, mobile phones and/or social networks, or a chat function on the platform. Overall, we have found WhatsApp to be the most straightforward means of private instant communication.

## During the Mediation

### Opening session (all parties present):

- Establish a rough timetable and any time restrictions the parties may have. For example, even though this is a virtual mediation from the comfort of your own home, some participants may have child care commitments.
- Establish ground rules suitable for your mediation. E.g. microphones off when you are not speaking and videos off if you have left the room to take a break.
- Establish how any settlement documents will be reviewed. In some instances screen sharing on the day may be appropriate whereas some parties have found editing documents off-screen and then sending this by email is more straightforward.

### Private breakout rooms

- Only the mediator can allocate parties to breakout room and join them in turn. Parties cannot move between breakout rooms themselves. They are private. This simulates the normal series of private meetings the mediator would have with each party in a physical mediation.
- Parties should be aware of this and keep an eye on who joins their breakout room, as there have been instances where individuals have been accidentally allocated to the wrong room for a short moment. Having a smaller number of attendees would help you spot this.

### Joint meetings

- In instances where parties are brought back together in the main meeting room for discussion, we have found there is less grandstanding given the artificial nature of the virtual mediation, which means less time is wasted.
- However, similar to physical mediations be prepared for some dead time here and there.
- Do not be afraid of interruptions. Whilst you would not be disturbed in the office, here someone might need to answer the door or deal with a child bursting in during the course of the day. This is ok and can actually break the ice.

## After the Mediation

- Whether the settlement is reached during or after the mediation this will happen in the same way as a physical mediation; the mediator is available should assistance be required.
- We have found that where settlement is in the process of being reached, parties can stay online to discuss this or continue offline at a more appropriate time but always bearing in mind the importance of recording any agreement in writing before everyone 'signs off'.

## Key Contacts

We are more than capable with handling your virtual mediation needs. Feel free to contact our Litigation team should you have any questions about this process.

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