



University of
East London

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Mediation Hub

Moving Mediation Online – Some Good Practice

1. Platforms

- **Pre-Mediation**

- The mediator should make note of any free trials running that may be of use.
- The mediator should analyse and compare the benefits and disadvantages of each platform to decide which is the best for everyone to mediate with.
- The mediator should also consider each platform's privacy policy and incorporate this into the written agreement under data protection. (Note: Some platforms allow one person to control who can record the session, some platforms allow virtual breakout rooms whilst others do not, time/participant limits etc.)

- **Microsoft Teams – to be used at UEL**

Scheduling a Meeting –

- You can schedule meetings using the calendar section on Teams, or even via a group chat to set up a meeting for those people in the chat group. The calendar is found on the left side of the Teams app.
- To schedule the meeting via calendar, you can select the 'New Meeting' option in the top right corner or simply click on a certain slot of a particular day. Then, you need to fill out the scheduling form to decide what date, time, and title the meeting should have. You can also add what Teams channel the meeting should be in, extra invites and more.
- When you have finished the form, click Save in the top right corner to ensure that the meeting is set up and that email invitations are sent out to all the attendees.
- For the group chat option, simply click the calendar-looking icon that is below the typing box. It should sit right between the square smiley face Sticker icon and the arrow-shaped Stream icon. This should open the scheduling form with the invitees already included. You just need to fill out the remaining details of the meeting, as mentioned above, and remember to click Save at the end.
- <https://support.office.com/en-gb/article/schedule-a-meeting-in-teams-943507a9-8583-4c58-b5d2-8ec8265e04e5>

- **Other platforms available:**

- Zoom - <https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>
- Skype - <https://www.skype.com/en/free-conference-call/>
- FaceTime - <https://support.apple.com/en-gb/guide/iphone/iph405ab67de/ios>
- Whatsapp - <https://faq.whatsapp.com/en/android/26000026>

2. **Written Agreement to Mediate Online/by Phone.**

- **Written Agreement**

- The mediator should decide whether to use video or voice-only conferencing, considering the views of the participants. Video can appear more unnatural than real life, though it allows participants to see other people whilst calling does not. Video is also more useful for mediators than voice-only calls, as they can assess the body language and reactions of the participants.
- The mediator should also include the requirement of video for at least the individual session, for confirmation of identity.
- The mediator should draw up a section in the agreement on what happens once a settlement is reached and should consult with the participants on their preferences. (electronic signatures or email the document around securely for physical signatures)

- **Conduct/Ground Rules for Mediation**

- All participants should maintain data protection by agreeing not to record or replay any audio or visuals from the mediation.
- All participants should agree to silence any phones, alarms, alerts and notifications, as well as switch off any other programs or apps to minimise distraction. This should be done for all nearby devices, such as mobile phones. Video conferencing may result in participants losing focus more than they would if face to face. Audio microphones should be muted when necessary.
- Only the participants to the mediation, and anyone else who has been agreed to be present in advance (lawyers, etc.) will be present during the mediation in their respective rooms.
- The mediator should be aware of the logistics of meeting online – is everyone meeting online remotely from different locations, is one team all together in one place, etc. It is best to have an even footing for all participants, so mediators should encourage participants to join in the same way. The mediator should also consider any time zone differences.
- The mediator should send a reminder via email/text/phone to the participants closer to the mediation time.

- **Data Protection**

- The mediator should be mindful of the effect of the platform on confidentiality– not completely confidential. (Note: University of Toronto report on security weaknesses of free Zoom accounts - <https://citizenlab.ca/2020/04/move-fast-roll-your-own-crypto-a-quick-look-at-the-confidentiality-of-zoom-meetings/>) The mediator should refer to the platform’s privacy policy in doing so, and should make this aware to the participants in the agreement. Premium accounts may also afford more confidentiality and security.
- The mediator should ensure all participants are in a quiet environment where no one can listen in. This should be done at the start of the session.
- The mediator should ensure that there is no personal information in anyone’s background such as family photos, names, etc. This should be done during the test call.
- The mediator should uphold confidentiality by deleting or destroying any information/documents directly after the mediation has finished or within a specific time.
- The mediator should ensure any emails that are sent are from a secure, encrypted email address.

- **Equipment requirements**

- All participants must have a good broadband connection. It is recommended that all participants check their connection status early to prevent any delays in joining the session.
- All participants must have an adequate device – phone/tablet/computer with camera and audio capabilities. If using a phone or tablet, do not hold the device freehand as this can impact comfortability. Ideally, have the device’s camera positioned at around eye-level.
- Participants may use headsets/headphones with built-in microphone – optional.
- The mediator should ensure that the audio and visuals are adequate to proceed with the mediation.
- Some platforms offer a ‘blur’ option to blur your background. This is optional as some participants may lose video quality by using the blur option. Each participant should consider their device’s and broadband’s strength before choosing this option.

- **Test calls**

- The mediator should initiate test calls to ensure the equipment is working correctly & all backgrounds are appropriate for the mediation.
- The mediator should use test calls as an opportunity to explain the platform more, showing participants how to ‘raise hand’ and enter/exit breakout rooms, etc.
- The mediator should also make test calls in order to retain client confidence and rapport.

- **Backup Plans**

- In case of poor/loss of connection – mediator arranges a new call.
- In case of interruption – the mediator should assess the nature of the interruption, initiate a pause, consider reminding participants of the written agreement rules, and if appropriate, terminate the session.
- In case of technology/platform not working - use an alternative platform. (e.g. if video conferencing fails, use voice-only conferencing, although this must be unanimously agreed by all participants.)
- In case of delays of any participants – the mediator should reschedule the mediation for a more suitable time.
- In case of a participant wishing to leave the mediation, the mediator could make use of break-out rooms to meet with the participant individually, the links to these break-out rooms (depending on platform) should be pre-notified to the different participants. Where break-out rooms are used, participants should be asked to go to their break-out room when leaving the joint meeting and told that the mediator will join them there shortly.

3. The Mediation Session

- **Starting the Session**

- The mediator should allow participants to enter the joint meeting.
- The mediator should commence the session by stating that it is without prejudice and that confidentiality must always be upheld according to the agreement.
- The mediator must make all participants aware that they cannot make use of any messaging/chat functions available on the platform as messages cannot be deleted. Only the mediator may use these functions to manage expectations and alter any arrangements, however, the mediator must also be aware of the implications of using the chat function. E.g. participants typing angry messages to each other. In such cases, the mediator should decide whether to terminate the session or not.
- The mediator should encourage all participants to use the 'raise hand' function (if available on the platform) if they wish to speak, to prevent interruptions.

- **Ending the session**

- The mediator should make a clear statement that the mediation is ending.
- The mediator should also ensure that all participants leave the meeting space before leaving it themselves.

- **After the Mediation Session**

- The mediator should decide whether electronic signatures or sending around documents via email to sign is more appropriate.
- The mediator should destroy/delete any documents relating to the mediation in order to maintain confidentiality. The mediator should also ensure that any

participants that have similarly made notes do the same and destroy/delete them as soon as possible.

- Any communication after the mediation must be clear in its purpose, be part of the bargaining or concluding phase, or arranging a future mediation date. Any further exploration or new points of discussion must be made in another mediation process.
- All post-mediation correspondence must be marked private and confidential when relevant.

4. Advice/Tips for the Mediator(s)

- Consider the impact of technology on your relationship with the participants. Rapport with clients can take longer to build and can be lost quickly. It may be important to create several pre-mediation sessions to build up relationships.
- Allow breaks like you would if in a face-to-face mediation. The mediator should make use of any available private breakout rooms on the platform.
- The mediator should consider other ways to build trust and connection with the participants, for instance, by talking about your own technological difficulties you may make the participant feel more at ease with their own difficulties.
- The mediator should be aware that eye contact loses its effect over video, so you should recommend addressing each other by name in order to maintain clarity.
- Due to the nature of lagging on video calls, interjections by the mediator or participants may be construed as rude. The mediator should suggest that if anyone feels the need to interject on a point, they should note their question/point down and be allowed to say it afterwards. This helps maintain structure during the mediation. The mediator should also make reference to the 'raise hand' option, if available on the platform.
- The mediator should be mindful of the tone of the participant; this can be done online by ensuring that only one person is speaking at a time, taking into account the one second lag.
- The mediator should also consider what types of situation are appropriate for online mediation. (One private provider listed several child-related situations that were suitable for online mediation, as well as situations regarding financial settlements and will disputes - <https://www.startmediation.co.uk/online-mediation/>)
- The mediator should also make several, regular checks on all participants to ensure that everyone is comfortable continuing the session in the online format.

5. Official Guidance for Online Mediation

- Civil Mediation Council – Guidance on Online & Remote Mediation
<https://civilmediation.org/wp-content/uploads/2020/03/CMC-Guidance-on-Online-and-Remote-Mediation-31.3.20.pdf>
- Family Mediation Council – Guidance for Online Video Mediation
<https://www.familymediationcouncil.org.uk/wp-content/uploads/2016/09/FMC-Guidance-for-Online-Video-Mediation-September-2016.pdf>

Main Sources

Civil Mediation Council - <https://civilmediation.org/wp-content/uploads/2020/03/CMC-Guidance-on-Online-and-Remote-Mediation-31.3.20.pdf>

Family Mediation Council - <https://www.familymediationcouncil.org.uk/wp-content/uploads/2016/09/FMC-Guidance-for-Online-Video-Mediation-September-2016.pdf>

Other Sources - Private Mediation Providers

Independent Mediators Chambers - <http://www.independentmediators.co.uk/wp-content/uploads/2020/04/Online-Mediation-How-to-use-and-some-guidelines-and-ground-rules.pdf>

Start Mediation - <https://www.startmediation.co.uk/online-mediation/>

Other Sources – Blogs

Davies, B, *Developing an Online Mediation Practice* – Mediate.com
<https://www.mediate.com/articles/DaviesB1.cfm>