


Advice for mediators on working with technology



CEDR has created the following guide for civil and commercial mediators to consider when conducting mediations online or by telephone.



Mediating using technology has the same fundamental principles and methods as standard face-to-face mediation but certain differences need to be thought about.

This guidance is not intended to be prescriptive but should enable mediators to be aware of some of the practical issues that can arise.

Before the mediation

- 1 A mediator needs to have an **appropriate professional email account** which is secure and can handle large files. A free web email account is unlikely to be appropriate. Online file sharing systems also need to be avoided unless they are secure.
- 2 The mediator and the parties need to be clear **when the mediation has begun and what communications are confidential and without prejudice**. This should be expressly stated at the top of emails.
- 3 If the mediation is going to take place remotely or by telephone, the mediator should still make the same effort as in a normal mediation to **contact the parties beforehand** and discuss the case with them privately. Email correspondence is not likely to be sufficient.
- 4 Similarly to how a mediator would confirm venue details and needs with a party, the mediator should **send in advance to the parties information about how to use any technology** and check that the parties know how to use it and are comfortable to do so. If the parties are not, the mediator should devise an alternative method.
- 5 It is desirable that **the mediator is in charge of the technology system**, however this is not always possible, for example where a firm is providing the virtual platform. In this instance, the mediator should speak with the firm about how to control the mediation (eg. setting up virtual meetings etc) and have neutrality and confidentiality, i.e. the mediator needs to check how any meeting between the mediator and the other party is private and confidential.
- 6 A mediator should **never** use technology that they are uncomfortable with or don't know how to use.

During the mediation

7 The mediator should be aware of the **effect of technology for process and relationship**. When using online technology, rapport takes longer to gain and can disappear more quickly. This is why it is important to have both pre-mediation and early rapport building sessions as much as is possible.

8 If using an online platform with live video, such as Skype you should **agree in advance** whether to use video throughout, not at all or at times. Video conferencing is more stilted than real-life and the mediator should be aware that parties can feel under scrutiny. At the same time, video conferencing can be a benefit to parties, to see that the other side are real people. The mediator needs to make a judgement call on this, rather than just having a default option of video on or off.

9 Confidentiality and privacy can be less clear in an online context and so the mediator may need to be more forthright about **confirming ground rules** at the start of the session. The mediator needs to feel confident that parties aren't having private conversations with individuals who are not formally part of the mediation, making extensive notes or transcripts and that the mediation is not being recorded.

10 The mediator needs to **check that people are engaged** as it's easier to become distracted if communicating remotely. This is especially the case if the party hasn't left the office and may have other work to look at. The mediator should therefore when leaving parties for an extended period of time either set a necessary task for the party that is relevant to the mediation or be clear that there is a break and that the parties can do something else. Leaving parties to their own devices for long times online is likely to lead to disengagement.

11 There will need to be a way for parties to give their **signature** remotely and it needs to be agreed in advance if it needs electronic verification or similar.

12 It is absolutely critical to **always have a backup option** for when the technology goes down (e.g. we will have a conference call by telephone). Similarly, do not delay the mediation whilst waiting for technology to be fixed but use the alternative method.

After the mediation

13 Be careful about communication sent after the mediation for whatever purpose. It needs to be clear if the communication is still under the auspices of the mediation and is private and confidential or not. A good rule of thumb is to **assume that any communication might be used by any party inappropriately**. If something is extremely confidential or difficult to explain by email, speak to the party directly instead.

14 Communications after the mediation should have a **clear purpose** and either be in a bargaining or concluding phase or arranging a future mediation day. If discussion is still taking place about exploring issues or raising new points, this needs to take place during a mediation process, not by extended post-mediation correspondence.

15 Whatever you do there needs to be a **clear final statement** by the mediator informing the parties when the mediation has finished and that the confidentiality and without prejudice provisions in regard to future correspondence are ending. Any future discussions need to be then organised within the context of a new mediation day.

16 A mediator should have an **appropriate policy for deleting files** and not leave confidential information about the parties on their system for a lengthy amount of time.

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