
Kluwer Mediation Blog

Mediations, using Zoom – a revelation?

John Sturrock (Core Solutions Group) · Friday, May 29th, 2020

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 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 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 is, arguably, 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 argued in one of my [earlier posts](#), online mediation could make a substantial contribution to lowering the carbon footprint of dispute resolution.

PS I [wrote recently](#) about the role of lawyers in all of this.

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