



Learning by Doing: The First Mediation Clinic Conference

Workshop: Covid-19 in 2020: What have we learned and what is the legacy

The following is a summary of the various discussions and inputs from both workshops with regards to the impact of the Covid-19 pandemic on mediation in 2020

Covid-19 has had a significant impact on the Mediation sector, particularly because of courts being closed due to lockdown restrictions, the limitations on face to face meetings and the use of remote mediation. The main discussions were based around the shift from face to face mediation to online and telephone mediations including the emergence of the Zoom as the preferred online platform.

Themes explored; shared experiences and feelings, perceptions, effectiveness, participation/ engagement, before and after – crossover, cost and gains, moving forward

What worked? The advantages of remote mediation

- Attendees agree that it was generally easier to manage online parties and to be able to regulate themselves. Clients seemed less “uncomfortable” when meeting “the other side” online than they would be in a face to face situation.
- The discussions highlighted that mediators are still able to understand the body language and cues while on Zoom. Thus one perceived advantage of face to face mediation can still apply in an online setting.
- A big advantage is that people log into a mediation in the comfort and safety of their own home/ spaces, which allows for a less stressful beginning to the process.
- The key aspects of any mediation is trust (trust in the process) and building a climate of intimacy during the mediation process. It was agreed that this can be maintained during an online mediations.
- Occasionally a mediation may include a history of domestic abuse or violence in which case face to face mediation may not be appropriate. However recent online mediation experience is suggesting that telephone or virtual mediation (with the option of no camera where appropriate) can be useful.
- There can also be a high level of ill feeling/ distrust between the parties where being in a room can be a barrier to successful mediation. Again experience seems to suggest that an online or telephone mediation can help diminish that barrier and enable mediation to go ahead.
- Some people suffer anxiety and find being face to face does not allow them to engage; here the chances of organising a face to face mediation are often slim. However with video, especially where parties have the opportunity to initially have the video turned off, mediation is more likely to go ahead.
- This is also important where a person suffering from PTSD for instance may not be able to engage visually with the other party as it may trigger an episode.
- Attendees generally found it easier to find a date when all can attend (the parties and mediators). The reduction in travel time may also make online mediation more cost effective.
- Sometimes it is easier to manage the conversation during online mediation as the mediator has control of the “mute” facility. When necessary this can help avoid parties talking over the top of each other.
- Virtual mediations can seem highly advantageous at this particular moment. We possibly experienced a “honeymoon” stage of virtual mediation, which may already have begun to wane.



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Additional thoughts from the facilitators:

- We cannot always know that where people mediate from is a place of safety for them/ comfort. People may be in situations where they cannot speak or feel free to express their thoughts and feelings, depending if others may be around in the home. Not everyone has the experience that their home is a space of safety – could be experiences of control, violence etc.
- This highlights the mediator's responsibility to ensure that all parties are comfortable with the means of mediation (i.e. online v face to face) prior to the mediation taking place and that they continue to be happy with the process during the mediation.
- There is unexplored potential in terms of mediation systems/clinic design:
 - Education and training – teaching remote mediation alongside face-to-face.
 - Supervision – increased opportunities to manage quality assurance of students and new mediators via Zoom.

What doesn't work? The challenges and disadvantages of remote mediation

- Logging on or calling in from home and/or the safety of our workplace can allow parties to be more angry and hostile towards each other.
- Some incidental encounters, or 'spaces in-between' may be lost in online mediation; e.g. having a cup of tea/coffee, seeing each other in the lift, rituals of everyday life - talking about the weather, etc.
- Children, other family members, carers or other distractions such as pets etc. may be around.
- It may be equally challenging for mediators to stay present for parties as they may also experience distractions; e.g. a habit of checking one's phone.
- Tends to rely more heavily on verbal communication – non-verbal communication could be missed.
- Confidentiality may be compromised if there are other individuals in the room, perhaps unseen by the mediator and giving advice in some way.
- It can be harder to build a rapport on Zoom (depending on the style of the mediator and parties).
- Bad connections, poor internet, pop-ups etc. These can be significant issues and should be taken into account when arranging a first online mediation.
- Ensuring the right people attend and the right people are in the room. It is critical that the mediator highlights this at the start of the mediation as a possible limitation on confidentiality.
- Some suggested that, when people invest more time to travel and be 'there' at a face-to-face mediation, there may be more incentive to settle on the day. They will be conscious of how much effort it has taken to get there. There is a risk that the parties in online mediation are less likely to feel the need to settle on the day, allowing disputes to drag on.



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- The impact of “Zoom fatigue” (see below). The online mediator may not know how many virtual meetings a party has had before or may have after the mediation. Again this should be considered in advance as part of the set-up.
- Physical breaks can help relax the situation, having a cup of tea/coffee etc. Online mediators must plan breaks.
- “Zoom fatigue” describes the tiredness, worry, or burnout associated with overusing virtual platforms of communication.¹ Like other experiences associated with the coronavirus (COVID-19) pandemic, Zoom fatigue is widely prevalent, intense, and completely new.
- <https://www.psychiatrictimes.com/view/psychological-exploration-zoom-fatigue>
- <https://hbr.org/2020/04/how-to-combat-zoom-fatigue>
- An imbalance can occur where one person is more skilled at using Zoom than the other. This can impact on the mediation and conversations. This may also apply to mediators, particularly where a mediator is less skilled than the parties, and could be a source of anxiety.
- There may be a similar issue where a party has access to better IT equipment than the others, including the mediator.
- Video calls make it more difficult for us to understand and process nonverbal communication, such as body language, facial expression, and tone of voice. We therefore exert more focus and energy in decoding nonverbal cues.
- Video calls may also provoke anxiety and negative feelings, contributing to fatigue. Technological glitches such as delays and lag times can heighten that anxiety and may cause negative perceptions of other callers.
- Many people feel pressure to perform when on a video call because they are on camera and are aware that they are being watched.
- According to Evan Selinger from the online technology and science publication OneZero, there is an underlying emotional aspect to Zoom fatigue. He argues that Zoom calls are a constant and painful reminder of the face-to-face social interactions we have lost; we are not so much physically fatigued as emotionally drained.
- One positive we should not ignore is that challenges and disruptions can also contribute to a sense of solidarity with the others on the call – “together against the technology.”

Techniques – tips and tricks

- Pre Mediation contact and conversations with parties is crucial to sorting out many of the issues above prior to mediation taking place
- Co-mediators can communicate by phone or via text throughout the mediation in order to overcome the pitfalls of using Zoom chat
- Where possible it may be of benefit to carry out a practice session with participants in order to prepare the space beforehand, particularly if they are not particularly IT literate.
- Phone mediations can be very successful but the mediator needs to be familiar with the process.
- Mediators can use screen share and other creative aspects of Zoom.



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- Mediators can check people's confidence with Zoom and, where necessary, give participants time to become familiar with the system.
- It is important that mediators establish rules at the start of a mediation including around using Zoom; e.g. no one present while mediating, when to mute or turn camera off.
- Good lighting, camera and microphone are all important for Zoom – applies to mediators and participants. For instance, when the sun is shining directly at the camera it can blank out the participant.
- Mediators, while on Zoom on computer, can still use phones to communicate (text or WhatsApp); e.g. to check in, how they think it's going, are things shifting, do you think we should call for a break etc?
- Multitasking while doing mediation should not be encouraged!
- Some cues on Zoom, like hands up, can easily be missed. The mediator needs to find a system that suits the participants and make it clear at the start of the mediation.
- Mediators should be willing to accept that a remote mediation may not be 'perfect' and to be transparent and flexible when things go wrong.

Moving Forward with remote mediation

Zoom would seem to be the preferred video platform - security, break out rooms.

Example of decision-maker not at the mediation – not able to settle on the day. This could have been avoided with better preparation.

In the future we may integrate both approaches; for example, using Zoom for initial setting up session and pre-mediations, then conducting joint mediation face-to-face.

We can offer more services to more people than if we were face-to-face, and reach people that would find it challenging to meet in one place. It is also easier to coordinate mediators and volunteers.

Remote mediation can reduce our carbon footprint; see <https://womacc.org>

Allows mediators to maintain flexibility.

New avenues for mediation can continue to be explored.

Accessible – variety of methods, blended approach, giving mediators the opportunity to have more options and to integrate different media.

Both remote and in-person mediation can achieve effective outcomes, allowing mediators to meet parties as they want to be met and potentially enabling them to get started more quickly (e.g. in neighbourhood disputes).

Mediators also have to be aware of our own bias as a mediator (what we prefer) to avoid imposing our preferred style and values to others.

Some possible themes for future conferences:

- Is COVID driving increased social divisions/inequality? Increased solidarity? How does this impact mediation?
- Economic, social, psychological impact on clients/people
- Impact on social trust – e.g. trust in justice institutions
- Impact on families and dynamics within a family