

# *The Society of Mediators*

*Giving you the latest updates from the Society of Mediators.*

## *Upcoming Events & Courses*

Foundation  
Training, London  
07/09

Mediation CPD,  
London 23/09

Mediation CPD,  
Taunton 25/09

Advanced  
Mediation Training,  
London 07/10



Foundation Mediation Training, February 2020

## *A Note from our President during Covid-19*

As I write, lives are being lost to the Coronavirus and there is much sadness for many, people will have suffered the loss of a loved one, a friend, or a person they know of and families will have lost mothers and fathers, grandparents, siblings and more. So, at times like these we can be forgiven to be sombre and more negative in our thinking ..... however, I encourage us to be positive and look ahead to brighter times that will emerge. After all this is what mediation is about!

At SoM we believe that mediation is not only a skill and competence that can be applied in a business or organisational setting to resolve conflict but a deeper way of thinking about life and our approaches to others. I urge you to consider reflection upon your mediation skills. And in doing so, perhaps think about how you might bring your practice into your daily life at this critical time. I am in no doubt that such thinking aids well-being and can create an inner calm.

I wish the SoM Community the very best and please do your utmost to keep yourselves safe



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## *Mediation in the time of Corona*

If you are a social media type then you will have seen every sort of meme and comment on the use of Teams or Zoom, Skype-pro or FaceTime in all sorts of personal and professional contexts. People seem either hate them or loathe them, but they have kept the wheels of some businesses and some families going. But what of mediation? Has online mediation come of age? It has been around for more than 20 years. In 2000, I hosted a visit from Russian Court of Arbitrage judges who were anxious to develop a form of telephone mediation that would enable them to work to resolve cases between Vladivostok and Moscow. We sorted some protocols.

## Progress?

Since that time, things have developed – people such as Graham Ross have created all sorts of platforms and ideas for ADR/ODR resolution with some local success but, and I trust he will forgive me, wider disinterest. People found online mediation clunky and somewhat impersonal – and early attempts to use AI to improve or predict outcomes, or to automate the process, gained little traction.

Whilst face to face mediations multiplied exponentially, particularly in business disputes and clinical negligence matters, online or video mediations were rare exceptions. Speaking personally, of my first 1,000 mediations before March this year, I had done four ‘online’ matters using video, and slightly more by telephone, over 20 years.

## Lessons and learning

COVID-19 has meant I have doubled that number in just five weeks. What lessons have been learned?

1. Have one of the participants set up the Zoom Room/Skype Place /Teams Meeting or whatever format there is – considerable preparation is needed and admin to get all the numbers and people corralled.
2. Have separate meetings for the plenary (‘open’) session and the respective participants – do not have them share a common meeting code for private meetings.
3. Book a time for an admin meeting with a representative of one of each of the participants.
4. Test protocols – make sure you agree a way that you as a mediator can knock on meeting room doors to enter only when they are ready: having a text/iMessage/phone number to call is useful.
5. The basics - make sure you have a signed mediation agreement scanned to you or an email agreeing to its terms
6. Prepare, test, and get resilience and redundancy on the tech – make sure that you set up multiple options including telephone and mobile numbers for when online video drops out, and text/What’sApp/iMessage options.
7. Check your room set up – neutral or clear background and no disturbances from those lovely grandchildren, as the whole mediation remains a confidential place.
8. Bandwidth is everything – don’t try this at home using video unless you can reliably stream for hours on end, and run two separate parallel systems.
9. Test your sound set up and your video picture – try a call from your proposed location to a friend or colleague and ask them about the sound and picture quality, your lighting and your ‘look’.
10. Have a second screen for the mediation documents you need – and put it close to your eye line.
11. Have a shredder to dispose of anything you print.
12. Talk slowly – and engage everyone with eye contact.
13. Get everyone to talk – go around the video room every time and make sure they are done.
14. Make a table plan – who is in each room and what are their roles.
15. Make sure they are back when you go back in the room.
16. Check the screen for interlopers – it can happen
17. Agree timings – give people space but say you will be back in ten minutes: and be back then.

18. Don't let the mediation drift – everyone seems to find online much more tiring than face to face to be progressive, without pressurizing for offers or concessions.

19. Be curious – people will engage if you show interest.

20. Remember that lay people may feel very cut off from their lawyers – and vice versa.

21. Above all – be friendly and yourself, and develop a rapport with everyone by giving them time: ask about how they are doing and make sure nobody feels under undue pressure

### **Does it work?**

Well, 80% (not the expected 97.3%) of the mediations by online video that I have done since 1st March have settled. That is lower by a significant percentage than face to face mediations but the sample size is small and there are particular features of every mediation.

It does work – after a fashion – and people profess themselves satisfied, pleased and happy with the process. But I am left feeling that more could have been done had they been face to face. That said, we work with what we have and the benefit of resolution for those 80% now, rather than delay and uncertainty, clearly outweighed delay.

### **Overall**

I will continue post-lockdown to offer online mediations – in whole or in part: I suspect that there will be more hybrid session with people meeting to some degree but others only joining by video. The minor confidentiality risks can be overcome.

After all – mediations are not about the mediators, they are about the participants and what suits them. If participants want online, then we should offer them with suitable preparation.

But, and I may be wrong, I do not expect online to become the norm. In my view, for the best results for all the participants, face to face mediating has no peer. The two dimensional online meetings cannot supplant three dimensional real mediations in terms of quality and outcome. I shall advise this to prospective participants whilst standing ready to be their flexible friend.



24th April 2020

Jonathan Dingle - Chairman, Course Leader 1 & Director of Training.