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## Covid-19 Mediation Service Open

With support from the Scottish Government Wellbeing Fund we are delighted to report that Scottish Mediation's Covid 19 Mediation Service is open.

Inspired by colleagues in Mediate British Columbia the service is for people with disputes and disagreements arising from the lockdown. That could range from flatmates falling out to a dispute with an employer about how furlough is working.

People are invited to get in touch with Scottish Mediation, we will contact the other party and if they are willing we'll allocate a mediator from our panel of mediators.

The mediators have volunteered to do this work pro-bono for individuals and organisations up to five people with a reduced flat fee of £300 for other organisations.

As well as getting in touch with organisations like Citizens Advice Scotland, SCVO and OSCR the Charity Regulator.

Scottish Mediation have excellent mainstream media coverage in the press and on TV for the scheme. Further promotion is currently taking place and will feature some of the mediators who have volunteered to be a part of the service.

For more information click [here](#).

# Mediations, using Zoom – a revelation?

John Sturrock

Ten weeks ago, I had barely heard of Zoom. At that time, I was fairly sceptical about online mediation in the kind of cases I do. It could never substitute for face to face meetings with their intimacy and candour. Or so I thought.

I have recently undertaken a number of mediations using Zoom. It is, frankly, a revelation. Indeed, in some respects for me as a mediator, this format is proving to be more effective than the traditional way.

Why might that be? Well, our preparation is different. In advance of the “mediation day”, I have met with the parties (the principals), and had one or more detailed meetings with the lawyers to discuss preparation, further inquiries and the issues and to focus on key points. All of these meetings have involved using Zoom albeit, in one case, only after a telephone conversation with the client and his lawyer and two experimental further calls to explore and then demonstrate Zoom. Initial reluctance changed to acceptance.

In a number of cases, in the initial meetings, I have shown the parties and their lawyers how the breakout rooms work, moving them back and fore between different locations in different permutations. That has built real confidence. All documents come separately and electronically. There is less formality about documentation, enabling people to augment and modify as the discussions progress. The (modified for this format) agreement to mediate is signed electronically in advance.

As a result, in advance of the “mediation day”, I feel I have been able to focus better not only on the substantive issues but on personal dynamics and

sensitivities. Of all my learning, though, it’s the intimacy of the meetings on the day which impresses me, whether listening to a party explaining his or her story, or discussing privately with the lawyers as candidly as I have ever done, their negotiating strategy and how I can help them. Sometimes, we have done this in the lawyer’s separate room, giving their client another room, indeed with permission to go off and do other things until their lawyer texts them with a request to return.

Sometimes I have spoken to the parties on their own just to reassure and help them to manage the day. Sometimes the lawyers all gather in the “lawyers’ room” to take stock. While many of the usual negotiation dynamics are present, I am finding that there is often greater



Photo by [Charles Deluvio](#) on [Unsplash](#)

candour and more respect shown for differing views. And a willingness to assess the effect of how we speak and act online. It is as if this electronic distancing enables a different kind of intimacy or openness.

I feel I have been able to be as frank and as considered as I would always hope to be. I am less hassled than I sometimes feel moving between rooms. We laugh

# Mediations, using Zoom – a revelation?

John Sturrock

about sharing lunch and refreshments. Dress code seems to vary but is mostly more relaxed and variation is not an issue. I feel more in control and of course, in a way, I am.

The real point, however, is that this is not a “Zoom mediation” but a mediation using a number of media, including an online visual and audio tool which is called Zoom. The platform is a servant to the process, not the other way round. Another, separate, thought has occurred to me as we ponder the delay in court cases. I have been struck by the effect on parties of long-running court cases. I have had some situations recently where the human cost of delay and the accumulation of physical and mental damage, and of monetary damages as a result, is really significant. By being stuck in the litigation process, people who are

already suffering become even less able to get back to work and even more psychologically damaged. Medical and employment reports will often say that, until a case is resolved, the claimant will not be able to move on. And yet they wait for months or years... This could be seen by some as a scandal. I know this is an obvious point but, if ever there was an argument for trying something different as a speedy alternative, now is surely the time.

And, as I have argued elsewhere [<https://www.mediate.com//articles/sturrock-green-pledge.cfm>], online mediation could make a substantial contribution to lowering the carbon footprint of dispute resolution.

John Sturrock, Founder and Senior Mediator, Core  
(First published in Kluwer Mediation Blog)



## Online Mediation Training Courses

Refresher Course for Accredited Mediators\*

and

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If you are interested in participating, please contact:  
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*\*please provide details of previous training completed*

[www.core-solutions.com](http://www.core-solutions.com)

# Scottish Mediation News

## Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Bradley McKay, Polly Harmer, Nayrim Buchan, Angela Grahame, Naomi Head and Richard Daniels **join** as new individual members.

Stephanie McTighe and Mark Field join as new Practitioners.

Renfrewshire Council join as organisation members.

*Whether you are an organisation, a practitioner of mediation or someone interested in finding out more we have a range of memberships available which can be viewed [here](#).*

## Training and CPD

Scottish Mediation are delighted to present our **Apology in Mediation CPD on October 15th October 10am-1pm and on 27 October 1pm-4pm.**

It has been said that the act of apology is one of the core reparative opportunities in damaged relationships. This 3 hour interactive workshop facilitated by Carolyn Hirst will explore the part that an apology can play in righting perceived wrongs and restoring relations. Questions to be considered include: What is an apology? What is the purpose of making one? Who should make and receive an apology? and Is there an optimal time for making an apology? The workshop will draw on research and practice, with mediators being invited to share experiences and discuss approaches.

This CPD is being held online. To book your space and for further details click [here](#).

## Mediate 2020

This year's Mediate 2020 is going to be a first for Scottish Mediation as we go online. We are currently reviewing dates in early November and are considering running the conference over two half days in order that we can deliver our engaging programme without zooming people out.

We are currently working on the conference theme and programme so if you have seen something you think would work well at the conference please let us know by emailing [admin@scottishmediation.org.uk](mailto:admin@scottishmediation.org.uk)

## Annual Verification Update

Every year Scottish Mediation selects members from the Scottish Mediation Register and undertakes a detailed verification of their mediation hours and their CPD and learning activity.

This year the following mediators were selected and we are delighted to say that they all met the standards set out. Patrick Scott, Anne Dick, Hew Dundas, Natalie O'Hare, Carolyn Thompson, Catriona Davies and Ailie Barclay.

# Scottish Mediation Charter

## Organisations Signing Up

Since its launch in January the Scottish mediation Charter has continued to attract commitments from organisations across Scotland.

### What is the charter?

It is a public statement of an organisation's commitment to using mediation as a way of resolving disputes and to equipping staff with the skills of mediation.



THE SCOTTISH  
MEDIATION  
CHARTER

stakeholders that the organisation is one that would seek and encourage dialogue as a core part of the way it conducts business.

By signing up to the Charter organisations can also share with and learn from other signatories through events for Charter Signatories.

There will be resources available to Charter members such as template policies and procedures and contact points to help take mediation forward.

### Why Sign Up?

Using mediation to resolve disputes can be more effective and help maintain both internal and external relationships. This can have a positive impact on an organisation's culture as an organisation that is skilled in dealing in conflict can also utilize its positive force for innovation and change.

Signing up gives an indication to key

### How Difficult is it to Meet the Standards?

The Charter is based on a self-assessment approach and essentially whether the organisation fulfills the two main commitments.

### What Does it cost?

There is no upfront cost in signing the Charter. For more info click [here](#).

## Online Mediation Skills Course,

27, 28 August, 3, 4, 11 September

2019 + Dates tbc

Designed for people who will be using mediation skills in their work, this course is accredited by the Scottish Credit and Qualifications Framework at level 6. Using Zoom as the online platform, this course consists of 9 modules. Each of the first 7 modules are two-hour online sessions, with the final two modules being held at a training venue, once covid-19 restrictions are lifted sufficiently to allow this to happen safely.

The course provides information on key concepts in mediation and the opportunity to discuss and practice basic skills in a safe, relaxed atmosphere. It covers the whole mediation process from first contact with the service to closing a case. The course is assessed based on activities from day five onwards, culminating in a full role-play of a mediation meeting on the last day of the course.

To book a place or for more information please contact: Robert Lambden at Scottish Community Mediation Centre: e-mail [infoscmc@sacro.org.uk](mailto:infoscmc@sacro.org.uk) Course Fee is £600 per participant



SCOTTISH COMMUNITY  
MEDIATION CENTRE

## Board Profile—Eilish Garland

### 1. What is your day job?

I am an independent accredited mediator and executive coach since 2014. I work flexibly with clients in universities, local authorities and in the NHS, across Scotland and am a volunteer in the Edinburgh Court Mediation Service.

Additionally, I am a Trustee with the Sutherland Trust which arranges lectures for Education, Social Work and the NHS professionals, and gives bursaries annually for further training in psychodynamic thinking and practice.

Mediation has been integral to my professional career. I started my professional life teaching in Dublin and in West Lothian. I was then asked to establish the first education service in NHS Adolescent Psychiatric Services in Edinburgh.

Later on, to engage with young people who were excluded from Secondary School, I initiated the Out-Reach Teaching Service to help and support them back to school, University or work.

The highlight of my professional career was undoubtedly heading up from its inception, the first uniquely education-dedicated dispute resolution service in Scotland in 1994 (then called the Advice and Conciliation Service) in the City of Edinburgh Council's Education Department for 250 educational establishments with staff, parents and stakeholders.

Over time, this pioneering service had proven success in reducing formal complaints from parents and stakeholders, and often using mediation between parents and Head Teachers, this service was highly commended by the Local Government Inspectorate. Latterly, it was used as a model of best practice for complaints handling in the Public Services Reform Act 2010.



### 2. What motivates you to get up on a Monday morning?

Having something to offer, giving back, being purposeful gaining fulfilment (but only after a cup of tea!).

### 3. How long have you been a Trustee and why did you become involved?

I was interested in becoming a Trustee again to continue to engage with, and promote mediation in its 'performing' stage, as it became more part of the fabric of Scottish life, and Scottish Mediation becomes more the 'Go to' place for all citizens.

## Board Profile—Eilish Garland

### **4. Did you have any prior knowledge of or involvement with Scottish Mediation before?**

Yes, I was a Trustee for three years when Scottish Mediation was called the Scottish Mediation Network. This was during its 'forming' period, with quite a bit of 'storming' going on at that stage.

### **5. What have been the highlights of your involvement with Scottish Mediation?**

- (i) Being a champion pioneer of mediation being a speedier, impactful, more flexible solution for disputes in the earliest stages.
- (ii) Having an opportunity to engage with mediation training skills with young learners and senior staff in education.
- (iii) Discussing and promoting mediation to people who do not know what mediation is (yet).
- (iv) Enjoying and gaining from conferences, William Ury, for instance.

### **6. What do you see as the main issues that the Board has to address at present?**

- (i) Promotion of mediation across the board.
- (ii) To dispel the belief that mediation is just for courts and lawyers, within a legal framework.
- (iii) To ensure access to all citizens.
- (iv) Consider Out-Reach Mediator hubs in all parts of Scotland as peer group support with Community Mediator Groups using social media more often.

### **7. If you could change only one thing for mediators, what would it be?**

I'd speed up widespread understanding and appreciation of mediation as a crucial, inexpensive, positive tool for dealing with any dispute, where appropriate. This is coming, but the sooner it happens, the better for society as a whole.

### **8. What keeps you busy outside work?**

Lifelong learning. Loving life, family, friends, relationships, running, cycling, art and travel (when possible).

# Zooming in: Some reflections on an online mediation training session

Craig Cathcart

## Zooming in: Some reflections on an online mediation training session

### Introduction

Recently, six Scottish Mediation colleagues including me took part in a 4-hour training and development session for online mediation.

Below are my fairly immediate reflections on the exercise from a skills development point of view, largely based on notes made during the session and my reflections on the experience since. Comments are not made with any sense of me having a 'right' answer, but purely to share my thoughts – what I learned, and the questions that arose in my mind as a result.

I found the session very useful. It identified some of the points of detail that mediators should be aware of when we use real time video technology. Secondly, it helped each of us get hands on practice with a particular online platform (Zoom). I have tried to make my comments as generic as possible, and clearly other apps are available and features will vary. In no particular order, these are some of my takeaways and observations.

### Confidentiality

Confidentiality looms large over everything we do, and in the online setting it takes on different dimensions. In addition to the usual prior discussions, explanations and contractual stipulations around confidentiality, the practical aspects need to be thought about and surfaced with clients and agents.

For example, how do we know who else can hear? Today, some of us had headphones, which meant that the session was not audible to anyone else in that person's space. Others used speakers, which runs the risk of having the amplified discussions overheard.

Who is in the room? When we occupy the same physical space, it is very clear and obvious who else is there. Not so online, when we cannot simply scan the room, and where to guarantee privacy we may need a more technical move than just closing the door.

The possibility of accidental exposure or leakage is increased when we start to use virtual side rooms for caucusing. It was unanimous today that breakout rooms are useful, and some of our practice was on becoming familiar with setting them up and moving parties in and out of them. Whoever is hosting the meeting (which may or may not be the mediator – see below), she needs to be comfortable with the creation and management of side rooms, and with monitoring what the software tells one about them. The Centre for Effective Dispute Resolution (CEDR) recommends at least 4 side rooms for a 2-sided mediation: one each for the parties, one for the mediator/s, and one for needs as they arise.

Care and thought need to be taken with the use of any 'chat' facility. In its native state, this allows participants in an online meeting to create a side bar conversation by typing (paradoxically not 'chatting'), with instant messages addressed to everyone or to a particular individual. In today's scenario, as agent for one of the parties, I deliberately sent messages solely to my client while the mediation was ongoing – 'passing notes under the table', as it was memorably summarised by Alun. Arguably this is desirable or even necessary in this context, since





## LLM/MSc Mediation and Conflict Resolution

The ability to deal with conflict is a key skill in the modern workplace. The UK's leading postgraduate programme in Mediation and Conflict Resolution at Strathclyde Law School provides a thorough, practical and exciting introduction to this developing area. Our alumni are working as freelance mediators and in law firms, public sector bodies, NGOs and mediation organisations, in Scotland and overseas.

**Legal training is not a pre-requisite; the MSc/LLM option means students from a wide range of disciplines can tailor the course to their needs.**

Distinctive features include:

- A thorough introduction to the academic study of mediation
- A focus on interpersonal mediation skills including the ability to deliver online mediation
- **The Mediation Clinic**, enabling students to work closely with experienced mediators. The arrival of Simple Procedure has brought many more cases to the Clinic, increasing the opportunities for students to gain real world experience
- Accreditation by Scottish Mediation (as fulfilling the training requirement for the Scottish Mediation Register)
- Rigorous and multi-disciplinary, taught by UK and international experts
- A truly international mix. Recent cohorts have included students from India, New Zealand, Ecuador, Brazil, Ghana, Nigeria, Seychelles, China, Canada, USA, Germany, Spain, Czech Republic, Poland, Belgium, Iceland and the UK
- Suitable for leaders, managers, lawyers, mediators, HR, health professionals and anyone working with people

Participants will enhance their confidence in dealing with interpersonal and organisational conflict while developing their communication and problem-solving skills. As well as core classes on mediation theory and practice, students may choose electives in negotiation, employment mediation, mediation law and policy and arbitration plus classes from throughout the Law School.

**Start Date:** September each year  
**Mode of Study:** Full-Time or Part-Time taught by a combination of evening lectures and intensive weekend sessions. For 2020 we are introducing a blend of online and face-to-face teaching.



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 t: 0141 444 8600

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parties on the same side have less opportunity to read non-linguistic signals than if they were in the same actual room. On the other hand, it could be seen as undermining the transparency of the discussion and the process, since it is not as obvious and visible as requesting a time out for consultation with one's client, for example.

In our case, the host realised this was happening, and part way through the mediation he restricted use of the chat facility. He then reconfigured the facility only to allow individual messages to the host (in this case the mediator), which could allow for process requests (such as for an adjournment) to be made quietly. While this restricts using the online platform to 'pass notes', of course it doesn't stop party and agent exchanging messages via email or text while the mediation is in flow.

The host can pre-allocate parties to particular side rooms, and even name them, and it may be a good organising tip to do this (and many other things) well before the mediation session. This helps reduce the risk of the wrong people being put into the wrong room. The host can also move between side rooms, although we did not come up with a wholly convincing analogue for the polite knock before entering that we use in the real world. Many of the features demonstrated today happen instantly, literally at the click of a button, and that includes the host entering and leaving rooms that may have ongoing private discussions.

Concern has been expressed about the 'hackability' of video conferencing software, and especially Zoom. The professional (i.e. paid for) version allows one to 'lock the meeting' once all



### THE MEDIATION PARTNERSHIP SMR Accredited Mediator Training



**First Course in Scotland to be accredited by the Scottish Mediation Register**

**N.B. This course has now moved online and will be delivered over eight morning sessions with an additional half day assessment**

**Dates: Thurs 10<sup>th</sup>, Fri 12<sup>th</sup>, Thurs 17<sup>th</sup>, Fri 18<sup>th</sup>, Thurs 24<sup>th</sup>, Fri 25<sup>th</sup>, Weds 30<sup>th</sup> Sept & Thurs 1<sup>st</sup> Oct 2020  
(Assessment Fri 9<sup>th</sup> Oct 2020)**

This intensive online course is suitable for mediators, lawyers, managers, HR personnel and anyone with an interest in gaining or enhancing mediation skills. It will provide delegates with a clear theoretical and practical training course, in line with the Scottish Mediation (SM) *Guidance on Mediator Competency*.

**"Best training event I have ever been to. Excellent guidance. Great fun."** Delegate from the University of Aberdeen

**"Previous training felt like learning the highway code and having a 'go' in a simulator, whereas with Linda and Aileen it was like getting to drive the car with two very able and encouraging instructors on board to make it a safe and enjoyable experience."** Lili Hunter, Lili Hunter Consulting Ltd

To book a place, or find out more information, contact Aileen Riddell on 07950 395276 or e-mail [enquiries@mediationpartnership.co.uk](mailto:enquiries@mediationpartnership.co.uk) [www.mediationpartnership.co.uk](http://www.mediationpartnership.co.uk)

## Zooming in: Some reflections on an online mediation training session

Craig Cathcart

participants are in, so there is no risk from any rogue party clicking the link and crashing the party. There are other access protections: meetings can be set up with passwords and with a 'waiting room', where those wishing to join have to be admitted by the host.

Finally, Zoom at least has a 'record' function, and unless explicitly agreed by all this should be disabled by the host. (And bear in mind that if as mediator one does record a session, a whole world of data protection obligations comes to rest on one's shoulders.)

### Pre-management of the parties

In a real-world environment, mediators will prepare and easily control the space in which the session takes place. We will arrange furniture, check facilities, as well as think about access requirements for participants, and a myriad of other things to do with setting the right tone by creating the right environment. In essence, the parties come to us, so only need to manage themselves.

In remote mediations, the balance of organisation is different. The parties need to self-organise IT access – hardware, software, broadband, possible accessories such as a webcam, external microphone and so on. And they must have a safe, relatively private space in which it can all be set up and operated. And then the skill set to work the equipment. Located elsewhere, there is only so much the mediator can do to assist with set up, or if things go wrong mid-session.

Pre-information thus becomes vital. That may have several aspects: a written technical spec checklist may be one ('Here's what you'll need to get set up for your online mediation'). Prior individual

conversations with parties are another, most likely starting by phone. These could go from initial engagement right up to the day of the mediation, to check everyone is where they need to be step by step. One suggestion from Alun was a staggered start; inviting parties to join the meeting at different times. This would allow them to be welcomed and settled with less pressure and potential loss of face (imagining that the first to arrive has been oriented and parked in a side room for the moment).

As mediators we do well to avoid making assumptions about how others are viewing the situation. This wisdom takes on a practical dimension when online. For example, we need to understand how



participants are accessing the meeting: is it via a laptop, PC, tablet, phone? Through practice we discovered that Zoom (and presumably other apps) is formatted differently depending on the hardware one is using, with both different functionality and different screen set ups.

### To see ourselves as.....

As Burns said, it is that most elusive gift – to know how we look to others? In our session I used a tablet, and while the

# Zooming in: Some reflections on an online mediation training session

Craig Cathcart

camera quality was good, the camera itself is on the left side of the device, rather than top middle as it would be on a computer. This meant that while I was looking straight at whomever I was addressing, to them it looked like I was avoiding eye contact and my gaze was unaccountably stage right. Given the importance of nonverbal confirming signals for showing attention and building rapport, this was a significant insight.

Later in the session I swapped for a laptop. This had a poor built in camera, but at least it was centrally located so that no longer did I appear distracted or untrustworthy with my averted gaze.

It is probably good practice when opening to address this specifically, and to ask the parties how you appear and sound to them (and give similar feedback). You might also explain not only that you may take notes from time to time, but that you could be looking at a second screen as well, and that the visual effect of this should not be over interpreted by the parties.

Other things to think about were how we filled our frame – too close to the lens, too far away, too high or low in the picture – and the visual impact of wearing headphones, headset mikes and so on. Another concern was how the glint of reflected screen light on one's spectacles could prevent that culturally important eye contact.

We had no scientific view on what makes the most positive impact, the main point is to understand that one is always projecting an image, so one should take care that it is the desired one.

## Opening

Some thought should be given on how the mediator's opening statement needs

to be adapted. As described above, for example, confidentiality has additional dimensions in the online context, and other things are also different. You should have managed client information and expectations up to this point; however it always makes sense to underline and remind, and of course to check understanding before you begin in earnest. Some possible additions/ amendments might include:

You may want to get each party vocally to confirm that nobody else is in the room;

Outline management/process control functions of the host – for example

how you have set up the 'chat' facility;

how side rooms are set up and any



Photo: Scott Graham unsplash.com

caucusing will be managed;

the power of the host to mute any and all mikes to allow for uninterrupted input;

(not) allowing parties to self-disable video during the session;

Directing all parties to mute when not

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contributing, to minimise feedback;

Remind parties of your back up plan (see below);

Each mediator approaches the opening in her own way, so the most useful tip here is to reflect in advance on how you do it in 'same space' mediating, and what should be different for the online context.

## Caucusing

Assuming you use caucuses in your practice, and you have the technical arrangements in place, then it may be useful to think about how the use of side meetings comes across in the virtual environment. From a party's viewpoint, for example does it add a sense of further remoteness to existing remoteness? How

do we ensure confidentiality from the party left alone, when we cannot monitor the physical space in which we have placed them? For instance it may be only natural for a non-attended party to step into the next room of their home and be asked by their partner 'How's it going then?'

We know from Einstein that time is relative, and in our session caucus time seemed to pass differently depending on one's role. For the mediator, private sessions whizzed by, whereas for the non-attended party, the time stretched and yawned, with all the dangers that can give rise to. Time management is important in all circumstances, and perhaps even more in the online setting.

Good caucusing hygiene applies here as elsewhere: manage parties' expectations

## Resolve conflicts at an early stage

### Mediation Skills

Perth 6th and 7th October 2020

£480 + VAT

This experiential course is endorsed by the Institute of Leadership and Management (ILM) and taught by Rachel Weiss, an experienced workplace mediator on the Scottish Mediation Register.

*"Great mediation skills training. Will take lots away to use within the workplace. Thanks, Rachel and Rowan Consultancy"*  
Noele McClelland, Partner, Thorntons LLP

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about how it will work, set and keep to a strict time limit with each party, take as little time as possible in caucus, leave homework for the non-attended party, check off what is/not to be shared with the other, take notes of what is agreed in caucus, and remind everyone multiple times of how confidentiality applies across all aspects of the mediation.

On top of the usual homework-setting, in a remote context it may be realistic to agree with the non-attended party what she can do while waiting. For example, take a comfort break (or not).

## And if all else fails....?

The recipe for much success in life is to hope for the best while preparing for the worst. Online, there is a huge number of organisational variables partly or entirely outwith the mediator's control, on top of the predictable unpredictability of human behaviour we are all used to. So it is useful to pre-reflect on what may go wrong, and what contingency you should have in place to deal with it.

An obvious risk is tech failure, whether from power loss, Wi-Fi drop, user incompetence or something else. In today's session, one participant suffered intermittent camera outage. She had full audio, but no video, for parts of the session.

This could be seen as a practical problem only: if she can hear and be heard, what's the issue? It may not be so simple. What does this do for equality of arms between the parties, for example, if you can see me but I can't see you? Does this create or increase a power imbalance?

Best advice may again be to think about this beforehand, and gain the parties' agreement on what you will do if there is

a partial or total tech failure. At a minimum, ensure there is at least one alternative means of contact for everyone - a phone number or email address, for instance. You may also want to manage the parties' expectations that at worst, should there be a breakdown, the session will need to be adjourned and rearranged.

## Get your back up

We know the mental agility and concentration needed at the best of times



Photo by Christina @ wocintechchat.com

to mediate effectively. If we add to this the need to manage an online platform with its various intricacies and hazards, then we may be asking too much of ourselves. From our practice today, a consensus emerged that having a second person helping run the show may be useful, if not in fact necessary, for success.

This may be a co-mediator, who has professional capability and insight and can also see to the technical aspects while not leading the discussion. He can let the first mediator concentrate on the 'what', while he looks after the 'how', on top of doing all the useful things a co-mediator does such as giving another view on where to go next.

## Zooming in: Some reflections on an online mediation training session

Craig Cathcart

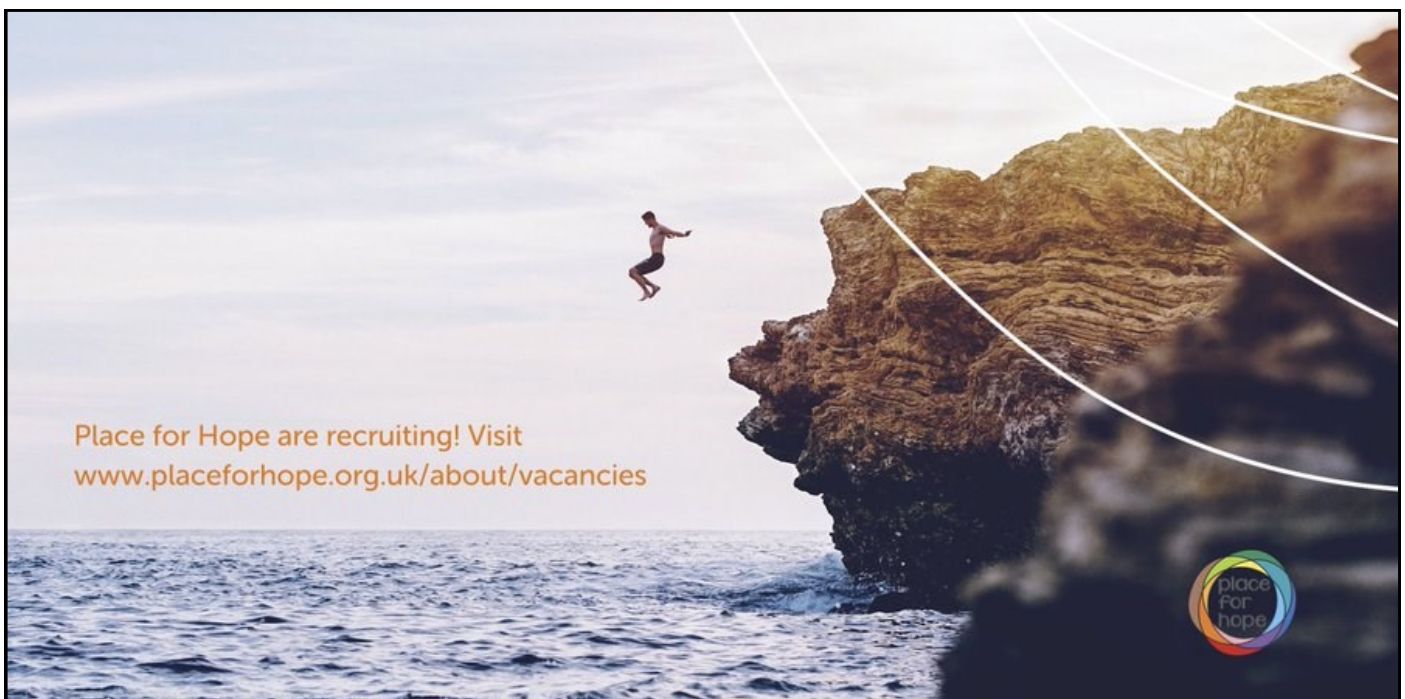
If not a mediator, then a second person acting as administrative and technical support in the session is likely to be helpful. In either case, the supporter can be designated 'host' for the meeting, giving her full use of the management functions of the platform. The suggestion was also made today that a second party could keep a log of the process moves if required, e.g. when parties were separated and how, when they returned and so on.

Mediation in any context requires huge energy and concentration. Based on our limited but growing experience, those of us in the session agreed that mediating online requires even more of both. Having another person supporting you will help

share that burden.

### Conclusion

For many, mediating online is change thrust upon us. Like the best mediation training, we are learning by doing. By applying good mediator traits like forethought, preparation, reflection, and thinking how things (literally) look to others, we will learn and adapt. Eventually the technology should become secondary and instrumental, allowing us to focus on the truly important matter of helping parties find a positive way through their differences.



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# Legal Mediation in the Time of Covid 19: Now Is the Time to Start Talking!

Mediating Online is happening, now you can use it too. By Graham Boyack, Director of Scottish Mediation; Paul Kirkwood Law Society of Scotland Accredited Commercial Mediator and Director of Mediation, Negotiation and Conflict Resolution Services (MNCRS); and Malcolm Currie CEDR Accredited Workplace and Employment Mediator and Mediation Skills Trainer/Coach, Director of Strathesk Resolutions.

## **Impact of Covid-19 on Civil Business**

First, the bad news. Ongoing government restrictions mean, for the foreseeable future, we're likely to have social distancing in one form or another. It therefore follows that 'normal' human contact is, at best, going to be difficult. One result is that many legal actions have been paused and proofs/tribunals in civil cases have been put off, causing a large backlog of cases. Many have been put back by years. The civil justice system as we have known it is not functioning, clients' interests cannot be taken forward quickly, and lawyers' businesses are suffering. So, what's the good news?

Well, there has never been a better time for lawyers and clients to consider legal mediation! Mediation is an approach that puts client involvement, and their best interests, first. It is quicker, and cheaper (for both clients and lawyers as there are no court fees), than going to court, carries less risk and, with direct solicitor involvement, keeps clients fully legally informed and in control. Most importantly, using an appropriate online conferencing facility (most mediators use the Zoom Pro platform), it is possible to maintain client and legal confidentiality (more on this later). The platform provides for clients and their lawyers to be kept in a waiting room, then to be admitted to a joint meeting room and, when the need arises, to be placed in breakout rooms for private, confidential

conversations between parties, their lawyers and the mediator.

In Scotland, whilst several lawyers, who are 'early adopters', use mediation, they are still a minority. Many litigation lawyers haven't yet had the opportunity to become familiar with, nor take part in, legal mediation. In some senses, the Scottish legal profession has seemed reluctant to embrace it, despite it being the norm in many other jurisdictions, but current circumstances may persuade them to do so.

## **Legal Mediation as a Win-Win-Win Option**

In Ontario, Canada mandatory mediation has been part of the court procedure for 21 years. Most litigated cases go through mediation. A mediator is appointed and arranges a mediation meeting early in the court process. Prior to that, parties must exchange a mediation statement setting out legal and factual issues, alongside supporting documents. Failure to comply leads to financial penalties being imposed and can result in cases being dismissed or defences repelled. Many litigation lawyers worried that mandatory mediation would threaten their financial well-being through reduced fees.

Unexpectedly, the outcome was much more positive. Mediation, now an integral part of court procedure, means lawyers must prepare themselves, and their clients to participate and negotiate effectively, in the same way as they need to prepare for a proof or tribunal hearing. As a result, those lawyers recover legal costs and fees in preparing for, and taking part in, the mediation. They get paid a lot earlier too, rather than having to wait until a settlement just before a court hearing or a long time afterwards. In theory, this should free their time to address the cases of additional clients.



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In Scotland, mediation is not an integral part of the court procedure, but it is still available for lawyers and their clients to use and recover costs through efficiencies of the process. In Commercial mediation the norm is for both parties to bear their own mediation costs (mediators cost a lot less than court cases). In Employment/Workplace mediation, employers bear the cost of mediation for both parties. Likewise, in litigation where Insurance is a factor, for example Personal Injury cases, it is the norm for insurers to meet the cost of mediation, including the costs of preparing for it and participating in it.

Prior to mediation, it is usual for the parties to enter into an Agreement to

Mediate, through which they commit to engage with the process with a view to reaching a mutually acceptable outcome. Within this, it is possible, indeed desirable, for both parties to identify who is meeting the preparation and participation costs to avoid dispute afterwards. It is in the interest of insurers to participate in mediation at an early stage. It prevents the parties becoming embedded in their positions, and will reduce their long-term legal costs, while failure to participate in an offered mediation could result in increased costs by way of court-imposed penalty. In the event of settlement following mediation in a litigated case (the vast majority of court cases do settle), or even in an unlitigated



### Getting to Grips with Mediation online: Active Learning for Practitioners

This 4-hour, immersive session will give you and 5 other participants active practice of mediating online. Using Zoom Pro, one of the online applications most widely used for mediation, you'll experience the process from all perspectives, including party, representative and mediator, as we develop a roleplay scenario over the morning. Using the application features, you're be able to make, and follow, process decisions.

After each round of mediation, there will be time to discuss how the medium has affected the process, and to share observations, hints and tips to allow full sharing of knowledge, with the hosts feeding in their knowledge and experience.

**The session is being led by Malcolm Currie and Paul Kirkwood. To book click [here](#).**

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one, it will result in lawyers being paid for their hard work much sooner (a particular boon at this time) and, more importantly, their clients cases will be settled much earlier, leading to happier clients and capacity for further cases. Generally speaking, clients whose legal disputes are settled quickly with less cost, are more satisfied and therefore more likely to instruct the same lawyers in future cases! If they've been dragged through an expensive court or tribunal process for years, they might not be!

## Accessing Mediation

Scottish Mediation keeps a Register of Accredited Mediators for the Scottish Government – details can be found on its website at [www.scottishmediation.org.uk](http://www.scottishmediation.org.uk). Other organisations that include mediators are the Law Society of Scotland, the Faculty of Advocates, RICS, CI Arb, Relationship Scotland, the University of Strathclyde Mediation Clinic and Edinburgh Sheriff Court Mediation Service, supported by CAB Edinburgh.

## Back to Zoom and Online Mediation/ Solicitor Training

You needn't wait for normal service to be resumed through the courts in order to progress a client's case. Mediation can be undertaken now, safely and confidentially, online. Everyone can be there, they can see everyone else and participate to the extent that they want. In the run-up to mediation, the mediator can have pre-mediation meetings with lawyers and their clients by video, enabling parties to become familiar with and trust the technology. By doing so, people are reassured that the actual mediation online is something that they can participate in and that it will work.

Paul Kirkwood, Law Society of Scotland Accredited Commercial Mediator, and Malcolm Currie, a CEDR Accredited

Workplace/Employment Mediator, are teaming up with Scottish Mediation and its Director Graham Boyack to offer online CPD mediation training, using Zoom Pro, to all professionals including mediators and lawyers. The sessions will be fully interactive, featuring mock mediations using commercial and employment scenarios where participants will be coached and encouraged to use the Zoom Pro technology, including the use of breakout rooms. Participants can choose to participate as mediators, clients or lawyers in the role-plays, ideally trying all three for a more 'rounded' feel of the process. This will provide a safe online learning environment for all, and hopefully go some way to demystifying the mediation process for many lawyers, to give them greater confidence to participate in legal mediation, look after the best interests of their clients and get their businesses going again! Details are on the Scottish Mediation website but feel free to get in touch with any of us.

## [Zoom for Mediators by Rowan Consultancy](#)

**Thursday July 23rd, 2pm-4pm**

Online mediation is here to stay, this workshop helps you transfer your mediation skills online. A maximum number of 12 participants ensures that everyone be an active participant.

You will learn how to:

- build rapport and trust online
- apply the ICODR (International Council for Online Dispute Resolution) Video Mediation Guidelines
- use breakout rooms and a waiting room with the main room
- share documents during a mediation
- schedule a meeting, linked to online calendars and invitations
- use the Zoom security features: lock meeting, password, settings

You will be sent 2 short videos beforehand, introducing you to Zoom settings and how to schedule a meeting.

For further details click [here](#).